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Client Alert

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FDIC Temporary Liquidity Guarantee Program

On October 14, 2008, the FDIC announced the Temporary Liquidity Guarantee Program. The program has two elements. The first consists of an FDIC guarantee of certain new senior unsecured debt issued by participating institutions on or after October 14, 2008 through June 30, 2009. The second part provides for an unlimited guarantee by the FDIC of funds held by an insured depository institution in non-interest-bearing transaction deposit accounts through December 31, 2009.

General Terms

Eligible Entities

All FDIC-insured financial institutions and domestic bank holding companies, financial holding companies and savings and loan holding companies that engage only in activities that are permissible for financial holding companies under section 4(k) of the Bank Holding Company Act (this would exclude “unitary thrift holding companies”) are eligible to participate in the senior unsecured debt guarantee program. All FDIC-insured financial institutions are eligible for continued participation in the transaction account guarantee part of the program.

Participation

All eligible entities will be covered under the program for the first 30 days at no cost. Prior to the end of this period, institutions may opt out of one or both parts of the program; otherwise fees will apply for future participation. Eligible entities may *not* opt out after November 12, 2008. There will be a form made available on the FDIC website (see below) for opting out of either part of the program. The form will also be available through FDIC*connect*.

The FDIC has strongly urged all eligible entities to participate in the program. If an insured depository institution does not continue to participate, the name of the institution will be posted on the FDIC’s website as having opted out of the program.

Terms of the Senior Unsecured Debt Guarantee

Fees

The cost for participating in the senior unsecured debt guarantee program after the first 30 days is an annualized fee of 75 basis points multiplied by the amount of debt issued under the program.

Coverage

The guarantee would apply only to newly issued senior unsecured debt issued between October 14, 2008 and June 30, 2009, including promissory notes, commercial paper, interbank funding and any unsecured portion of secured debt.

The amount of the debt that can be guaranteed may not exceed 125 percent of debt that was outstanding as of September 30, 2008 that was scheduled to mature on or before June 30, 2009. The 125 percent limit applies on an entity-by-entity basis and not on a consolidating holding company basis. For eligible entities that had little or no unsecured debt as of September 30, 2008, those institutions will be able to issue debt under the program and the amount will be determined by the FDIC on a case-by-case basis in consultation with the entity's primary federal regulator. We understand that the FDIC will issue guidance on how the amount of debt for these institutions will be determined, but it is likely that it will be based on the institution's recent history and normal pattern in relation to its unsecured debt.

The guarantee will continue for up to three years (through the earlier of the maturity of the debt or June 30, 2012). Thus, for overnight Fed Funds, the program will effectively end on June 30, 2009.

Use of Proceeds

While encouraged, there is no requirement that the proceeds of the debt under the program be used to grant loans.

Enhanced Supervision

Participants will be subject to enhanced regulatory supervision to prevent rapid growth or excessive risk-taking. The FDIC will maintain control over the continued eligibility of an institution in consultation with the institution's primary federal regulator. The FDIC will require separate reporting to that agency by institutions participating in the loan guarantee program. Forms for reporting will be forthcoming.

Terms of the Transaction Account Guarantee Program

Coverage

The FDIC will insure non-interest-bearing transaction deposit accounts over and above the current coverage of $250,000 per account, with no limit, until December 31, 2009.

Fees

A 10-basis-point annual rate surcharge would be applied to non-interest-bearing deposit amounts over $250,000. This surcharge will be collected through the normal assessment cycle. Institutions will not be assessed on amounts that are otherwise insured.

Reporting

Reporting under the transaction account guarantee program will be pursuant to the Call Report to which the FDIC will propose minor changes.

Resource for Additional Information

The FDIC has hosted a couple of telephone briefings to date to answer questions related to the program. Many of the comments have raised issues that have not been resolved. The FDIC board is meeting on October 23, 2008 to adopt the parameters of the program. We understand that some aspects of the program will be subject to comment (and possibly amendment) for a brief time period prior to the November 12, 2008 deadline for opting out.

The FDIC has created a dedicated page for the program on its website. It can be found at www.fdic.gov/tlgp/. Press releases, financial institution letters and an archive of technical briefing phone calls can be found there. There is also a dedicated email address for those wishing to submit questions about the program to the FDIC. The address is tlgp@fdic.gov.