October 20, 2009

MEMORANDUM: The Board of Directors

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SUBJECT: Final Rule allowing the basic debt guarantee component of the Temporary Liquidity Guarantee Program (TLGP) to expire on October 31, 2009 and establishing a six-month emergency guarantee facility.

I. SUMMARY OF RECOMMENDATION

Staff recommends that the Board adopt, and authorize publication in the *Federal Register* of, the attached Final Rule. The Final Rule amends various provisions in 12 C.F.R. Part 370 to allow the Debt Guarantee Program (DGP), a component of the TLGP, to expire on October 31, 2009 and to establish a six-month emergency guarantee facility.

Discussion

In October 2008, the FDIC adopted the TLGP. The TLGP is part of a coordinated effort by the FDIC and other federal agencies to address disruptions in credit markets and the resultant inability of financial institutions to obtain funding and make loans to creditworthy borrowers.

The TLGP is composed of two components: a debt guarantee component and a transaction account guarantee program. The DGP initially permitted participating entities to issue FDIC-guaranteed senior unsecured debt until June 30, 2009, with the FDIC's guarantee for such debt to expire no later than June 30, 2012. On May 29, 2009 the Board extended the issuance period and the guarantee period of the DGP for certain entities. Specifically, for IDIs, entities that previously had participated in the TLGP, and other entities specifically approved by the FDIC, the Board extended the expiration date of the issuance period to October 31, 2009, and the expiration date of the FDIC's guarantee to December 31, 2012.[1]

Since the domestic credit and liquidity markets appeared to be improving, the Board adopted a Notice of Proposed Rulemaking (NPR) on September 9, 2009 that offered two alternatives to phasing out the DGP, Alternative A and Alternative B. Under Alternative A, the DGP would expire as provided in the FDIC's existing regulation on October 31, 2009, with the FDIC's guarantee for such debt expiring no later than December 31, 2012. Under Alternative B, the DGP would expire for most participating entities as provided in the current regulation, and the FDIC would establish a limited six-month emergency guarantee facility to be made available in emergency circumstances to IDIs and certain entities participating in the DGP.

The NPR requested comments on all aspects of the notice. The FDIC received four (4) comments in response to the NPR. All four comments generally supported the FDIC adopting Alternative B.

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[1] The extension was made available to IDIs and other participating entities that had issued FDIC-guaranteed debt on or before April 1, 2009, without application to the FDIC. Other participating entities that applied to and received approval from the FDIC also were permitted to participate in the extended DGP.

II. THE FINAL RULE

A. Conclusion of Basic DGP

As proposed in Alternative B of the NPR, the Final Rule preserves provisions of the current regulation governing the duration of the FDIC's guarantee of senior unsecured debt under the basic DGP. Thus, participating IDIs and other participating entities that had either (i) issued guaranteed debt before April 1, 2009, or (ii) had not issued guaranteed debt before April 1, 2009, but had received the FDIC's permission to issue guaranteed debt after June 30, 2009 are permitted to issue FDIC-guaranteed senior unsecured debt under the basic DGP until October 31, 2009. The FDIC's guarantee for such debt issuances expires no later than December 31, 2012.

B. Emergency Guarantee Facility

The Final Rule also establishes a limited, six-month emergency guarantee facility upon expiration of the basic DGP on October 31, 2009. The Final Rule permits all IDIs and other entities that have issued FDIC-guaranteed senior unsecured debt on or before September 9, 2009, to apply to the FDIC for access to the emergency guarantee facility. The Final Rule adopts Alternative B's requirement that the FDIC consider applications to use the emergency guarantee facility on a limited, case-by-case basis. Under the Final Rule, FDIC prior approval may be granted when an applicant demonstrates an inability to issue non-guaranteed debt to replace maturing senior unsecured debt as a result of market disruptions or other circumstances beyond the applicant's control. If approved, an applicant is permitted to issue FDIC-guaranteed senior unsecured debt through and including April 30, 2010, with the FDIC's guarantee for such debt expiring no later than December 31, 2012.

1. Application Requirements

The Final Rule requires that applications to participate in the emergency guarantee facility be submitted to the Director of the Division of Supervision and Consumer Protection on or before April 30, 2010. An application must include a projection of the sources and uses of funds through December 31, 2012; a summary of the entity's contingency plans; a description of the collateral that an entity can make available to secure the entity's obligation to reimburse the FDIC for any payments made pursuant to the guarantee; a description of the plans for retirement of the FDIC-guaranteed debt; a description of the market disruptions or other circumstances beyond the entity's control that prevent the entity from replacing maturing debt with non-guaranteed debt; a description of management's efforts to mitigate the effects of such disruptions or circumstances; conclusive evidence that demonstrates an entity's inability to issue non-guaranteed debt; and any other relevant information that the FDIC deems appropriate.

2. Participation Fee

The Final Rule also imposes an annualized assessment rate of a minimum of 300 basis points on any FDIC-guaranteed debt issued pursuant to the emergency guarantee facility. Under the Final Rule, the FDIC may increase the assessment rate above 300 basis points on a case-by-case basis, depending upon the risks presented by the issuing entity.

III. CONCLUSION

Staff recommends that the Board adopt and authorize publication of the attached Final Rule.