



March 31, 2016

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley, Director
Division of Risk Management ~~Supervision~~

Mark Pearce, Director
Division of Depositor and ~~Consumer~~ Protection

SUBJECT: Rescission of Memorandum entitled Deposit Insurance Application Processing and De Novo Institution Supervision and Examination Guidance

Summary

In August 2009, the Board of Directors authorized issuance of guidance to professional staff related to applications for deposit insurance and supervisory activities during institutions' de novo period. The guidance related specifically to proposed and newly organized state non-member institutions supervised by the FDIC, and was issued in the form of a Regional Director Memorandum entitled *Deposit Insurance Application Processing and De Novo Institution Supervision and Examination Guidance* (Guidance). The Guidance supplemented the FDIC Statement of Policy on Applications for Deposit Insurance (the "SOP") as to state nonmember institutions, but did not amend the SOP.¹

Concurrence:

Charles Yi
General Counsel

¹ 63 Fed. Reg. 44756, August 20, 1998; amended at 67 Fed. Reg. 79278, December 27, 2002.

The Guidance was issued to address the elevated levels of newly insured institutions among identified problem institutions, as well as the failures of newly insured institutions in 2008 and 2009.² Among other things, the Guidance extended the de novo period for supervisory purposes from three to seven years, prescribed certain conditions to be included in all approvals of deposit insurance that extended certain capital and business plan requirements to seven years, and required prior approval of any material change in business plan throughout the seven-year de novo period. In addition, the Guidance enhanced the supervisory processes applied to state non-member institutions throughout the first seven years of operation with respect to both safety and soundness, as well as consumer protection examinations. De novo institutions supervised by other primary federal regulators are not, and have not been, subject to the Guidance.

Since issuance of the Guidance, the FDIC has adopted regulations and guidance that apply to all institutions to strengthen the quality and levels of capital, increase institution liquidity, and, among other changes, establish parameters and prudent practices for management of interest rate risk, brokered deposits, concentrations and lending. Further, the Division of Risk Management Supervision (RMS) and the Division of Depositor and Consumer Protection (DCP) have developed and implemented new supervision programs and procedures that, together with long-standing supervisory processes, have strengthened the evaluation and analysis of de novo proposals, as well as the supervision of newly organized institutions.

² By August 2009, institutions operating less than seven years were over-represented among failed institutions, with most of those failures occurring during the fourth through seventh years of operations. In addition, approximately 13 percent of young institutions (those institutions operating within the first seven years following organization) were assigned composite safety and soundness ratings of 4 or 5. Across all institutions, approximately 11 percent of community institutions were assigned composite safety and soundness ratings of 4 or 5 as of August 2009, and more than 100 institutions were added to the FDIC's "problem bank list" during the second quarter of 2009 alone. During the period, the banking sector was characterized by rapid and significant deterioration, with the number of problem institutions increasing to 552 as of September 30, 2009. Virtually all performance and condition measures as of mid-2009 were continuing to deteriorate, with no reversal until late-2011 and early-2012. In contrast, the banking sector is much healthier now than six years ago. After increasing to 884 at year-end 2010, the number of problem banks has declined to 203 as of September 30, 2015, the lowest level since September 30, 2008.

Staff believes that the enhanced regulatory regimen, including current supervisory processes, provide for a strong, forward-looking supervisory posture and effectively address the application review and supervisory objectives of the Guidance.

For these reasons, staff seeks the authorization of the Board of Directors to rescind the Guidance and take other actions necessary to carry out the Board's intent, including rescission of the Financial Institution Letter entitled *Enhanced Supervisory Procedures for Newly Insured FDIC-Supervised Depository Institutions*, which was issued on August 28, 2009 (FIL-50-2009), and revision and re-issuance of FIL-56-2014, "Guidance Related to the Statement of Policy on Applications for Deposit Insurance."

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