



Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C. 20429-9990

Financial Institution Letter
FIL-11-2009
March 2, 2009

MODIFICATION OF TEMPORARY LIQUIDITY GUARANTEE PROGRAM

Interim Final Rule on Mandatory Convertible Debt under the TLGP

Summary: On February 27, 2009, the FDIC adopted an interim rule that allows entities participating in the debt guarantee portion of the Temporary Liquidity Guarantee Program (TLGP) to issue certain mandatory convertible debt (MCD). No FDIC-guaranteed MCD may be issued without the FDIC's prior written approval.

Distribution:

All FDIC-Insured Institutions

Suggested Routing:

Chief Executive Officer
President
Chief Financial Officer

Related Topics:

Temporary Liquidity Guarantee Program

Attachment:

Interim Rule

Contacts:

Steve Burton, Senior Financial Analyst, Division of Insurance and Research, (202) 898-3539; or Mark L. Handzlik, Senior Attorney, Legal Division, (202) 898-3990

TLGP@fdic.gov

Note:

FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at www.fdic.gov/news/news/financial/2009/index.html.

To receive FILs electronically, please visit <http://www.fdic.gov/about/subscriptions/fil.html>.

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 3501 Fairfax Drive, E-1002, Arlington, VA 22226 (1-877-275-3342 or 703-562-2200).

Highlights:

- *Eligibility.* To be eligible for the FDIC's guarantee, MCD must meet the definition of senior unsecured debt in Section 370.2(e) of the final rule; must be newly issued on or after February 27, 2009; and must provide in the debt instrument for the mandatory conversion of the debt into common shares of the issuing entity on a specified date no later than June 30, 2012.
- *FDIC permission required.* No FDIC-guaranteed MCD may be issued without the FDIC's prior written approval. Entities must file a written application with the FDIC and the appropriate federal banking agency before issuing MCD.
- *No change to cap.* This interim rule will not result in a change to an eligible entity's existing debt guarantee cap.
- *Fee.* The amount of the assessment fee for the FDIC's guarantee of MCD will be based on the time period from issuance of the MCD until its mandatory conversion date.
- *Disclosure.* Institutions that issue FDIC-guaranteed MCD will have to comply with specific disclosure requirements.

**MODIFICATION OF TEMPORARY LIQUIDITY GUARANTEE PROGRAM
Interim Final Rule on Mandatory Convertible Debt under the TLGP**

On February 27, 2009, the FDIC adopted an interim rule that makes minor modifications to the Temporary Liquidity Guarantee Program (TLGP). Under the interim rule, entities that are participating in the debt guarantee program would be able to issue certain mandatory convertible debt (MCD) that would be guaranteed by the FDIC under the TLGP. The intent of the mandatory convertible debt amendment to the TLGP is to give eligible entities additional flexibility to obtain funding from investors with longer-term investment horizons and to reduce the concentration of FDIC-guaranteed debt maturing in mid-2012 that might otherwise have to be rolled into new debt.

To be eligible for the FDIC's guarantee, MCD must meet the definition of senior unsecured debt in Section 370.2(e) of the final rule; must be newly issued on or after February 27, 2009; and must provide in the debt instrument for the mandatory conversion of the debt into common shares of the issuing entity on a specified date no later than the last date on which the FDIC's guarantee of the issuing entity's senior unsecured debt is effective (unless the issuing entity fails to timely make any payment required under the debt instrument, or merges or consolidates with any other entity and is not the surviving or resulting entity). In addition, the interim rule provides for specific disclosures relative to the MCD aspect of the TLGP.

No FDIC-guaranteed MCD may be issued without the FDIC's prior written approval. Like other applications described in the TLGP, an eligible entity that wishes to issue MCD must include the details of the request, a summary of the applicant's strategic operating plan, and a description of the proposed use of the debt proceeds. In addition, an application to issue FDIC-guaranteed MCD must include the proposed date of issuance, the amount of MCD to be issued, the mandatory conversion date, and the conversion rate (as described in Section 370.3(h)). Finally, since the issuance of debt that will convert into stock could raise control issues, an applicant seeking to issue FDIC-guaranteed MCD must provide confirmation that its appropriate federal banking agency has received all applications and all notices required under the Bank Holding Company Act of 1956, as amended, the Home Owners' Loan Act, as amended, or the Change in Bank Control Act, as amended, in order to issue the debt.

Arthur J. Murton
Director
Division of Insurance and Research