May 29, 2009

MEMORANDUM: The Board of Directors

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SUBJECT: Adoption of a Final Rule that restates, without change, the Interim Rule that Amended the Temporary Liquidity Guarantee Program to Extend the Debt Guarantee Program and to Impose Surcharges on Assessments for Certain Debt Issued on or after April 1, 2009

I. SUMMARY OF RECOMMENDATION

Staff recommends that the Board adopt the attached proposed Final Rule and authorize its publication in the *Federal Register*. The proposed Final Rule would restate without change the text of the Interim Rule adopted by the Board on March 17, 2009, and published for comment in the *Federal Register* on March 23, 2009 (Interim Rule). As stated in the Interim Rule, the Final Rule would provide for a limited extension of the debt guarantee program (DGP) of the Temporary Liquidity Guarantee Program (TLGP); the imposition of surcharges on assessments for certain debt issued on or after April 1, 2009; and the establishment of procedures to permit certain entities participating in the TLGP to apply to issue non-FDIC-guaranteed debt after June 30, 2009.

Discussion

In October 2008, the FDIC adopted the TLGP. The TLGP is part of a coordinated effort by the FDIC, the U.S. Department of the Treasury (Treasury), and the Board of Governors of Federal Reserve System to address unprecedented disruptions in credit markets and the resultant inability of financial institutions to fund themselves and make loans to creditworthy borrowers.

In its most recent amendment to the TLGP regulations, the FDIC sought comment on the three components of the Interim Rule: the limited extension of the DGP, the imposition of surcharges on certain debt, and the establishment of procedures for issuing non-FDIC-guaranteed debt. The amendments were intended to facilitate an orderly transition period for participating institutions to return to non-FDIC-guaranteed funding, and reduce the potential for market disruption when the program ends.

The FDIC received two comments on the Interim Rule, both from groups representing the banking industry. The commenters generally supported the Interim Rule. Specifically, the commenters endorsed the surcharges placed on certain FDIC-guaranteed debt issued after April 1, 2009, and welcomed the potential for a corresponding decrease in the standard assessments for insured depository intuitions (IDIs) that could result from the direct deposit of the surcharges into the Deposit Insurance Fund (DIF).

II. THE FINAL RULE

The proposed Final Rule does not differ from the Interim Rule previously adopted by the Board. Like the Interim Rule, the proposed Final Rule will not modify an eligible entity's existing debt guarantee limit or affect any conditions that the FDIC may have placed on the issuance of debt by an IDI or other participating entity. The proposed Final Rule consists of the three components described below, all of which are currently reflected in the Interim Rule.

A. Extension of the Debt Guarantee Program

Prior to implementation of the Interim Rule, participating entities were permitted to issue senior unsecured debt until June 30, 2009, with the FDIC's guaranty expiring on the earlier of the maturity of the debt or June 30, 2012.

The Interim Rule provided a limited extension of the DGP for participating IDIs. The extended DGP also applies to other participating entities that issued FDIC-guaranteed debt before April 1, 2009; however, other participating entities that did not issue FDIC-guaranteed debt as of April 1, 2009, are required to submit an application to and receive approval from the FDIC to participate in the extended DGP.[1]

Under the Interim Rule, entities that participate in the extended DGP are permitted to issue FDIC-guaranteed senior unsecured debt, including mandatory convertible debt, until October 31, 2009. Additionally, the Interim Rule extended the FDIC's guarantee for senior unsecured debt issued on or after April 1, 2009, to the earlier of the stated maturity date of the debt (or the mandatory conversion date for mandatory convertible debt) or December 31, 2012.

The proposed Final Rule would adopt without change the extensions to the DGP provided for in the Interim Rule.

B. Surcharges for Certain Guaranteed Debt Issuances

Consistent with the Interim Rule, the Final Rule, would impose an annualized surcharge on assessments for FDIC-guaranteed debt with maturities (or, in the case of mandatory convertible debt, time periods to conversion) of at least one year. For such debt issued on or after April 1, 2009, until and including June 30, 2009, and maturing on or before June 30, 2012, the assessment surcharge is 10 basis points for IDIs and 20 basis points for other participating entities.

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1 The term "other participating entities" means bank holding companies, certain savings and loan holding companies, and certain FDIC-approved affiliates that are participating in the DGP.

Consistent with the Interim Rule, the Final Rule would impose a higher surcharge on assessments for FDIC-guaranteed debt issued under the extended DGP – that is, FDIC-guaranteed debt issued after June 30, 2009 and on or before October 31, 2009, or FDIC-guaranteed debt issued on or after April 1, 2009 with a maturity date after June 30, 2012. The surcharge on assessments for IDIs is 25 basis points. However, for other participating entities that issued FDIC-guaranteed debt under the DGP before April 1, 2009 (and for such entities that did not issue FDIC-guaranteed debt under the DGP before April 1, 2009, but that have been approved by the FDIC to participate in the extended DGP), the assessment surcharge is 50 basis points.

Staff recommends that the surcharges on assessments imposed on both IDIs and other participating entities remain the same as provided for in the Interim Rule.[2] As such, the surcharges for IDIs would remain slightly lower than those imposed on other entities participating in the DGP. Staff believes that this differential remains appropriate because entities other than IDIs, for which the FDIC has limited supervisory authority, present more uncertainty to the FDIC.

The amount of any surcharge collected in connection with the extended DGP would be deposited into DIF and used by the FDIC when calculating the DIF reserve ratio. Staff anticipates that the amount of revenue that the surcharge produces will enable the FDIC to reduce the amount of the emergency special assessment provided for in the Interim Rule and Request for Comment, *Assessments*, adopted by the Board on February 27, 2009.

C. Procedures for Applications to Issue Non-FDIC-Guaranteed Debt

The Interim Rule established procedures to permit certain entities that participate in the extended DGP to apply to the FDIC to issue non-FDIC-guaranteed debt after June

[2] Staff notes that on May 20, 2009, the *Helping Families Save Their Homes Act of 2009* (Pub.L.No. 111-22) was enacted. Section 204(d) of this Act authorizes the FDIC to impose one or more special assessments on both IDIs and depository institution holding companies (with the concurrence of the Secretary of the Treasury) to recover losses to the Deposit Insurance Fund arising from action taken or assistance provided with respect to an insured depository institution following a system risk determination made pursuant to section 13(c)(4)(G)(i) of the Federal Deposit Insurance Act (the FDI Act).

30, 2009. If approved by the FDIC, such entities are permitted to issue non-FDIC-guaranteed debt after June 30, 2009, with any maturity and without paying any additional fee to the FDIC.[3]

III. Effective Date

Staff recommends that the Board find good cause for making these modifications effective immediately as a Final Rule.

[3] Some participating entities elected to pay a fee to issue long-term non-guaranteed debt that could mature beyond June 30, 2012, pursuant to 12 CFR 370.6(f). These entities may continue to issue long-term non-guaranteed debt without additional application to the FDIC. The Interim Rule required these entities to apply to issue other than long-term non-guaranteed debt, but there would be no additional cost for such issuances if approved by the FDIC.