August __, 2009

MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson
Director
Division of Supervision and
Consumer Protection

Michael Bradfield
General Counsel

SUBJECT: Final Rule: Part 329, Elimination of Three Transfer Sublimit For Savings Deposits

RECOMMENDATION:

On May 20, 2009, the Board of Governors of the Federal Reserve System (the FRB) announced final amendments to Regulation D (12 C.F.R. Part 204) which, among other things, prohibits the payment of interest on "demand deposits." The FRB's rule applies to all member banks and is effective on July 2, 2009. Under section 18(g) of the Federal Deposit Insurance Act (the FDI Act) the FDIC is generally required to conform its regulations to those issued by the FRB so that the same rules apply to state nonmember banks with respect to the payment of interest on demand deposits. Accordingly, staff recommends that the Board of Directors ("Board") update Part 329 of its rules to conform to the FRB's rule. We further recommend that the Board find that there is good cause under the Administrative Procedure Act (the "APA") to dispense with notice and comment and to make this final rule effective upon publication in the Federal Register because this rule change is a ministerial action. Further details of the recommended amendments are provided below.

BACKGROUND:

A. FRB Amendments to Regulation D

Regulation D implements the statutory prohibition against the payment of interest on demand deposits. Key to the prohibition is the definition of "demand deposits." As discussed in more detail below, prior to the recent amendment, Regulation D excluded from the definition of a "demand deposit" accounts that permit no more than six transfers per four-week period with a sublimit of not more than three transfers per month by check, debit card, or similar order. The FRB's rule change eliminated this three-transfer sublimit, effectively expanding slightly the scope of transaction accounts that qualify for interest payments because they do not fall into the definition of "demand deposit." The FRB decided to eliminate the three transfer sublimit for checks and drafts because distinctions between such transfers and other types of pre-authorized or automatic transfers subject to the six-per-month limit were no longer logical in light of technological advances. See 74 FR at 25631 (May 29, 2009).

B. FDIC Responsibilities under Section 18(g) of the FDI Act.

Section 18(g) of the FDI Act (12 U.S.C. § 1828(g)) provides that the Board of Directors of the FDIC shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks. Accordingly, the FDIC adopted regulations prohibiting the payment of interest or dividends on demand deposits at 12 C.F.R. Part 329. See 51 FR at 10808 (Mar. 31, 1986).

Section 18(g) of the FDI Act also provides that the FDIC shall make such exceptions to this prohibition as are prescribed with respect to demand deposits in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the FRB (12 U.S.C. § 1828(g)).

Generally, member banks, state nonmember banks and insured branches of foreign banks are subject to the statutory prohibition and exceptions to that prohibition, although under different statutes and regulations. From time to time the FRB issues or authorizes a new exception to the prohibition applicable to member banks, and the FDIC later issues or authorizes a similar exception affecting state nonmember banks and insured branches of foreign banks, as is the case in this particular rulemaking. Note, however, that under section 329.3 of Part 329, state nonmember banks and insured branches of foreign banks are already subject to the same exceptions to the prohibition that member banks are subject to, regardless of whether the FDIC has issued or authorized the specific exception. See 63 FR at 8342 (Feb. 19, 1998).

C. Amendments to Sections 329.1(b)(3) and 329.102

In accord with the FRB amendments to Regulation D, staff recommends that the FDIC amend the Part 329 definition of "demand deposit" to eliminate the three transfer sublimit. Staff also recommends that a minor change be made to the interpretive rule set forth in section 329.102 to conform it to section 329.1(b)(3) as amended by the rulemaking.

D. Exemption From Public Notice and Comment

The FDIC is required by law to promulgate the same exception to the prohibition against the payment of interest on demand deposits that has been prescribed by the FRB by regulation with respect to member banks. Moreover, under section 329.3 of FDIC Rules and Regulations, state nonmember banks and insured branches of foreign banks are already covered by the FRB elimination of the three transfer sublimit when that regulatory change becomes effective on July 2, 2009. As a result, amending Part 329 to eliminate reference to the three transfer sublimit would essentially only be an official recognition by the FDIC of an already established requirement.

For these reasons, staff recommends that the FDIC should determine for good cause that public notice and comment is unnecessary and impracticable under the APA (5 U.S.C. § 553(b)(3)(B)), and that the rule should be published in the Federal Register as a final rule.

CONCLUSION:

For the reasons explained above, the staff recommends that the Board adopt the attached final rule.

Staff members knowledgeable about this case:

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Attachments