

October 16, 2008

## FDIC Temporary Liquidity Guarantee Program

On October 14, 2008, in another attempt to strengthen confidence in the U.S. banking sector and to improve liquidity for U.S. banks, the FDIC invoked its powers to assist insured depository institutions if severe financial conditions exist which threaten the stability of a significant number of insured depository institutions and announced the establishment of a Temporary Liquidity Guarantee Program (the “**FDIC Guarantee Program**”). The FDIC will (i) guarantee *newly-issued* senior unsecured debt of qualifying institutions (the “**Debt Guarantee**”) and (ii) provide full coverage of non-interest bearing deposit transaction accounts, regardless of the U.S. dollar amount (the “**Deposit Guarantee**”).

The FDIC Guarantee Program applies to the following “Eligible Entities”: (i) FDIC-insured depository institutions (banks and thrifts), (ii) U.S. bank holding companies, (iii) U.S. financial holding companies and (iv) U.S. savings and loan holding companies that engage only in activities that are permissible for financial holding companies (which excludes savings and loan holding companies with primarily commercial activities). Institutions electing to participate in the FDIC Guarantee Program will be subject to enhanced supervisory oversight to prevent rapid growth or excessive risk taking. The FDIC will determine each institution’s eligibility to participate in the FDIC Guarantee Program in consultation with its primary federal regulator. If an institution currently has no unsecured debt, the FDIC will consider special eligibility arrangements on a case-by-case basis.

### **What is covered?**

**Debt Guarantee** The FDIC will guarantee *newly-issued* senior unsecured debt, including promissory notes, commercial paper, inter-bank funding, and any unsecured portion of secured debt, issued by eligible institutions on or before June 30, 2009. The amount of an entity’s debt covered by the Debt Guarantee may not exceed 125% of such entity’s debt that was outstanding as of September 30, 2008 and scheduled to mature before June 30, 2009. The Debt Guarantee expires on June 30, 2012, even if the covered debt matures after that date.

**Deposit Guarantee** The Deposit Guarantee provides protection to non-interest bearing deposit transaction accounts held at FDIC-insured institutions and is intended to protect payment-processing accounts, payroll accounts and working capital accounts of small and medium-sized businesses. Any FDIC-insured institution will now be able to provide deposit insurance coverage for 100% of the funds in such accounts regardless of the U.S. dollar amount. It should be noted that the Deposit Guarantee applies only to transaction accounts and that certificates of deposit, savings and investment products are not covered by deposit insurance in excess of the current \$250,000 coverage. According to the FDIC, approximately 75% of domestic deposits will now be covered by FDIC guarantees. The Deposit Guarantee will expire on December 31, 2009, the same date that the \$250,000 coverage limit on FDIC deposit insurance established by the Emergency Economic Stabilization Act of 2008 is scheduled to expire.

### **What is the cost?**

There are no fees relating to the FDIC Guarantee Program for the first 30 calendar days. After that date, participants will be charged a fee equal to (i) for the Debt Guarantee, 75 basis points against the amount of debt covered under the Debt Guarantee, and (ii) for the Deposit Guarantee, a 10 basis point surcharge applied to non-interest bearing transaction deposit accounts not otherwise covered by the existing deposit insurance limit of \$250,000. The surcharge relating to the Deposit Guarantee will be added to a participating institution’s risk-

based deposit insurance premium paid on those accounts. The fees received by the FDIC will be held in a separate FDIC account and will be used to cover the costs of the program. If costs exceed the fees collected, the balance will be paid for through a special assessment on all FDIC-insured institutions, as called for under the FDIC Improvement Act of 1991, including institutions that did not participate in the program.

### ***Participation in the Programs***

As noted, Eligible Entities will be covered under the FDIC Guarantee Program for the first 30 calendar days without incurring any additional costs. However, institutions that do not want to participate in the FDIC Guarantee Program after that date must “opt out” or be assessed a charge. If an institution opts out of the program, the related guarantees will only be effective for the first 30 calendar days. Although not expressly stated in the release, the FDIC has indicated that institutions can choose to opt out separately from either prong of the FDIC Guarantee Program (a choice to participate in one part of the FDIC Guarantee Program does not obligate participation in the other). The FDIC has also indicated that further guidance or regulation to implement the FDIC Guarantee Program will be forthcoming. The ability to issue guaranteed debt will expire on June 30, 2009.

### ***Using Guaranteed Instruments as Collateral***

The FDIC stated that it is recommending that the instruments guaranteed under the Debt Guarantee should be eligible as collateral for borrowing and it will coordinate with the appropriate regulatory agencies.

### ***Contacts***

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