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IMPORTANT MEMORANDUM

TO: CEOs, CFOs, and Boards of Directors of FDIC-Insured Institutions

FROM: Bybel Rutledge LLP

RE: FDIC Temporary Liquidity Guarantee Program

DATE: October 27, 2008

On Friday, October 24, 2008, the FDIC issued interim rules implementing the Temporary Liquidity Guarantee Program (the "Rule"). The Program became effective October 14, 2008, and consists of two components: (1) the temporary unlimited guarantee of funds in non-interest bearing transaction accounts (the "Transaction Account Guarantee Program") and (2) the temporary guarantee of certain newly-issued unsecured senior debt (the "Debt Guarantee Program") (collectively, the "Programs"). FDIC-insured institutions were automatically enrolled in both components of the Program as of October 14, 2008, and must pay the fees associated with each component beginning November 13, 2008, unless they opt-out of either component on or before November 12, 2008.

Transaction Account Guarantee Program

> **Required Action: An FDIC-insured institution must opt-out with the FDIC on or before November 12, 2008, if it does not wish to participate in the Transaction Account Guarantee Program. Furthermore, all eligible institutions must prominently disclose in writing at its main office and deposit-taking branches its decision to participate in or opt-out of the Transaction Account Guarantee Program.**

Automatic Enrollment and Opt-Out Provisions.

Under the Transaction Account Guarantee Program, the FDIC temporarily will provide an unlimited guarantee for funds held at FDIC-insured institutions in non-interest bearing transaction accounts above the existing deposit insurance limit until December 31, 2009. This insurance is in addition to, and separate from, the current $250,000 guarantee of all FDIC-insured accounts. FDIC-insured institutions automatically were enrolled in the Transaction Account Guarantee Program as of October 14, 2008, and will continue to be enrolled in the program unless the institution notifies the FDIC of its intention to opt out of the Transaction Account Guarantee Program on or before November 12, 2008. If an eligible institution opts out of the Transaction Account Guarantee Program, the FDIC's guarantee of its noninterest-bearing transaction deposit accounts will expire the earlier of 11:59 pm EST on November, 12, 2008, or at the time of the FDIC's receipt of the institution's opt-out decision.

What is Covered: Noninterest Bearing Transaction Accounts.

These accounts are a transaction accounts with respect to which interest is neither accrued nor paid and on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal. This definition encompasses traditional demand deposit checking accounts that allow for an unlimited number of deposits and withdrawals at any time. The definition also encompasses official checks issued by an insured depository institution and accounts on which depository institutions waive fees or provide fee-reducing credits for customers with checking accounts. This definition, however, <u>does not</u> encompass negotiable order of withdrawal accounts or money market deposit accounts.

Mandatory Notice Requirements: Yes.

Institutions must prominently disclose in writing at its main office and at all branches at which deposits are taken its decision to participate in, or opt-out of, the Transaction Account Guarantee Program. These disclosures must be provided in simple, readily understandable text indicating the institution's participation or nonparticipation in the Transaction Account Guarantee Program and must clearly state whether or not covered noninterest-bearing transaction accounts are fully insured by the FDIC. Below are examples of disclosures an institution may wish to consider:

<u>Participating Institutions</u>:

[Institution's Name] is a participant in the FDIC Transaction Account Guarantee Program under which all balances in its non-interest bearing deposit accounts are fully insured until December 31, 2009. This is in addition to the current FDIC insurance limits of $250,000 applicable to interest-bearing accounts.

<u>Non-Participating Institutions</u>:

[Institution's Name] has elected NOT to participate in the FDIC Transaction Account Guarantee Program under which balances in its noninterest-bearing deposit accounts are fully insured until December 31, 2009. However, all accounts currently are insured by the FDIC up to $250,000.

Additional Fees Charged: Yes.

Beginning November 13, 2008, FDIC-insured institutions that have not opted out of the Transaction Account Guarantee Program will be assessed, on a quarterly basis, an annualized 10 basis point assessment on balances in noninterest-bearing transaction accounts that exceed the existing deposit insurance limit of $250,000. Under the Rule, the FDIC will collect such assessments at the same time and in the same manner as it collects an institution's quarterly deposit insurance assessments. Assessments associated with the Transaction Account Guarantee Program will be in addition to an institution's risk-based assessment.

Debt Guarantee Program

> **Required Action: An eligible institution must opt-out with the FDIC on or before November 12, 2008, if it does not wish to participate in the Debt Guarantee Program. Furthermore, participating institutions must disclose to interested lenders and creditors whether the debt being offering is guaranteed by the FDIC, and the debt guaranteed under the Debt Guarantee Program must contain appropriate disclosures on the face of the instrument. Participating institutions also must calculate its outstanding senior debt issued as of September 30, 2008, and provide that information to the FDIC to calculate the guarantee limits under the Debt Guarantee Program.**

Type of Debt to Be Guaranteed.

The Debt Guarantee Program will guarantee all newly-issued senior unsecured debt up to prescribed limits that is issued by participating institutions on or after October 14, 2008, through and including June 30, 2009. Senior unsecured debt includes, without limitation, federal funds purchased, promissory notes, commercial paper, unsubordinated unsecured notes, certificates of deposit standing to the credit of a bank, bank deposits in an international banking facility of an insured depository institution, and Eurodollar deposits standing to the credit of a bank. Senior unsecured debt may be denominated in foreign currency. To be eligible for the Debt Guarantee Program, senior unsecured debt must be noncontingent and evidenced by a written agreement, contain a specified and fixed principal amount to be paid on a certain date, and not be subordinated to another liability.

Amount of Debt Subject to Guarantee.

The FDIC temporarily will guarantee newly issued unsubordinated debt in a total amount up to 125 percent of the par or face value of senior unsecured debt outstanding, excluding debt extended to affiliates, as of September 30, 2008, that is scheduled to mature before June 30, 2009. This maximum guaranteed amount will be calculated for each individual participating institution within a holding company structure. Under procedures not yet published, the FDIC will require that each participating institution calculate its outstanding senior unsecured debt as of September 30, 2008, and provide that information – even if the amount of the senior unsecured debt is zero – to the FDIC. The 125 percent limit may be adjusted for certain participating institutions if the FDIC, in consultation with any appropriate Federal banking agency, determines it is necessary.

Term of the Guarantee.

The guarantee continues from October 14, 2008, through June 30, 2012 regardless whether the debt or any portion thereof matures earlier than June 30, 2012.

Use of Proceeds.

The primary purpose of the Debt Guarantee Program is to provide liquidity to the inter-bank lending market and promote stability in the unsecured funding market for banks. The purpose is not to encourage innovative, exotic or complex funding structures or to protect lenders who make high-risk loans in hopes of high returns. Thus, for purposes of the Debt Guarantee Program, senior unsecured debt excludes, for example, obligations from guarantees or other contingent liabilities, derivatives, derivative-linked products, debt paired with any other security, convertible debt, capital notes, the unsecured portion of otherwise secured debt, negotiable certificates of deposit, and deposits in foreign currency and Eurodollar deposits that represent funds swept from individual, partnership or corporate accounts held at insured depository institutions. Also excluded are loans to affiliates, including parents and subsidiaries, or to institution affiliated parties, including controlling shareholders, directors, and officers.

Mandatory Disclosure Obligations: Yes.

If an eligible institution remains in the Debt Guarantee Program, it must clearly disclose to interested lenders and creditors, in writing and in a commercially reasonable manner, what debt it is offering and whether the debt is guaranteed under the Debt Guarantee Program. Debt guaranteed by the FDIC under the Debt Guarantee Program, must be clearly identified in writing in a commercially reasonable manner on the face of any documentation as "guaranteed by the FDIC".

Fees Imposed for Guarantee: Yes.

Beginning on November 13, 2008, any FDIC-insured institution that has not opted out of the Debt Guarantee Program will be assessed fees for continued coverage. All eligible debt issued from October 14, 2008 (and still outstanding on November 13, 2008), through June 30, 2009, will be charged an annualized fee equal to 75 basis points multiplied by the amount of debt issued, and calculated for the maturity period of that debt or June 30, 2012, whichever is earlier. The fee charged will take into account that no fees will be charged during the first 30 days of the Debt Guarantee Program. If any participating institution issues eligible debt guaranteed by the Debt Guarantee Program, the participating institution's assessment will be based on the total amount of debt issued and the maturity date at issuance. If the guaranteed debt is retired before its scheduled maturity, fees will not be refunded.

May An Institution Issue Non-Guaranteed Debt Before It Issues Guaranteed Debt: No.

Participating institutions are prohibited from issuing non-guaranteed debt until the maximum allowable amount of guaranteed debt has been issued. A participating institution can then issue non-guaranteed debt in any amount and for any maturity. If a participating institution nonetheless issues debt identified as "guaranteed by the FDIC" in excess of the limit established by the FDIC, it will have its assessment rate for guaranteed debt increased to 150 basis points on all outstanding guaranteed debt, and the participating institution and its institution-affiliated parties will be subject to enforcement actions including the assessment of civil money penalties.

If you have questions regarding either the Transaction Account Guarantee Program of the Debt Guarantee Program, please do no hesitate to contact any of the following individuals:

- Nicholas Bybel, Jr.: bybel@bybelrutledge.com
- G. Philip Rutledge: rutledge@bybelrutledge.com
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