

FINANCIAL INSTITUTIONS ALERT

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

FDIC Extends Transaction Account Guarantee Program

April 14, 2010

On April 13, 2010, the FDIC issued an interim rule to extend the Transaction Account Guarantee (TAG) program, which had been set to expire on June 30, 2010, for an additional six months through December 31, 2010. The interim rule affords the possibility of an additional 12 month extension of the TAG program through December 31, 2011 at the discretion of the Board of Directors of the FDIC.¹ There will be a 30-day public comment period after which the interim rule will go into effect.

➤ **No Increased Fee for Continued Participation in the TAG Program**

The interim rule does not alter the TAG program's tiered-pricing assessment, ranging from 15 to 25 basis points, based on an institution's deposit insurance assessment risk category.

➤ **Change in Basis for Reporting Assessment Purposes**

In order to monitor and assess fees based upon the ongoing risk exposure of the Depositor Insurance Fund (DIF), the interim rule provides that insured depository institutions that do not opt out of the TAG program will be required to report their TAG amounts as average daily balance accounts. Beginning with the September 30, 2010 report date for the Report of Condition or Thrift Financial Report, the total dollar amount of TAG-qualifying accounts and the total number of accounts must be reported as an average daily balance. This will cover the period from July 1 through September 30, 2010. The amounts to be reported as daily averages are the total dollar amount of the noninterest bearing transaction accounts of more than \$250,000 for each calendar day during the quarter, divided by the number of calendar days in the quarter. Documentation supporting the amounts used in the calculation of the average daily balance amounts must be retained and be readily available upon request by the FDIC or the insured depository institution's primary Federal regulator.

➤ **Treatment of Negotiable On Withdrawal (NOW) Accounts**

In order to align NOW accounts covered by the TAG program with current market rates, and to ensure the program is not used inappropriately by institutions to attract interest rate-sensitive deposits to fund risk activities, the interim rule reduces the interest rate on NOW accounts eligible for the FDIC's guarantee from a maximum of 0.50 percent to a maximum of 0.25 percent. The

¹ If the Board of Directors of the FDIC determines that an additional 12 month extension is warranted, an announcement will be made no later than October 29, 2010.

interim rule does not prescribe specific disclosures related to NOW accounts. However, contractual terms governing individual deposit accounts may require disclosures to consumers regarding modification of interest rates on applicable NOW accounts.

➤ **Opportunity to Opt Out of the TAG Program**

The interim rule provides insured depository institutions currently participating in the TAG program with a one-time, irrevocable opportunity to opt out of the TAG program extension. A participating insured depository institution's decision to remain in the TAG program obligates it to remain in the TAG program through December 31, 2010, or for an additional 12 months if the FDIC extends the TAG program further. An insured depository institution that wishes to opt out of the program must provide the FDIC with notice of its intent to opt out, via email, by April 30, 2010.²

Bass, Berry & Sims PLC's Financial Institutions Subgroup specializes in advising and assisting financial institutions in their dealings within a complex banking environment. We have represented numerous financial institutions, and their holding companies, in public and private equity and debt offerings, including in participation in the United States Department of the Treasury's Capital Purchase Program; counseled financial institutions in mergers and acquisitions; and advised boards of directors of financial institutions concerning director liability and regulatory issues. From small community banks and thrifts in Tennessee and Kentucky, to large publicly held banks and insurance companies and their holding companies, we counsel our financial institution clients on a broad range of federal and state regulatory matters.

If you have any questions regarding the issues addressed in this Financial Institutions Alert please feel free to communicate with any of your regular contacts in the Corporate and Securities Group or any of the attorneys in our Financial Institutions Subgroup listed below.

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² The e-mail subject line to optout@fdic.gov must state "TLGP Election Form Opt Out Requested – Cert No. XXXXX". The e-mail must include the following information: name of the insured depository institution; FDIC certificate number; city, state, and zip code; contact name and contact information; a concise statement that the insured depository institution would like to opt out of the TAG program effective July 1, 2010; and confirmation that, no later than May 20, 2010, the insured depository institution will post a notice in the lobby of its main office, each domestic branch, and if it offers Internet deposit services, on its web site, clearly indicating that funds held in non interest bearing transaction accounts that are in excess of the standard maximum deposit insurance amount will not be guaranteed under the TAG program after June 30, 2010.