

FINANCIAL INSTITUTIONS

Alert

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

FDIC Approves Proposed Rule to Seek Prepayment of Assessments

October 1, 2009

On September 29, 2009, the Board of Directors of the Federal Deposit Insurance Corporation adopted a Notice of Proposed Rulemaking (NPR) that would require insured institutions to prepay their estimated quarterly risk-based assessments for the fourth quarter of 2009 and for all of 2010, 2011 and 2012.

Calculating and Implementing Prepaid Assessments

For purposes of calculating an institution's prepaid amount for the fourth quarter of 2009 and for all of 2010, an institution's assessment rate would be its total base assessment in effect on September 30, 2009. The rate would be increased by three basis points for all of 2011 and 2012. For the purpose of calculating the prepaid amount, an institution's third quarter 2009 assessment base would be increased quarterly at an estimated five percent annual growth rate through the end of 2012. The FDIC would begin to offset prepaid assessments on March 30, 2010 representing payment of the regular quarterly risk-based deposit insurance assessment for the fourth quarter of 2009.

Accounting for Prepaid Assessments

Each institution would record the entire amount of its prepaid assessment as a prepaid expense (asset) as of December 30, 2009. Notwithstanding the prepaid assessment, each institution would have to record the estimated expense for its regular risk-based assessment each calendar quarter thereafter. Therefore, as of September 30, 2009, each institution should have accrued an expense (a charge to earnings) for its estimated regularly quarterly risk-based assessment for the third quarter of 2009, which is a quarter for which assessments would not have been prepaid, and a corresponding accrued expense payable (a liability). On December 30, 2009, each institution would pay both its assessment for the third quarter of 2009, thereby eliminating the related accrued expense payable, and the entire amount of its prepaid assessments, which it would record as a prepaid expense (asset). As of December 31, 2009, each institution would record (1) an expense (a charge to earnings) for its estimated regular quarterly risk-based assessment for the fourth quarter of 2009, and (2) an offsetting credit to the prepaid assessment asset because the fourth quarter assessment of 2009 would have been prepaid.

Each quarter thereafter, an institution would record an expense (a charge to earnings) for its regular quarterly risk-based assessment for that quarter and an offsetting credit to the prepaid assessment asset until this asset is exhausted. Once the asset is exhausted, the institution would record an expense and an accrued expense payable each quarter for its regular assessment payment, which would be paid in arrears at the end of the following quarter. If the prepaid assessment is not exhausted by December 30, 2014, any remaining amount would be returned to the institution.

The federal banking agencies' risk-based capital rules permit an institution to apply a zero percent risk weight to claims on U.S. Government agencies. The FDIC believes the prepaid assessment and the Temporary Liquidity Guarantee Program nondeposit obligations should receive a zero percent risk weight.

Restrictions on Use of Prepaid Assessments and Exemptions for Certain Depository Institutions

Under the NPR, prepaid assessments could only be used to offset regular quarterly risk-based deposit insurance assessments. The FDIC would also exercise discretion to exempt an institution from the prepayment requirement if the FDIC determines that the prepayment would adversely affect the safety and soundness of the institution. An insured depository institution could also apply to the FDIC for an exemption from all or part of the prepayment requirement if the prepayment would significantly impair the institution's liquidity, or would otherwise create hardship.

Transfer of Prepaid Assessments

An insured depository institution would be permitted to transfer a portion of its prepaid assessment to another insured depository institution, provided that the institutions notify the FDIC's Division of Finance and submit a written agreement signed by the legal representatives of both institutions. In the event that an insured depository institution merged with, or consolidated into, another insured depository institution, the surviving or resulting institution would be entitled to use any unused portion of the disappearing institution's prepaid assessment not otherwise transferred.

Disposition in the Event of Failure or Termination of Insured Status

In the event that a depository institution's insured status terminates, any amount of its prepaid assessment remaining (other than any amounts needed to satisfy assessment obligations not yet offset against the prepaid amount) would be refunded to the institution. In the event of failure of an insured depository institution, any amount of its prepaid assessment (other than any amounts needed to satisfy assessment obligations not yet offset against the prepaid amount) would be refunded to the institution's receiver.

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 contact 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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