

FINANCIAL INSTITUTIONS

Alert

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

FDIC Extends De Novo Period and Enhances Supervisory Procedures for Newly Insured Depository Institutions

September 14, 2009

On August 28, 2009, the Federal Depository Insurance Corporation (FDIC) released a Financial Institution Letter (FIL) advising the banking industry of supervisory changes for state nonmember institutions insured seven years or less. Pursuant to the FIL, the de novo period during which institutions are subject to enhanced supervisory procedures and capital requirements has been extended for certain institutions.

- **De Novo Period**

The FDIC extended the de novo period from three to seven years for newly insured FDIC-supervised depository institutions. During the de novo period, newly insured FDIC-supervised institutions are subject to higher capital requirements and more frequent examinations.

- **Examinations**

The FDIC also revised the visitation and examination schedules for risk management, compliance examinations and Community Reinvestment Act (CRA) evaluations. For risk management, newly insured state nonmember institutions will undergo a limited-scope examination within the first six months of operation and a full-scope examination within the first twelve months of operation. After the first examination and through the seventh year of operation, the institution will remain on a twelve month examination cycle.

For compliance, newly chartered and insured institutions will undergo a full-scope compliance examination and CRA evaluation within the first twelve months of operation. A visitation will occur in the second year, a compliance-only examination in the third year, a visitation in the fourth year and a compliance examination and CRA evaluation in the fifth year. Thereafter, the institution may be subject to the regular examination schedule.

- **Business Plans**

Previously, the FDIC required de novo institutions to provide written notice of a proposed change to business plans during the first three years of operation. The FDIC will now require de novo institutions to obtain prior approval from the FDIC before any proposed material change or deviation from the depository institution's business plan during its first seven years of operation.

The request for a material change in a de novo institution's business plan must adequately support the business reason for the proposed change. The FDIC will evaluate the request to determine if the institution has sufficient capital, management expertise and internal controls in place to adequately manage the risks associated with such a material change. If a de novo institution implements a material change in its business plan without the FDIC's prior approval, the FDIC may seek monetary penalties in addition to other enforcement action.

Before the end of the third year of operation, newly insured FDIC-supervised institutions will be required to submit updated financial statements and business plans for years four through seven. Required submissions include a strategic plan (highlighting plans for capital maintenance and dividend payments, establishment of branches, determining product offerings and other strategies that may alter the institution's risk profile) and pro forma financial statements.

- **Applicability**

The procedures described above apply to existing state nonmember institutions that have operated for less than seven years. De novo institutions that are subsidiaries of certain eligible holding companies (those with consolidated assets of at least \$150 million, a BOPEC rating of at least "2" and at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions) are excluded from the requirements of the FIL. The FDIC maintains the discretion as to whether some or all of the requirements of the FIL should be extended to such institutions.

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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