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NEWSLETTER OF THE BANKING AND SPECIALTY FINANCE PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

Opting Out of the Temporary Liquidity Guarantee Program: Not for the Faint of Heart

Craig D. Miller

Acting under the authority granted by the Emergency Economic Stabilization Act of 2008, the Federal Deposit Insurance Corporation ("FDIC") announced several initiatives to reduce "systemic risk" in our nation's financial system. As part of these initiatives, the FDIC implemented its Temporary Liquidity Guarantee Program, or "TLG Program." The TLG Program is designed to preserve confidence and encourage liquidity in the banking system in order to ease lending to creditworthy businesses and consumers. The TLG program consists of two basic components: (i) a temporary guarantee of newly-issued senior unsecured debt and (ii) a temporary unlimited guarantee of funds in noninterest-bearing transaction accounts at FDIC-insured institutions.

Initially, for the first 30 days of the program, all eligible institutions were covered under both components of the TLG Program and the guarantees provided by the TLG Program were offered at no cost. **This initial period has now been extended to 11:59 p.m. Eastern Standard Time on December 5, 2008**. On or before 11:59 p.m. EST, on December 5, 2008, eligible entities must inform the FDIC whether they want to affirmatively opt out of either component of the TLG Program. If an entity opts out of both components of the TLG Program, the FDIC's guarantee of its newly issued senior unsecured debt and noninterest-bearing transaction accounts will expire at the earlier of 11:59 p.m. EST on December 5, 2008, or at the time of the FDIC's receipt of the eligible entity's opt-out determination. For those that do not opt out of the senior unsecured debt component of the TLG Program, the FDIC will guarantee qualifying debt if it is issued on or before June 30, 2009, until the earlier of the

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maturity date of the debt or June 20, 2012. For those that do not opt out of the guarantee of noninterest-bearing transaction accounts, the FDIC will guarantee the uninsured portion until December 31, 2009.

Beginning on December 6, 2008, eligible entities will be charged fees for continuing to be a part of the TLG Program. For continued participation in the unsecured debt guarantee program, entities will be charged an annualized fee equal to 75 basis points multiplied by the amount of qualifying debt and calculated for the maturity period of the debt. For debt that matures after June 30, 2012, June 30, 2012 will be used as the maturity date. For continued participation in the noninterest-bearing transaction account guarantee program, entities will be assessed on a quarterly basis 10 basis points on balances in noninterest-bearing transactions accounts that exceed the existing deposit insurance limit of $250,000 until December 31, 2009.

As institutions consider whether or not to opt out of the TLG Program, they are reminded to consider not only the financial impact of such a decision, but also the potential public ramifications for having their name included on an FDIC website as an institution that has opted out of either or both components of the TLG Program. In addition, institutions that opt out of the guarantee of funds in noninterest-bearing transaction accounts are reminded that they must disclose in writing at their main office and all branches at which deposits are taken their decision to opt out of that aspect of the TLG Program. Accounts with balances of $250,000 or less, will continue to be insured under the FDIC's general insurance deposit coverage until December 31, 2009.

The form for opting out of the program will be available beginning on **Wednesday, November 12, 2008**, and must be submitted via FDIConnect, the FDIC's secured, web-based correspondence system.

back to top

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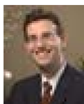

Craig D. Miller Mr. Miller's practice focuses on representing public and private corporations and financial institutions in a wide range of sophisticated corporate matters, including mergers and acquisitions, public and private securities offerings and corporate governance issues, including compliance with the Sarbanes-Oxley Act and continued listing requirements promulgated by self-regulatory organizations. He also regularly represents

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