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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Employee Compensation

The Federal Deposit Insurance Corporation ("FDIC") is considering ways that the FDIC's risk-based deposit insurance assessment system ("Risk-Based Assessment System") could be changed to account for the risks posed by certain employee compensation plans. The FDIC does not propose to limit the amount of employee compensation, but rather is concerned with adjusting risk-based deposit insurance assessment rates to adequately compensate the Deposit Insurance Fund for the risk inherent in the design of certain compensation programs. The FDIC would provide incentives for institutions that adopt compensation programs which better align employees' interests with the long-term interests of the institution's shareholders and the FDIC. Any change to the Risk-Based Assessment System would be intended to improve the way risk is differentiated among institutions rather than generate revenue for the Deposit Insurance Fund.

Once criteria was developed by the FDIC relating to the risks posed by certain employee compensation programs, the criteria would allow the FDIC to determine whether an institution has adopted a compensation system that either meets a defined standard or does not. The FDIC would then determine whether an institution's system met the standard when setting assessment rates. One objective of the FDIC is to insure that institutions have compensation policies that do not encourage excessive risk-taking and that are consistent with the safety and soundness of the institution.

Compensation programs that would meet the FDIC's goals may include features as follows:

1. A significant portion of compensation for employees whose business activities may present greater risk to the institution and who also receive a portion of their compensation according to formulas based on meeting performance goals would be paid in the form of non-discounted restricted stock.

2. Significant awards of the institution's stock would only vest over a multi-year period and would be subject to a clawback mechanism in cases where risks assumed during the performance measurement period have an adverse effect in subsequent periods.

3. The compensation program would be administered by a committee of the Board of Directors composed of independent directors with input from independent compensation professionals.

In those instances where these factors were present, institutions would receive a lower risk-based assessment rate than those firms that could not meet the standards.

Alternatively, the FDIC may conclude that those institutions that have employee compensation plans that did not meet these factors would receive a higher risk-based assessment rate.

FDIC board members John Dugan, the Comptroller of the Currency, and John Bowman, Acting Director of the Office of Thrift Supervision, have expressed their opposition to the employee compensation proposal by the FDIC. The proposal by the FDIC is available on its website at *www.fdic.org*.

Small Business Lending Fund

President Obama has provided the details of the administration's plan for the proposed $30 billion Small Business Lending Fund which will provide funds to community banks to support small business lending. Under the proposal, $30 billion in Trouble Asset Relief Program funds ("TARP") would be transferred to a new program outside of TARP to support small business lending. The new program would require Congress to enact legislation authorizing capital investments in community banks with an incentive structure to support new small business lending.

The administration's proposal should hopefully encourage broader participation by banks in that participants will not face existing TARP restrictions such as limitations relating to executive compensation. Current participants in TARP will be able to convert from the existing TARP program into the new program thereby substantially reducing their costs.

Banks with less than $1 billion in assets would be able to receive capital investments up to 5% of their risk-weighted assets. Banks between $1 and $10 billion in assets would be eligible to receive up to 3% of risk-weighted assets. To participate, banks will have to be approved by their primary federal bank regulator.

The dividend rate for a capital investment provided by the Treasury under the proposed program would begin at 5%, with reductions to as low as 1% if a bank demonstrated increased small business lending relative to a baseline set in 2009. Banks would receive a 1% point decrease in their dividend rate for every 2.5% increase in incremental business lending they achieve over a two-year period, down to a minimum dividend rate of 1%. Banks would realize this reduction in the dividend rate sooner if they made earlier, but consistent progress towards increased lending. For purposes of the proposed program, banks would be able to receive the incentive on the basis of new lending beginning on January 1, 2010. After five years, the dividend rate would be increased to encourage timely repayment by banks to the Treasury.

An example of the administration's proposal: A bank with $500 million in risk-weighted assets, held $250 million in business loans at the end of every quarter of 2009. In 2010, the bank applies for and receives approval to draw capital equal to 5% of its risk-weighted assets from the Small Business Lending Fund (the maximum allowable). After drawing $25 million in capital from the fund, the bank increased the amount of its outstanding small business loans to $275 million by the end of two years (a 10% increase over the baseline). As a result, while the bank received capital with an initial dividend rate of 5%, that dividend rate would be decreased to 1%. The 1% dividend would then be locked-in, and the bank would benefit from this attractive rate for the following three years.

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