April 8, 2014

MEMORANDUM TO: Board of Directors

FROM: Doreen R. Eberley, Director
Division of Risk Management Supervision

SUBJECT: *Notice of Proposed Rulemaking: Advanced Approaches Risk-Based Capital Rule: Proposed Revisions to the Definition of Eligible Guarantee*

Summary: On July 9, 2013, the FDIC Board of Directors (Board) adopted an interim final rule that comprehensively revised the general risk-based and leverage capital rules for state nonmember banks and state savings associations (FDIC-supervised institutions). The interim final rule is generally consistent with the international capital standards adopted by the Basel Committee on Banking Supervision (BCBS) in 2010, as set forth in *Basel III: A global regulatory framework for more resilient banks and banking systems* (Basel III), as well as subsequent changes to the Basel III framework and recent BCBS consultative papers. The interim final rule adopted a definition of eligible guarantee that requires all eligible guarantees to be provided by an eligible guarantor. This definition, however, inadvertently limited the recognition of eligible guarantees for wholesale credit exposures under the advanced approaches risk-based capital rule as incorporated into subpart E of the 2013 capital rule (advanced approaches). To address this situation, the attached notice of proposed rulemaking (NPR or proposed rule) would remove the requirement that an eligible guarantee be made by an eligible guarantor for purposes of calculating the risk-weighted assets of an exposure (other than a securitization exposure) under the advanced approaches.

Recommendation: That the Board issue the attached NPR and authorize its publication in the *Federal Register* with a public comment period that would end on June 14, 2014.

Concur:

Richard J. Osterman, Jr.
Acting General Counsel

Discussion:

In 2013, the FDIC, Office of the Comptroller of the Currency (OCC), and Board of Governors of the Federal Reserve System (Federal Reserve) (collectively, the agencies) comprehensively revised and strengthened their respective regulatory capital frameworks (2013 revised capital rule).[1] Among other provisions, the 2013 revised capital rule included a definition of eligible guarantee for purposes of both Subpart D (standardized approach) and the advanced approaches.[2] The definition of "eligible guarantee" requires that an "eligible guarantor" must provide the eligible guarantee.

An eligible guarantor under the 2013 capital rule includes a sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation, a multilateral development bank, a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty. It may also include an entity (other than a special purpose entity) that at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security that is investment grade; whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and that is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

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[1] The Board and the OCC issued a joint final rule on October 11, 2013 (78 FR 62018) and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). Today, staff will also seek the Board's approval to adopt as final the interim final rule. Staff will also seek the Board's approval on a joint final rule that implements enhanced supplementary leverage ratio standards and a joint proposed rule that proposes modifications to the definition of total leverage exposure in the agencies' 2013 revised capital rules.

[2] 12 CFR 324.2.

Prior to the promulgation of the 2013 capital rules, the agencies' advanced approaches rules (for example, the FDIC's capital rules in Appendix D of Part 325) did not require eligible guarantees be provided by a defined eligible guarantor. In developing the 2013 capital rules, the agencies' intention was to keep the same approach.

Accordingly, the requirement in the 2013 revised capital rules that eligible guarantees be provided only by eligible guarantors unintentionally limited guarantees to wholesale exposures under the advanced approaches. To address this issue, the attached NPR would reinstate the guarantee requirements of the credit risk mitigation framework of the advanced approaches, which, as previously stated, the banking agencies had not intended to change in the 2013 revised capital rules.

Nonetheless, guarantees that serve for credit risk mitigation purposes under the standardized approach and under the securitization framework of the advanced approaches would continue to be restricted to guarantees provided by eligible guarantors. Further, this revision would not affect the calculation of the risk-based capital floor requirements under the standardized approach, which serves as a floor for the risk-based capital requirements applicable to advanced approaches banking organizations.

While staff is also recommending that the Board adopt as final the FDIC's 2013 capital rules, staff does not recommend that this correction to the definition of eligible guarantee be included in the final rule. This notice of proposed rulemaking will allow the FDIC to move forward in concert with the other banking agencies, ensuring that the FDIC's capital rules align with those of the OCC and Federal Reserve.

Conclusion

FDIC staff recommends that the FDIC Board adopt the attached NPR and authorize its publication in the *Federal Register* for a comment period ending on June 14, 2014.

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