

FDIC-Guaranteed Securities and TRACE Eligibility

Guaranteed Senior Unsecured Debt Is a TRACE-Eligible Security

Under a new Federal Deposit Insurance Corporation (FDIC) program, the “Temporary Liquidity Guarantee Program” (Program), certain senior unsecured debt securities that are issued by eligible financial institutions, such as insured U.S. depository institutions and U.S. bank holding companies, which comply with the applicable regulations of the Program and the Debt Guarantee component of the Program, are fully and unconditionally guaranteed by the FDIC (FDIC-Guaranteed Senior Unsecured Debt).

FDIC-Guaranteed Senior Unsecured Debt is a TRACE-eligible security if it is registered under the Securities Act of 1933 or issued pursuant to Section 4(2) of the Securities Act and purchased or sold pursuant to Securities Act Rule 144A and otherwise complies with NASD Rule 6210(a).¹ Firms must report transactions in such FDIC-Guaranteed Senior Unsecured Debt to TRACE, including transactions that were executed prior to this *Notice*.

Questions concerning this *Notice* should be directed to:

- tracefeedback@finra.org;
- FINRA Operations, at (866) 776-0800;
- Patrick S. Geraghty, Director, Fixed Income, Market Regulation, at (240) 386-4973;
- Elliot R. Levine, Chief Counsel, Transparency Services, at (202) 728-8405; or
- Sharon Zackula, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8985.

December 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Executive Representatives
- Fixed Income
- Legal
- Operations
- Systems
- Trading
- Training

Key Topic(s)

- FDIC-Guaranteed Securities
- TRACE-Eligible Securities

Referenced Rules & Notices

- FINRA Rule 6210(a)
- Section 4(2) of the Securities Act
- Securities Act Rule 144A

Endnotes

- 1 FINRA is aware that on November 24, 2008, the staff of the Securities and Exchange Commission (SEC), Division of Corporate Finance, issued an interpretation that the FDIC-Guaranteed Senior Unsecured Debt would be “considered guaranteed by an instrumentality of the United States for purposes of Section 3(a)(2) of the Securities Act of 1933.” See Letter from Thomas J. Kim (Kim), Chief Counsel and Associate Director, Division of Corporation Finance, SEC, to Federal Deposit Insurance Corporation (FDIC), Attn: John V. Thomas (Thomas), Acting General Counsel, dated November 24, 2008 (SEC Interpretive Letter), responding to a letter from Thomas, Acting General Counsel, FDIC, to Kim, Chief Counsel and Associate Director, Division of Corporate Finance, SEC, dated November 24, 2008 (FDIC Letter).

The terms and conditions of the FDIC’s “Temporary Liquidity Guarantee Program,” including the Debt Guarantee Program component of the Program, are set forth in final rules at 12 CFR Part 370, “Temporary Liquidity Guarantee Program,” which were adopted on November 21, 2008. 12 CFR §§ 370.1 et seq. See 73 FR 72244 (November 26, 2008).