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VIA ELECTRONIC MAIL

May 6, 2009

Joseph DiNuzzo
Counsel, Legal Division
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Clarification of Sweep Disclosure Requirements in
FDIC Final Rule on Processing of Deposit Accounts in the Event of an Insured
Depository Institution Failure, 74 *Federal Register* 5797, February 2, 2009

Dear Mr. DiNuzzo:

The American Bankers Association (ABA) is writing to request clarification of the sweep disclosure requirements in the final rule issued by the Federal Deposit Insurance Corporation (FDIC) on processing of deposit accounts in the event of an insured depository institution failure (failed bank rule).¹ That rule requires that insured institutions provide notices to all sweep account customers as to whether swept funds are “deposits” under the Federal Deposit Insurance Act,² or if not, whether the funds would have the status of secured creditor or general creditor in the event the institution fails.

ABA understands that the goal of these disclosures is for bank customers to understand the status of all of their funds in the event of a bank failure, and we support that goal. However, as our members have begun to delve more deeply into the steps necessary to provide the disclosures, a number of issues have arisen for which ABA seeks guidance from the FDIC. We are also concerned that in some circumstances, the notices may confuse rather than inform sweep customers. These issues generally involve the scope of the term “sweep account” and the party to whom the notice must be provided.

Scope of “Sweep Account”

The final rule defines a sweep account as:

An account held pursuant to a *contract* between an insured depository institution and its customer involving the *pre-arranged, automated transfer of funds* from a deposit account to either another account or investment vehicle located within the depository institution (internal sweep account), or an investment vehicle located outside the depository institution (external sweep account). [*Emphasis added.*]

¹ The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$14 trillion in assets and employ over 2 million men and women.

² 12 U.S.C.1813(l).

However, there are instances where a bank may be acting under governing documents on behalf of an account which include the investment of cash without identifying a specific vehicle into which the cash is swept or a particular threshold at which funds are transferred.

For example, the documents governing a trust account may provide that the trustee bank will invest cash received, such as from dividends and interest, on a timely basis. Such monies are typically placed in a trust deposit account and are then swept each night into money market mutual funds outside the bank, but the particular investment vehicle or type of vehicle is not specified in the governing fiduciary account documents. ABA requests FDIC's concurrence that accounts with such general types of provisions are not "contracts" covered by the definition of "sweep accounts" under the rule.

We also seek guidance on the coverage of deposit accounts where funds are swept to pay down loan accounts. While we recognize that such accounts may be technically covered by the definition of "sweep account," we are concerned that the disclosures may actually be counterproductive for customers who are already confused about deposit insurance coverage.

For example, some customers use funds swept from a deposit account to make loan payments. In this case, there is no expectation that the funds are being swept back and forth as is typically the case in investment sweeps or are available for other purposes once the loan payment is made. And, surely such customers do not expect that their loan accounts are covered by deposit insurance. Accordingly, the disclosure serves no purpose other than to raise consumer concerns about the safety of their funds.

Scope of Disclosure Requirement

ABA requests FDIC's concurrence that sweep disclosure notices need not be sent to accounts for which the bank, acting in a representative capacity is the account owner and holds legal title to the account assets. Examples of these types of accounts would include accounts for which the bank serves as trustee, executor, managing agent, custodian or other representative capacity. In such instances, we believe it would be redundant for the bank to send the sweep disclosure notice to itself. Accordingly, we request that FDIC affirm this position so that we may disseminate this information to our members.

If you have any questions about these matters, please don't hesitate to contact me.

Sincerely,



Cristeena G. Naser