



September 6, 2018

MEMORANDUM TO: The Board of Directors

FROM: Doreen R. Eberley
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SUBJECT: Limited Exception for a Capped Amount of Reciprocal Deposits from Treatment as Brokered Deposits

RECOMMENDATION AND SUMMARY

Staff recommends that the FDIC Board of Directors (the Board) authorize publication of the attached notice of proposed rulemaking (NPR or proposal) with a 30-day comment period. The NPR would conform the FDIC's current regulations that implement brokered deposits and interest rate restrictions with recent changes to Section 29 of the Federal Deposit Insurance Act (FDI Act) made by Section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act) related to reciprocal deposits, which took effect on May 24, 2018. Conforming amendments to the FDIC's regulations governing deposit insurance assessments are also being recommended in the proposal.

This rulemaking is the first part of a two-part effort to revisit the brokered deposit rules. FDIC staff is currently working on the second part, which is planned for presentation to the Board later this year and which would seek comment on the brokered deposit regulations more generally.

DISCUSSION

Section 202 of the Act amends Section 29 of the FDI Act to except a capped amount of reciprocal deposits from treatment as brokered deposits for certain insured depository institutions (IDIs).

Background

Under Section 29 of the FDI Act, well capitalized institutions are not restricted from accepting deposits by or through a deposit broker and have no restrictions on the rates they pay on deposits. However, less than well capitalized institutions may not accept or solicit brokered deposits and

Concur:

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may not offer rates on any deposits that are significantly higher than the prevailing rates in the institution's normal market area. The FDIC may waive the restriction on accepting brokered deposits for adequately capitalized IDIs; however, the restriction to accept brokered deposits cannot be waived if the institution is undercapitalized. Moreover, the interest rate restrictions cannot be waived for institutions that are less than well capitalized.

Reciprocal Deposits

The reciprocal deposit arrangement is based upon a network of banks that place funds at other participating banks in order for depositors to receive insurance coverage for the entire amount of their deposits. In these arrangements, institutions within the network are both sending and receiving identical amounts of deposits simultaneously. Because reciprocal arrangements can be complex, and involve numerous banks, they are often managed by a third party network sponsor. As a result of this arrangement, the institutions themselves (along with the network sponsors) are "in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions,"¹ and meet the definition of a deposit broker. The involvement of deposit brokers within the reciprocal network means the deposits are brokered deposits.

For assessment purposes, reciprocal deposits have been treated more favorably than other types of brokered deposits. In particular, the risk-based assessment rate methodology for established small banks includes a "brokered deposit ratio." The ratio, which measures significant reliance on brokered deposits and applies to all established small banks, excludes reciprocal deposits for institutions that are well capitalized and well rated. In a 2009 rulemaking where the FDIC introduced a prior version of this ratio, the FDIC stated that "[it] recognizes that reciprocal deposits may be a more stable source of funding for healthy banks than other types of brokered deposits and that they may not be as readily used to fund rapid asset growth."²

Section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act

Section 202 of the Act amends Section 29 of the FDI Act to except a capped amount of reciprocal deposits from treatment as brokered deposits for certain IDIs.

Section 202 defines "reciprocal deposits" as "deposits received by an agent institution through a deposit placement network with the same maturity (if any) and in the same aggregate amount as covered deposits placed by the agent institution in other network member banks."

Conversely, reciprocal deposits do not include deposits received by other network member banks through a network, such as (1) deposits received without the institution placing into the network a deposit of the same maturity and same aggregate amount (sometimes referred to as "one-way network deposits") and (2) deposits placed by the institution into the network where the deposits were obtained, directly or indirectly, by or through a deposit broker. Such other network deposits meet the definition of brokered deposits but would not meet the definition of reciprocal deposits and thus would not be eligible to be excepted from an institution's brokered deposits under Section 202.

¹ Excerpt of the definition of "deposit broker." 12 U.S.C. 1831f.

² 79 Fed. Reg. 9525 (March 4, 2009).

As amended by Section 202, Section 29 now allows qualifying IDIs to except a certain amount of reciprocal deposits from a brokered deposit designation. To qualify, the institution must meet the definition of “agent institution,” which requires that it meet one of the following criteria:

- when most recently examined under Section 10(d) of the FDI Act was found to have a composite condition of outstanding or good; and is well capitalized;
- the institution has obtained a waiver pursuant to Section 29(c) of the FDI Act; or
- the institution does not receive an amount of reciprocal deposits that causes the total amount of reciprocal deposits held by the agent institution to be greater than the average of the total amount of reciprocal deposits held by the agent institution on the last day of each of the 4 calendar quarters preceding the calendar quarter in which the agent institution was found not to have a composite condition of outstanding or good or was determined to be not well capitalized.

In addition, the Act defines the following terms that are used in the definition of “reciprocal deposits”:

- The term “covered deposit” means “a deposit that (i) is submitted for placement through a deposit placement network by an agent institution; and (ii) does not consist of funds that were obtained for the agent institution, directly or indirectly, by or through a deposit broker before submission for placement through a deposit placement network.”
- The term “deposit placement network” means “a network in which an insured institution participates, together with other insured depository institutions, for the processing and receipt of reciprocal deposits.”
- The term “network member bank” means “an insured depository institution that is a member of a deposit placement network.”

Limited Exception for Reciprocal Deposits

If the definitional framework set forth above is satisfied, a well capitalized and well rated “agent institution” can classify the lesser of the following amounts as non-brokered (referred to as the *general cap*):

- \$5 billion, or
- an amount equal to 20 percent of its total liabilities.

Agent institutions that are either not well rated or not well capitalized could receive non-brokered reciprocal deposits up to the lesser of the *general cap* or a *special cap*, which is the average amount of reciprocal deposits held at quarter-end during the last four quarters preceding the quarter that the institution fell below well capitalized or well rated.

Reciprocal deposits that do not meet the Section 202 exception remain brokered deposits under Section 29.

Importantly, Section 202 confirms that the current statutory rate restrictions for less than well capitalized institutions continue to apply to any deposit, including a reciprocal deposit that is a covered deposit.

The Proposal

FDIC staff recommends that the Board adopt the attached proposal to amend the brokered deposit regulations by adding Section 202's limited exception and its corresponding defined terms (as described above) into a new Section 337.6(e). Staff is also recommending that the proposal include conforming amendments to section 337.6(b)(2)(ii) related to the interest rate restrictions under Section 202. Finally, staff is recommending that the proposal include amendments that align the FDIC's assessments regulations with the Act's definition of "reciprocal deposit." The proposal seeks comment on all aspects of the proposed rulemaking.

Conclusion

FDIC staff recommends that the Board approve the attached Notice of Proposed Rulemaking for publication in the Federal Register.

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