



March 5, 2019

MEMORANDUM TO: The Board of Directors

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

SUBJECT: Technical Amendment to Preamble

Staff recommends that the Board approve technical amendments to preamble text adopted by the Board on December 19, 2018, relating to the final rule on the treatment of a capped amount of reciprocal deposits (“final rule”).¹

The final rule amended the FDIC’s regulations that implement brokered deposits and interest rate restrictions to conform with recent changes to section 29 of the Federal Deposit Insurance Act made by section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act.

The attached technical amendments are in response to concerns raised by several industry participants about the meaning of a sentence in the preamble of the final rule. Their concern was whether the sentence and its corresponding footnote could be viewed as changing existing interpretations related to accepting or receiving deposits. The sentence is underlined below:²

The FDIC recognizes that the statute only limits the amount of reciprocal deposits an institution may “receive” in order to be considered an agent institution. Thus, an institution that is less than well capitalized or not well rated will still qualify as an agent institution if it holds a level of reciprocal deposits above the special cap, as long as (1) such deposits were received before the institution became less than well capitalized or not well rated, (2) such deposits are time deposits,²⁸ and (3) the institution satisfies all other qualifications necessary to be an agent institution. For example, an institution that is well capitalized but no longer well rated could continue to be an agent institution if it holds reciprocal time deposits that it received prior to its rating downgrade until those time deposits mature or roll off, but would no longer be an agent institution if it renewed or rolled over such deposits and doing so caused the total amount of reciprocal deposits to exceed the special cap. In this case, once the institution receives reciprocal deposits in excess

¹ 84 FR 1346 (February 4, 2019).

² *Id.* at 1349.

Concur:

Charles Yi
General Counsel

of its special cap, it is no longer an agent institution. If an institution is not an agent institution, all of its reciprocal deposits should be reported as brokered deposits.

28 Transactional reciprocal deposits are viewed as being received daily.

Staff does not intend the preamble language to change existing interpretations related to accepting or receiving deposits. Therefore, in an effort to avoid confusion, staff recommends deleting the sentence in question along with its corresponding footnote and, amending the sentence that immediately follows. The revised paragraph would read as follows:

The FDIC recognizes that the statute only limits the amount of reciprocal deposits an institution may “receive” in order to be considered an agent institution. To take a simple example, an institution that is well capitalized but no longer well rated could continue to be an agent institution if it holds reciprocal certificate of deposits that it received prior to its rating downgrade until those certificate of deposits mature or roll off, but would no longer be an agent institution if it renewed or rolled over such deposits and doing so caused the total amount of reciprocal deposits to exceed the special cap. In this case, once the institution receives reciprocal deposits in excess of its special cap, it is no longer an agent institution. If an institution is not an agent institution, all of its reciprocal deposits should be reported as brokered deposits.

Because these recommended changes are technical, and do not change the rule text, staff believes that the changes to the preamble text may be effectuated without notice and comment. Staff further recommends that the changes become effective on the date of publication because the changes are technical and delaying the effective date would serve no purpose.

For convenient reference, staff recommends republishing the revised preamble and final rule in their entirety.

Staff contacts:

Legal Division

Vivek Khare, Counsel, (202) 898-6847
Thomas Hearn, Counsel, (202) 898-6967

RMS

Thomas F. Lyons, Chief, Policy and Program Development, (202) 898-6850