Brokered Deposits and Interest-Rate Restrictions
Telephone Seminar for Financial Institution Officers and Employees

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Coordinator: Welcome and thank you for standing by. All participants will be in a listen-only mode for the duration of today's conference. Today's call is being recorded.

If you have any objections you may disconnect at this time. Now I would like to introduce Mr. Daniel Bean.

Daniel Bean: Thank you. Good afternoon everyone. Welcome to today's Risk Analysis Center presentation entitled Brokered Deposits and Interest Rate Restrictions. There will be discussion by our presenters and a question and answer session will be held via email.

If you would like to ask a question by email during the presentation please send your request to rac@fdic.gov. That's rac@fdic.gov. I would like now to turn this call over to Mindy West, Chief Division of Supervision and Consumer Protection.

Mindy West: Thank you Dan. I'd like to welcome you to this discussion and presentation of Brokered Deposits and Interest Rate Restrictions. Thank you for participating on this call.

This topic has generated a lot of interest and many questions during our industry outreach events, particularly in light of the recent revisions to the interest rate restrictions outlined in Section 337.6 of the FDIC Rules and Regulations which goes into effect January 1, 2010.

Although Section 337.6 is of primary concern to banks that are less than well-capitalized it's important for all banks to be familiar with this regulation and its requirements.

We thought this would be a good time to give you an overview of issues concerning brokered deposits in general as well as the new requirements. During this call we will discuss some of the changes communicated in a Financial Institution Letter we sent out last Friday, FIL-69-2009, that describes the process for determining high-rate areas under the interest rate restrictions contained in FDIC Part 337.6.

I'd like to thank our presenters today, Greg Bottone, who is the Assistant Regional Director in our New York region, Becca Berryman, the Senior Capital Markets and Securities Specialist in our Atlanta regional office, Lou Bervid, Senior Examination Specialist in our Policy Group here in Washington, Martin Thompson, Review Examiner, also headquarters Washington and Chris Hencke, Counsel from our Legal Division for participating on this call.

Each of our panelists will make some remarks about brokered deposits and the interest rate restrictions as well as provide information regarding filing a request for determining if an institution is operating in a high-rate area under Part 337.6.

We will then open it up to take your questions and answers via email. We are recording this call today and we will make a transcript of this call available on the fdic.gov Web site probably around the first of the year. With this I'd like to turn it over to Lou.

Lou Bervid: Thank you Mindy. Today's presentation will start by clarifying the definition of brokered deposits. That segment will include a discussion of CDARS deposits, sweep accounts, Internet deposits and deposit listing services.

We will then review which banks are impacted by the brokered deposit and interest rate restrictions contained in Section 337.6, as well as providing an overview of brokered deposit waivers and interest rate restrictions.

We will close the presentation by providing an overview of what to expect during examinations for banks impacted by this regulation. After concluding the presentation, as Mindy mentioned we will have a question and answer period where you will find - you will be able to submit questions by email.

Send your questions to rac@fdic.gov and include the words “brokered deposits” in the subject line. When we respond to the question we will not identify the person or institution asking the question.

We will start the presentation by clarifying who are considered deposit brokers and what account types should be included in brokered deposit balances.

Who is a deposit broker? A deposit broker is any person engaged in the business of placing deposits or facilitating the placement of deposits of third parties with insured depository institutions.

Deposit brokers are - also include any insured financial institution that is not well-capitalized and any employee of those institutions who engages directly or indirectly by offering deposit rates that are significantly higher than the prevailing rates of interest in the bank’s market area.

In addition to accounts commonly reported as brokered deposits many institutions may have additional funds that should be included in this category.

We have received questions regarding the inclusion of Internet deposits, deposits from listing services, CDARS deposits and sweep accounts. Becca will now discuss the inclusion of these accounts as brokered deposits.

Becca Berryman: I'll start by discussing CDARS deposits and other deposit placement services. Deposits received through a deposit placement network such as the CDARS program are brokered deposits and should be reported as such on the reports of condition.

These deposits can be obtained on a reciprocal basis or through a one-way buy program. As a reminder these balances are subject to the same interest rate restrictions as all other deposits.

Banks eligible to apply for a waiver may include these balances in a brokered deposit waiver application. Only if the waiver is granted the bank would then be able to accept, renew or rollover these deposits.

Sweep accounts are another deposit grouping included as brokered deposits. These accounts are reported as brokered deposits unless the bank requests and receives a primary purpose exemption from the FDIC.

The bank will receive this exemption only after review and the decisions are made on a case-by-case basis. The sweep account program must meet all of the following criteria before a primary purpose exemption would be considered.

Funds cannot be swept into time deposit accounts. Fees paid by the bank are flat rate fees and not based on the number of accounts or the balances contained in the accounts.

The number - the amount of swept funds does not exceed 10% of the total brokerage funds of the customers in the sweep program. Total brokerage funds include investments, uninvested cash and sweep balances.

For additional information please refer to the FDIC advisory opinion number 05-02 dated February 3, 2005 which is titled Are Funds Held in Cash Management Accounts Viewed as Brokered Deposits by the FDIC?

I'll now move into a discussion of Internet listing services and deposit brokers. Internet deposits may or may not be considered brokered deposits. Because deposit brokers may utilize these services banks need to ensure that they are aware of the source of funds and report the balances appropriately.

In other words if the deposit provider is a broker the funds should be reported as brokered deposits on the call report. In addition any funds acquired through the Internet, whether brokered or not, are subject to the interest rate restrictions if the bank is subject to Section 337.6.

A deposit listing service is a compiler of information about deposits and deposit brokers are facilitators in the placement of deposits. In general a deposit listing service is not a broker if all of the following FDIC criteria are met.

The service compensation consists only of subscription fees for gathering and listing of rates. In addition the listing service does not require an institution to pay for other services as a condition to being listed.

These fees are flat fees and not calculated on the basis of the number of accounts or volume of deposits. The listing service performs no services except the gathering and transmission of information between depositors and the depository institutions.

Any funds to be invested in deposit accounts are remitted directly by the depositor to the insured depository institution and not directly or indirectly by or through the listing service.

All funds acquired through a listing service are subject to the rate restrictions. I've covered a lot of information here but an important thing to note is that a deposit listing service just lists rates and shares information.

The easiest way to think about deposit brokers is that there is someone between you and the deposit provider. I'll now turn over the presentation to Greg to provide an overview of the assessment changes on brokered deposits.

Greg Bottone: Good morning and good afternoon. I'm going to cover a topic that has resulted from the implementation of the revised deposit insurance assessment procedures.

Beginning with the second quarter 2009 assessment process the amount charged for brokered deposits was changed. For Category I institutions which generally have a composite rating of 1 or 2 and are well-capitalized, the FDIC introduced a new financial ratio into the financial ratios method and that's called the adjusted broker deposit ratio.

This ratio is intended to measure the extent to which brokered deposits are used to fund rapid asset growth. This new ratio affects institutions whose brokered deposits are more than 10% of domestic deposits and whose assets are more than 40% greater than 4 years previously.

Institutions in Risk Category I can exclude CDARS and other similar deposits obtained on a reciprocal basis from the adjusted brokered deposit ratio. However brokered deposits that are swept into an institution are included in the ratio.

An institution in Risk Category II, III or IV will be subject to an assessment rate adjustment for brokered deposits referred to as the brokered deposit adjustment. This adjustment will be limited to those institutions whose ratio of brokered deposits to domestic deposits is greater than 10%.

Asset growth rates will not affect this adjustment. The adjustment will be determined by multiplying 25 basis points times the difference between the institution's ratio of brokered deposits to domestic deposits and 10%.

However the adjustment will never be more than 10 basis points. It is important to note that for this adjustment brokered deposits include reciprocal deposits and sweep deposits.

This concludes the first part of our presentation. The next segment includes an overview of the revisions to Section 337.6 and clarification on which banks are impacted by the regulations limitations, as well as revisions to the interest rate restrictions, requirements for filing a brokered deposit waiver and calculation of the applicable market rate.

So what is Section 337.6? It is the regulation that implements Section 29 of the FDIC Rules and Regulations called Brokered Deposits and restricts the use of brokered deposits and sets limits paid on interest-bearing deposits by less than well-capitalized FDIC insured institutions.

So why was the rule revised? The revisions were made to bring the restrictions in line with the regulation's intent and to simplify the process for determining conformance.

The intent of the regulation is to prevent banks from circumventing the prohibition of accepting brokered deposits without the assistance of a deposit broker by offering high rates.

In addition the low yields on U.S. Treasury securities compress the national rate caps computed under prior regulation. Therefore the national rates fell well short of the actual paid on certificates of deposit by banks.

Given the increasing use of Internet deposits the final rule also addresses difficulties in determining the origin of the deposit and calculating the prevailing rates paid within that market area.

The national rate is now defined as a simple average of rates paid by all FDIC institutions and branches. The national rate should be used to determine conformance with this regulation by all banks unless the bank has requested and received a determination from the FDIC that it is operating in a high-rate area.

The prevailing rate for institutions with the high-rate determination is the average of rates offered by other FDIC institutions and branches in the bank's local geographic area.

Rates offered by credit unions can be included in this calculation if an institution can support that it competes directly with these institutions for deposits.

The national rates are updated weekly and posted on the FDIC Web site. The link can be found in FIL-69-2009 which was issued last Friday and is accessible at fdic.gov.

Now that we've provided an overview of the revised rule, what banks are impacted by Section 337.6? Applicability is determined by the bank's capital category as defined by Section 38 of the FDI Act and Part 325 of the FDIC Rules and Regulations.

There are two major categories of banks impacted by this regulation. The first group includes adequately capitalized banks and well-capitalized banks under a formal enforcement action with a specific capital provision.

These particular well-capitalized banks are considered adequately capitalized for the purposes of Section 337.6. Banks in this group cannot accept, renew or rollover brokered deposits without a waiver from the FDIC.

In addition they cannot pay interest rates above the applicable market rate. The second group includes undercapitalized, significantly undercapitalized and critically undercapitalized banks.

These institutions cannot obtain a brokered deposit waiver and they are also subject to the interest rate restrictions in Section 337.6. As a result the acceptance of deposits with rates significantly exceeding the applicable market rate is a violation of 337.6.

The next section of the presentation discusses the implementation of the regulation. First I will discuss brokered deposit waivers. Who can receive a waiver and when assessing a waiver application what factors are considered by the FDIC?

Brokered deposit waivers are only available to adequately capitalized institutions. Well-capitalized banks do not need a brokered deposit waiver. However for the purposes of this regulation well-capitalized banks under a formal enforcement action with a specific capital provision are considered adequately capitalized and therefore must obtain a waiver before holding brokered deposits.

To request a waiver a letter of application should be submitted to the appropriate FDIC regional office for review. Applications are evaluated on a case-by-case basis and are not automatically granted.

Waivers are generally approved for no longer than 90 days at a time. Contingency waivers are not processed and as a result banks should submit applications only after becoming subject to Section 337.6.

Waiver applications are evaluated for traditional safety and soundness concerns including the institution's capital position, asset quality, liquidity levels and earnings performance.

Institutions that do not have a viable plan for returning to well-capitalized status or are experiencing negative trends towards undercapitalized status are not likely going to be granted a waiver.

The region will also assess an institution's contingency funding plans related to lines of credit with other corresponding banks and government agencies, as well as current business plans to expand or grow.

Another significant provision in Section 337.6 involves interest rate restrictions for banks that are less than well-capitalized. Lou will now provide an overview of the interest rate restrictions and high-rate market determinations.

Lou Bervid: Thanks Greg. Section 337.6 restricts the use of brokered deposits and limits rates paid on interest-bearing deposits by less than well-capitalized FDIC insured institutions.

Deposits solicited by these institutions cannot significantly exceed the prevailing rates in the applicable market. The applicable market rate is the national rate for all banks until they request and receive a high-rate determination from the FDIC.

The FDIC has interpreted significantly exceeds as meaning more than 75 basis points. Once the rule is effective an institution that believes it is operating in a high-rate area will be able to use the prevailing rates in its market area to determine conformance only if it seeks and receives a determination from the FDIC that it is operating in a high-rate area.

With or without the high-rate determination institutions must use the national rate to determine conformance for all out of area deposits beginning January 1, 2010.

How can a bank obtain a high-rate determination? To obtain a high-rate determination banks will be asked to submit information regarding their market area in letter form to the applicable regional office.

For determination requests received by December 31 of this year a response will be received by January 30, 2010. For institutions that submit the determination request by December 31, 2009 and are determined to not be operating in a high-rate area, begin using the national rate caps to determine conformance with local deposits by March 1, 2010.

Institutions submitting determination requests after December 31, 2009 will have to begin using the national rate caps on January 1, 2010 until they have received a determination from the FDIC that the institution is operating in a high-rate area.

As previously stated banks can only use the local market approach - market area approach if they have requested and received a high-rate determination from the FDIC.

The determination will be effective for the calendar year but will be rescinded by written notice from the FDIC if the institution’s market area is determined to no longer be in a high-rate area. Becca will continue the implementation

discussion by reviewing issues surrounding calculating the local market average.

Becca Berryman: The first issue I'll cover is how is the prevailing rate calculated? After receiving a high-rate determination the bank will use a local market approach with the calculation based on all rates paid by all FDIC insured institutions and branches within the bank's geographic market area.

The prevailing market rate is calculated for deposits based on maturity and size of the deposits. In addition banks should exclude their own rates from calculating the market average.

Credit unions may be included in the calculation if the bank can show that these institutions impact the rates being paid in the market area. Prevailing rates are calculated by averaging rates paid by account type, maturity and account size.

For example the bank's money market account rates are compared to the average rates for its competitors' money market accounts. These accounts could include all tiers of money market accounts as well as special rate products and relationship accounts.

For deposits with the same maturity structure the prevailing rate is calculated based on jumbo which includes accounts with balances $100,000 and greater and non-jumbo status accounts with balances less than $100,000.

No other divisions based on deposit size are permitted. The final rule allows the segregation of savings accounts, NOW accounts and MMDAs for evaluation purposes.

However, additional account bifurcation for special features is not allowed. Another common question is why are branches of other banks included in determining the prevailing rate?

Individual branches of other institutions are considered to be competitors soliciting deposits within a market area. The new rule defines the national rate as a simple average of rates paid by all insured depository institutions and branches for which data are available.

Excluding branches for calculating a prevailing rate for a local market would be inconsistent with the methodology used to calculate the national rate under the new rule.

Institutions should use the all banks, all branches methodology under the revised regulation. So what rates do I use? When comparing the actual cost of brokered deposits to the applicable market rate banks should use the all in costs paid by the bank rather than just the stated rate.

The rate should be consistent with the requirement for reporting interest on deposits on the reports of condition and income. Call report instructions state that banks should include as interest expense finder's fees and broker's fees that represent an adjustment to the rate paid on deposits.

Another set of questions relates to the treatment of uncommon account features and promotional rates. The final rule allows for segregation of savings accounts, NOW accounts and money market deposit accounts for evaluation purposes.

However accounts cannot be segregated based on special features including tiers other than jumbo and non-jumbo, account relationships or other features not regularly provided by the institution.

Promotional rates are included in the average with accounts having similar maturity and size. Many institutions have argued that artificially low rates should be excluded from the calculation.

However the low nature of particular rates is not reason enough for exclusion and the rate should be included in the calculation of the prevailing rate. I will next review a couple of examples of market rate calculations.

These examples are available in the FIL that we issued last Friday. The first example shows a calculation for the prevailing rates for deposits under $100,000 non-jumbo.

In this example the bank has two tiers for their deposit, a $10,000 tier with a rate of 1.2% and a $50,000 tier with a rate of 1.5%. You also can see in the example that the bank has rates from two different competitors.

One of their competitors has one branch and another competitor offers two tiers for a similar maturity account. Bank A is offering two tiers similar to the example bank.

Bank B only has one tier of deposits but it has two offices within the example banks' market area. If you recall from previous parts of the discussion, rates from all the branches and all the tiers of deposits are included in the below $100,000 - non-jumbo calculation.

The average market rate is then calculated using all banks and all branches within the geographic area. In this case it would include the four rates being offered by the two other institutions.

The average rate for this product is 0.7% which results in a rate cap of 1.45% after adding 75 basis points. When comparing that rate cap to the bank's rate note that the rate on the $10,000 tier is below the rate cap.

However the rate on the $50,000 tier at 1.5% is above the 1.45% rate cap by 5 basis points and should be adjusted. So what do you do then? If you have a deposit product that is a non-standard maturity such as a 10-month CD there is another example provided in the Q&A to address this issue. Because many market areas offer products that are not one of the standard maturities, we've included an example in the Q&A document that illustrates the interpolation process.

In this example banks in the market area offer a 9-month and a 12-month CD. The example bank however wants to offer a 10-month CD which does not have comparables in the market.

To obtain a comparable rate find the difference between the two commonly offered rates. In this example that difference would be 30 basis points which is the difference between the 9-month rate of .9% and the 12-month CD rate of 1.2%.

The second step is determining the per-month amount of that difference. Thirty basis points is divided by three because there are three months between the maturities of the two commonly used rates.

To obtain the 10-month comparable add the one month difference of 10 basis points to the 9-month rate of .9%. The comparable rate then would be 1%. The rate cap for the 10-month CD would be 1.75% or 1% plus 75 basis points.

I suggest if you have questions about this to review the Q&A document. The steps are clarified in that document. Greg.

Greg Bottone: Okay, to close out the presentation we will discuss the treatment of high-rate accounts that existed prior to the institution becoming subject to Section 337.6 and what to expect during examinations.

Many institutions impacted by Section 337.6 have accounts with rates that are - significantly exceed the applicable market rate. The rates on these accounts should be adjusted to within the applicable limit as soon as the accounts are renewed or rolled over.

As a result rates on CDs can continue to be paid until the maturity of the deposits. However rates on non-maturity accounts should be adjusted as soon as 337.6 becomes applicable.

Any account with a significantly higher than market rate should be reported as a broker deposit only if it has been acquired, renewed or rolled over since the institution became subject to the rate restrictions.

So what should you expect during an examination if your bank is subject to Section 337.6? For banks able to use the local market approach examiners will review their internal rate monitoring system to ensure that the bank is using the appropriate market rate and is including all banks and branches within the market area in their calculation.

Examiners will also review out of area deposits to ensure compliance with the national rate cap. For banks required to use the national rate examiners will review the bank's monitoring system to ensure compliance with the regulation.

In both cases the compliance documentation should be available for examiner review at any point in time. Examiners will use this documentation to verify the level of brokered deposits reported on the call report.

When reviewing the liquidity component examiners will assess an institution's reliance on brokered, wholesale and other volatile funding sources such as what Mindy indicated in her opening remarks.

Examiners follow our Manual of Examination policies which says that the use of wholesale funding is not viewed negatively. However we will review a bank's use of brokered and other wholesale funding relative to its business plan, its overall risk profile, its capital category and its contingency planning activities.

It is generally shortfalls in these other areas that lead to examiner criticism of a bank's reliance on brokered funding, not just the level of brokered funds or the non-core funding dependency ratio.

Per Financial Institution Letter 13-2009 The Use of Volatile or Special Funding Sources by Financial Institutions That are in a Weakened Condition, FDIC supervised institutions, regardless of rating, that rely excessively on a volatile funding mix are subject to heightened off-site monitoring and more extensive on-site examinations.

Institutions rated 3, 4 and 5 are expected to implement a plan to stabilize a reduced risk exposure. Examiners will also review the institution's contingency funding plans which should detail an institution's response to stress scenarios, including changes to the bank's PCA capital category which impacts the applicability of Section 337.6, adverse publicity and business disruptions due to natural disasters.

The contingency funding plan should include definitions of responsibilities and decision making authority so that all personnel understand their role during a problem funding situation, an assessment of the possible liquidity events an institution may encounter, details on how management will monitor liquidity events and conduct stress testing, triggers related to brokered deposits and other funding sources and identification of backup facilities. This concludes the third major topic of our presentation.

Lou Bervid: I want to quickly summarize the key points from today's presentation. CDARS deposits are brokered deposits. Swept accounts are brokered deposits unless the bank receives a primary purpose exemption.

Section 337.6 does not apply to well-capitalized institutions. Less than well-capitalized institutions are subject to Section 337.6. Remember that this would include well-capitalized banks under a formal enforcement action with a specific capital provision.

They're therefore deemed to be adequately capitalized. An institution subject to Section 337.6 must adhere to the national rate cap unless it requests and receives a high-rate determination from the FDIC.

Banks using the local market approach must include all banks and branches from their geographic market area in the analysis. Institutions subject to interest rate restrictions must use the national rate for out of market deposits.

Contingency funding plans should address the impact of Section 337.6 restrictions. We are now ready for the question and answer section of our presentation.

Please submit your questions to rac@fdic.gov. That's rac@fdic.gov and include the words "brokered deposits" in the subject line. And we've received a number of questions in advance of the presentation so we're going to start with those.

The first question asks, "If we send in our letter of request to be considered to be operating in a high-rate environment before 12/31/09 are we allowed to use the local area market rates we have requested during the time we are waiting for our response from the FDIC on our request?"

The answer is yes. For local area deposits you can use the prevailing rate in your local area and you would add the 75 basis points to that to determine the rate cap.

But as of 1/1/2010 you must start using the national rate caps. Again that's the national rate plus 75 basis points which is posted on our FDIC Web site for all non-local deposits.

Here's another question, "If a bank applies for a high-rate market determination from the FDIC but does not receive an answer before January 1 what rates should the bank offer after January 1 while awaiting the FDIC's response?"

Institutions will hear from the FDIC by January 30 and will have until March - the institution will have until March 1 to start using the national rate if it's not considered to be operating in a high-rate area.

So you'll receive our response by the 30th of January. So you have a couple of months leeway here but you don't have to start using the national rate for local deposits if you submit that application or that determination request by the 31st of December.

The second question, "For banks that receive the determination from the FDIC who is responsible for calculating the local market prevailing rates?" The institution is responsible for calculating the prevailing rates to ensure they're in conformance with the interest rate restrictions.

We won't be doing that for you and then examiners will review that information once they come on-site during examinations to ensure that the institution is conforming with the interest rate restrictions.

Another question, “If an institution is found to operate in a high-rate market will it automatically be allowed to use its market rates for setting interest rates? If not what other factors will the FDIC consider when making the determination?”

Yes the prevailing rates in the local market can be used for local deposits. The FDIC will consider standardized data however when making the determination. And we talked a little bit about that. It’ll be either by state, MSA or Micro SA.

Becca Berryman: Okay I’ve received a question about how would the national average be determined for money market accounts when we offer different interest rate tiers depending on the balance in the account?

Just as a reminder the only split we allow is for jumbo and non-jumbo. So when you’re calculating the local market average accounts with required balances less than $100,000 are in the non-jumbo calculation, and a balance with - accounts with balances that are required to be $100,000 or above would be in the jumbo balances.

So several different tiers may be in each calculation and there’s not a separate calculation by tier other than jumbo and non-jumbo.

Another question is, “Are credit union rates included in the market area averages?” For the national rate calculation and the high-rate determinations they are not included. However if you do receive a high-rate determination and can show that credit union rates impact the local market area and your competitors’ rates you can include them in that analysis.

The next question I got, “Are the rates on odd term time deposits monitored and regulated under this rule? And also what about rewards checking?”

There's some good information in the Q&A on odd term or non-standard term deposits and how those calculations.

I went over a couple of those pretty quickly but the Q&A shows you how to use interpolations for accounts that are between two standard maturity accounts and that's how we monitor that, both on the national rate basis and on the local market analysis.

And accounts such as rewards checking or other special type of accounts are included with all other checking accounts when calculating the market average.

Greg Bottone: Okay I have a few here. "If an institution is considered well-capitalized are there any events that would cause that institution to have to comply with brokered deposits and interest rate restrictions?"

And the answer is if you're well-capitalized the only way that this would be applicable to you is if you were under a formal enforcement action with a specific capital provision which would make you adequately capitalized.

And therefore you have to obtain a waiver before you have brokered deposits. Another question, "If you are under a Memorandum of Understanding or a board resolution that has a capital ratio stated in there are you required to get a waiver?"

And the answer is no because you're not under a formal enforcement action such as a cease and desist order or a consent order.

I have another question here, "A bank that's under a written agreement with their state regulator and the Federal Reserve and the bank meets the well-capitalized standard condition, the agreement does not specify any specific

capital directive other than requiring a plan and the FDIC has not issued a capital directive to the bank."

And I draw your attention back to the statement that we made a couple times here that if a bank is well-capitalized and they are under a formal enforcement action of which a written agreement would qualify, there has to be a specific capital provision considered in the formal agreement.

And that would make you adequately capitalized and therefore you would have to obtain a waiver.

Lou Bervid: Okay I have a question here. It says, "Please provide a specific example of the use of national rates versus rate caps as shown on the weekly national rates and rate caps table.

For example, absent a high-rate area determination by the FDIC is compliance defined by the national rate column or the rate cap column? Does a high-rate area determination by the FDIC potentially allow an institution to exceed the rate cap column as stipulated in the determination or is the rate cap column intended to reflect the absolute maximum rate the institution may pay when the FDIC has provided a high-rate area determination?"

The regulation states that the institution should not significantly exceed the average rate for the applicable market. And we have defined significant as more than 75 basis points.

Therefore when determining the national rate in the table use the national rate cap-when using a local market approach add 75 basis points to prevailing rate on the average for the market.

So the cap is the addition of 75 basis points to the applicable rate. For example if you look at the table use the right-hand column showing rate caps and based

on the last week data for non-jumbo the maximum rate for money market deposit accounts is 1.1% and that rate is 1.71% for a 12-month CD.

Here's another question, "If a bank wants to be allowed to use local rates instead of the national average will bank management need to provide supporting data for the request? It sounds like FDIC will perform the analysis and all the banks needs to do is request it."

The only information that you'll need to send in is just to notify us that you're seeking the request, the determination. Please make that clear in the letter and any information you have about your local market area.

If you receive a determination that you are operating in a high-rate area you will use your local market data to determine conformance. Typically we will only look at that information for the prevailing rate and your calculations to determine conformance during an examination. So that's when we'll need your prevailing rate information.

Also, "There is no mention of credit unions in the memo. Earlier guidance had indicated that the bank could request the right to include them in the survey of local rates."

We don't include credit unions in the calculation of the average deposit rate by MSA state and national rate. If you can support that you are competing directly with the credit unions you can use it in the calculation of the prevailing rate for the local market area.

And then I have another question here that says, "Does the market rate calculations just apply to local deposits?" Yes that's correct. For out of area deposits you'll need to use the national rate.

Most Internet deposits received from a listing service still use the national rate. If the customer's located outside your market area then you'll have to use the national rate for those deposits.

Martin Thompson: Good morning and good afternoon. This is Martin Thompson and I'd like to add on to a comment that Greg made earlier regarding institutions that are subject to or have memorandums of understanding and how that affects their use of brokered deposits.

As Greg mentioned a well-capitalized institution subject to an MOU is not restricted from accepting, renewing or rolling over deposits; that the MOU is not considered a formal action.

However the MOU may contain provisions that address reduction or reducing reliance on brokered deposits. And the primary federal regulator will monitor that institution's compliance with the MOU.

So it is expected that the institution comply with the Memorandum of Understanding and take steps to reduce the reliance or the volume on brokered deposits.

Also we have received several questions on processing brokered deposit waivers. And just in this current economic environment brokered deposit waiver requests will not be afforded expedited processing.

As noted in a recently issued Financial Institution Letter on brokered deposit waiver requests the institution will be notified in writing that the application has been removed from expedited processing.

I'd also like to reiterate several factors that Greg talked about earlier about what we consider when we review these brokered deposit waiver requests.

First and foremost as Greg mentioned each request is considered on a case-by-case basis.

And we look at the institution's capital position, its asset quality, its liquidity and funds management practices, the level and trend of its earnings, the ability of the institution to manage volatile liabilities and its plan to reduce reliance on brokered deposits or other volatile funding sources.

In addition what type of contingency funding plans does the institution have, for instance correspondent bank accounts or lines of credit with Federal Reserve or Federal Home Loan Bank Board?

And finally we also look at the management's growth and funding strategies. We also received the following question regarding MOUs. The question reads, "We are operating under an MOU with 8% Tier 1 capital. If we become less than 8% Tier 1 capital, are we restricted from using brokered deposits?"

And the asset - I mean the answer is it depends because for determining your prompt corrective action category it's really an assessment of three different capital ratio metrics.

Those three ratios would be your total risk based capital ratio, your Tier 1 risk based capital and your Tier 1 leverage ratio. For a well-capitalized institution you must maintain total risk based capital of 10% or over, Tier 1 risk based capital of 6% or over and Tier 1 leverage of 5% or over.

So you have to look at all three capital ratio metrics to determine your PCA capital category and then you can determine if you maintain your well-capitalized position and therefore can continue to hold brokered deposits.

Finally the last questions I'd like to address reads, "Will the process to obtain approval to continue accepting reciprocal deposits through the CDAR

program be different from getting approval to accept traditional brokered deposits?"

And the answer is no. As we mentioned earlier - as Lou mentioned in his summary CDARS reciprocal are considered brokered deposits and they will be treated the same as traditional brokered deposits for any brokered deposit waiver requests. With that I'd like to turn it over to Chris Hencke who - is going to respond to a few questions.

Chris Hencke: Hi. We got a few questions in that are more technical or I would say legal in nature and I'm going to answer a couple of those right now. First question, "Please explain the exclusion from the determined deposit broker set forth in 12 CFR Section 337.6 A52A."

And let me back up a little. The FDIC's regulations that govern in this area of the law is 12 CFR Section 337.6. That regulation does include a definition of deposit broker.

It also includes a list of exceptions to that definition. And this question involves one of those exceptions, the exception that I call the bank itself exception.

The regulations basically say the bank itself is not a deposit broker with respect to any funds placed with the bank. It seems sort of self-obvious that the bank itself is not a deposit broker, but the second part of this question is very good and it sort of clarifies why we have this exception.

Here's the second part. "Does a deposit by an insured depository institution as custodian for itself and others fall under the definition of brokered deposits?"

This kind of account illustrates why we have this exception because sometimes it looks like the bank - it actually looks like the bank itself is a third party.

And here's an example. The bank for its own convenience sets up an account titled The Bank Itself as Custodian for Itself and Others. Question, "Is this kind of account a brokered deposit?"

The answer is maybe, maybe not. We would need to know more about this account. If this account is set up solely for the bank's own convenience and there is no third party, there's just the bank and the owners of the deposits, no third party then it is not a brokered deposit.

Example, maybe the bank itself is selling stored value products and for its own convenience it has set up this commingled account as custodian for itself but there really is no third party.

On the other hand you could have an account with this exact same title in which there is a third party. Maybe the bank is working with a service provider in selling stored value products and maybe there is a third party that is standing between the bank and the owners of this deposit.

In that case the money would be brokered deposit because of the existence of the third party. So it really gets down to is there a third party or not? Let me take one more kind of technical legal question.

"Please explain why there are different rates for savings versus MMDA accounts, i.e. in that both are non-transaction accounts subject to monthly withdrawal limits. Why are there separate categories for each? As a hypothetical can we increase the cap by renaming any savings account products as MMDAs or vice versa if applicable?"

In - when we published our regulation we mentioned - the example we actually mentioned was MMDAs versus NOW accounts. And we mentioned that we might recognize the distinction between these two types of accounts because there is a true legal distinction between a NOW account and an MMDA.

A NOW account can only be owned by a person or a non-profit organization or a charity. It cannot be owned by a profit-making corporation. An MMDA on the other hand, that can be owned by a profit-making corporation.

So - and it has other requirements, an MMDA, about notice of withdrawal and so forth. These are real requirements under the Federal Reserve regulations, Regulation D and other regulations.

As far as just renaming accounts, no that doesn't work. You can't take a NOW account and rename it as an MMDA or vice versa. Well let me give you a better example. An MMDA owned by a profit-making corporation, you can't simply rename that a NOW account because that customer is not eligible to own a NOW account.

So that's the whole point. We're willing to recognize distinctions where there is a real legal distinction. On the other hand we were I think obviously hesitant to recognize distinctions that created solely by the bank by adding contractual features to their MMDA and then arguing that their MMDAs are different than somebody else's MMDAs.

So that's the whole point, real legal distinctions between types of accounts versus merely contractual bells and whistles without an underlying legal distinction.

Lou Bervid: Thanks Chris. I've got a couple of questions here. "Will it be possible for the public to learn what institutions have applied for a high-rate area determination?"

We're not going to be publishing that information on institutions operating in a high-rate area. We got a follow up question. "What specific information should be contained in the high-rate determination request sent to the regional office?"

I think I need to clarify that a little bit more. As I said earlier we're not going to be looking for specific data from the institution on rates - prevailing rates in the area.

But we are interested - it would be helpful if you provide us information on where you consider your market area is and that could be based on your branch locations as well as your marketing practices.

So just a kind of a summary of that would be helpful and then we'll be using that to determine, using the standardized data for those areas to make the determination as to whether you're operating in a high-rate area.

We've gotten a few questions related to the impact of the regulation recorded and the stresses that it places on institutions. And the use of all branches with regards to the national rate. We use all branches and when you're using the local market approach we expect you to use all branches in the calculation as well.

And I'm going to just I guess mention a few points about that. We recognize the impact of the financial or the interest rate restrictions have on institutions subject to these restrictions and we're sensitive to the funding issues that they pose.

We're fully aware of them. Our regulation is intended to recognize these concerns while still meeting the statutory requirements. The regulation was revised to address apparent subjectivity in the prior rule which allowed some weak institutions to increase costs for the banking industry and resolution costs for the FDIC.

We believe the changes that we made add clarity to the regulation and actually simplifies the process for determining conformance, both for institution management as well as the examiners making sure that they're conforming with the regulations.

And of course equally important is remaining consistent with the intent of the statute. But with regards to using all branches in the calculation our intent in revising the regulation was to obtain an accurate calculation of prevailing deposit interest rates, and the number of branches at which deposit rates are offered is important to this in completing this calculation.

For example in an environment where many branch banks were aggressively competing for deposits the adverse cost effect on the banks would be understated if we were to collapse all that branch data into one single bank-wide average.

Also the 75 basis point adjustment allowed under the regulation remains significant in the current rate environment. As an example the 75 basis points added to the national average for money market deposit accounts, allows bank subject to the restrictions to pay more than three times the current national rate of .35%.

When the proposed rule was issued we asked the industry if the 75 basis point spread should be adjusted. After considering the comments we received we decided to maintain that current spread to provide institutions subject to these

restrictions with some flexibility in meeting the requirements of the regulation. So that's the reason we included all branches in the calculation.

Becca Berryman: I received a couple of questions about does the FDIC use weighted average or numerical averages? When we calculate the average rates we use a simple average, no weighting of any particular bank by deposit balances.

And so that's the simple average for the rates paid by all banks, all branches for which data is available. Another part to that question was, "If the FDIC determines that a market is a high-rate area will it communicate that fact to all FDIC insured institutions with branches in that market?"

No. And we do not communicate that information except to the bank under question. Another question is in the - about the - in the Q&A there was a question regarding the cost of gifts given when opening a deposit account being calculated included in the deposit rate and what other costs should be included.

The costs that should be included in the deposit rate is, first off you're using the yield versus the stated - plain stated rate on the deposit account. So it's anything that is impacting the yield and that would be required to be reported on the call report as interest expense for those deposits on the report of income.

And another question I just received is, "Are Internet deposits considered out of market deposits?" For most institutions they are. So if you are not an Internet bank which effectively can make you a national bank, you have to treat those as out of market deposits unless you can show that those depositors are within your geographic footprint which is where your main office and branches are and where you normally market.

Greg Bottone: Okay I have a few here. “Is there an appeals process if it’s determined that your bank is not in a high-rate area?” And the answer is there is no appeal process but I would encourage you to work closely with the applicable regional office.

Another question, “Are interest rate restrictions going to apply to well-capitalized banks that show significant deterioration in their loan portfolios but continue to be well-capitalized under regulatory standards?” And the answer is no.

Another question was, “For a bank that is no longer well-capitalized and has been directed to refile past call reports in order to reclassify deposits as brokered, what guidelines or instructions exist to assist the bank in reclassifying those deposits? What mechanisms exist to determine which deposits on the books as of the call date are in violation?”

And I hesitate to give a direct answer to this because every situation’s a little bit different. I would encourage the institutions affected that they would contact their applicable regional office of the FDIC for guidance.

There’s a number of issues to consider here. One at least is of a materiality much like when we asked someone to refile the call report, one of the things we determined whether is the refiling information, will it be material.

Martin Thompson: Thank you Greg. We received a question that states, “What is the definition of a specific capital provision within an enforcement action?” Does it include a requirement to maintain capital ratios of X% or only when a capital call has been made?”

A specific capital provision is a requirement to maintain a stated capital ratio such as maintain an 8% Tier 1 capital ratio, Tier 1 leverage ratio and a 12%

Tier 1 risk based capital ratio. And the bank has to comply with both capital ratio requirements to satisfy that provision.

Chris Hencke: This is Chris Hencke again from the Legal Division. We have a couple of questions that came in regarding sweep accounts so let me answer those quickly. First, "Are sweeps from brokerage accounts considered brokered deposits? Are there any ways that they would not be considered brokered and/or any limits to be aware of?"

We have an advisory opinion which Becca mentioned earlier numbered 05-02 and that's what you want to look up under this advisory opinion. And it did involve brokerage accounts and to be more specific it involved funds that were swept from a broker dealer into banks as part of a money management program, idle funds - clients' idle funds swept into bank accounts.

And in this Opinion 05-02 the FDIC said that these funds sitting in the bank accounts would not be considered brokered if certain requirements are satisfied.

In other words generally they would be considered brokered but if certain requirements are satisfied they would not be considered brokered. Those requirements very briefly are, one, the sweep must be into a non-time deposit account; two, any fees paid by the bank to the third party, the broker, must be flat fees for record keeping, not fees related to the volume of deposits; and three, the total amount of swept funds must not exceed 10% of the client assets in that sweep program which brings me to my second question.

"Can you clarify what this means? Ten percent of what?" The 10% is a comparison of the amount in the sweep program of funds in the bank deposit accounts versus the amount of funds or assets for those same customers that are not in the bank accounts.

In other words up to 10% can be sitting as idle funds in the bank account but at least 90% of the funds or assets of those particular clients, the ones participating in the sweep program, must be invested in something other than a bank deposit account, for example the stock market or securities. So that's what the 10% refers to.

Final question involving sweep accounts, "Does the exemption provided by this advisory opinion apply to deposits placed by brokered dealers which make available a sweep feature involving the clearing of trades?"

The advisory opinion only involves programs in which idle client funds are swept into banks. I think the final question about clearing trades, that sounds like something different to me.

That doesn't sound like idle funds waiting till the client decides to buy more securities. I'm not - so I'm not - so I think this question does involve something different.

It may not in fact be governed by the Opinion 05-02 and I guess I would encourage the person who asked this question to maybe send us some more information by email about what - about these - about - exactly about what you mean with these clearing of trades. And that's all I have at the moment.

Becca Berryman: Okay, a procedure question. "Can you clarify the calculation of rates for local money market competitors with tiers? Does each competitor tier account in the average in the local market? For example a branch with a $3000 tier below $100,000 and two branches - a bank has a $3000 tier below a thousand - $100,000 in two branches."

There are six different - can be a total of six different rates included in the calculation of the local average. When you're calculating the local market

average you have to include all tiers by your competitors for its data that are available.

The only division that we have is for the non-jumbo to jumbo calculation so in the example you gave where you have three money market rate tiers below $100,000 and two branches, you would have those three tiers rate at both branches included in the average.

Another question is, “Are CDARS one-way sell funds non-reciprocal where the bank is placing funds into the CDARS network and not receiving anything back from the network considered brokered?”

In addition to this question I’ve receive a couple of others about the CDARS accounts and similar deposit arrangements. I’d like to provide you some clarification.

The amount in those programs that would be considered brokered is not the amount you place into the system but the amount you receive from the system.

So if you’re in a one-way sell program where you’re not receiving anything but getting rid of deposits that would not be brokered. But if you’re in a one-way buy where you’re receiving deposits, additional funds are coming into your account, that would be.

In the reciprocal arrangement you’re doing both. You’re placing funds outside your bank and receiving funds. It’s the amount you receive that is included in the brokered deposit total.

A couple of you have asked about being under a state order, not with the FDIC as a party to the order, being well-capitalized. Does this make you - does this make 337 applicable to you?

The federal regulator has to be party to the order for it to pull you under to that - into being applicable to 337.6. Another question I've received, "Is there a particular determination form we should be using?"

It's a letter so there's no particular form. Just send a letter with the required information as outlined in the FIL to the appropriate regional office for your determination.

Martin Thompson: Thank you. The next question reads, "If a holding company is under an MOU which contains a formal enforcement action with specific capital provisions, are all banks within these - the holding company umbrella subject to the deposit rate limits?"

If the holding company is subject to an MOU then the answer - and it has that the answer is no because the MOU pertains to the operation of the holding company.

However the second part of the question reads, "If a bank is under a formal enforcement action with a specific capital provision but the bank now meets the capital requirement, is the bank subject to the deposit rate limit?"

The answer is yes. The bank will be subject to the deposit rate limits as long as the formal action remains in place. One other question is, "We are a well-capitalized bank but we are under the formal written agreement now."

And it continues, "Our regulators didn't tell us that we have to get a waiver before we issue the brokered CDs. Are we subject to 337.6?" The answer is if your formal agreement contains a capital maintenance provision then yes, you are subject to the interest rate restriction contained in Part 337.6.

Chris Hencke: Here's a question. "We use a program called the insured deposit program. We started using this program four years ago and we saw the same deposit amount

today that we started with. These deposits act more like core deposits than my CD specials. Why do you still insist that these are brokered when some of my core deposits are more interest rate sensitive? Do you see any chance that this rule could be changed?"

The reason - the basic reason goes back to the definition of deposit broker which is not only defined in the FDIC's regulations but is also defined by Congress itself in the statute.

And it's not defined as rate sensitive. That's - rate sensitive is not the definition of a brokered deposit. The definition basically is a deposit that comes into the bank by or through a third party.

And so that's really the reason that we apply the definition we do of deposit broker because that's the definition that Congress has given us. Another question, "You say that there cannot be a fee to the customer based on balances, i.e., it must be a flat fee. Can the interest rate be tiered and paid based on balances?"

I think this question must go back to the discussion we had on both sweep accounts and listing services where the FDIC said one of the things we're going to look to is whether the third party is earning a fee that's tied to the deposit volume.

And here the question was, "Well, putting aside the fee how about if you can - if the interest rate is tiered based on deposit volume?" I would say if the arrangement is such that the third party is benefiting from that interest rate structure, in other words maybe they get some sort of - they get a cut of the interest rate then you're going to have the same problem.

The third party is going to be rewarded for the greater volume of deposits and that's an indication that the third party is a deposit broker. If the third party - if

the interest rate tiers do not reward the third party but only reward the real owners of the funds then I don't know, maybe.

I would want to know a little bit more about that before I - before we commit ourselves on that question. But I think generally the third party would benefit from the interest rate tiers and so I think that would probably be a problem.

Finally, "What does restrict mean in Section 337.6 when it's referencing use of brokered deposits? Does that mean prohibit?" Basically yes. If you're not well-capitalized and you don't have a waiver you may not accept brokered deposits.

On the other hand if you get the waiver you can accept brokered deposits. So I guess when we say restrict for some banks it means you may not take these funds. For other banks it means well, you can't take them now but come and get a waiver and then you can take them.

Greg Bottone: Okay I have a few here. "Where do you send the letter asking for a determination? The FIL mentions the applicable FDIC regional office and do we send this to our case manager?"

We want you to send that to the regional director of the regional office. "How often does the FDIC monitor the rate areas?" We do monitor them weekly.

"If you receive notice of no longer being in a high-rate area is this applicable immediately or is there a time period to adjust?" You would get a letter and the letter would instruct the institution when to start using the national rate.

"If we have multiple areas of business, different cities, do we send in a determination for each market?" We would want you to send in just one. You can include the different markets but just one letter would be fine.

And you would send it to the regional office that is responsible for either supervising you or as a backup supervisor. “The only mention of the letter for determination is the market. What other information is necessary in a letter request for determination?”

We just need the market area information. And another question, “Is there any need for a well-capitalized bank to request a high-rate local market area or will this only be requested if and when they fall below well-capitalized.

If you’re well-capitalized you don’t have to apply for a brokered deposit waiver so you have - there’s no need for us to make a determination about a high-rate local market area.

Becca Berryman: I’ve received a question regarding operating in high-rate areas. “If a financial institution is approved by the FDIC that they are operating in a high-rate area how often does the institution need to update their market rate study?”

We review those rates weekly because even if you don’t change your rates your market competitors do and therefore the average changes, which results in the caps also changing. So it could be as frequently as weekly.

There - another one expressed some confusion over the high rate and national rate and when you must use them. “If you - stating if you did not get approval to be in a high-rate category would you have to keep your rates at or below the national rate and would you have to be at or under the rate cap which would include the 75 basis points?”

All banks (subject to the interest rate restrictions (added for clarification)) have to comply with the national rate cap which would be the national average plus 75 basis points, unless you request and receive a high-rate determination.

Only then would you be able to use the local market calculation for your local deposits. You would still be required to use the national rate analysis including the national rate cap for out of area deposits.

“If a bank is subject to Section 337.6 how are brokered money market accounts handled since they do not have a maturity date?” This is a good time to re-emphasize the difference between the non-maturity and maturity deposits and what we expect on the rate adjustments.

For maturity deposits if those rates exceed what would be the rate cap at the time you become subject to 337.6, they are adjusted when they renew, mature or roll over.

For non-maturity accounts however the expectations are that those will be adjusted as soon as possible.

Chris Hencke: Question, and we actually had two questions on - which are virtually identical on this. “We participate in the intra-sweep on balance sheet sweep program. Are these included in brokered deposits? The funds are not swept outside of the bank.”

The question here is how did the bank - how did the funds first come into the bank? Was there a third party, and I think there was and I think the reference here is to a company called The Reserve Fund.

And so if there’s a third party company that put the money into the bank or helped put the money into the bank that’s the key thing. That makes them - that makes it a brokered deposit regardless of whether it’s some sort of internal sweep thereafter.

Another question, “Do banks placing deposits with other banks have any responsibility to monitor the rates?” The interest rate restrictions go to the banks that offers the rate.

If another bank is placing funds and they happen to place funds with a bank that’s in violation of the interest rate restrictions, that’s really not a problem for the bank placing the funds.

In other words no, there’s really not a responsibility for you to monitor somebody else’s rates. The obligation to follow the rules is - lies with the bank that’s offering the rates.

Lou Bervid: I’ve got a couple questions here. “Where should a bank obtain rates of all banks and branches in the prevailing market area?” And I understand that can be difficult at times.

Many are - many banks use a third party information source to provide that information. “How is the determination made whether the prevailing rate is state MSA or Micro MSA?”

We’re going to use the information that you provide as far as your market area to make that determination as to where you fall with regards to a state MSA or Micro SA.

“If I understand correctly the FDIC will do the research and determine if an area is high-rate when a request is made by the - an institution. Will these determinations be made public so that all institutions in that area will know they’re in a high-rate area or potentially every institution in the market has to request the determination?”

We're going to have every institution make that request and we're not going to publish it because market areas are different. Each institution may have a different market area that we need to consider.

And this is a similar question, "If one bank receives a determination of a high-rate market area can other banks in that area use the same determination?"

No, they're going to have to make that request. Of course if they have the same market areas that they will get that, you know, a determination that they're in a high-rate area.

Let's see, here's another one. "Our bank will be requesting to be recognized as a high market - high-rate market. We are concerned about customers who live in neighboring towns who bank with us.

Many surrounding towns share a newspaper or local paper and see our deposit rates weekly. Some customers commute to our town for work and bank here but have non-local mailing addresses. Are we to consider these customers out of market? If so maturing deposits will have to be repriced based on zip code."

Not necessarily. Your market area is your market area and, you know, if people are commuting into that area from, you know, where they live it's very reasonable if they're commuting that that is part of your market area.

So once we make this determination based on where you're operating, where you're marketing, you can determine where your market area is.

There is still that flexibility. Of course it has to be reasonable and it has to be a geographic area but you can make that determination and just use that information. And it does not necessarily have to coincide with our - the area that we use but I assure you they'll be similar.

Becca Berryman: Okay, “When determining whether or not when you’re in a high-rate market do we use the national average or the national rate cap for comparison?” You always use the rate caps for the ultimate comparison because that includes the additional 75 basis points.

Another question, “How do you determine market for a bank that only has branches in one state? Is the state the market or are individual markets within the state considered separately?”

This is a question where you get the “it depends” answer. If your bank has branches in one state but they cover the whole state you could have the whole state as your market area.

But you may only have branches within one state but concentrated in one MSA, then you could use the MSA as your market area. So it depends on the locations of those branches.

Okay another one is, “We’re using listing services to generate deposits and for most of our financial institution customers are out of state. We are under a formal enforcement action although we are well-capitalized under PCA. Do we need to use FDIC - the FDIC average rate or can we use the average local market rate since the out of state CDs are always our market concentration?”

If they’re out of area or you’re considered a national - if your market is considered national because of how you solicit deposits and where you solicit deposits, and if they’re out of that geographic area then you’re required to use the national rate plus the 75 basis points as your comparison.

“For the money market rate comparison would you compare the money market rate cap to your highest money market rate or to your portfolio money market rate?

For example if you are only over the rate cap on your highest tier but your overall portfolio cost on money market is under the cap how is this determined?"

If you have multiple tiers of accounts not one of those tiers can exceed the rate cap limit, whether it's the local or the national. So you have to compare your tiered accounts individually to the national or local rate as applicable.

Chris Hencke: Question, "Our bank is part of a multi-bank holding company with all banks holding separate charters. We have a shared product similar to CDARS but only using the banks within our holding company. Are the funds placed in our bank from customers of our sister banks considered brokered deposits?" Answer, yes.

Martin Thompson: All right, "Do institutions under an immediate capital requirement that have met the immediate capital requirement ratios fall under the restriction requirements of Part 337.6?"

The answer is yes. This is an OCC formal agreement and until it is lifted by the OCC the institution would still be covered and required to adhere to the restrictions of Part 337.6.

Next question, "Are de novo banks who are well-capitalized subject to Part 337?" And the answer is it depends on the - for - on the pure numbers basis if the bank has a Tier 1 capital and a total risk based capital that meet the well-capitalized PCA category, then the answer would be yes.

They are not restricted. However if the FDIC relied on a business plan that did not promote the use or vigorous use of brokered deposits and the bank was going outside that approved business plan, then we would take strong actions

and we might consider other actions to curb the bank's reliance on brokers' deposits when in fact they were not reflected in their original business plan.

So the answer would be maybe. If again the bank relied on brokered deposits and they didn't state that in their original business plan then we would take pause with that.

Final - my final question is, "Are we correct in our understanding that a MOU is not a formal written agreement?" The answer is yes, an MOU is not considered a formal enforcement action under the regulatory guidelines.

Mindy West: Well I'm afraid we're out of time for this call but I want to thank you for participating and for your wonderful questions. We have gotten a number of institution-specific questions in and we will respond directly to the people that have emailed those questions directly.

A couple other people have asked where we can find the Q&As that we were referring to earlier, and there is an attachment to Financial Institution 69-2009.

You would go to FDIC's Web site and under the Financial Institutions Letter you'd click on 69-09 and then if you scroll down a little bit in that letter you'll see Question and Answer Attachment, a hyperlink to that.

So we've also received a lot of questions we haven't been able to get to today. We will try to respond to as many of those as we can but if you still have a question and you haven't heard from us, remember you can contact the applicable FDIC regional office or you can contact the people listed as contacts on that FIL-69-09.

And a few other people have asked about the transcript. It will be available some time after the first of the year and that will be listed under fdic.gov, the Web site, under Interest Rate Restrictions.

So we'll put it in the What's New section so you can find it easily. And with that I want to thank our panelists and again thank you so much for your participation.

Coordinator: This concludes today's conference. Thank you for your participation and you may disconnect at this time.

END