INSTITUTIONAL DEPOSITS CORP.

December 1, 2008

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attn: Comments: RIN 3064-AD35

Dear Sir:

The following comments are offered on aspects of the FDIC's above-referenced proposed modifications to the assessment system, indicating two areas in which we believe that distinctions need to be recognized by the FDIC and one area in which we believe that an existing distinction is being made that is inconsistent with the FDIC's objective of establishing an appropriate risk-based assessment system. In addition, we would like to express a concern that the FDIC's new assessment system will revive the perception that there is a real stigma on brokered deposits.

1. Sweep Accounts.

Should sweep accounts that meet the statutory definition of brokered deposits be excluded from the definition of brokered deposits for purposes of the adjusted brokered deposit ratio or the brokered deposit adjustment? If so, how?

Comment: We believe that a specific type of sweep accounts should be excluded – namely balances swept from its own core deposit accounts into a related money market account with full FDIC insurance on the full balance. Such balances would be listed in the Call Report as RECON B550 on Schedule RC-E.

In addressing this issue, our objective is to highlight a distinction for deposits made at a bank based on funds swept from the bank's own core customer transactional accounts into a money market program, on the basis of which the same amount of funds are placed in money market accounts at that same bank (a "network" service structured to maintain full FDIC insurance on the funds). In this type of situation, the bank is dealing with relationship customers and the structure of the account should be encouraged, not discouraged, so the bank can continue to fill the customers' needs for competitive, but relationship based, pricing and risk management. If the FDIC requires a bank to include the swept deposits in its calculation of the adjusted brokered deposit ratio, there will be a penalty to the bank in offering its most desired core deposit customers the ability to receive market rates of return and FDIC risk management on their funds and in doing so would help to push these customers out of the banking system and to Wall Street products such as money market mutual funds.

Reference is made to the "Joint Agency Advisory on Brokered and Rate-Sensitive Deposits" (Advisory Memo 2001-5a), a copy of which is attached. In this Advisory Memo, there is a clear indication that all of the various financial regulatory agencies were interested in seeing banks focus on relationship accounts so there would be a basis for maintaining customer balances by means other than just rate. Sweep accounts reflect just such a situation – a clear relationship exists insofar as the customer maintains a transactional account at the bank, and, in order to maintain that relationship, the bank needs to offer rates and risk management structures that are reasonable in their market area. It would penalize the bank if they had to include the balances in their calculation of the adjusted brokered deposit ratio. By excluding

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these types of swept balances from the calculation, the FDIC would be encouraging the type of access to stable, relationship-based sources of deposits that its studies reflect proper management by a bank.

Conclusion: For these reasons, we believe that these types of swept balances should be excluded from the calculation of the adjusted brokered deposit ratio. The listing of these swept money market balances should be in RECON B550 of Schedule RC-E.

2. **Network Deposits placed by Banks in other Banks.**

Should deposits received through a network on a reciprocal basis that meet the statutory definition of brokered deposits be excluded from the definition of brokered deposits for purposes of the adjusted brokered deposit ratio or the brokered deposits adjustment? If so, how?

Comment: We believe that network balances of bank-to-bank funding should be excluded, with such balances being listed in the Call Report as RECON B552 on Schedule RC-E.

In addressing this issue, our objective is to make a distinction for bank-to-bank deposits since they are currently being emphasized as an important element for maintaining a healthy banking system today. This is a subset of the deposits which are being managed by "networks" to ensure full FDIC insurance on large deposits, which involves the placement of excess liquidity from one bank as a deposit in another bank – essentially creating a Fed Funds equivalent funding process, but structured in a manner that the receiving bank carries the funds on its books as a deposit and the funding bank obtains full FDIC insurance on the funds, unlike Fed Funds.

As the FIDC knows, the current economic difficulties that are affecting this Rule Making process have also prompted the Federal Reserve to develop measures that will encourage and support interbank funding which almost dried up during the initial phase of the current crisis. To the extent that "network" services provide banks with the desired objective of a safe means of continuing to provide interbank lending, we think that the FDIC should want, in general, to recognize and encourage this process, and, in specific, to structure its assessment system in such a way that it also recognizes and encourages the process. It would especially be counterproductive for the FDIC to penalize and discourage the process by giving these deposits the stigma of brokered deposits and assessing additional fees for use of the "network" services.

Conclusion: Under the circumstances, we believe that a distinction should be made for network deposits made by financial institutions and that these deposits should be excluded from the definition of brokered deposits for purposes of the adjusted brokered deposit ratio or the brokered deposit adjustment. These balances would be appropriately listed in the Call Report as "Nontransactional Accounts of Depository Institutions in the US" – RECON B552 of Schedule RC-E.

3. **Deposits obtained through listing services.**

Should high cost deposits, including those received through a listing service and the Internet, that do not meet the statutory definition of a brokered deposit be included in the definition of brokered deposits for purposes of the adjusted brokered deposit ratio or the brokered deposit adjustment? If so, how?

Comment: We believe that deposits received through listing services should be included in the definition of brokered deposits both for the purposes of applying to those deposits the limits applicable

to all brokered deposits as well as for purposes of determining the brokered deposit adjustment.

In addressing this issue, we would like first to refer to the definition of "deposit broker:"

> "The term *deposit broker* means: (A) Any person *engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions*, or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties"

In addition, we would like to highlight the fact that the two major objectives of this round of the FDIC's Rule Making process are: (1) to meet its obligation to establish an appropriate Restoration Plan to restore its reserve ratio to 1.15 percent; and (2) to improve the way that its assessment system differentiates risk among insured institutions. In both cases, meaningful loopholes in the definition of brokered deposits will erode the FDIC's achievement of these important goals since there will be an opening for financial institutions to make greater use of the loopholes to avoid compliance with the FDIC's new rules. There needs to be a level playing field for the rules to work properly.

In general, we believe that the historical treatment of listing services in particular is an unwarranted and unjustified exception to the definition that is applicable to all other sources of deposits to banks. Clearly listing services constitute an entity which is *"engaged in the business of … facilitating the placement of deposits of third parties with insured depository institutions"* – that is their explicit purpose in being in business. And when one considers the circumstances surrounding this service it makes it even clearer that the "service" is that of a broker – one who puts entities together for compensation. Consider the fact that bank rates are generally available for review by people on the internet for free, so why would someone pay for the right to obtain that information unless the information that was being made available was somehow different – i.e., with information on higher rate offerings intended to attract funding. This is the only explanation as to why a funding entity would pay $3,000 or more a year for this information. Only a wholesale funding source would ever agree to pay such a large amount of money for the information.

For over 12 years, the President of our Company managed the largest listing service in the US and her experience supports our conclusion – the "value" offered to banks was the ability of the listing service to connect the banks to wholesale sources of funding – primarily credit unions, but also large CD brokerage firms and "CD finders" that would charge fees to the buyers of the CDs. In addition, the structure of the service enabled banks to "bid" for deposits by changing their rates daily in this private environment in order to attract the funds that they desired without letting the "public" market know of the higher rate offering (and this was a specific sales pitch of the listing service to bank customers). Meanwhile, this is precisely what was criticized in the "Joint Agency Advisory on Brokered and Rate-Sensitive Deposits" (Advisory Memo 2001-5a) as being contrary to the intention of focusing banks on accessing true core deposits. Good rule making should create a level playing field. This would best serve the objectives of the FDIC and give the participants a sense of fairness in the application of the rules.

Conclusion: Under the circumstances, we believe that deposits received through listing services should be included in the definition of brokered deposits for the purpose of applying the limits applicable to all brokered deposits as well as for the purpose of determining the brokered deposit adjustment.

4. **<u>Is the Stigma of Brokered Deposits Returning</u>?**

<u>Comment</u>: We believe that one aspect of the proposed new Rules will recreate a perception that the FDIC believes that brokered deposits are simply bad and should be avoided if at all possible -- i.e., using the brokered deposit adjustment to establish a higher risk assessment for merely holding brokered deposits whenever the deposits are more than 10% of total domestic deposits (without regard to whether the bank has used them for fueling any extraordinary growth to any extent). We believe that this rule will be interpreted as a message to banks that *any* use of brokered deposits for more than 10% of total domestic deposits is deemed a red flag. In order to address the problems associated with bringing back a stigma on brokered deposits, we encourage the FDIC to consider two changes in its rules: (1) application of the brokered deposit adjustment only if the bank's growth exceeds 20% over the preceding 4 years; and (2) test the effect of allowing "adequately capitalized" banks to access brokered deposits by providing that through December 31, 2009 a waiver will automatically be available unless otherwise indicated by the FDIC.

In addressing this issue, we would like to start by describing two conflicting perceptions for framing the debate over brokered deposits -- *first*, the traditional perception that brokered deposits are a toxic product that needs to be minimized as best as possible because they are just not safe; and *second*, an alternative perspective that brokered deposits are a highly efficient market product that has not yet been integrated into the regulatory system in a way that the regulators consider to be reliable, based on their experience of the effect of the regulatory process.

We start with this distinction because we believe that the rules that are being proposed provide an excellent opportunity for testing the second framework – i.e., will the industry benefit from the FDIC's focusing on managing growth (i.e., take advantage of an efficient product), rather than focusing on mere use of any one product (whether it's the brokered deposit product or any other product)? In addition, by highlighting these two ways of framing the issue, we also highlight the effect of different perceptions in this process – since the market can be expected to react negatively if there is a negative perception imbedded in the rules, we need to be prepared for and understand the potential unintended consequences of that reaction. Perceptions will definitely become reality when they are imbedded in regulations.

The first framework is the general basis for the structure of the FDIC's proposed new rules – i.e., associating risk with mere ownership over 10% of total deposits, whether or not there is any extraordinary growth in total assets ("asset growth rates do not affect the adjustment" – page 61587). We believe that this approach reflects a return to the blanket stigma of brokered deposits insofar as volume alone triggers the "penalty" of risk assessment, whether or not the bank is using the deposits to support excessive growth by FDIC standards, and whether or not the brokered deposits are priced at or below the price of local core deposits. In effect, this is like blaming a gas station for selling gas to an arsonist who uses the gas to start a fire – "they made it too easy to get the gas." Efficient market theorists would criticize that logic.

The FDIC outlines its reasons for taking this approach on page 61571 of the Proposed Rules, stating that "significant reliance on brokered deposits tends to increase an institutions risk profile, particularly as the institution's financial condition weakens." Three reasons are given: (1) the weakened bank typically pays higher rates of interest on brokered deposits; (2) "market or statutory restrictions may limit its ability to attract, renew or roll over these deposits, creating significant liquidity challenges;" and (3) "reliance on brokered deposits tends to decrease greatly the franchise value of a failed institution."

We would suggest that a closer analysis of these 3 reasons will show that they do not always support the conclusion reached by the FDIC. For example, with respect to the first reason (rate), market conditions in Florida and Georgia (the states in which our offices are located) indicates that this is definitely not true currently. Several banks in our region (BankUnited being the largest example) recently dropped out of their position as "well capitalized" banks and they are now advertising in local newspapers for new "core" deposits at rates that are *more than 100 basis points per annum over comparable DTC rates on brokered deposits* since they are not permitted to take brokered deposits. This outcome is obviously the *opposite* of what the rules are supposed to accomplish – i.e., supposedly forcing banks to return to the use of less expensive deposits. And this is the basic point of our comment: the FDIC is setting rules that they believe will work to accomplish an intended result (lower liability cost), but the result is not being realized. In effect, we hope that the FDIC can begin to realize the *actual* results (increased deposit costs) of their existing rules while making rule changes that could actually *increase* the unintended results.

In addition, from the investors point of view, our experience with investors in our IDC Deposit Network® Program has been that the security of full FDIC insurance overrides chasing higher returns as long as the rate is a stable, consistent, market level rate (in our case, moving up or down only when there are changes in the Fed Funds Target Rate). In other words, placement of deposits at any bank is being made based on the US guarantee, *not* the financial condition or credit of the financial institution. Over time, if there is sufficient growth of network programs such as ours and Promontory's, and if the FDIC were to permit network brokered deposits to be held by "adequately capitalized" banks, the FDIC might find that there would be little change in the availability of reasonably priced funding, as needed, for "adequately capitalized" banks as well as "well capitalized" banks, regardless of the degree of brokered deposits held by the bank.

The FDIC's second reason is "liquidity challenges" that arise due to "market or statutory restrictions." Although the FDIC mentions both market and statutory restrictions, the fact is that the primary restriction is the statutory restriction on use of brokered deposits only by "well capitalized" banks – i.e., brokered deposits cannot continue to be held in banks that are not "well capitalized." In essence, this restriction creates a self-fulfilling prophecy that the bank's liquidity will erode when it is no longer "well capitalized." Consider the position of our company in this situation: upon request by a bank that is "well capitalized" we place deposits in the bank, usually in an amount of $5 to $10 million (based on their request for funding); then, if and when we learn that the bank has become only "adequately capitalized," we are required to immediately withdraw the deposits. There is no "market" restriction in this situation, only the statutory restriction. In this particular situation, if the FDIC does not like the consequences that they are suffering from, then they should seek a change the statutory restriction, not criticize the use of brokered deposits. This problem is self-inflicted.

With respect to the last grounds for assessing risk based solely on the existence of brokered deposits at a bank, the FDIC states that the "franchise value" of an institution with brokered deposits is always reduced by the presences of brokered deposits. We believe that this reasoning fails to take into consideration a multitude of factors that affect the valuation of any bank. For example, large banks are often able to attract more corporate accounts that have a lower cost of funds (DDA accounts) which makes these banks very attractive to buyers, while smaller banks have fewer opportunities to attract corporate accounts, so they are forced to focus on retail accounts. Meanwhile, over the last 10 years retail customers have moved a substantial portion of their savings into money market funds, so they are not maintaining material balances in demand deposit accounts at a local bank. The local bank has thus needed to obtain more of its deposits through higher cost term deposits or brokered deposits in order to fund its business. Under these circumstances, smaller banks are inevitably going to carry a lower valuation in the event of a

failure, whether or not they have brokered deposits. And the existence of brokered deposits at either the large bank or the small bank isn't going to change the major underlying characteristic of the bank that will affect its valuation. Strength in loan production is another factor which could affect "franchise value" because relationships count on the lending side as well as the deposit side. In addition, it would be important to look at trends of deposit costs in the region – are the fully loaded costs of attracting new core deposits increasing while the all-in costs of brokered deposits are decreasing? Separate and apart from these factors affecting valuation in the banking industry, it is important to understand that valuation of most acquisitions in any industry is influenced by the value of management, not just assets, so the lower valuation of failed banking institutions can be expected to reflect adjustments for poor management of the bank.

In order to test the FDIC's assumptions, we analyzed the characteristics of the 23 banks that have been closed by the FDIC over the past 2 years. Of the 23 banks, we analyzed 19, omitting 4 banks that did not exist four years earlier, so there would have been no valid and comparable starting point data. Of the 19 remaining banks, 4 had negative growth rates over the preceding 4 years and 15 had explosive growth, so uncontrolled high rates of growth was clearly a component in the bulk of these cases. With respect to the relative rate of growth of all 19 of the failed banks that we reviewed, while the average bank in the US grew by approximately 20% over the prior 4 years, the average growth of these 19 banks was 236% (more than 12 times the national average, even after including the negative growth rates of 4 banks). What's interesting, is that the brokered deposits were not a major part of the deposits in these banks – at the beginning of the 4 year analysis period, on average, 9% of the banks' total deposits were brokered deposits, and at the end, 27% of their deposits were brokered. So growth of these banks was funded only partially by brokered deposits, with "core" deposits being the main source of excessive growth. Brokered deposits were not the primary basis on which the banks' funded their growth.[1] In essence, these banks seemed to have formed an intention to grow rapidly from whatever source of funding was made available to them, and brokered deposits were not the primary means that they used to accomplish the growth. This data would suggest that the FDIC will be very justified in focusing on and assessing risk relative to high growth of total deposits, but it does not support their assertion that brokered deposits were a major tool used to engineer the uncontrolled rate of growth. The point here is that we believe the FDIC will be making a mistake in establishing the 10% level of brokered deposits relative to total domestic deposits as a threshold for assessment of risk based on holdings of brokered deposits alone, without any reference to the overall rate of growth of the bank, which is clearly a more likely reason for bank failures. More studies would need to be done to test any assumption to the contrary and proceeding with the current plan would only indicate the FDIC's continued perception that brokered deposits deserve to carry a stigma, regardless of the facts.

Our conclusion on the issue of risk associated with reliance on brokered deposits is that the 3 reasons used by the FDIC do not really support their position – especially if you remove the major problem associated with the statutory restriction that requires brokered deposits to be withdrawn when a bank is less than

[1] It would be important for the FDIC to begin to study the variety of unintended market reactions to the rules on brokered deposits. One example that will tend to skew statistical analyses is a bank's actions taken in preparation for a shift to being only "adequately capitalized" insofar as they aggressively increase brokered deposits knowing that they won't be able to do so after they fall out of the "well capitalized" status. Here, the FDIC could interpret this as "proof" of the bank's errant behavior which they would deem to be "uncontrolled growth" using brokered deposits, and yet it's really a rational, defensive move on the part of the bank to stock up on these deposits quickly at the last moment that they are permitted to.

"well capitalized." This is an example of how the bias against brokered deposits has resulted in the creation of restrictions (no brokered deposits to other than "well capitalized" banks) the effect of which are then used as "reasons" to justify the bias, when those effects are really consequences of the restriction.

The second framework for analyzing the use of brokered deposits starts with an assumption that brokered deposits are an efficient market product – i.e., they efficiently deliver value to both the buyer and seller as market conditions require, at an all-in cost that is fair and reasonable and is improving over time as the size of the market grows. It's probably because of this "efficiency" that the FDIC continues to react so negatively to the "problem" of brokered deposits – it so easy to see the ease with which banks access this product. Now, add to this assumption, another assumption that this market will continue to become more efficient over time – i.e., note the trend of decreasing costs associated with brokered deposits: whereas the spread for brokered deposits used to be as much as 50 basis points, the spread now ranges between 20 – 25 basis points and is sometimes as little as 12.5 basis points. Today, on average, we believe the industry generally works with an expected all-in cost of 20 basis points per annum for brokered deposits. With respect to the difference between the rates on core deposits and brokered deposits, the feedback that we receive from banks is that approximately 10% of deposits are brought in as demand deposits (i.e., no cost of funds to the bank) and the balance is brought in at rates that are expected to be, on average, about 10-15 basis points under the rate of DTC eligible CDs traded in the market. So, on balance, overall core deposits could be estimated to be 45-50 basis points per annum less expensive than brokered deposits, based on rate comparison alone (i.e., before including the fully loaded costs of acquiring core deposits)(and before account for the effect of aggressive pricing in order to replace brokered deposits by banks that are no longer well capitalized – see example of BankUnited referred to above on page 4) .

Now, let's compare the costs that a local bank might be expected to incur in attracting new core deposits. First, information from bank clients indicate that a bank can generally incur costs of at least $200,000 and up to $1,500,000 a year for a branch office (office space, tellers and marketing and allocation of build-out costs and general overhead expenses).[2] We then add to this assumption, the earlier assumptions about the fact that a community bank branch will generally attract 10% of its deposits in no-cost DDA accounts and the balance in interest bearing deposits at rates that are, on average, 10-15 basis points less than brokered deposits. Under this set of assumptions, *based on rate alone*, the weighted average cost of funds could be between 45-50 basis points under the cost of brokered deposits, which would mean that the "average" branch with a $250,000 annual cost, would need to attract $50 million in deposits to breakeven if it was to be evaluated based on deposit accumulation alone. Note, however, that in order to find the true, all-in cost of these deposits (adding the costs of the branch office) in addition to the stated rate of interest, you need to add at least 40 bps for the small office or 300 bps for the larger branch. So the true cost of core deposits is generally about equal to, if not substantially more than, the cost of brokered deposits. An economic analysis of brokered deposits would generally confirm the logic of this insofar and the brokered deposit is a more efficient (i.e., commoditized) product that has little value adjustment in its pricing. It would be important for the FDIC to begin to realize the reality of this commodity market pricing factor as it tries to grow in its understanding and management of brokered deposits in the future.

Under these conditions, until a banker could expect to achieve more than say $50 million in new deposits from a new branch, the banker should be willing (baring implementation of the new Rules) to consider

[2] There are a broad range of types of bank branches – simple store front offices used primarily for loan production (not deposit taking), and full bank branches with tellers, drive in windows, etc. The cost of each type varies widely, so we have included cost estimates here that reflect a simple store front office or a small branch with tellers.

accessing brokered deposits instead of incurring the costs of a new branch to attract additional core deposits. In essence, the bank would "save" capital otherwise required to be allocated to expansion costs by using brokered deposits until they were reasonably assured of the likelihood of accessing sufficient new core deposits to justify the expansion. We don't believe that this type of analysis is being done yet by bankers because they have not been encouraged or supported in doing so. And if the new Rules are implemented as currently planned, bankers would further be discouraged from doing this analysis because of the shadow of regulatory disapproval and taxing (risk assessment) to be applied to brokered deposits, regardless of their value. We shouldn't expect broad market use of studies of this kind until the FDIC is willing to consider recognizing (or at least exploring the possibility) that brokered deposits are a healthy, efficient market product that *should* be used when conditions warrant it.

We believe that the effects of these two different frameworks are brought out in a review of the Rule Making process of the FDIC in the following ways:

First, before finalizing use of the 10% level for brokered deposits as the point of inflection for higher assessments, the FDIC should calculate the effect of the changes in definitions that the FDIC is currently considering since its expansion of the types of deposits to be included as brokered deposits will put more banks beyond the "trigger point." By our estimates, if the FDIC adds to the definition of brokered deposits those obtained through the Internet and listing services, the total and proportionate amount of brokered deposits in the banking system are going to increase substantially, pushing more banks into the categories requiring an increase in their assessments, even though there has been no real change in their business. From our analysis using the current definitions of brokered deposits, 1,272 banks already have brokered deposits above 10% (15% of the banks). If the FDIC begins to include deposits from listing services in these numbers, the number of banks with brokered deposits over 10% could increase substantially. Clearly brokered deposits have become a safe and standard way for banks to add deposits in the increasingly competitive market for consumer deposits, so these numbers shouldn't be unexpected. Today brokered deposits are used by 3,386 banks in the US, up from only 1,710 banks at the end of 2001. Over that same time, the number of banks who have more than 10% in brokered deposits has grown from 414 to 1,272. It is hard to believe that the FDIC is going to, in essence, penalize this natural growth in the use of brokered deposits as an efficient tool for banks to remain competitive in a market that gives retail and commercial customers many different ways to earn a fair return on their money.

Second, we believe that there should be more analysis of the potential relative impact of growth, as opposed to the level of use of brokered deposits as the issue to be focused on by the FDIC in the assessment of risk. Based on our analysis of the recent bank failures, we believe that the record suggests that the primary problem is uncontrolled explosive growth – not the high use of brokered deposits alone.

The importance of looking at this data is to develop a more accurate understanding of the factors involved in bank failures and to determine whether one can legitimately begin to reduce the blame of brokered deposits from the list of actual causation. Clearly it is bad management that is the root of any bank failure. Bankers are in the business of dealing with money, so there is inevitably going to be a funding source in the room when failure occurs, and there will be an inevitable inclination to attribute blame to all of players who are in the room when that failure occurs – i.e., attributing "blame" to the source of funding even though the source of funding had nothing to do with the poor management of the money when it came into the bank. Logic suggests that we need to stop and carefully review the circumstances to make an accurate determination of the real cause (bad management) and not be distracted by factors that were involved in but not directly a cause of the failure (accessing funds through brokered deposits). We believe that current FDIC data shows that there are thousands of sound and financially responsible banks

in the industry today which access substantial funding (more than 10% of their domestic deposits) from brokered deposits. They have not been tainted by the product or the process by which they accessed it. In fact, the funding world could be commended for having made the funding so accessible – efficient markets should be seen as healthy markets, not unhealthy ones.

The FDIC is obviously fulfilling its purpose by focusing its attention on the assessment of risks in the industry and helping participants properly manage those risks. However, in evaluating any system, there is a possibility of being distracted by "noise" in the system. We believe that the accessibility of brokered deposits may be such "noise" and that the FDIC could be pushing banks away from the use of brokered deposits at precisely the time that they should be learning how to take advantage of and properly manage their use of brokered deposits. The current Rule Making Proposal has imbedded in it an assessment of risks in two different ways: one of which we believe is valid (i.e., a high rate of growth indicates an exposure to risk); and the second of which might not be valid (any particular level of use of brokered deposits relative to total domestic deposits is, in and of itself, a risk). And there is a danger in the latter which is that it will activate the "stigma" aspect of brokered deposits, without testing whether it's true. Studies could be done to show that it's possible that reasonably grown levels of use of brokered deposits by responsible management is not correlated to bank failures. And if that is true, then the financial industry could begin to properly focus its attention on understanding how best to produce success by studying the efficiency of market products and tools for managing their use. In effect, the FDIC should be aware of the risk that it could be taking in suggesting that use = probable abuse. By setting mere use as a trigger for increasing assessment of risk, that's the implication.

Conclusion: In order to address the problems associated with bringing back a stigma on brokered deposits, we encourage the FDIC to consider two changes in its rules: (1) application of the brokered deposits adjustment only if the bank's growth exceeds 20% over the preceding 4 years; and (2) test the effect of allowing "adequately capitalized" banks to access brokered deposits by providing that through December 31, 2009 a waiver will automatically be available unless otherwise indicated by the FDIC.
These recommendations are made so the FDIC can begin to re-evaluate its position on brokered deposits, enabling it to see that the rules and restrictions themselves could be causing some of the instability and problems in the market (especially when "deposits dry up" because of the statutory restrictions). In this way the FDIC would at least be signaling their focus on a real red flag (high, potentially uncontrolled, growth) and not just the holding of brokered deposits which cannot be proven to be a proximate cause of most of the failures that have been experienced recently.

These comments are respectfully submitted to the FDIC's in support of their establishment of appropriate Rules to meet their primary objectives.

Sincerely,

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