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By Electronic Delivery

December 19, 2008

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

Dear Mr. Feldman:

This comment letter is submitted on behalf of Double Rock Corporation ("Double Rock") in response to the notice of proposed rulemaking ("Proposed Rule") by the Federal Deposit Insurance Corporation ("FDIC"), published in the Federal Register on October 16, 2008.[1] Double Rock provides services to banks, broker/dealers and their customers and governmental entities in connection with a number of sweep and network programs including sweeps of free credit balances from customer accounts at broker/dealers into insured bank deposits ("Insured Deposit Sweep Program"), sweeps between money market deposit accounts and demand deposit accounts at banks ("On Balance Sheet Sweep Program") (collectively, "Sweep Programs") and a program to allocate deposits among a network of banks ("Network Program"). Double Rock appreciates the opportunity to comment on this important matter.

We understand that the purposes of the Proposed Rule are to: (i) improve the way the deposit insurance assessment system differentiates risk among insured depository institutions; (ii) improve fairness within the deposit insurance assessment system by limiting the subsidization of riskier institutions by safer ones; and (iii) change assessment rates in order to raise the assessment revenue required to restore the declining deposit insurance fund ("DIF").[2] As elements of carrying out these purposes, we understand the FDIC is proposing that within Risk Category I, the receipt of brokered deposits that are 10% or more of domestic deposits coupled with growth of the institution of 20% over the last four years are factors that affect the base assessment rate within the range for that Category. In addition, in the other Risk Categories the FDIC is proposing a brokered deposit adjustment on top of the base assessment ratio. We also understand that the

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[1] Assessments, 73 Fed. Reg. 61,560 (Oct. 16, 2008) (to be codified at 12 C.F.R. pt. 327).
[2] *Id.* at 61,563.

Proposed Rule would adopt the definition of brokered deposits in Section 29 of the Federal Deposit Insurance Act ("FDIA"), which is the definition used in banks' quarterly Call Reports.[3]

In this context, in the Proposed Rule the FDIC has asked whether sweep accounts that meet the statutory definition of "brokered deposits" under Section 29 of the FDIA should be excluded from the definition of "brokered deposits" for purposes of calculating the FDIC's proposed adjusted brokered deposit ratio and brokered deposit adjustment.[4] And, if so, the FDIC has asked how amounts to be excluded can be identified.

Double Rock agrees with the FDIC that in certain cases brokered deposits, typically certificates of deposits, that are included in the definition of "brokered deposits" pose increased risks to banks. In the past some banks have funded rapid growth that often involved higher-risk business strategies by paying high rates to attract funds from deposit brokers who were seeking to maximize the return for their customers. A deposit insurance assessment system that charges a higher assessment in these cases is merely recognizing the higher risk inherent in this growth and funding strategy.

Historically, brokered deposits have been associated not only with rapid growth but also with higher-risk asset portfolios. In these cases, brokered deposits were often withdrawn on the first sign of trouble, or due to the availability of a higher rate elsewhere, leaving the bank unable to fund itself. Given past problems with brokered deposits, Congress has enacted limitations on the acceptance of brokered deposits by banks that are not well capitalized[5] and the Call Report separately identifies brokered deposits.[6] However, in an effort to capture all types of deposit broker arrangements that may present these risks, the statutory definition focuses on whether deposits are received from a deposit broker rather than whether deposits are actually funding a higher-risk business model, or are particularly rate-sensitive. Moreover, the definition of "deposit broker" is broad and Double Rock believes that the statutory definition of "deposit broker" picks up some programs, including the Double Rock Sweep Programs and the Network Program, which should not be viewed as presenting the same risks being targeted and therefore should not be subject to a higher assessment rate.

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[3] *Id.* at 61,565.
[4] *Id.* at 61,566 (adjusted brokered deposit ratio), 61,570 (brokered deposit adjustment).
[5] *See* 12 U.S.C. § 1831f.
[6] *See* Consolidated Reports of Condition and Income for A Bank with Domestic Offices Only-FFIEC 041 Schedule RC-E.

While Double Rock supports the FDIC's goals of improving the risk-based deposit insurance assessment system, Double Rock believes that its Programs represent stable, defined sources of deposits to banks.

Proposed Rule

The FDIC proposes to introduce a new financial ratio into the financial ratios method that is intended to "measure the extent to which brokered deposits are funding rapid asset growth."[7] Under the Proposed Rule, the adjusted brokered deposit ratio would only affect established Risk Category I institutions whose total assets were more than 20% greater than they had been four years previously, after certain adjustments, and whose brokered deposits made up more than 10% of the institution's domestic deposits.[8] While the adjusted brokered deposit ratio calculation is based on a number of factors other than the depository institution's use of brokered deposits, by and large "the greater an institution's asset growth and the greater its percentage of brokered deposits, the greater . . . the increase in its initial base assessment rate."[9]

The FDIC also proposes to introduce a new brokered deposit assessment rate adjustment for Risk Category II, III and IV institutions.[10] The proposed brokered deposit adjustment would apply to those institutions whose ratio of brokered deposits to domestic deposits was greater than 10% and would be added to the institution's base assessment rate after all other adjustments had been made.[11] The adjustment is an add-on determined by multiplying the difference between the institution's ratio of brokered deposits to domestic deposits and .10, times 25 basis points. The adjustment is capped at 10 basis points. Accordingly, the greater an institution's use of brokered deposits, the greater the increase in its base assessment rate.[12] Double Rock believes the better approach would be to exclude core deposits from the definition of "brokered deposits." Double Rock believes that the FDIC's assertion, that depository institution failures may correlate with over-reliance on high-cost, unstable brokered deposits, does not apply to core deposits.

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[7] 73 Fed. Reg. at 61,564-65.
[8] *Id.* at 61,565.
[9] *Id.*
[10] *Id.* at 61,570.
[11] *Id.*
[12] *See Id.*

The Sweep Programs and the Network Program Differ from Volatile Brokered Deposits

The Double Rock Sweep Programs and the Network Program are designed to provide stable funding and are not used for rapid growth strategies and do not constitute "hot money." The On Balance Sheet Sweep Program is a sweep between a money market account and demand deposit accounts at a bank. This Program helps the bank to retain corporate customers by providing them with a means of paying interest on what would otherwise be corporate demand deposits on which interest cannot be paid. Demand deposits are deposits that are considered to be core deposits. Demand deposits involve both debtor-creditor and payment services relationships associated with corporate checking accounts. These tend to be stable relationships that are not a source of funding for rapid growth. Similarly, the Insured Deposit Sweep Program for free credit balances from broker/dealers involves transaction account relationships and is limited by deposit insurance coverage. This Program is not used to fund rapid growth nor are these funds likely to be withdrawn precipitously because the deposits of all of the depositors are fully insured, and historically have not been interest yield sensitive. These services do not emphasize yield; rather, they provide convenience and safety. They are the antithesis of a brokered certificate of deposit program.

Similarly, the Network Program allocates government funds among banks, and such funds are fully insured because they are below the maximum amount for deposit insurance coverage. As in the case of the Sweep Programs, the amount of deposits in any individual bank that results from this Program is limited by the number of entities participating in the Program and the deposit insurance limits. Also, like the Insured Deposit Sweep Program, the likelihood of precipitous withdrawal of these funds is low because all of these funds are insured and are relationship based, focused on service and safety, not yield.

Significantly, all of the deposits that result from the Double Rock Programs are considered to be core deposits under the definition in the Uniform Bank Performance Report ("UBPR"). The UBPR defines "Core Deposits" as "[t]he sum of demand deposits, all NOW and ATS accounts, MMDA savings, other savings, and time deposits under $100 thousand." While this definition is used in the UBPR to measure the stability of funding as opposed to rapid growth, Double Rock believes that the same characteristics that lead to core deposits being considered to be a stable source of funding make core deposits an unlikely source of rapid, higher-risk growth that should result in a bank being subject to a higher deposit insurance assessment. Excluding core deposits from the definition of "brokered deposits" would also address the measurement issues because core deposits are already measured for UBPR purposes and can be determined from the Call Report Schedule RC-E.

Once again, Double Rock appreciates the opportunity to comment on this important matter. If you have any questions concerning these comments or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me, at (202) 778-1614.

Sincerely,

Oliver Ireland