March 31, 2009

Mr. Robert E. Feldman
Executive Secretary, Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Brokered Deposit Rule Part 337.6 - proposed amendments to the regulations relating to the interest rate restrictions on depository institutions that are not well capitalized.

We appreciate the opportunity to comment on the proposed regulation referenced above. As a firm that provides assistance to approximately 300 financial institutions (in many different markets nationwide), we appreciate and applaud the FDIC in being proactive in terms of clarifying/enhancing current regulations.

It is our understanding that the goals for the proposed changes are to: a) reduce the likelihood of troubled banks adding exposure to the insurance fund by paying an inordinate premium over 'market' rates in order to attract deposits; b) lower the probability for localized systemic deposit rate pressures due to troubled banks bidding up "local market" rates; and, c) simplify/standardize the determination of what constitutes an allowable rate paid on deposits without triggering a brokered classification.

In this regard, we ask the FDIC to consider the following as they re-evaluate the brokered deposit regulation:

1. The "National Rate" should be a *default rate* rather than a presumed definition of the "Prevailing Rate" for all banks. While the proposed regulation allows for evidence to be presented to the FDIC that the prevailing rates of interest in a bank's particular market exceed the "National Rates", our concern is that wording such as *"In most cases, however, the FDIC expects that the highest permissible rate would be the National Rate plus 75 basis points"*, sets a potentially problematic tone in this regard.

   Accordingly, we believe that the regulation should allow each institution to calculate and defend its analysis of the "Prevailing Rates" in the bank's "normal market area", or to accept the "National Rates" as the default levels.

2. At the very least, the rule should reflect the broad use of off-term CD 'Specials' in most markets when determining an estimate for the local prevailing rates. We suggest allowing for "CD Special" term ranges in addition to the standard rack rate maturities presented in the FDIC sample table (e.g. 7 months to 11 months as category between the rack rate terms of 6 and 12 months). At a minimum, the rack rates should be defined to encompass

additional non-standard terms (e.g. 6 month to include 5-9 months, 12 month including 10-15 months). Including only traditional rack rate maturities, which most banks intentionally keep well below market rates to capture the inelasticity within their deposit bases, will miss measuring the terms and rates that banks must use to capture new deposit dollars. The exclusion of these rates and terms will substantially reduce the calculated prevailing rates and hamper, in our opinion, the attainment of the ultimate goals of both the bank and the FDIC relating to brokered deposit regulation compliance.

In this regard, it would be also helpful for the FDIC to disclose its methodologies and data sets in order for banks to better determine whether meaningful differences exist in a local market that may not be captured in the FDIC's national average.

3. Consider increasing the 75 basis point add-on over the National/Prevailing Rate (by at least 25bp) as well as providing for FDIC flexibility to modify the spread based upon prevailing market conditions. We feel this way for the following reasons as well as the belief that a wider spread will increase the likelihood that bank's would utilize the "National Rate" vs. incurring the costs to calculate a more bank specific prevailing local market rate.

   Many 'reported' rates are artificially low due to relationship pricing that exists in most markets. Many banks pay rates above and beyond offering rates if a customer has a checking account, multiple accounts, direct deposit, etc. It is not uncommon to be able to increase CD rates by 25-75 basis points due to relationship pricing. Additional leeway seems warranted given the abundance of relationship pricing seen throughout the industry. The same can be said for tiered pricing (different rates for same term based on deposit size) which is also prevalent in many banks. Accordingly, the FDIC survey should incorporate some "normalization" of their data for differences in pricing based upon relationships and tiers; or this should be reflected in a larger add-on spread.

   Since a fixed spread (e.g. 75bp) takes on a very different meaning when prevailing CD rates are at 6.00% (for example) vs. 2.00%, the FDIC should have flexibility to widen the spread based upon prevailing market conditions.

4. In lieu of a single "National Rate", information is clearly available to calculate more specific "Regional Rates" (i.e. by state, county, etc,). We suggest regionalizing the standard rate, if there is to be a rate calculated. Nonetheless, we would recommend allowing each bank to provide its own analysis. We would suggest not outlining specific methodologies a bank must use to calculate its own prevailing market rate. Enough flexibility should be allowed to capture the true local market rate while staying within the "spirit" of the rule.

5. The influence of credit unions on prevailing local market deposit rates offered in very many areas of this country is irrefutable. Ignoring this reality in the determination of prevailing rates can be quite problematic for banks operating in such markets, with a potential unintended consequence of increasing the probability of a liquidity crisis for a

bank that is no longer deemed to be well capitalized. The brokered rules should allow for the inclusion of credit unions.

6. Consider allowing (without a waiver) adequately capitalized banks to replace maturing brokered CDs for a period of time (e.g. 6 months), without increasing the balance of the position, while working on a plan to reduce the level of Brokered deposits. This would lower the potential risk of a liquidity crisis, without increasing FDIC liability should the institution fail. This would benefit the bank, its local competitors and the FDIC given the goals described above.

We thank you for your time in reading our comments, and appreciate your serious consideration of our thoughts and recommendations. We would be happy to discuss this letter with you.

Sincerely,

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