

Regulatory Relief Bill Exempts Certain Reciprocal Deposits From Being Deemed Brokered Deposits

June 6, 2018

The Economic Growth, Regulatory Relief and Consumer Protection Act (the “Act”), the regulatory relief bill signed into law last month, contains an important provision for banks that rely on reciprocal deposits, like the Certificate of Deposit Account Registry Service (“CDARS”). Under this new provision, qualified reciprocal deposits up to certain limits held by a well-capitalized bank with a CAMEL rating of 1 or 2 will not have to be treated and reported as brokered deposits.

I. Background

Brokered deposits are deposits obtained from or through a person engaged in the business of placing deposits, or facilitating the placement of deposits, at banks. Only banks that meet certain capital requirements are allowed to accept brokered deposits without a waiver from the FDIC, and banks are required to report the amount of their brokered deposits to regulators. Banks generally prefer not to have a deposit classified as a brokered deposit because that classification may result in the deposit being viewed as “hot money” subject to frequent movement as depositors and deposit brokers seek higher rates at other institutions.

The FDIC has taken a very expansive view of what are considered brokered deposits, and has determined that reciprocal deposits are brokered deposits. Reciprocal deposits are deposits gathered through a placement network that allows customers to spread funds over many banks to maximize FDIC deposit insurance coverage. Through these reciprocal arrangements, banks both send and receive deposits to other banks so that the funds of any one customer at any one bank do not exceed the general \$250,000 limit on deposit insurance. The CDARS program is a prominent example of a reciprocal deposit network.

The Act has now created an exclusion from the restrictions and requirements on brokered deposits for qualifying reciprocal deposits held by eligible banks.

II. Brokered Deposit Exception

Pursuant to the Act, qualifying reciprocal deposits will not be considered brokered deposits of an eligible bank to the extent the total amount of such reciprocal deposits does not exceed the lesser of \$5 billion or an amount equal to 20% of the bank’s total liabilities. To be eligible for this exception, the bank must have a CAMEL rating of

1 or 2 in its most recent federal examination, and be well capitalized. A bank that does not meet those qualifications can still take advantage of this new exception if it obtains a waiver from the FDIC. A bank in that situation will be subject to certain limits on the interest rate that can be paid on the reciprocal deposits.

The Act set forth technical requirements for determining whether a deposit is deemed a reciprocal deposit eligible for this exception, but it appears that deposits placed through CDARS and other popular deposit placement networks will meet these requirements.

III. Further Information

If you have any questions regarding the Act, or brokered deposit issues in general, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at (516) 296-9196 or via email at kpatterson@cullenanddykman.com, Elizabeth A. Murphy at (516) 296-9154 or via email at emurphy@cullenanddykman.com, Diana Acosta at (516) 357-3739 or via email at dacosta@cullenanddykman.com, or Mandy Xu at (516) 357-3850 or via email at mxu@cullenanddykman.com.

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