

Trust Investments Under the New Brokered Deposit Rule

The FDIC recently revised its Rules and Regulations Part 337.6, which governs the definition of brokered deposits. The updated rules uphold provisions, already in place, that exempt certain entities and activities from the restrictions placed on deposit brokers. These exemptions include: trust departments of insured depository institutions; specific trust activities associated with pension and employee benefit plans; and trustees of testamentary and irrevocable trusts. In addition, as of April 1, 2021, the new rules expand the scope of the Primary Purpose Exception, giving non-bank trust companies a broader entrée into qualifying as exempt from the definition of brokered deposits.

Non-Bank Trust Entities*

Historically, most trust services were facilitated via the trust departments of full-service banks. Today many non-bank entities, such as investment advisory firms, broker dealers and insurance companies, are establishing trust companies to provide their clients with full-service fiduciary and investment management services. Furthermore, some banks are choosing to forego the traditional trust department/branch structure and are consolidating their trust operations into an affiliated trust company. These stand-alone non-bank trust companies do not take deposits or make loans; instead, they limit their activities only to the exercise of trust powers. Prior to the newly revised rule, a non-bank trust company generally would not qualify under one of the statutory trust exemptions. Although the Primary Purpose Exception existed as an option before the rule change, the FDIC's expansion of the Primary Purpose Exception classification provides an additional, measured approach for a trust company pursuing an exemption from brokered-deposit restrictions.

In the preamble to the new brokered deposit rule, the FDIC specifically addresses trust companies, stating:

The FDIC understands that these trust companies invest their customer assets under administration in a variety of different investment products, which may include deposit accounts. As such, the FDIC believes that some trust companies will be eligible to meet the Primary Purpose Exception under the "25 percent test" because they place less than 25 percent of customer assets under administration at IDIs.

When asserting the less than 25% exemption, a trust company will be required to provide a written notice to the FDIC that it intends to operate under the 25% rule exemption. They will also be required to provide quarterly information to the FDIC to support the continuation of the exemption.

FDIC has also reiterated that if the trust company does not qualify under the 25 percent test, it can still apply for a Primary Purpose Exception by undergoing the formal application process and demonstrating to the FDIC that the company's primary purpose is providing traditional trust services, rather than placing deposits.

The expansion of the Primary Purpose Exception provides a valuable opportunity for trust companies to identify themselves as non-brokered when placing deposits with insured depository institutions and opens a new avenue for banks that are seeking non-brokered deposit funding.

As a best practice, banks that accept trust deposits in the QwickRate CD Marketplace should assess the type of exemption being claimed by the trust investor and review the documentation provided to support that exemption. Trust investors

The bottom line?

These exemptions still qualify as non-brokered under the new rules and regulations:

- Trust departments of insured depository institutions
- Specific trust activities associated with pension and employee benefit plans
- Trustees of testamentary and irrevocable trusts



who meet one of the statutory exceptions may provide only a statement acknowledging it. A trust investor claiming the 25 percent customer asset exception will need to provide the issuer with evidence of their notice to the FDIC, as well as periodic updates to the agency. Lastly, entities that have availed themselves of the FDIC primary purpose application process will make verification of the application's approval available. All documents pertaining to a non-bank trust investor's exemption will be posted in its investor profile in the QwickRate Marketplace.

***Non-Bank Trust Entities Qualify for BSA Exemptions**

Non-bank trust entities are subject to the chartering and regulatory requirements of either a state or federal agency. Currently about 40 states have laws that allow for the establishment of a stand-alone state-chartered trust company. At the federal level, the Office of the Comptroller of the Currency (OCC), may also authorize the creation of a "national trust company" whose activity is limited to the exercise of trust powers. Any non-bank trust company that is chartered by a state or federal government agency, as described above, will qualify to be exempted by definition from the Customer Identification Program (CIP) and Customer Due Diligence (CDD) requirements of the Bank Secrecy Act regulations.

For more information, contact Debbie Walker, QwickRate Director of Regulatory and Compliance, at 678.797.4056. Or call Customer Service at 800.285.8626.

About QwickRate

QwickRate® provides the premier **non-brokered CD Marketplace** for funding and investing, with fast connections to more than 3,000 institutions to proactively manage liquidity needs. QwickRate offers other affordable tools and services to help simplify and make work easier for bankers. The **IntelliCredit™** loan review and credit intelligence solutions give banks a better, more efficient way to detect and manage risk and move a decades-old loan review process online. **QwickAnalytics®** provides time-saving bank research, performance analysis and regulatory tools including CECLSolver™ and Credit Stress Test.

