

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9375]
[October 7, 1982]

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

— Payment of Finders' Fees to Bona Fide Brokers
— Denial of State Petitions for Exemptions From Interest Rate Ceilings

To All Depository Institutions, and Others Concerned,
in the Second Federal Reserve District:

The following statement has been issued by the Depository Institutions Deregulation Committee (DIDC) summarizing the actions taken at its September 17, 1982 meeting:

At its September 17, 1982 meeting, the Depository Institutions Deregulation Committee (DIDC) determined that its finders' fee regulation, which requires a finders' fee to be considered as part of interest paid to a depositor, does not apply to fees paid to *bona fide* brokers. A finders' fee is defined as a fee paid by a depository institution to a third party who introduces a depositor to the institution. In 1980, when the regulation was issued, the Committee was concerned about depository institutions circumventing interest rate ceilings by paying finders' fees, which were then given back to depositors. The Committee's interpretive ruling means that a *bona fide* broker can receive a fee for placing any type of deposit (time or demand) with a depository institution and not reduce the interest paid to the depositor, as long as certain conditions are met. These conditions assure that no portion of the fee paid to the broker is passed on to the depositor. The Committee defined a *bona fide* broker as a person principally engaged in the business of acting as a broker or dealer in regard to deposits, securities or money market instruments.

The Committee also denied petitions by four states [New Jersey, South Dakota, Texas, and Washington] requesting certain exemptions for depository institutions in their states from DIDC regulations limiting interest rate ceilings. The states requested the exemptions in order to permit institutions in their states to compete with money market mutual funds. The Committee concluded that granting such exemptions could aggravate thrift earnings problems, and would put institutions in neighboring states at a competitive disadvantage. The DIDC noted that Congress is in the midst of considering legislation that: (1) could expand thrift asset powers, thus allowing them to increase their profitability, and (2) could direct the DIDC to authorize an instrument to be issued by all depository institutions nationwide which would be competitive with money market mutual funds. Therefore, the Committee denied the petitions and declined to take any further action on this issue until Congress has completed its consideration of the financial reform legislation.

The next DIDC meeting will be held on Wednesday, December 1, 1982, at 3:00 p.m.

Printed on the reverse side is the text of the DIDC's ruling in the finders' fee matter, which has been reprinted from the *Federal Register*. Questions may be directed to our Consumer Affairs and Bank Regulations Department (Tel. No. 212-791-5914).

ANTHONY M. SOLOMON,
President.

(OVER)

**DEPOSITORY INSTITUTIONS
DEREGULATION COMMITTEE**

12 CFR Part 1204

[Docket No. D-0028]

**Payment of Finders' Fees to Bona Fide
Brokers; Interpretative Ruling**

AGENCY: Depository Institutions
Deregulation Committee.

ACTION: Interpretive ruling.

SUMMARY: Effective December 31, 1980, the Depository Institutions Deregulation Committee ("Committee") adopted the finders' fee regulation (12 CFR 1204.110) which defined as interest a fee paid by a depository institution to a third party who introduced a depositor to the institution. That regulation was adopted in response to concern with widespread use of finders' fees to circumvent interest rate ceilings by passing finders' fees through to the depositors. The Committee has received questions as to whether the regulation applies to the payment of a fee to a *bona fide* broker for the placement of deposits with a depository institution. At its September 17, 1982 meeting, the Committee determined that fees may be paid to *bona fide* brokers and not be included as interest under conditions that ensure that no part of the finders' fee is paid to depositors.

EFFECTIVE DATE: September 17, 1982.

FOR FURTHER INFORMATION CONTACT:
Elaine Boutilier, Attorney-Advisor,
Department of the Treasury (202) 566-
8737; Rebecca Laird, Senior Associate

General Counsel, Federal Home Loan Bank Board (202) 377-6446; Alan Priest, Attorney, Office of the Comptroller of the Currency (202) 447-1880; F. Douglas Birdzell, Counsel, or Joseph A. DiNuzzo, Attorney, Federal Deposit Insurance Corporation (202) 389-4147; or Paul S. Pilecki, Senior Attorney, Board of Governors of the Federal Reserve System (202) 452-3281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 12 CFR Part 1204

Banks, banking.

PART 1204—INTEREST ON DEPOSITS

Pursuant to its authority under Title II of the Depository Institutions Deregulation and Monetary Control Act of 1980 (94 Stat. 142; 12 U.S.C. 3501 *et seq.*), to prescribe rules governing the payment of interest and dividends on deposits of Federally insured commercial banks, savings and loan associations, and mutual savings banks, the Committee amends, effective September 17, 1982, Part 1204—Interest on Deposits (12 CFR Part 1204) by adding a new § 1204.202 to read as follows:

§ 1204.202 Payment of fees to bona fide brokers.

(a) Under § 1204.110 of the Committee's rules, any fee paid by a depository institution to a person who introduces a depositor to the institution must be paid in cash when paid for a deposit subject to rate ceilings and generally will be regarded as a payment of interest for purposes of compliance with rate ceilings. This rule was adopted effective December 31, 1980, in order to

prevent the circumvention of rate ceilings that could occur if a "finders' fee" is passed on to the depositor.

(b) The Committee has received several inquiries as to whether depository institutions are required to pay fees in cash to brokers that solicit deposits on behalf of the institution and to regard such payments as interest. The Committee previously found the finders' fee regulation inapplicable to All-Savers Certificates and to a specific person who acted as a broker of demand deposits. The Committee has determined that finders' fees may be paid to *bona fide* brokers of time and demand deposits without regarding such payments as interest for purposes of deposit interest rate ceilings. Accordingly, a fee to a broker will not be regarded as a payment of interest if:

- (1) The fee is paid to a *bona fide* broker, which is a person who is principally engaged in the business of acting as a broker or dealer in regard to deposits, securities or money market instruments;
- (2) the relationship between the broker and depository institution is memorialized in a written agreement, a copy of which is retained by the depository institution and made available to examiners; and (3) an officer of the broker certifies that no portion of the fee paid to the broker is directly or indirectly passed on to the depositor, and a copy of the certification is given to the depository institution to be retained on file with the agreement.

By order of the Committee, September 24, 1982.

Gordon Eastburn,
Policy Director.