CENTER FOR CAPITAL MARKETS COMPETITIVENESS

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June 9, 2020

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

Re: Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions – RIN 3064–AE94

Dear Secretary Feldman:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the Notice of Proposed Rulemaking on "Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions" (the "Proposed Rule"). According to the Proposed Rule, the Federal Deposit Insurance Corporation's ("FDIC") policy objective is to "modernize its brokered deposit regulations to reflect recent technological changes and innovations that have occurred."[1]

The Chamber welcomes the Proposed Rule and believes it will make important updates to the brokered deposit framework reflecting recent innovations in our modern financial system and make it easier for financial companies to meet the evolving needs of consumers. The Chamber's membership includes a broad body of stakeholders including insured depository institutions, broker dealers, and registered investment advisers that have the shared objective of meeting the various financial needs of their customers.

The Proposed Rule makes important updates to the definition of "deposit broker," and thus the definition of "brokered deposits," that reflect developments to our financial system since the Financial Institutions Reform, Recover, and

[1] See Proposed Rule, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 Fed. Reg. 7453 (February 10, 2020).

Enforcement Act of 1989 ("FIRREA") was signed into law nearly thirty years ago. Our financial system has evolved both in terms of the products that are available to consumers and how these activities are funded. There have also been a number of changes to the regulatory structure of the financial system – most recently the Dodd-Frank Act and Basel III – that are intended to reduce risk at financial institutions.

The Chamber made two specific recommendations in our comment letter to the FDIC in response to the Advanced Notice of Proposed Rulemaking ("ANPR") and we are pleased to see the FDIC has taken steps to address them. We requested the FDIC clarify the treatment of "sweep deposits" so consumers can have flexibility to manage funds between their FDIC-insured deposits and investment accounts. We also requested the FDIC make updates to the primary purpose exemption to appropriately account for the use of prepaid cards especially given their importance for the underbanked accessing the financial system.

The Chamber is pleased to provide the following recommendations to improve the Proposed Rule:

- **I. Clarify the "Facilitation" Prong of the Deposit Broker Definition**
- **II. Revise the Definition of Business Line in the Primary Purpose Exception**
- **III. Clarify Treatment of Business Relationships Deemed to Meet the Primary Purpose Exception Subject to the Application Process**
- **IV. Grandfather Existing Advisory Opinions for the Primary Purpose Exception**
- **V. Application Process for the Primary Purpose Exception Should Facilitate Innovation**
- **VI. Change the Liquidity Coverage Ratio and the Net Stable Funding Ratio**

Discussion

The FDIC's historic treatment of brokered deposits is not aligned with Congressional intent. The legislative intent of Section 29 is unambiguous: to prevent so-called "hot money" from endangering banks and limiting the possibility of losses to the deposit insurance fund. During debate of FIRREA, Senator Frank Murkowski noted, "The goal of this provision is to prevent the flagrant abuse of the deposit insurance system by troubled institutions that take excessive risks and leave the taxpayers to suffer the consequences . . . This is not a blanket prohibition on the use

of brokered deposits, but a narrowly drawn provision that specifically targets the most flagrant abusers. . . I want to make sure we all understand that we clearly only cover troubled banks and thrifts. There is no limitation on healthy institutions. They can proceed as they should."

The FDIC's brokered deposit definition imposes costs on well-capitalized financial institutions outside the context of Section 29 of the Federal Deposit Insurance Act. For example, the brokered deposit definition penalizes banks that are deemed well-capitalized for the purposes of FDIC insurance assessments. The definition also underlies assumptions in the Liquidity Coverage Ratio (LCR) therefore requiring banks to hold more high-quality liquid assets than may be necessary. Similarly, the Net Stable Funding Ratio (NSFR), when implemented, would have negative consequences.[2]

Significant updates to financial regulation have been implemented since the brokered deposit rules were originally contemplated that should be taken into account as the FDIC weighs the appropriate severity of deposit restrictions. The Proposed Rule is designed to address liquidity issues that result from, or are exacerbated by, risky or otherwise high-cost deposit funding sources. But the Proposed Rule does not contemplate the liquidity regulations that have been implemented in recent years including the LCR, stress tests such as the Comprehensive Liquidity Analysis Review (CLAR), Comprehensive Capital Analysis Review (CCAR), and the Dodd-Frank Act Stress Test (DFAST), not to mention that the Net Stable Funding Ratio (NSFR) is a major pending reform that the U.S. has agreed to implement as part of the Basel III Accords. These regulations occur in the backdrop of new and evolving expectations of customers.

Consumers have new expectations for financial institutions to serve them via an omnichannel experience that was not contemplated when the brokered deposit regime was put in place. At that time, the primary, if not only, way to access banking services was via a brick and mortar branch. Additionally, the number of products and services banks have made available to their customers has increased.

The FDIC should recognize that a deep relationship between a bank and their customers, which is paramount to the "stickiness" of resulting deposit financing,

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[2] The final rule implementing the Liquidity Coverage Ratio (October 10, 2014) includes 108 references to "brokered deposits" and notes "The agencies continue to believe that brokered deposits have the potential to exhibit greater volatility than funding from stable retail deposits, even in cases where the deposits are fully or partially insured, and thus believe that higher outflow rates, relative to some other retail funding, are appropriate." The rule that would implement the Net Stable Funding Ratio (June 1, 2016), which is not yet final, includes 91 references to "brokered deposits."

requires them to provide a myriad of products and services in an integrated and convenient manner. These consumer expectations are often fulfilled through partnerships and technology solutions with third-parties. In a speech on the "Future of Banking" and the need for innovation in October last year, Chair McWilliams noted, "The key customer-centric features of digital banking are affordability, convenience, and real-time access to information."[3] However, the brokered deposit regime oftentimes frustrates financial institution's ability to provide this consumer experience.

Recommendations for Improving Proposed Rule

I. Clarify the "Facilitation" Prong of the Deposit Broker Definition

The Chamber appreciates the FDIC's steps to clarify the "facilitation" prong of the "deposit broker" definition but believes changes are necessary to avoid undermining the Agency's intent. Banking has changed dramatically since the brokered deposit rules were originally contemplated and continues to evolve. The interpretation of the "facilitating" in the definition of "deposit broker" should reflect market developments.

The current interpretation of "facilitating" by the FDIC is overly broad and therefore causes any number of third parties of insured depository institutions ("IDIs") to meet the definition of "deposit broker." Section 29 generally defines a "deposit broker" as "any person engaged in the business of placing deposits, or *facilitating* the placement of deposits, of third parties with [IDIs] or the business of placing deposits with [IDIs] for the purpose of selling interests in those deposits to third parties." The FDIC issued FAQs in 2016 stating, "The term 'facilitating the placement of deposits' is interpreted broadly to include actions taken by third parties to connect insured deposit institutions with potential depositors. As a result, a third party could be a deposit broker even when the third party does not open bank accounts on behalf of depositors or directly place funds into bank accounts."[4] The Chamber believes this is unnecessarily broad and could penalize IDI's from accepting low-risk deposits.

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[3] FDIC Chairman McWilliams: The Future of Banking (April 1, 2019) before The Conference of State Bank Supervisors, available at https://www.csbs.org/fdic-chairman-mcwilliams-future-banking
[4] Frequently Asked Questions. Identifying, Accepting, and Reporting Brokered Deposits (2016), available at https://www.fdic.gov/news/news/financial/2016/fil16042b.pdf

The Proposed Rule states that a person would now meet the "facilitation" prong if it meets any one of these four tests:

- The person directly or indirectly shares any third-party information with the insured depository institution;
- The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution;
- The person provides assistance or is involved in setting rates, fees, terms, or conditions for the deposit account; or,
- The person is acting, directly or indirectly, with respect to the placement of deposits, as an intermediary between a third party that is placing deposits on behalf of a depositor and an insured depository institution, other than in a purely administrative capacity.

The Chamber is concerned with the first test of the facilitation prong and recommends the FDIC remove it or make it substantially narrower. Including a person who "directly or indirectly shares any third-party information with the insured depository institution" in the facilitation prong could cause any number of entities to be treated as a deposit broker. This would appear to undermine the FDIC's intention of making updates that reflect our modern financial system.

Comments in response to the ANPR emphasized that the facilitation prong is overly broad. This concern originated due to a vague statutory definition that was subsequently addressed by the 2016 FAQs that also provided a broad interpretation of "facilitation." The Proposed Rule will not remedy these concerns if it uses equally broad language.

Banks make use of a wide variety of marketing relationships that draw on different sources of consumer data. This is not unique to banks – marketing has dramatically shifted in the internet age as companies identify novel ways to market to consumers. Companies share information about consumer preferences to more effectively reach and target potential customers. However, banks may elect to forego attractive marketing and other origination channels as mere access to a customer's identity and other information would likely be interpreted by the FDIC as the "direct or indirect" sharing of information by a third party. Moreover, consumers increasingly expect financial services providers to offer convenient and customized solutions for opening, linking, and viewing information across their accounts. Such aggregation services necessarily entail some sharing of data between parties, which would be effectively prohibited if the restriction on information sharing is adopted in its current form.

The sharing of "any" information by a third party for any purpose is clearly broader than the stated intent of the Proposed Rule. The Proposed Rule notes that the facilitation definition "is intended to capture activities that indicate that the person takes an active role in the opening of an account or maintains a level of influence or control over the deposit account after the account is open."[5] There are numerous instances wherein a third party may share information with the insured depository institution without taking an active role in the opening of the account or maintaining a "level of influence of control" over the deposit account after it is open. Under such arrangements, the depositor still makes the ultimate decision of selecting their bank, opening a deposit account and funding it without the influence or control from a third party.

It is in the best interest of a bank and its customers to provide a universal experience that does not penalize information sharing. For example, a financial advisor at an affiliate broker-dealer is equipped to provide more advice if he or she has access to information about a client's deposit accounts. Correspondingly, customers expect the most-informed advice possible from financial professionals providing investment advice.

The Chamber recommends that the FDIC remove the test for if a "person directly or indirectly shares any third-party information with the insured depository institution" from the facilitation prong. Another approach, although less desirable, would be to make this test narrower. We would recommend the following change:

The person directly or indirectly shares ~~any~~ third-party information with the insured depository institution, **which would ~~allow~~ authorize the insured depository institution to open a deposit account for the third party, and does not include information that is shared for purposes of compliance with applicable laws or regulations**.

The Chamber believes this recommendation will provide important clarity to insured depository institutions to source deposits in a manner that reflects consumer preferences without undermining safety and soundness.

[5] See Proposed Rule, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 Fed. Reg. 7457 (February 10, 2020).

II. Revise the Definition of Business Line in the Primary Purpose Exception

The Chamber is concerned with the broad definition of "business line" used in the Proposed Rule. This new definition underlies the proposed application and reporting requirements in the Proposed Rule. The broad definition could actually increase regulatory burden, compared to the status quo, and jeopardize the FDIC's intention of modernizing its brokered deposit regulations.

According to the Proposed Rule, "The term business line would refer to the business relationships an agent or nominee has with a group of customers for whom the business places or facilitates the placement of deposits." It goes on to note, "Ultimately, the determination of what constitutes a business line will depend on the facts and circumstances of a particular case, and the FDIC retains discretion to determine the appropriate business line to which the primary purpose exception would apply."[6] This definition may encompass too many business lines or treat one business line as multiple business lines, thus increasing the regulatory burden imposed on the financial institution.

The definition of "business line" underlies reporting obligations of the financial institution and the proposed application process for the primary purpose exception. The Proposed Rule states, "The FDIC will describe the reporting requirements, including the frequency and any calculation methodology, as part of its written approval for a primary purposes exception,"[7] which makes it extremely difficult to estimate the associated regulatory burden associated with each business line. The Proposed Rule states the reports might be required quarterly, and Question 24 requests feedback on the frequency, but it is difficult to judge if this is appropriate given the absence of information for what would be required in each report. The Chamber urges the FDIC to minimize the paperwork burden of reporting requirements consistent with the Paperwork Reduction Act.

The Proposed Rule should provide financial institutions more autonomy for defining their respective "business lines." The Chamber recommends eliminating the presumption that financial institutions are unwilling/incapable of appropriately defining their business lines for purposes of the Proposed Rule. Instead, the Proposed Rule should be amended to state that insured depository institutions are expected to

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[6] See Proposed Rule, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 Fed. Reg. 7461 (February 10, 2020).
[7] See Proposed Rule, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 Fed. Reg. 7462 (February 10, 2020).

make a good faith and reasonable determination of their business lines. Alternatively, the FDIC should consider permitting financial institutions to self-certify they are in compliance with the primary purpose exception and require them to submit supporting documentation for review.

Additionally, the term "business line" should be interpreted expansively to categorically include multiple legal entities. For example, multiple broker-dealer affiliates, irrespective of those entities are associated with an insured depository institution, should be permitted to be deemed a "business line" if they are offering the same product. This clarification would help reduce administrative burden for determining the applicability of the primary purpose exception and the ongoing reporting obligations required under the proposal.

III. Clarify Treatment of Business Relationships Deemed to Meet the Primary Purpose Exception

The Proposed Rule includes two business relationships deemed to meet the primary purpose exception subject to the application process. According to the Proposed Rule, "The primary purpose of an agent's or nominee's business relationship with its customers will not be considered to be the placement of funds, subject to an application process, if less than 25 percent of the total assets that the agent or nominee has under management for its customers, in a particular business line, is placed at depository institutions."[8] The Chamber supports this bright line approach, but believes clarification is warranted. The Chamber recommends revising the test to meet the primary purpose exception to include "assets under administration" or "assets under management." This change will permit an entity to meet the primary purpose exception wherein it is using the services of a third-party or administrator or custodian.

The Proposed Rule also provides that if an agent or nominee places 100 percent of its customer funds into transaction accounts at depository institutions and no fees, interest, or other remuneration is provided to the depositor, then it would meet the primary purpose exception of enabling payments, subject to providing information as part of an application process. The Chamber appreciates the additional clarity the FDIC has proposed for meeting the primary purpose exception but

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[8] See Proposed Rule, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 Fed. Reg. 7459 (February 10, 2020).

believes prohibiting the use of any "fees, interest, or other renumeration"[9] is unreasonably strict, given transaction account typically earn a nominal rate of interest.

IV. Grandfather Existing Advisory Opinions for the Primary Purpose Exception

Under the Proposed Rule, the FDIC would establish an application process under which an agent or nominee that seeks to avail itself of the primary purpose exception, or an insured depository institution acting on behalf of an agent or nominee, could request that the FDIC consider certain deposits as non-brokered as a result of the primary purpose exception. If an application from the agent or nominee is approved, deposits placed or facilitated by that party would be considered non-brokered for a particular business line. The Chamber believes there could be some value in the formalized application process for meeting the primary purpose exception that has been proposed by the FDIC but believes at least in certain circumstances it could create unnecessary regulatory burdens.

In this regard, the Chamber recommends grandfathering existing Advisory Opinions to avoid disruption and confusion for the current use of the primary purpose exception. The application process creates uncertainty regarding Advisory Opinions already issued by the FDIC on the applicability of the primary purpose exception. Insured depository institutions already rely on existing Advisory Opinions.

The Proposed Rule would appear would to suggest these existing Advisory Opinions would be invalidated and that the insured depository institution would be required to avail itself of the FDIC's new application process in order to continue to meet the primary purpose exception. This would be extremely disruptive to existing business relationships and could possibly prevent consumers from accessing currently available products and services. Even if the FDIC application process prioritized insured depository institutions that meet the primary purpose exception under an existing Advisory Opinion, the influx of applications would likely take substantial time for review.

The Chamber also recommends that the ten percent (10%) permissible ratio limit in the Advisory Opinions be increased to the twenty five percent (25%)

[9] See Proposed Rule, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 Fed. Reg. 7459 (February 10, 2020).

consistent with the new threshold imposed in the Proposed Rule. To the extent that the FDIC has already indicated in the Proposed Rule that a third party is not a deposit broker if less than 25% of its customers assets are placed with depository institutions, there is no need to continue to make past recipients of Advisory Opinions subject to the now-outmoded 10% limit.[10]

V. Application Process for the Primary Purpose Exception Should Facilitate Innovation

The Chamber believes the application process for the primary purpose exception could be an opportunity to encourage innovation for novel deposit placement relationships but may also impose an unnecessary administrative hurdle for relationships that clearly meet the standards required for the primary purpose exception. The Chamber urges the FDIC to clarify the role of the application process for well-known deposit placement relationships that have not previously been deemed to meet the primary purpose exception.

One of the most significant hurdles to innovation is misunderstanding regulation and the absence of opportunities to achieve certainty from regulators. There are undoubtedly innovative arrangements that have not yet come to market or have yet to be contemplated. The FDIC recognized this challenge when it established the FDIC Tech Lab (or FDiTech), which Chair McWilliams has emphasized "will engage with banks and fintechs to help us understand the latest financial technology and provide sound guidance and technical assistance to banks that those to deploy these new technologies."[11] The Chamber supports the creation of an application process to provide clarity about the applicability of brokered deposit regulations for novel deposit relationships, but the FDIC should ensure it does not become an unreasonable administrative barrier.

The Chamber recommends an expedited application process for business lines that unambiguously meet the primary purpose exception. Third parties and insured depository institutions that have relationships with third parties should not have to

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[10] See also FDIC Advisory Opinion, dated March 19, 2020, available at: https://www.fdic.gov/regulations/laws/rules/4000-10420.html#fdic400020-01, in which the FDIC recently granted all past Advisory Opinion recipients a temporary six-month increase from 10% to 25% in their permissible ratios, further evidencing the FDIC's current view that up to 25% of a broker-dealer's customer assets may be placed with depository institutions without causing the broker-dealer to be deemed to be a deposit broker.

[11] See generally, McWilliams, J. (2019, October 4). Regulators need new approach to innovation. American Banker Online, available at https://www.fdic.gov/news/letters/innovation.html

avail themselves of the application process in circumstances similar to those that have already been found to meet the primary purpose exception in other contexts. The application process would otherwise create a new regulatory hurdle for depository institutions and third parties that could inhibit their ability to enter into new relationships and thus dampen innovation.

The FDIC appears to recognize these concerns when noting, "An approval that a third party meets the primary purpose exception (based on an application by an IDI on behalf of the third party) could be applicable to all deposit placements by that third party at other IDI(s) to the extent that the deposit placement arrangements with the other IDI(s) are the same as the arrangement between the applicant and the third party."[12] However, interpretation of this clarification of the primary purpose exception depends on the definition of "the same arrangement." A conservative interpretation would conclude that the arrangement would have to be *identical* and would therefore not take into account the novel circumstances of relationships between banks and third parties.

The Proposed Rule also appears to address these concerns through Question 18, which suggests an expedited application process if the application is "simple and straightforward and meets the relevant standards." It is unclear what the FDIC means by "simple and straight forward," which would prevent applicants from having certainty they would benefit from the expedited application process.[13] There are, however, deposit placement arrangements commonly known to the FDIC that should simply be excluded from being subject to the application process once they have already been found to meet the primary purpose exception. One concept the FDIC should consider is providing deference to firms that have previously demonstrated they meet the criteria required of a business line to meet the primary purpose exception.

The FDIC should provide special consideration to the following deposit placement relationships to the extent they are required to complete the application process:

- **Sweep Deposits for Broker-Dealers.** As the Chamber expressed in our response to the ANPR, "Such services are a convenient way for consumers to help maximize return on their otherwise idle funds and to receive the benefit of

[12] See Proposed Rule, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 Fed. Reg. 7461 (February 10, 2020).
[13] See Proposed Rule, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 Fed. Reg. 7461 (February 10, 2020).

FDIC insurance which is not available for free cash held in a brokerage account. The primary purpose of this service is to assist customers with managing cash for the transaction of securities through the broker-dealer."[14] Sweep deposits are funding during times of market volatility given the propensity of investors to seek stability. In fact, during the 2008 financial crisis data shows that banks saw a net inflow of sweep deposit brokerage customers seeking to avoid market risk.[15] The placement of deposits at an insured depository institution is incidental – the business of a broker-dealer is to buy and sell securities on behalf of customers. The 2005 Advisory Opinion recognizes the primary purpose of sweep accounts is to facilitate the customers' purchase and sale of securities but imposes a number of inappropriate restrictions in connection with the use of the "primary purpose" exception.[16]

- **Prepaid Cards.** Prepaid cards are used for a wide variety of purposes and facilitate economic inclusion and smart financial choices. Notably, prepaid cards have provided a new means for economic inclusion for individuals who are not able to access the interbank payment system through the use of a credit card or a debit card linked to a checking account. Prepaid cards have increasingly become a substitute for checking accounts. As the Chamber noted in response to the ANPR, "the FDIC generally has not viewed prepaid card companies as meeting the primary purpose exception. However, staff at the FDIC has not distinguished between acting with the purpose of placing deposits for other parties from acting with the purpose of enabling other parties to use deposits to make purchases."[17] The Chamber recommends the Final Rule rescind the 2016 FAQ given it appears to conclude that virtually all deposits placed in connection with a prepaid card program are brokered.[18]

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[14] Quaadman, T. Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions – Document Number 2018-28273, RIN 3064–AE94 (FDIC). [Letter written May 7, 2019, to the Federal Deposit Insurance Corporation] Available at http://www.centerforcapitalmarkets.com/wpcontent/uploads/2019/05/5.7.19_BrokeredDeposts_FDIC.pdf?#

[15] See generally, comments from The Charles Schwab Corporation. (2014, January 31). Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring [Letter to Board of Governors of the Federal Reserve System,

[16] Federal Deposit Insurance Corporation. Advisory Opinions, "Are funds held in 'Cash Management Accounts' viewed as brokered deposits by the FDIC?" February 3, 2005. Available at https://www.fdic.gov/regulations/laws/rules/4000-10350.html

[17] Quaadman, T. Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions – Document Number 2018-28273, RIN 3064–AE94 (FDIC). [Letter written May 7, 2019, to the Federal Deposit Insurance Corporation] Available at http://www.centerforcapitalmarkets.com/wpcontent/uploads/2019/05/5.7.19_BrokeredDeposts_FDIC.pdf?#

[18] Frequently Asked Questions. Identifying, Accepting, and Reporting Brokered Deposits (2016), available at https://www.fdic.gov/news/news/financial/2016/fil16042b.pdf

- **Health Savings Accounts.** The Proposed Rule's application process could unintentionally create ambiguity about the treatment of Health Savings Accounts (HSAs) as core deposits given this has not been previously contemplated by the FDIC. HSAs are not currently treated as brokered deposits, but this rulemaking should be used as an opportunity to provide clarity given HSAs were not invented until a decade after FIRREA was signed into law. Businesses now use HSAs as a tool for their employees to fund their healthcare expenses. The portability of HSAs provides important flexibility to individuals to switch employers when new professional opportunities arise. The FDIC reached a similar conclusion in a 2013 consumer advisory that noted, "You can save money that can help you avoid a shock to your finances from a sudden large medical bill."[19]

Finally, the FDIC should take steps to avoid being inundated with requests for approval to meet the primary purpose exception. If existing Advisory Opinions are not grandfathered, there would be an initial flood of applications from institutions previously deemed to meet the primary purpose exception, but it is unclear if/when the number of applications would subside given the degree of innovation currently ongoing in the banking system. There is reason to be concerned about the FDIC's ability to quickly respond to applications, unless those where the applicants would appear to clearly qualify the exception are processed on an expedited basis, therefore slowing innovation or discouraging applications, which is opposed to the underlying objective of the rulemaking.

VI. Change the Liquidity Coverage Ratio and the Net Stable Funding Ratio

The FDIC should use this opportunity to coordinate with the Federal Reserve Board (FRB) and the Office of the Comptroller of the Currency (OCC) to review other rules, such as the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR), and make conforming changes to appropriately account for the updated definition of brokered deposits. The LCR and NSFR both extensively reference the definition of "brokered deposit."

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[19] See generally, McKechnie, K. comment letter on behalf of the American Bankers Association HSA Council on "Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions" [Letter written May 7, 2019, to the Federal Deposit Insurance Corporation] Available at https://www.fdic.gov/regulations/laws/federal/2019/2019-unsafe-and-unsound-banking-practices-3064-ae94-c-055.pdf

The LCR requires a bank to hold enough high-quality, liquid assets to cover projected net cash outflows over a 30-day stress period; brokered deposits are considered to be of a relatively higher risk for outflow. The current definition thus requires covered financial institutions to hold more high-quality, liquid assets. The Chamber has previously commented holding more HQLA than necessary limits covered financial institutions ability to lend to businesses and consumers and raised similar concerns with NSFR.

The NSFR is a long-term funding requirement that requires covered banking organizations to maintain a minimum level of stable funding relative to the liquidity of their assets, derivatives, and commitments, over a one-year period, and is intended to complement LCR requirements; brokered deposits are considered to be relatively less stable than some other funding sources. This has the effect of increasing the cost of funding to small businesses and consumers by covered financial institutions.[20] The Chamber strongly recommends conforming changes to the NSFR before the rule is finalized.

Finally, the Chamber has previously expressed concern that the LCR and NSFR would inappropriately constrain liquidity. Recent markets during the Covid-19 public health and economic crisis are at minimum anecdotal evidence that liquidity concerns previously raised by the Chamber were justified. Federal banking regulators have appropriately responded with interim final rules to free up liquidity on the balance sheets of depository institutions, but it begs the question if this liquidity was unnecessarily restricted before the onset of the crisis. This insight should be used to revise liquidity requirements, including the LCR and NSFR, imposed on depository institutions.

[20] Gil, A. Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements, RIN 1557-AD97, RIN 7100-AE 51, RIN 3064-AE 44, Docket ID OCC-2014-0029, Docket No. R-1537. [Letter written August 4, 2016] Available at
https://centerforcap.wpengine.com/wp-content/uploads/2016/08/2016-8.04-NSFR-Comment-Letter.pdf

Conclusion

We appreciate the opportunity to comment on the Proposed Rule. We are committed to updating brokered deposit regulations so they reflect the modern financial services marketplace. We stand ready to work with you in this effort.

Very Respectfully,

Bill Hulse