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February 25, 2016

VIA ELECTRONIC MAIL (comments@fdic.gov)

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Re: RIN 3064-AE37

Dear Mr. Feldman:

I am writing on behalf of StoneCastle Cash Management, LLC ("StoneCastle") to comment on the revised Notice of Proposed Rulemaking and Request for Comment (the "2016 NPR") issued by the Federal Deposit Insurance Corporation ("FDIC") on January 21, 2016. In the 2016 NPR, the FDIC requests comments on a revision to the initial Notice of Proposed Rulemaking on Assessments (the "2015 NPR") issued by the FDIC on July 13, 2015, which sought to amend 12 CFR Part 327 by modifying the deposit insurance assessment system for established small banks.

The 2016 NPR proposes revisions to the 2015 NPR by, among other things, using a brokered deposit ratio (which treats "reciprocal deposits" the same as under current regulations) as a measure in the financial ratios method for calculating assessment rates for established small banks instead of the previously proposed core deposit ratio. The FDIC stated that the primary purpose of the 2016 NPR was to improve the risk-based deposit assessment system applicable to small banks to more accurately reflect risk.

We commend the FDIC's reasoned, risk-based approach to the proposed rulemaking and support the revisions to the proposed rule set forth in the 2016 NPR. Consistent with a risk-based approach, we respectfully submit that the FDIC should further amend the 2016 NPR to exclude certain deposits held in fiduciary and non-UGMA custodial accounts, in the same manner as reciprocal deposits for purposes of calculating the brokered deposit ratio.[1] Fiduciary and non-UGMA custodial accounts are savings, checking or money-market demand accounts opened by a

[1] While this comment letter provides our view on the treatment of fiduciary and non-UGMA custodial accounts with respect to the brokered deposit ratio, we further believe that any additional FDIC rulemaking proposals should treat reciprocal, fiduciary and non-UGMA custodial accounts in the same favorable manner relative to other brokered deposits in light of their similar purpose and risk profile.

custodian at the request of a depositor to delegate administration of the deposit account to a legal custodian and administrator.[2]

We understand that under the 2016 NPR, deposits held in fiduciary and non-UGMA custodial accounts would, like reciprocal deposits, continue to be considered brokered deposits rather than core deposits solely because a third party assisted with the administration of the deposits at insured depository institutions. However, unlike reciprocal deposits, and notwithstanding their low risk assessment by the FDIC, the 2016 NPR would not exclude deposits held in fiduciary and non-UGMA custodial accounts for the purposes of determining a brokered deposit ratio for calculating assessment rates for established small banks.

Consistent with its treatment of reciprocal deposits, the FDIC has determined that fiduciary and non-UGMA custodial accounts are lower risk than traditional brokered deposits but nonetheless should not be classified as core deposits. Fiduciary and non-UGMA custodial accounts present even lower risk and less volatility than sweep deposits. The primary purpose of such accounts is for a larger institutional depositor to utilize fiduciaries and custodians to make the administration of depositing larger deposits at smaller community banks as efficient as doing so at a single money center bank. Accordingly, we believe that fiduciary and non-UGMA custodial account deposits should receive the same treatment as reciprocal deposits.

Similar to a reciprocal deposit program, fiduciary and non-UGMA custodial account deposit programs allow depositors to place their funds into interest bearing FDIC insured accounts at multiple banks with the assistance of technology to ease the administrative burdens of accounting for the funds held at each bank. It is important to note that these deposits receive no higher FDIC assessment when deposited as a single larger deposit at a money center bank. Therefore, smaller community banks are at a disadvantage relative to large money center banks when trying to attract deposits from large corporate, public entity and non-profit customers. Without fiduciary and non-UGMA structures, those institutions would incur significant administrative burdens by making a large number of relatively small deposits at many smaller banks. There is a distinct public policy benefit in allowing fiduciary and non-UGMA custodial accounts to receive the lower assessments of reciprocal deposits. First, enhancing the attractiveness of these kinds of accounts will result in more funding to secondary and tertiary markets, which increases the capacity to make loans. In addition, this would encourage smaller banks to diversify their depositor base with customer types they would otherwise not be able to access as readily as a money center bank.

[2] A depositor may elect to use a fiduciary or custodian to reduce administrative costs through the use of outsourced CFO or treasury services, or extended FDIC insurance programs. A typical "fiduciary or non-UGMA custodial account" is created when (i) an insured depository bank (Bank A) opens an omnibus account and deposits funds (i.e., makes a deposit) at another insured depository bank (Bank B), and (ii) Bank A serves as custodian (the accounts are titled "Bank A as Custodian for other entities"). The purpose of such a deposit is to increase FDIC insurance coverage for the depositor (the client of Bank A). There is no "reciprocal deposit" – one way deposit from Bank A to Bank B. There is no special negotiation of rates. Bank A holds the balance in a Trust Account (i.e., not reported as part of its assets in the call report).

Deposits in such programs, which have been in the market for nearly a decade, are stable sources of relatively low cost deposits that are not interest rate sensitive. Fiduciary and non-UGMA custodial account deposits are insured, low-cost, stable deposits based on relationships and have high retention rates relative to traditional brokered deposits. The FDIC has indicated in response to our previous inquiry that fiduciary deposits held in a trust account should be considered a fiduciary account and not a brokered account.[3] We believe that these accounts have similarly low risks to those of reciprocal deposit accounts and are not aware of any FDIC commentary supporting a contrary position to its previous assessment that such deposits are low risk. Not only are fiduciary and non-UGMA custodial account deposits less risky than other brokered deposits, the FDIC has indicated that some brokered deposits present less risk than certain types of core deposits.[4]

We believe that if a program offers technology that specifically enables community and regional banks to obtain stable deposits that would normally flow to large money center banks or to money market funds with minimal administrative burden and the deposits earn interest at the same or similar rates that the participating banks pay to other deposit customers, there is no more risk than that of a reciprocal, or a direct retail deposit. These deposits are not similar to the "hot money" deposits that have in the past been synonymous with certain brokered deposit programs. They are not time deposits with fixed maturities; rather they are overnight deposits, akin to traditional checking, savings or money market demand account deposits.

Moreover, by carving out only reciprocal deposit accounts from the brokered deposit ratio, 2016 NPR would treat similarly low-risk brokered deposit accounts differently without apparent reason, provide a few select market participants with pricing advantages over its competitors, reduce competitive vigor of the market and discourage other participants from bringing potentially more efficient and less risky programs to market. Perversely, this special treatment of reciprocal deposits could potentially make reciprocal deposits more risky by concentrating the administration of such accounts in a few market participants that utilize patent protected technology to the sole benefit of those same few market participants.[5] We believe the potential negative effects of the 2016 NPR can be mitigated by expanding the types of low-risk deposits that are excluded from the brokered deposit ratio. Accordingly, we urge the FDIC to amend 2016 NPR so that similarly situated low-risk accounts, particularly fiduciary and non-UGMA custodial accounts, are treated in the same manner as proposed for reciprocal accounts.

It is our firm's position that the FDIC should keep a brokered deposit ratio treating reciprocal deposits the same as under current regulations as a measure in the financial ratios method for calculating assessment rates for established small banks instead of the previously proposed core

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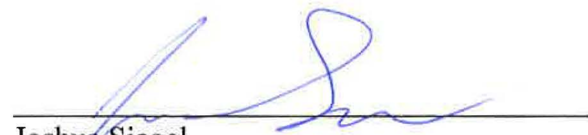
[3] FDIC STARSMail. "Re: FDIC Reply [SCC2009W-012065-0]." Message to Erik Minor. 18 Sept. 2009. Email.

[4] FDIC, *Study on Core Deposits and Brokered Deposits 5 fn. 7* (July 8, 2011) (citing the FDIC's Risk Manual of Examination Policies); See also, FDIC's Risk Management of Examination Policies 6.1-9 (Mar. 2015).

[5] Generally, a "reciprocal deposit" refers to Promontory's "CDARS Reciprocal" product which is a software product that provides banks with a way to obtain funding, by keeping the full amount of funding on the bank's balance sheet, and enabling banks to replace other funding options. Institutions that offer CDARS are members of the Promontory Network. When a member bank places a deposit using the CDARS service, that deposit is divided into amounts under the standard FDIC insurance maximum of $250,000 and allocated among other Promontory Network members, making the deposit eligible for FDIC insurance.

calculating assessment rates for established small banks instead of the previously proposed core deposit ratio. For the same reasons as those mentioned in the 2016 NPR, we believe this should apply to deposits held in fiduciary and non-UGMA custodial account programs since it satisfies the same risk criteria as reciprocal deposits. We respectfully submit that you treat fiduciary and non-UGMA custodial account programs, which include extended FDIC insurance programs, the same way you treat reciprocal deposits in the current assessment system.

Sincerely,



Joshua Siegel
Chairman, StoneCastle Cash Management, LLC