October 30, 2024

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
Attention: James P. Sheesley, Assistant Executive Secretary
RIN 3064-AF99

Re: Notice of Proposed Rulemaking, Brokered Deposit Restrictions (the "Proposed Rulemaking")

Dear Mr. Sheesley:

American Deposit Management, LLC ("ADM") respectfully requests that the Federal Deposit Insurance Corporation ("FDIC") withdraw the Proposed Rulemaking. In the event the Proposed Rulemaking is not withdrawn, we respectfully request the FDIC consider significant revisions to the Proposed Rulemaking and a suitable delay until such revisions can be properly vetted among all impacted parties. Our request is so that the FDIC can avoid the anticipated unintended consequences of the proposal on local governments, non-profit organizations and community banks.

ADM is a national treasury management and financial services company that provides customers with a source for industry-leading cash management, consulting and fulfillment services. ADM is registered with the Securities & Exchange Commission (SEC) as a Registered Municipal Advisor with oversight from the Municipal Securities Rulemaking Board (MSRB). ADM has been involved in the brokered deposit rule regime both as a Notice filer and an Application filer since the 2020 changes[1]. As such, we believe we have a unique perspective and valuable insight given our experience with the FDIC as well as our relationships with depositors and banks across the United States.

The Proposed Rulemaking would have significant and negative impacts on financial institutions (particularly community banks), third-party service providers, and customers, with no clear record that the revisions would have any corresponding benefits to safety and soundness. We share the concerns raised in many other comment letters and concur with the conclusions included in the broad based industry comment letter submitted on August 21, 2024[2] identifying the disruption the

[1] FDIC, Final Rule, Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, 86 Fed. Reg. 6742 (Jan. 22, 2021).
[2] See the comment letter submitted August 21, 2024 by The American Bankers Association, the American Fintech Council, the Bank Policy Institute, the Consumer Bankers Association, the Financial Services Forum, the Financial Technology Association, the Independent Community Bankers of America, the Innovative

W220N3451 Springdale Rd, Pewaukee WI 53072
www.americandeposits.com
414.961.6600

Proposed Rulemaking would cause in the industry, the failure of the FDIC to address the reasoning leading to the 2020 final rule, and the lack of data or factual support for the Proposed Rulemaking. We conclude that such a broad, sweeping arrangement will have a significant negative impact on banks and customers alike. The brokered deposit landscape was originally aimed at monitoring reliance on certain types of theoretically transient deposits by unhealthy institutions. Over time, there has been a far more expansive application of the rules to all institutions, and we believe the Proposed Rulemaking represents an even further departure from the relevant statutory framework.

We highlight our more specific concerns below. Overall, we believe these concerns, combined with those shared by others, make it clear that the Proposed Rulemaking should be withdrawn, or significantly revised to avoid the negative and foreseeable consequences of an ill-considered proposal.

1. **Revising the 2020 regime is hasty and without factual support.**

The Proposed Rulemaking cites quite specific instances and fintech relationships in support of the proposed changes. While we question the underpinnings and causal relationships noted, from our vantage point, we believe the Proposed Rulemaking creates a large burden on the smaller, relationship-driven service providers, such as ADM. We are concerned that the focus on unregulated entities and those in the fintech space create collateral damage to others serving a vital need in the market for both depositors and the community-based financial institutions they utilize across the country.

In addition, we would like to see further investigation and explanation of any direct or indirect assertions that recent bank failures had material roots in brokered deposits. The records currently breaking down these failures do not seem to indicate such.

2. **Not all participants are the same.**

The Proposed Rulemaking takes a "one-size-fits-all" approach and would significantly impact the business of third parties, such as ADM, as well as its customer base and hundreds of participating banks. The Proposed Rulemaking seems hyper-focused on the fintech industry and seeks to create structure for unregulated entities without a relationship-driven approach. In this business, relationships matter beyond tech platforms that enable them.

ADM stands as a stark contrast to the fintech model. ADM is SEC-regulated and has a relationship-driven approach both with customers and banks. Unlike many of the parties highlighted in the Proposed Rulemaking, ADM is a regulated entity that has continuously complied with oversight from the SEC, MSRB and, when applicable, the FDIC with respect to PPE and the brokered deposit regime.

While ADM certainly acts in the best interests of its clients by securing deposit insurance (where applicable) and reasonable rates based on the interest rate environment, these services are ancillary to ADM's core offerings. ADM is closely connected with its customers and has developed meaningful and long-lasting relationships with its participating banks. The average relationship tenure of ADM's current bank partners is 9 years, providing a stable available deposit relationship

---

Payments Association, the Institute of International Bankers, the National Association of Industrial Bankers and the Securities Industry and Financial Markets Association (the "August 21st Letter").

across multiple business cycles. Over 50% of the banks in ADM's network have less than $1 billion in assets and are critical in the provision of vital local community banking services. ADM engages in ongoing conversations with its participating banks, monitoring their call report data, further highlighting ADM's business model is that of a relationship, not a button you push when you need deposits.

ADM assists municipalities, school districts and other entities with funds placement, provides fulfillment services for burdensome court settlement offerings, and assists with various escrow relationships (among other things). These clients establish long-term relationships with ADM and our bank network, something the Proposed Rule disregards and jeopardizes. Multiple client relationships date back over 10 years. For example, we have longstanding relationships with multiple municipalities. As a registered municipal advisor, ADM is a fiduciary that provides a variety of services, including but not limited to, liquidity management, vendor payment processing, merchant services, and RFP administration. Additionally, to assist with meeting the tax-exempt obligations of the municipality, ADM provides arbitrage rebate reporting, bond spend down analysis, and regulatory compliance documentation to adhere to IRS guidelines as they pertain to tax exempt bonds. Municipal entities are required by state statute and/or internal investment policies to ensure that safety and preservation of principal is the foremost investment objective. Often, the requirements include protection of bond proceeds at greater than or equal to 100%. As a fiduciary, ADM coordinates pledged collateral, repurchase agreements and/or the issuance of public unit deposit letters of credit with its partner institutions and their respective regional Federal Home Loan Bank (FHLB).

These relationships do *not* reflect the risk that a stereotypical "brokered" deposit would. Rather, our relationships are durable, long term (or with defined terms), and are not driven solely by rates. When specific spend-down timeframes are involved, such as a construction project, ongoing communication between ADM and our participating banks help to match the planned tenure of the funds with the liquidity management strategy of the bank. This allows community banks to have yet another source of well-planned deposit sourcing through an ongoing long-term relationship with ADM that is stable, understood, and reliable (a pretty good definition for a core deposit in today's environment).

Under the Proposed Rulemaking, these would immediately be considered "brokered deposits." It seems the Proposed Rulemaking seeks to address a very specific (and somewhat questionable) nexus between certain fintechs and banks <u>without appropriate regard or appreciation for the different organizations providing valuable services that help both depositors and community banks with reliable solutions.</u>

3. **The Proposed Rulemaking does not have an adequate transition plan.**

The failure to provide an adequate transition plan under the Proposed Rulemaking will be damaging to all constituencies. As it stands, all deposits that *may* fall under an exemption would be classified on Day 1 as "brokered deposits." Such classification would continue until an application is filed, accepted, and reviewed by the FDIC, within very generous timelines afforded to the FDIC case managers. ADM alone has over 300 participating banks under business lines that have been afforded an exemption after the comprehensive application and notice process that ADM complied

with. By not grandfathering or providing for a transition plan, on Day 1 of adoption of the Proposed Rulemaking, all related funds would need to be recharacterized as brokered deposits on the financials for our participating banks.

If necessary, after a comprehensive analysis of what problem needs to be solved, we see at least three paths that would be more efficient and less disruptive to all constituencies:

1. For those who have specifically provided an application and received approval for an exemption for certain business lines, such approvals should be "grandfathered" in under any new rule, providing not only consistency and fairness to those who have relied on and complied with the 2020 Rule. This would also seem to be common sense from an efficiency standpoint. The FDIC already has most, if not all, necessary materials to determine the continued applicability of these exemptions.
2. Another option is to simply add specific exemptions for the filings that have been previously approved. For example, if administration of court-ordered settlements has been approved by the FDIC, including that in the list of exemptions should be sufficient. We realize the Proposed Rulemaking says settlements could "reasonably lead to a conclusion" that the relationship is exempt. We think clearly spelling that out in the exemptions would be most practical and less burdensome on institutions, third parties and the FDIC.
3. If the FDIC remains confident that there will not be many applications (see below), and to incentivize proper attention to these filings, it seems prudent to have deposits subject to an existing application be characterized as *exempt* until the FDIC acts.

Again, our concern is there is no transition mechanism built in given the current proposed rule's requirement that all PPE applications existing today are revoked, which is grossly unfair to banks and businesses like ADM that have relied in good faith on and made substantial investments of time and money to comply with the rules currently in place. This Proposed Rule will cause unanticipated disruptions for the third parties and their customers, and for financial institutions. At the very least, we feel the adoption of any changes to the rules should thoroughly consider all transitionary options.

4. **The Proposed Rulemaking will have unintended and detrimental consequences on both banks and depositors.**

By defaulting a larger portion of deposits as "brokered", there will be unintended consequences for both ADM's customers and participating banks.

As mentioned above, ADM has several active business lines operating under current exemptions. We believe the Proposed Rulemaking would be damaging to our customers by creating further obstacles to core deposit treatment. For example, school districts that need an investment plan related to their referendums, for which our services are a solution, would now have less options because the underlying deposits would be considered "brokered" without our existing PPE application. And yet these deposits are anything but a source to "facilitate rapid growth" or help banks "grow out of problems", two primary drivers of concern with brokered deposits. The

relationship management protocol between ADM and its participating banks is in place to further support a strong and stable bank network for these types of deposit needs.

In addition, there would be harm to our network of community banks, which would have less access to this durable source of funding. The Proposed Rulemaking would likely have the perverse effect of driving substantial deposits to banks that are seen as "too big to fail." This is contrary to public interest and could be detrimental to the community banking space.

5. **Putting the onus of submission of applications on IDIs is inefficient, illogical, and overly burdensome on IDIs.**

Although it appears the FDIC has not received many formal applications based on the disclosures in the Proposed Rulemaking, if all notice filers are now going to move to an application path, the burden and backlog filers will encounter at the FDIC is likely to create significant delays and cause damage to IDIs. Pairing this with the proposed 120-day review window (which may be extended at any time by the FDIC) and forcing the IDI to classify deposits as "brokered" in the meantime, does not create appropriate incentives. For every one application the FDIC could receive for a specific business line, the proposal could translate to many applications from specific IDIs, putting unnecessary burden on the IDI and the FDIC.

By way of example, while the FDIC estimates less than 90 applications, ADM works with over 300 banks. ADM currently has three existing exempt business lines – taking just 300 banks times 3 existing business lines, that would be 900 applications. And that's *just* ADM.

We support the FDIC's goal of IDIs being able to accurately report deposits and encourage the FDIC to consider data an IDI can rely on that would enable accuracy, outside of each IDI having to apply and backlogging the FDIC team with thousands of PPE applications. If there are concerns with "confusion" on the part of IDIs and others, the FDIC could maintain a more thorough public database providing each exemption and the deposits to which it applies. That way, an IDI would be able to independently verify the applicability of exemptions and, if required, reach out to the third party or the FDIC with any questions.

As shown in our response, we are in a unique position to provide insight to this subject given our relationships with financial institutions and our placement within the industry. We strongly believe the Proposed Rulemaking would have a significant and negative impact on financial institutions (particularly community banks), third-party service providers, and customers, without clear support or corresponding benefits. As such, we respectfully request the withdrawal of the Proposed Rulemaking.