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November 21, 2024

Via Email (comments@fdic.gov)

James P. Sheesley
Assistant Executive Secretary
Attention: Comments—RIN 3064-AF99
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

RE: Notice of Proposed Rulemaking on Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions

Dear Mr. Sheesley:

Raisin Solutions US LLC ("Raisin") submits this comment letter to the Federal Deposit Insurance Corporation ("FDIC") in response to the notice of proposed rulemaking to amend the FDIC's regulations relating to brokered deposits ("NPRM").[1] Raisin appreciates the opportunity to provide comments on the NPRM.

Background on Raisin

Raisin aims to provide an easy-to-use, transparent platform where U.S. consumers can find deposit products (such as savings accounts or certificates of deposit) and regional and community banks can offer their products to consumers in all fifty states. Raisin's online platform, Raisin.com, allows interested consumers the ability to obtain and manage deposit products offered by a wide variety of federally insured banks and credit unions, without Raisin controlling or influencing deposit decisions. In turn, the banks on the Raisin platform are able to reach a nationwide audience of potential customers far beyond their own local scope. As our partner banks and credit unions pay fees to Raisin in return for marketing their products to consumers and performing or arranging infrastructure and administrative services, Raisin is able to offer consumers access to the platform and the ability to obtain savings products from these banks and credit unions with no Raisin fees.

With this structure, we believe Raisin has created a unique platform that benefits both banks and consumers. For our nation's regional and community banks, Raisin is democratizing access to retail deposit funding by providing banks with an efficient technology and marketing service to reach retail consumers nationwide. This allays the prohibitive costs and administrative burdens in standing up a proprietary online brand and crucially evens the playing field with G-SIBs and the entrenched online players. Raisin is able to deliver a highly flexible solution which allows banks to offer a variety of their deposit products at scale or source incremental liquidity

[1] 89 *Fed. Reg*. 68,244 (Aug. 23, 2024).

without cannibalizing or repricing their direct funding base. The banks participating in Raisin's platform have full control of the products and terms that are offered and can leverage the solution in the way that best meets their funding objectives. Banks on the Raisin platform have the ability to diversify their funding sources and efficiently access sticky, granular retail deposits. At the same time, the Raisin platform is based on providing a customer direct control and choice over their deposits. Consumers are able to place deposits with the banks of their choosing and align their money with their values. They are able to find, fund and manage multiple deposit products from a wide variety of banks through a single login without paying Raisin any fees.

Raisin's platform represents a win-win for all involved: banks have the ability to efficiently obtain high-quality, sticky deposits which meet their funding needs and customers are able to directly select the products and banks which meet their savings goals. Ultimately, the Raisin solution embraces the modernization of banking where consumers look to connect with financial institutions online, while delivering critical infrastructure and marketing expertise to enable regional and community banks to meet those consumers in this digital forum.

Comments

If adopted, the NPRM would result in a significant increase in the number of deposits at FDIC-insured depository institutions ("IDIs") that are characterized as brokered. In significant part, this will result from proposed Section 337.6(a)(5)(ii)(E), which relates to deposit arrangements in which an IDI or depositor pays a fee to a third party. As a practical matter, proposed Section 337.6(a)(5)(ii)(E) will mean that fewer IDIs will have access to such deposits. Also, the IDIs that are able to access such deposits will bear a greater regulatory burden when doing so. The FDIC has not provided a meaningful justification for issuing the NPRM or for proposed Section 337.6(a)(5)(ii)(E), and finalizing the NPRM would result in material harm to IDIs, particularly community banks that rely on deposits that are currently not brokered deposits but that would be brokered deposits under the NPRM. Accordingly, we urge the FDIC not to finalize proposed Section 337.6(a)(5)(ii)(E) and also to add a provision to proposed Section 337.6(a)(5)(iv) to indicate that a person is not a deposit broker if the person does not engage in any of the conduct described in proposed Sections 337.6(a)(5)(ii)(A)-(D) and does not seek to influence depositor movement of funds to or from particular IDIs.

I. *The NPRM Is an Unjustified Policy Change*

Section 337.6 of the FDIC regulations implements Section 29 of the Federal Deposit Insurance Act, which restricts certain IDIs from accepting deposits that are obtained, directly or indirectly, by or through any deposit broker. Section 29 was enacted in 1989. Until 2020, Section 337.6 tracked the statutory definition of "deposit broker," which is broadly worded and has limited exclusions. As a result, the pre-2020 version of Section 337.6 did not account for

many modern developments in the distribution of deposits or the evolution of Internet-based technologies.

In 2020, the FDIC updated its deposit broker regulation following a lengthy process that included multiple rounds of public comment and discussions with the industry.[2] At that time, the FDIC explained that "its regulations governing brokered deposits are outdated and do not reflect current industry practices and the marketplace."[3] The 2020 update provided the industry long-sought clarity about what constitutes a deposit broker through a precisely worded regulation that linked the definition of "deposit broker" to particular conduct that the FDIC regarded as presenting an elevated risk to IDIs and the banking system. Regional and community banks and other IDIs have relied on that clarity for nearly three and one-half years.

The NPRM effectively represents a reversal of the current regulation that would return the industry to the pre-2020 deposit broker regulation landscape. Of particular concern to Raisin, proposed Section 337.6(a)(5)(ii)(E) would deem a person to be a deposit broker if the person has a relationship or arrangement with an IDI or customer where the IDI or the customer pays the person a fee or provides other remuneration in exchange for deposits being placed at one or more IDIs. However, the NPRM does not provide any meaningful explanation to justify the reversal in policy.

As discussed in more detail below, the NPRM relies on recent developments that had a negative effect on the banking or broader financial services industry as justification for the change in the FDIC's policy position without logically connecting these problems with proposed Section 337.6(a)(5)(ii)(E). Also, the FDIC has not explained why it is appropriate to employ the expansive approach of proposed Section 337.6(a)(5)(ii)(E), which is written so broadly that it will treat deposits which have no attributes of high-risk deposits as brokered deposits. This is a case of the proverbial throwing out the baby with the bath water. Finally, the FDIC's unjustified change in policy that is reflected in proposed Section 337.6(a)(5)(ii)(E) will be damaging to IDIs, particularly regional and community banks, which is a critical factor that is not accounted for in the NPRM.

II. *The NPRM Inappropriately Relies on Recent Developments for Support*

Recent developments in the banking industry cited in the NPRM do not justify the FDIC's abrupt policy reversal. The FDIC points to the run on uninsured deposits from First Republic Bank ("First Republic") and the bankruptcy of Voyager Digital Holdings, Inc.

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[2] 86 *Fed. Reg.* 6,742 (Jan. 22, 2021). *See also* 85 *Fed. Reg.* 7,453 (Feb. 10, 2020) (notice of proposed rulemaking) and 84 *Fed. Reg.* 2,366 (Feb. 6, 2019) (advance notice of proposed rulemaking).

[3] 86 *Fed. Reg.* at 6,742.

("Voyager") to support its sudden policy change.[4] Yet neither situation resulted from a reliance on brokered deposits.

The run on First Republic was the result of depositor concerns about the risk of holding uninsured deposits and had nothing to do with whether the deposits were treated as brokered under the current regulation. The FDIC explained last year:

> First Republic's business model was heavily reliant on uninsured deposits, which also represented a funding concentration and ultimately a volatile funding source after the failure of [Silicon Valley Bank]. . . . First Republic's uninsured deposits ranged from 51 to 64 percent of total assets from 2018 through 2022. In an April 2023 report, the U.S. Government Accountability Office (GAO) noted that the median uninsured deposits to total assets percentage for a group of peer banks ranged from 31 to 41 percent from 2018 through 2022.
>
> Uninsured deposit balances almost doubled from year-end 2019 through year-end 2021.[5]

After a rapid increase in uninsured deposits at First Republic, a precipitous loss of depositor confidence in the bank resulted in a massive withdrawal of uninsured deposits. From December 31, 2022 to March 31, 2023, the uninsured deposits at First Republic experienced a 57 percent reduction, signifying a startling reversal in the conduct of the holders of First Republic's uninsured deposits. The bank could not survive the run on uninsured deposits. Significantly, the FDIC's assessment did not identify brokered deposits as a factor that contributed to the failure of First Republic.

The problems that resulted from the Voyager failure also were unrelated to whether the relevant deposits were brokered. Voyager was a cryptocurrency business that acted as an intermediary between customers and IDIs. In the Voyager situation, the risk to deposit customers resulted from poor recordkeeping by Voyager and other operational issues,[6] and there was no bank failure. In fact, after the Voyager failure, the IDI that held Voyager customer deposits, Metropolitan Commercial Bank, ceased providing deposits for crypto businesses and did so without incident. Its holding company, Metropolitan Bank Holding Corp. ("MCB"), explained at the time:

> . . . that it will fully exit the crypto-asset related vertical. . . . [MCB] expects minimal financial impact from the exit of this vertical. MCB currently has four active institutional crypto-asset related clients that in the aggregate currently account for approximately 1.5% of total revenues and 6% of total deposits. . . . [The President and CEO of MCB stated that] 'Crypto-related clients, assets and

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[4] 89 *Fed. Reg*. at 68,245.

[5] FDIC, *FDIC's Supervision of First Republic Bank*, at 10-11 (Sept. 8, 2023) (internal footnotes omitted).

[6] *See*, *e.g.*, Board of Governors of the Federal Reserve System, FDIC, Office of the Comptroller of the Currency, *Joint Statement on Bank's Arrangements with Third Parties to Deliver Bank Deposit Products and Services* (July 25, 2024) ("Joint Statement").

deposits have never represented a material portion of the Company's business and have never exposed the Company to material financial risks.'[7]

MCB filings with the Securities and Exchange Commission following the Voyager failure did not discuss any adverse impact on the bank from the Voyager failure. A Form 8-K filed by MCB on July 21, 2022 – two weeks after the commencement of the Voyager bankruptcy – does not mention an adverse impact on the bank.[8] Another Form 8-K filed on October 20, 2022 stated that:

> Total deposits were $5.7 billion, a decrease of $446.9 million, or 7.2% from June 30, 2022, and an increase of $274.0 million or 5.0% from September 30, 2021. The decrease from June 30, 2022, was primarily due to a decrease of $485.9 million in digital currency business deposits, partially offset by an aggregate net increase of $39.0 million in all other deposit verticals.[9]

Thus, neither the insolvency of First Republic nor the bankruptcy of Voyager provide any support for the FDIC to reverse course on the 2020 update or to include proposed Section 337.6(a)(5)(ii)(E) in the NPRM. As FDIC Director McKernan put it, the NPRM does not "offer any evidence that some of the deposits that this proposal would re-classify as brokered deposits actually present the same or similar risks" as deposits that are classified as brokered under the current regulation.[10]

The NPRM also makes a brief reference to the bankruptcy of Synapse Financial Technologies, Inc. ("Synapse"), a fintech "middleware" company, as support for the NPRM. However, the FDIC states only that rapid growth through such an arrangement without corresponding growth in risk management is problematic,[11] and the FDIC and other federal banking agencies have issued joint written guidance to addresses those risk management issues.[12]

Additionally, the FDIC cites to the failure of IndyMac Bank and ANB Financial National Association ("ANB") to explain the historical role of brokered deposits in bank failures and as a way to explain why expanding the brokered deposit definition is warranted. However, the type of deposits at issue in those IDI failures is not the type of deposit that the FDIC would classify as brokered in the NPRM. In the IndyMac and ANB failures, the problematic deposits were

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[7] MCB, Press Release (Jan. 9, 2023), available at: https://investors.mcbankny.com/news-events/news/news-details/2023/Metropolitan-Bank-Holding-Corp.-to-Exit-Crypto-Asset-Related-Vertical/default.aspx.

[8] MCB, Current Report (Form 8-K) (July 21, 2022).

[9] MCB, Current Report (Form 8-K), Exh. 99.1, at 2 (Oct. 20, 2022).

[10] Statement by Jonathan McKernan, Director, FDIC, Board of Directors, on the Proposed Brokered Deposit Restrictions (July 30, 2024).

[11] 89 *Fed. Reg*. at 68,250.

[12] *See*, *e.g.*, the Joint Statement.

traditional large-block deposits placed by securities brokers on behalf of their retail customers.[13] As the FDIC is aware, large-block deposits placed by securities firms have a vastly different risk profile than many deposits that would become brokered as a result of the NPRM.

Finally, the FDIC effectively has signaled that it does not have sufficient information to form a clear view on the current impact of deposits that ceased to be brokered as a result of the 2020 update by issuing a Request for Information on deposits concurrently with the issuance of the NPRM. Surely, the FDIC should at least review the results of its own Request for Information before it proposes to change the brokered deposit regulation.

III. *The NPRM's Focus on Fees is Misplaced*

We are deeply concerned about proposed Section 337.6(a)(5)(ii)(E), which would treat deposits as brokered if a person has an arrangement with an IDI or customer where the IDI or customer pays a fee to the person in exchange for deposits being placed at the IDI. In the NPRM, the FDIC explains that this treatment would apply even if the fee is merely "related to" the placement of deposits and even if the fee is only for "administrative services provided in connection with a deposit placement arrangement."[14] This is an extraordinarily broad scope that unreasonably and overexpansively correlates fees with this risk. And, the effect of proposed Section 337.6(a)(5)(ii)(E) is amplified by the FDIC's proposed expansion of the regulation's anti-evasion provision in proposed Section 337.6(a)(5)(iii). That section contains a description of evasion that could charitably be described as impenetrable and that will surely discourage arrangements in which a person receives a fee that might not otherwise come within the "deposit broker" definition.

Proposed Section 337.6(a)(5)(ii)(E) will cause arrangements that currently do not result in brokered deposits to become brokered deposit arrangements – without any serious analysis of whether the payment of a fee bears on the riskiness of the deposit. The FDIC states in the NPRM that it "has found that fees paid to a third-party intermediary would play a key role in incentivizing referral volume of third-party deposits to IDIs and "such third-party deposits may be more likely to leave the IDI if another IDI were to offer more favorable terms or pay a higher fee."[15]

However, the FDIC misses the point. A fee paid to a person does not make a deposit riskier, and accepting fees does not equate to deposits with the problematic characteristics. Indeed, the FDIC proposes to allow acceptance of fees by passive listing services without

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[13] *See*, *e.g.*, U.S. Department of the Treasury, Office of Inspector General, Audit Report, *Safety and Soundness: Material Loss Review of ANB Financial, National Association*, at 7 (Nov. 25, 2008) and Alex Roth & Valerie Bauerlein, *A Gamble that Went Bust*, The Wall Street Journal (May 16, 2008).

[14] 89 *Fed. Reg.* at 68,252.

[15] *Id.*

causing the listing services to be deposit brokers.[16] But, there is no meaningful explanation of distinct treatment of passive listing services.

The risk that the deposit broker statute seeks to protect against comes not from the payment of a fee but rather from the ability of a person to control or influence the movement of deposits. The risk does not exist when IDIs pay a fee to a person for an arrangement in which the person *does not*: (i) set deposit rates or terms; (ii) allocate deposits to IDIs; (iii) have the ability to move deposits from an IDI; or (iv) seek to influence depositor movement of funds to or from particular IDIs. In other words, the risk of fee payments "incentivizing referral volume of third-party deposits to IDIs" does not exist if the recipient of the fee has no power – contractually, operationally or otherwise – to refer depositors to an IDI. Relatedly, deposits that result from an arrangement in which an IDI pays a fee to a third party that has no referral power are not "more likely to leave the IDI if another IDI were to offer more favorable terms," unless consumers independently decide to move their deposits. The FDIC seemed to appreciate this in 2020 and does not address in the NPRM why the reasoning that supported the 2020 updated regulation (which did not treat all deposits gathered in fee arrangements as brokered deposits) no longer applies.

The Raisin platform does not involve any of the problematic attributes noted above that could be – *but that are not necessarily* – associated with a fee payment. Raisin does not exercise any discretion over the placement of the deposits. Nor does any party involved in the Raisin service. Instead, Raisin is a platform on which consumers view IDI deposit account marketing information and make independent decisions to select savings products from among multiple banks and credit unions. On the Raisin platform, consumers manage all of their selected savings products. When a consumer selects a bank or credit union deposit product, an IDI transfers the consumer's funds to a custodial account at the selected financial institution. Unlike brokered deposit accounts placed by securities firms, in the Raisin platform, each consumer whose funds are deposited has sole discretion over the selection of the IDI, deposit product, timing of deposits and withdrawals, and deposit and withdrawal amounts. All of these actions are free of Raisin's control or influence. Therefore, an IDI that markets its savings products on the Raisin platform is at no risk of having deposits withdrawn and moved *en masse* by a broker exercising its own discretion for multiple customers and also is at no greater risk of a single depositor withdrawing funds than if the depositor had opened a deposit account directly with the IDI.

Crucially, the funds deposited by consumers at regional and community banks through the Raisin platform act as true retail deposits. The Raisin platform only supports individual consumers and does not permit businesses or other entities to deposit funds. The average Raisin high-yield savings account has a value of approximately $25,000 and the average certificate of deposit has a value of approximately $63,000. Additionally, Raisin imposes a maximum account value at each bank on the Raisin platform of $250,000 per individual / $500,000 per joint account which minimizes potential flight resulting from consumer fears that deposits are uninsured. The "sticky" nature of the funds sourced through the Raisin platform is supported by empirical data regarding the behavior of these deposits. The average duration for a high-yield savings account is approximately 357 days. This data further suggests that even variations in

[16] *Id*.

interest rate have relatively minimal impact on the stability of these deposits. As has been noted by many others opposing the NPRM, the FDIC's efforts to regulate the types of deposits banks accept should focus not on the source of the deposit but rather on the quality, behavior and risk of those deposits.

By treating all deposits that result from arrangements in which an IDI pays a fee to a third party as brokered deposits, proposed Section 337.6(a)(5)(ii)(E) sweeps so broadly that it harms IDIs that pay for services that have no risky attributes. That harm will be felt mostly by regional and community banks. These IDIs often lack the technology infrastructure and technology support staff to effectively and efficiently market their deposit products to consumers nationwide through an Internet channel in direct competition with large, money center banks. For these banks, solutions like the Raisin platform offer a cost-effective way to attract deposits from consumers and build on that deposit relationship. Moreover, the deposits that regional and community banks gather through the Raisin platform fund local loans and investments that are crucial to the communities these banks serve. These IDIs would be harmed by proposed Section 337.6(a)(5)(ii)(E) because all deposits they gather through fee arrangements could be treated as brokered. This will increase deposit insurance assessment rates for these regional and community banks, which already operate on thin profit margins. Also, as the FDIC is aware, federal banking regulators often informally restrict the percentage of an IDI's funding that may be in the form of brokered deposits. Thus, proposed Section 337.6(a)(5)(ii)(E) will effectively discourage or eliminate for many IDIs an important source of low-risk funding.

IV. *Conclusion*

The FDIC has proposed to change the deposit broker regulation without justification. Additionally, the proposed changes to the "deposit broker" definition would unreasonably use the payment of a fee as a proxy for particular conduct that the FDIC could instead address with specificity in the NPRM, which is compounded by an impenetrable anti-evasion provision. The effect of the FDIC's actions will be to harm community banks without having lowered deposit-related risk to IDIs or the banking system. For these reasons, we urge the FDIC not to finalize proposed section 337.6(a)(5)(ii)(E) and also to add a provision to proposed Section 337.6(a)(5)(iv) to indicate that a person is not a deposit broker if the person does not engage in any of the conduct described in proposed Sections 337.6(a)(5)(ii)(A)-(D) and does not seek to influence depositor movement of funds to or from particular banks.

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Raisin appreciates the opportunity to provide comments to the NPRM. If there are any questions regarding our comments, please do not hesitate to contact me at

Sincerely,

Cetin Duransoy
CEO, Raisin US