February 22, 2016

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429
(comments@fdic.gov)

Re: RIN 3064-AE37: Request For Comment On Proposed Rulemaking To Amend 12 C.F.R. Part 327 To Refine The Deposit Insurance Assessment System For Established Small Banks

Dear Mr. Feldman,

Kasasa appreciates this opportunity to comment on brokered deposit issues in response to the Federal Deposit Insurance Corporation's (FDIC or the "Corporation") request for comments regarding the Corporation's revised Notice of Proposed Rulemaking (NPR), which was published in the Federal Register on February 4, 2016. This NPR would amend 12 C.F.R. Part 327 to refine the deposit insurance assessment systems for established small banks, and revises the original NPR published on July 13, 2015 (the "2015 NPR").

Introduction:

Kasasa (formerly known as BancVue) provides an array of business services, including enabling technologies and retail product design to assist small community banks compete with global systemically important bank holding companies (GSIBs) and other larger banking organizations.

Insured depository institutions hire our company to help them reduce costs, increase operational efficiencies and develop deeply connected, long-lasting, in-market "core" customer relationships by offering a suite of financial products and services that award accountholders with interest and rewards for utilizing their bank as their primary financial institution and their checking account as their primary financial transaction account. Thus, the account's corresponding deposits serve as a low cost and highly stable and profitable source of funds from which the bank can operate its business and serve its community.

Kasasa operates "behind the scenes" and under the direction of our client banks and Kasasa receives compensation solely for the professional services and capabilities it provides to banks. Kasasa does not have any relationships with consumers, and does not have any ability to influence, facilitate, place or move any depositor funds with or between any insured depository institutions.

The community banks that Kasasa supports own all consumer relationships, and all consumer decisions are a function of the interactions and engagements each institution has with their accountholders and with other consumers who live within the institution's local community and / or market(s).

Comments:

Kasasa agrees with the 442 comment letters the FDIC received in connection with the 2015 NPR that argued that reciprocal deposits should not be treated as brokered deposits for assessment purposes if they were not brokered deposits at the banks placing them into a reciprocal deposit arrangement. That is, the process of placing these deposits into the reciprocal deposit arrangement and replacing them with funds received through the arrangement from other insured banks does not alter the nature of the deposits.

The limitations on brokered deposits in the Federal Deposit Insurance Act ("FDIA") were drafted in response to real problems in the banking system caused by certain banks' undue reliance on brokered deposits. Accordingly Kasasa believes that it is appropriate for deposit insurance assessments to reflect the risks of brokered deposits. The FDIC has identified three types of problems that brokered deposits can present: 1) excessive growth from too-easy access to deposits; 2) liquidity problems due to withdrawals in times of stress or by depositors seeking better rates; and 3) the franchise value of the deposits in the event of a failure.

Kasasa believes that the statutory definition of brokered deposits can sweep up deposits that do not present these risks. Reciprocal deposits are one such type of deposits. A common scenario for setting up reciprocal deposits is one in which a bank holds non-brokered deposits from a single depositor that exceed the available FDIC insurance levels, so the bank offers the depositor the added comfort of full deposit insurance coverage by distributing the deposit to other banks in insurable amounts. In return, the bank receives a like amount of deposits from the other banks with the assistance of a third party service. This type of deposit does not present the risks the FDIC has identified with brokered deposits. That is, these deposits do not fuel rapid growth because each bank involved in the reciprocal arrangements maintains the same amount of deposits that it already held, and the deposits do not present liquidity risks because the participating banks still have the same amount of deposits if the network were to be unwound. The franchise value of these deposits should be equal to, or greater than, the franchise value of the original deposit. These deposits simply should not be considered to be brokered deposits at all.

Kasasa also believes that the definition of brokered deposits is overly broad in other respects. In order to keep up with the rapid changes that are occurring within the banking industry and remain competitive, community financial institutions will have no choice but to partner with third-parties to assist them raise consumer awareness, offer online information and comparison research, improve digital and mobile access and make banking engagement and financial transactions easier for consumers. Yet, under today's expansive definition of deposit brokers, even though these third parties have no relationship with or control over any consumer decision or activity, regulators may deem these third-parties to be deposit brokers (and thus the consumer's deposits residing in the associated institution to be brokered) even though the third-party did nothing more than to help an insured depository institution make it easier and more convenient for a consumer to make an informed decision about their institution and the products and services they offer. Providing "consumer convenience" should not be interpreted to be "facilitating the placement of deposits" when the third-party has no control over the actual establishment of an account or the deposit or withdrawal of any funds to or from the account.

Kasasa also believes that the definition of brokered deposits should exclude stable retail deposits, as recognized by the Basel Committee on Bank Supervision and by the FDIC in its own Liquidity Coverage Ratio rules, when the account is opened directly by the retail customer.

Kasasa does not believe that such accounts pose any risk to account holding banks due to the activities of such intermediaries, either in terms of excessive growth or potential for withdrawal in times of stress. Kasasa also believes that these deposits have a high franchise value and, therefore, do not pose risks to the FDIC in the resolution of a troubled bank. In sum, Kasasa believes that the FDIC, and the health and stability of the banking industry, would be better served if regulatory risk and insurance assessments were based on the measureable characteristics of a bank's relationship with the depositor and the actual behavior of the funds residing in the depositor's account, rather than the activities of intermediaries described above.

Implementing such an exception to the definition of brokered deposits does not pose conceptual difficulties because all of the pieces required to implement this solution are currently in place. The terms "core deposits," "stable retail deposits," and "retail customer" are fully defined, fully documented and utilized by regulators within their examination practices, as well as their liquidity risk management and stress testing activities.

- <u>Examination Practices</u>: As documented Section 6.1 of the FDIC's Risk Management Manual of Examination Polices, for examination purposes, the FDIC defines core deposits as *"generally stable, lower-cost funding sources that typically lag behind other funding sources in repricing during a period of rising interest rates. The deposits are typically funds of local customers that also have a borrowing or other relationship with the institution. Convenient branch locations, superior customer service, extensive ATM networks, and low or no fee accounts are factors that contribute to the stability of the deposits. Other factors include the insured status of the account and the type of depositor (retail, commercial, municipality, etc.)"*

- <u>Liquidity Risk Management & Stress Testing</u>: As documented in Subpart B of Part 329 - Liquidity Risk Measurement Standards, the FDIC has adopted and currently uses the Basel Committee on Bank Supervision (BCBS) definition of a stable retail deposit as follows: *"Stable retail deposit means a retail deposit that is entirely covered by deposit insurance and: (1) Is held by the depositor in a transactional account; or (2) The depositor that holds the account has another established relationship with the FDIC-supervised institution such as another deposit account, a loan, bill payment services, or any similar service or product provided to the depositor that the FDIC-supervised institution demonstrates to the satisfaction of the FDIC would make deposit withdrawal highly unlikely during a liquidity stress event."*

  Similarly, in Section 329.3 of the Standards, the FDIC has adopted and currently utilizes the BCBS' definition of a retail customer as follows: *"Retail customer or counterparty means a customer or counterparty that is: (1) An individual; (2) A business customer, but solely if and to the extent that: (i) The [BANK] manages its transactions with the business customer, and credit facility and liquidity facility transactions, in the same way it manages its transactions with individuals; (ii) Transactions with the business customer have liquidity risk characteristics that are similar to comparable transactions with individuals; and (iii) The total aggregate funding raised from the business customer is less than $1.5 million; or (3) A living or testamentary trust that: (i) Is solely for the benefit of natural persons; (ii) Does not have a corporate trustee; and (iii) Terminates within 21 years and 10 months after the death of grantors or beneficiaries of the trust living on the effective date of the trust or within 25 years, if applicable under state law."*

  Furthermore, in Section 329.32, the FDIC has adopted and currently uses the BCBS' outflow assumptions as follows in their liquidity coverage ratio stress testing: *"329.32 Outflow amounts: (a) Retail funding outflow amount. An FDIC-supervised institution's retail funding outflow as of the calculation date includes (regardless of maturity or collateralization): (1) 3 percent of all stable retail deposits held at the FDIC-supervised institution."*

These definitions are strikingly similar and contain illustrative and easy-to-understand characteristics that can be measured by community banks to demonstrate to their prudential regulator that the accountholder relationships and corresponding deposits match the documented definition and intent of the supervisory and liquidity coverage requirements. To the extent that the FDIC believes that it is constrained from implementing such an exception by the current statutory language in the FDIA, Kasasa believes that the FDIC should support legislation to amend the statutory language to permit such an exception.

Conclusion:

Thank you once again for the opportunity to comment on FDIC's revised proposed rule to more closely align the assessment system with the risks associated with established small banks. On behalf of our client institutions, Kasasa appreciates that the FDIC's revised proposal maintains the current treatment of reciprocal deposits in determining the insurance assessment small banks must pay.

Kasasa understands that brokered deposits continue to be an area of regulatory concern and scrutiny, and that imprudent use of or reliance on brokered deposits can elevate a financial institution's risk and possibly contribute to distress or failure. Given the significant legal, technological and marketplace changes that have occurred over the past quarter century and the rapid pace of change occurring within the banking industry today, Kasasa believes it is appropriate for the FDIC to formally recognize that reciprocal deposits and stable retail deposits should not be considered to be brokered deposits and should be recognized as a low risk, desirable source of funds, which insured depository institutions can use to operate their businesses and serve their communities.

As such, Kasasa respectfully encourages the FDIC to exempt reciprocal deposits and all stable retail deposits where the account is opened and held by the retail customer from being considered to be funds obtained, directly or indirectly, by or through a deposit broker.

Sincerely,

Patrick Laughlin
Senior Vice President