BANK OF AMERICA

May 3, 2019

Via Electronic Mail

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
Attention: Robert E. Feldman, Executive Secretary

Re: Brokered Deposits (RIN 3064-AE94)

Ladies and Gentlemen:

Bank of America appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (the "FDIC") advance notice of proposed rulemaking (the "ANPR")[1] in connection with the FDIC's comprehensive review of its regulatory approach to brokered deposits. We believe that the FDIC's historic interpretations and guidance are not consistent with the realities and characteristics of modern relationship banking, incorrectly classify many stable deposit relationships as brokered and have strayed from the original intent of Congress. We encourage the FDIC to seize this opportunity to take a fresh look at the issue and to acknowledge the meaningful benefits and stability of relationship banking deposits by excluding all deposits placed through affiliate relationships from the definition of a brokered deposit.[2]

Section 29 of the Federal Deposit Insurance Act[3] restricts the ability of undercapitalized banks from soliciting and accepting deposits through deposit brokers. A deposit broker is defined as "any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties."[4] While the statute does not define the term "brokered deposit", the FDIC's regulations and interpretations define that as any deposit directly or indirectly received through the mediation or assistance of a deposit broker.[5] The original intent and purpose of this statute was relatively narrow. It was designed to limit a troubled bank from taking desperate measures by chasing

1 84 Fed. Reg. 2,366 (Feb. 6, 2019).

2 Bank of America supports the overall comments submitted by the Bank Policy Institute and the American Bankers Association, but want to specifically call out the importance of the issues and concerns relating to relationship banking and affiliates.

3 12 U.S.C. § 1831f.

4 12 U.S.C. § 1831f (g)(1).

5 12 C.F.R. § 337.6(a)(2).

unstable funding through deposit brokers at high costs because such actions would exacerbate existing funding problems of the bank and increase risks of losses in the event of insolvency.

Over time, the FDIC has leveraged these definitions and concepts to reach far beyond the original context contemplated by Section 29 by imposing restrictions and costs on all banks (not merely those that are undercapitalized) and penalizing banks with brokered deposits when calculating FDIC insurance assessments and when making liquidity assumptions in regulations such as the Liquidity Coverage Ratio. The FDIC has assigned a general stigma to brokered deposits as unstable funding. Brokered deposits have been deemed "hot money" that will be withdrawn from the bank at the first sign of trouble, and therefore deserving of less favorable regulatory treatment than stable core deposits. .

While we acknowledge that there may be fair reasons why the FDIC may choose to disfavor and discourage "hot money" as a source of funding, the main problem that the FDIC should address in updated regulations is that the FDIC is overly expansive in its definition of a brokered deposit such that it fails to distinguish between materially different business models and deposits that have dramatically different characteristics. As a result, some stable core deposit funding is being mischaracterized as brokered.

The classic "hot money" brokered deposit involves a third party who intermediates the customer relationship with the bank, often in such a way that the bank does not even know the identity of the customer. In this model, the broker generates a fee solely for placement of funds with the bank, and the customer seeks only a higher yield on their deposit. Since there is no greater depth to the depositor relationship that would generate loyalty or "stickiness" of that customer to maintain those deposits at the bank, the FDIC views that particular type of brokered deposit as one that may leave in times of stress.

This is in stark contrast to how deposits are generated under Bank of America's business model and the way in which we serve our customers. Bank of America offers a wide array of financial products and services designed to meet the needs of our customers, including deposits, loans, investments and brokerage services. Our customers want us to build a deep relationship, covering many types of products and services, in a seamless and integrated way. Bank of America offers these products and services in a variety of ways in order to provide convenience and satisfy the needs of our customers, including use of modern technology such as mobile and online services. In addition, our industry-leading program to provide rewards, such as rate benefits or bonus credit card points, to our customers for doing more business with us makes no distinction between deposits they make via our affiliates or directly into the bank. The deposits maintained by Bank of America as a result of these comprehensive customer relationships are in fact very stable and share no characteristics with the classic brokered deposits deemed problematic by Congress and the FDIC. In fact, during the financial crisis, not only did deposits based on our relationship banking model remain stable, we actually grew deposits throughout the period.

We offer two specific examples where existing FDIC interpretations are over-broad and should be narrowed.

The first issue relates to the role of affiliates of the bank in helping serve our clients. The FDIC has taken a very broad view that any deposit placed or facilitated by a party (other than the bank itself) makes that party a deposit broker and therefore taints any related deposits as brokered. This characterization is inappropriate in the context of relationship banking within a financial holding company. For example, if a Merrill financial advisor (our affiliated broker dealer) meets with a customer who desires a loan or deposit account, the financial advisor makes a referral to the bank in order to meet such customer's needs. By doing that seamlessly and treating the customer in a holistic manner, we serve our customers better and we deepen and strengthen that relationship. In managing that relationship, we can satisfy customer demands for conveniently accessing their full relationship across multiple products in one place and facilitate interactions between these accounts. These depositor relationships are not a mere passive placement by brokers seeking fees and customers seeking higher yields. These referrals strengthen and deepen the customer relationship. Indeed, they typically include transaction accounts that represent the customer's primary banking relationship.

Contrary to the FDIC's historic interpretation that implies that any ongoing involvement of an affiliate is a "facilitation" that perpetuates a negative characterization of a deposit, the involvement of the Merrill financial advisor should be considered a positive attribute because it shows that Bank of America is actively managing, maintaining and growing the entire customer relationship. We encourage the FDIC to clarify by regulation that an affiliate of the depository institution does not constitute a "broker". Therefore no relationship deposits at the bank shall be considered a brokered deposit, even if an affiliate participates in serving and supporting that customer relationship. We strongly discourage the FDIC from attempting to draw arbitrary and artificial distinctions of how such affiliate relationship management is conducted. Such conditions would overly complicate the rule (as is the case under the current interpretations) and would have no meaningful impact on how these deposits would perform under stress.

The second issue relates to affiliate sweep deposits. Bank of America offers a service whereby uninvested cash balances of customers with Merrill brokerage accounts are automatically swept into a deposit account at Bank of America. This is a convenient service for customers to place such funds in an FDIC insured deposit account incidental to the investment services offered through the brokerage account. The funds in the sweep account move back to the brokerage account as needed to settle securities transactions. The FDIC granted an exemption to Merrill stating that these sweep deposits are not deemed brokered pursuant to the primary purpose exemption. Consistent with similar programs and exemptions granted to other institutions, the FDIC set an arbitrary limit on the percentage of assets in the brokerage account that can be swept at any given time before losing the benefit of the exemption. The FDIC should maintain treatment that these affiliate sweep programs are exempt, but the FDIC should remove all conditions and limits relating to such exemption.

The exemption is premised on the fact that the sweep deposit is incidental to the broker dealer's core business (which is financial advice and securities brokerage). That remains true regardless of the size of the cash balances that happen to be in the customer's portfolio at any given time. The asset cap imposed in the exemptions is arbitrary and not grounded in the statute. The amount of deposits in the sweep program at any time are based purely on customer behavior and preferences. Balances may go up or down based on an individual customer's investment appetite or strategy, the performance of the stock market, or the performance of the economy. It makes no sense that any of these factors (which are unrelated to the efforts or strategies of the broker dealer affiliate) should have any bearing on the availability of the exemption from being a deposit broker.

Both of the examples above illustrate that current FDIC policies and interpretations are imposing unnecessary restrictions or discouraging behavior that should not be viewed as harmful but instead be viewed as beneficial, both to customers and banks. These types of comprehensive customer relationships foster a loyal and stable customer base and share no substantive characteristics of the "hot money" which was the original concern underlying the rules promulgated by the FDIC. We encourage the FDIC to thoughtfully tailor the regulatory requirements and consequences surrounding brokered deposits to focus on the particular characteristics of "hot money" deposits and recognize the stable nature of the deposits that are generated through comprehensive customer relationships shared between the bank and its affiliates.

While we recognize that it may be beyond the scope of this particular ANPR, we further encourage the FDIC and other regulators to amend liquidity regulations (LCR and NSFR) to address the concerns discussed above and ameliorate the negative consequences currently applied to affiliate relationship and sweep deposits.

Thank you for your consideration.

Sincerely,

[redacted]
Andrew M. Sieg[redacted]
President, Merrill Lynch Wealth Management
Bank of America