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June 18, 2019

Mrs. Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street N.W.
Washington D.C. 20429

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EXECUTIVE SECRETARY

Dear Chairman McWilliams,

In issuing its Advance Notice of Proposed Rulemaking and Request for Comments on Brokered Deposits ("Request"), Federal Deposit Insurance Corporation ("FDIC") leadership has raised an issue that is of critical importance to community banks as they compete for deposits against large regional and global systemically important banks. The detailed and considered comments, submitted in over 100 individual letters by a broad spectrum of industry participants, is evidence of the interest in, and the significance of, deposit broker / brokered deposit concerns.

Per statements made in your May 2019 speeches before the United States Senate's Committee on Banking, Housing and Urban Affairs and the United States House Financial Services Committee, we understand the FDIC is planning to move swiftly on reviewing the current methodologies for calculating the national rate caps applicable to less than well capitalized banks.

While we recognize more than half of the comment letters received by the FDIC raised this singular issue, it is vitally important to recognize that the current brokered deposit rules, and FDIC staff interpretations, are making it difficult for <u>all</u> banks, regardless of capitalization status, to gather stable deposits. In fact, comments received by the FDIC stating the current rules and staff interpretations are impeding banks use of third parties generally, and marketing activities in particular, as well as comments regarding the classification of relationship based deposits as brokered, collectively may well equal or be greater than the total number of comments received by the agency on the national rate cap issue.

While we believe the national rate cap issue is important, we are concerned that the FDIC may prioritize this sole issue and defer addressing other equally important issues, such as the role of third parties whose services assist banks raise stable deposits and help individual depositors find bank accounts that best fit their individual needs as opposed to the role of third party intermediaries who act as traditional brokers and place temporary deposits with the highest bidder. The importance of this issue is demonstrated by comments submitted on behalf of both small and large banks, Fintechs and the fact, that a number of the comments are informed by a wealth of experience in bank supervision and regulation, either in the drafters of the comments themselves, or the management of the comment entities or both. Excerpts from four (4) comments demonstrate the breadth of concern associated with this important issue. In addition, we have attached our own review of the issues raised by the comments and more extensive excerpts from the comments on how the current brokered deposit rules and interpretations are creating problems for banks seeking stable, individual depositor relationships.

First, speaking for smaller banks, Christopher Cole, writing on behalf of the Independent Community Bankers of America in Comment Letter # 84 noted that:

> "In the area of transaction accounts including reward-based checking accounts, we have said that this is a source of stable funding and should rarely be considered brokered deposits. In contrast to certificates of deposit, where a depositor makes a fixed, often one-time, placement of funds at a bank, a traditional transaction account is usually the product of a direct and ongoing relationship between the bank and its depositor, involving deposits and withdrawals by the depositor to meet the depositor's transactional needs. As a result, most transactional account customers have a direct,

ongoing relationship with the bank, and all deposits from these relationships result in consistent, stable funding for the bank. Furthermore, even where the depositor is introduced to a bank through the mediation of a deposit broker, subsequent deposits placed solely by the depositor through the use of their transactional accounts should not be deemed brokered where the deposit broker does not continue its mediation or placement of deposits.

> Multi-service relationships where the depositor has another relationship with the bank should also rarely be considered a brokered deposit. Therefore, deposits (such as a checking or savings deposit, CD, MMA, etc.) associated with an individual customer who has another ongoing bona fide financial services relationship with the bank should not be considered to be a brokered deposit."

Second, speaking for larger banks, Dafinia Stewart, a former Senior Counsel in the Legal Division of the Board of Governors of the Federal Reserve System ("Board"), writing on behalf of the Bank Policy Institute, whose President Greg Baer also hails from the Board's Legal Division and was an Assistant Secretary of the Treasury for Financial Institutions, in Comment Letter # 54, noted that:

> "As a result, the scope of deposits the FDIC has indicated are "brokered" has been significantly expanded beyond what Congress envisioned. Although this overly broad interpretation of the definition of "deposit broker" has long been a concern for banks, in recent years the issue has become increasingly acute. Specifically, because the FDIC's regulations and guidance have not kept pace with technological innovation, market developments and consumer preferences, there is a significant risk that a large amount of deposits that are in fact stable could be classified as brokered simply because technology and business practices have enabled banks to implement more efficient methodologies for sourcing these deposits. These methodologies include some involvement of a third party, but the primary business of the third party is not the placement of deposits and/or its compensation is not tied to the balance of deposits placed or the balance of deposits in a client's account. In most cases, it is the IDI (and not the third party) that maintains a direct banking relationship with the depositor."

Third, speaking for the Fintech company Credit Karma in Comment Letter # 52, Jarrod Loadholt noted that:

> "Over the past forty years, the introduction of new technology has caused the disintermediation of many types of financial services that, at one time, were provided to consumers almost exclusively by IDIs through brick-and-mortar offices. The practical effect of disintermediation has been to enable depository and non-depository organizations to offer unbundled financial services to the public. As a result, non-depository organizations have become dominant in several areas of consumer banking that once were the domain of IDIs....
>
> In a disintermediated business environment, IDIs, particularly smaller institutions, must often depend on business partners to provide the initial consumer contact or the operating platform to reach and serve consumers, yet the brokered deposit rule stands in the way of many such arrangements. The brokered deposit rule has been interpreted to apply even to minor or incidental assistance to depositors or IDIs when taking deposits. This interpretation has increased the cost to IDIs to accept deposits, as a result of higher deposit insurance assessments, higher liquidity requirements, more burdensome stress testing, and greater supervisory scrutiny of the IDI's growth plans. This financial and managerial price tag has discouraged IDIs from working with intermediaries to gather deposits, which in turn has decreased the public's access to traditional deposits and often prevented consumers from receiving a fair return on their deposits."

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Fourth, John Douglas, former General Counsel of the FDIC during the consideration of Financial Institutions Reform, Recovery and Enforcement Act of 1989, which added the brokered deposit provisions to the Federal Deposit Insurance Act, writing in Comment Letter # 70 on behalf of Teachers Insurance and Annuity Association of America, a saving and loan holding company whose President is Roger Ferguson, former Vice Chairman of the Board and former Chair of the Financial Stability Board, noted that:

> "Driven by technological change, banks now rely on third-party vendors in all aspects of their operations, including for deposit platforms and outsourced services. Few U.S. banks do not utilize FIS, Fiserve, or Jack Henry to provide and/or maintain their core deposit platform – in fact, these three service providers have over 71% of U.S. core banking market share as of Q1 2019.24 These and other vendors also provide call center services, which have become more important as traditional branches decline. In a technical reading of Section 29, these third-party vendors 'facilitate' the taking of deposits, since deposits are placed in depository institutions through their services. While these vendors technically are in the business of facilitating the opening of banks' deposit accounts, they rightly have never been characterized by the FDIC as deposit brokers. Categorizing these vendors as deposit brokers would be irrational and would not comport with the legislative intent of Section 29. Therefore, TIAA believes that clearly articulating a vendor exception from the definition of deposit broker would be appropriate and would fit with a core principles-based approach to determining whether deposits should be treated as brokered or core."

We recognize that evaluating and responding to all of the issues raised by the Request is a significant and time consuming task. We also appreciate the FDIC's willingness to move quickly on the national rate cap issue, but we urge the FDIC to move quickly on bringing the brokered deposit rules into line with current technologies, banking business practices, consumer preferences and markets.

Sincerely,

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CC: Mr. Robert E. Feldman

Re: RIN 3064-AE94: Request For Comment On Proposed Rulemaking To Amend 12 C.F.R. Part 337 To Review Current Brokered Deposit Regulations And Interest Rate Restrictions Applicable to Banks That Are Less Than Well Capitalized.

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ADDENDUM

Summary of Comment Letters Received By The FDIC In Response To Its ANPR and Request For Comments On Brokered Deposits and Interest Rate Restrictions.

Industry Perspectives	# of Letters	% of Letters	Comment Letter Numbers
1. Adjust National Rate Cap To Reflect True Market Rates	59	57%	2; 3; 4; 5; 6; 7; 8; 9; 11; 12; 18; 19, 21; 22; 23; 27; 29; 30; 31; 32; 35; 39; 40; 41; 42; 43; 44; 48; 50; 51; 54; 56; 58; 66; 68; 70; 71; 77; 79; 81; 82; 83; 84; 85; 86; 87; 88; 89; 90; 96; 99; 102; 103
2. 3rd Party Organizations & Services Should Be Exempt	50	49%	16; 20; 24; 28; 35; 42; 43; 46; 52; 53; 54; 58; 68; 70; 81; 83; 84; 85; 86; 92; 94; 97; 98; 99; 102 (Note: Letter #24 represents 26 individually submitted comments)
3. Brokered Deposits Shouldn't Be Treated Negatively	28	27%	3; 5; 8; 9; 10; 13; 16; 25; 29; 30; 33; 34; 38; 47; 48; 49; 50; 62; 66; 75; 76; 87; 88; 90; 93; 95; 96; 100
4. Relationship Based Deposits Should Be Exempt	19	18%	20; 26; 30; 32; 39; 40; 42; 43; 46; 53; 56; 58; 68; 71; 81; 84; 97; 98; 102
5. "Primary Purpose" Should Enable More Exemptions	16	16%	2; 17; 26; 36; 37; 52; 54; 59; 63; 70; 74; 79; 80; 91; 94; 96
6. Affiliated Broker Dealers Should Be Exempt	14	14%	1; 2; 57; 58; 59; 64; 67; 68; 69; 70; 86; 89; 92;94
7. Affiliated Sweeps Should Be Exempt	13	13%	20; 54; 57; 59; 64; 68; 69; 70; 74; 86; 89; 92; 94
8. Marketing Activities Should Be Exempt	12	12%	20; 41; 53; 54; 67; 68; 71; 81; 82; 86; 92; 94
9. Health Savings Accounts Should Be Exempt	11	11%	26; 37; 45; 55; 60; 65; 68; 73; 87; 88; 96

10. Prepaid Accounts Should Be Exempt	7	7%	17; 28; 45; 54; 59; 80; 92
11. Transaction Account Deposits Should Be Exempt	7	7%	20; 42; 43; 46; 81; 84; 98
12. Current Regulations Are Inhibiting Product Innovation	6	6%	17; 20; 40; 41; 52; 92
13. Unaffiliated Sweeps Should Be Exempt	5	5%	2; 64; 68; 86; 89
14. Listing Services Should Be Exempt	5	5%	20; 32; 79; 81; 94
15. Bank Operating Subsidiaries Should Be Exempt	4	4%	2; 54; 67; 68
16. All Banks Now Operate In A National Market	3	3%	12; 32; 41
17. Regulations Are Penalizing Well Capitalized Banks	3	3%	38; 87; 88
18. Investment Advisors Should Be Exempt	2	2%	2; 86
19. "Potentially Volatile" Classifications Are Inappropriate	2	2%	30; 40
20. The "Source" Of Deposits Is Not The Problem	2	2%	10; 13
21. Affinity Relationships Should Be Exempt	2	2%	14; 82
22. Long Term Maturity Deposits Should Be Exempt	2	2%	31; 54
23. Co-Branded Marketing Should Be Exempt	2	2%	20; 32
24. Local Gov't Investment Pools Should Be Exempt	1	1%	2
25. Transferrable Deposits Should Be Exempt	1	1%	2
26. Broker Dealer Reserve Balances Should Be Exempt	1	1%	2
27. Bankruptcy Management Software Should Be Exempt	1	1%	2
28. Bank Capitalization Should Be Examined	1	1%	15
29. Custodial Deposits Should Be Exempt	1	1%	35
30. Consumer Referrals Should Be Exempt	1	1%	68

Summary of Comments Received By The FDIC in Response to Its Request

- **Third Party Service Providers & Services Should Be Exempt From All Deposit Broker Regulations:**

  - **Comment Letter # 35 - StoneCastle Cash Management**: "Rapid advances in technology are changing the landscape in every industry, and banking is no exception. The ability of consumers and businesses to use technology to gather information quickly, make choices and act upon them efficiently will only increase in the future. This evolution will impact the manner in which deposits are made as well as the traditional flow of deposits.

    In that light, we strongly believe that the mere existence of a third party involved in the process of a customer making a deposit at a bank, in and of itself, regardless of the role and nature of that entity, has generally led to the characterization of the resulting deposit as brokered. We believe that various developments in the industry provide compelling reasons for the FDIC to characterize certain deposits as non-brokered, even when a third party plays a role.

    We feel that the current rules that define deposits as core or brokered are too narrowly focused on the mere existence of a third party in the process of a deposit account being opened at a bank, rather than the specific attributes and quality of the deposit.

    In our view, deposits should not be considered inherently brokered simply because a third party is involved with the bank deposit process."

  - **Comment Letter # 39 - Oregon Bankers Association:** "The current rules and the FDIC's interpretations of those rules are broad in scope and coverage but narrow in potential exemptions. This framework makes it hard for banks, and community banks in particular, to take advantage of external resources to gather deposits and build new customer relationships. The current regime is a disadvantage for healthy banks to gather stable and diversified funding. It stifles their use of well-accepted technology and increases their regulatory costs. It also impedes bank innovation and limits customer access to banking options and conveniences."

  - **Comment Letter # 52 - Credit Karma**: "We also believe that the FDIC's broad definition of "brokered deposit" restricts community banks' ability to partner with firms like Credit Karma and compete with larger banks for consumer retail deposits.

    Over the past forty years, the introduction of new technology has caused the disintermediation of many types of financial services that, at one time, were provided to consumers almost exclusively by IDIs through brick-and-mortar offices. The practical effect of disintermediation has been to enable depository and non-depository organizations to offer unbundled financial services to the public. As a result, non-depository organizations have become dominant in several areas of consumer banking that once were the domain of IDIs.

    In a disintermediated business environment, IDIs, particularly smaller institutions, must often depend on business partners to provide the initial consumer contact or the operating platform to reach and serve consumers, yet the brokered deposit rule stands in the way of many such arrangements. The brokered deposit rule has been interpreted to apply even to minor or incidental assistance to depositors or IDIs when taking deposits. This interpretation has increased the cost to IDIs to accept deposits, as a result of higher deposit insurance assessments, higher liquidity requirements, more burdensome stress testing, and greater supervisory scrutiny of the IDI's growth plans. This financial and managerial price tag has discouraged IDIs from working with intermediaries to gather deposits, which in turn has decreased the

public's access to traditional deposits and often prevented consumers from receiving a fair return on their deposits."

- **Comment Letter # 53 - Farm Bureau Bank**: "Finally, Section 29 itself is narrowly crafted and shows that Congress did not intend every third party that assists a bank in any way with its deposit activities to be treated as a deposit broker. Under Section 29, a "deposit broker" is "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."

- **Comment Letter # 54 - Bank Policy Institute**: "As a result, the scope of deposits the FDIC has indicated are "brokered" has been significantly expanded beyond what Congress envisioned. Although this overly broad interpretation of the definition of "deposit broker" has long been a concern for banks, in recent years the issue has become increasingly acute. Specifically, because the FDIC's regulations and guidance have not kept pace with technological innovation, market developments and consumer preferences, there is a significant risk that a large amount of deposits that are in fact stable could be classified as brokered simply because technology and business practices have enabled banks to implement more efficient methodologies for sourcing these deposits. These methodologies include some involvement of a third party, but the primary business of the third party is not the placement of deposits and/or its compensation is not tied to the balance of deposits placed or the balance of deposits in a client's account. In most cases, it is the IDI (and not the third party) that maintains a direct banking relationship with the depositor.

  The consequence is that banks may forgo potential sources of stable deposit funding in order to avoid increasing the level of deposits they must report as brokered. This results in customers having fewer options for financial services and banks having less lending and earnings capacity. In addition, the lack of clarity has led to confusion and inconsistent treatment in the market regarding whether certain deposits are classified as brokered deposits."

- **Comment Letter # 58 – Live Oak**: "A combination of innovation and technology to reach customers and deliver financial products and services and the customer's evolving preferences to how they desire to conduct their personal and business activities, is not adequately considered in the existing deposit guidance. As services or offerings become more specialized, new partnerships and alliances are developing and the market is unclear how regulators will interpret those activities.

  Modernizing the regulations and regulatory interpretation regarding third party arrangements is needed to allow IDIs to leverage innovation. FinTech firms are quickly moving to develop new banking platforms and services to improve the customer experience. IDIs look to participate through partnering with these firms to provide the bank operations and oversight. Expanded services and product offerings through advanced technology will increase access to banking offerings, flexibility and convenience, and reduce the cost for customers while providing a better reach for Community Banks in particular, that do not have the same resources available as the larger IDIs. However, because current FDIC interpretation trends to any third-party intervention equates to a Brokered Deposit determination, these partnerships have become increasingly difficult to navigate. Although the primary purpose of such partnerships is clearly not the "placing of deposits or facilitating the placement of deposits of third parties", narrow interpretations regarding third-party involvement impede IDIs participation."

- **Comment Letter # 70 - Teachers Insurance and Annuity Association of America TIAA**: "Driven by technological change, banks now rely on third-party vendors in all aspects of their operations, including for deposit platforms and outsourced services. Few U.S. banks do not utilize FIS, Fiserve, or Jack Henry to provide and/or maintain their core deposit platform – in fact, these three service providers have over 71% of U.S. core banking market share as of Q1 2019.24 These and other vendors also provide call center

services, which have become more important as traditional branches decline. In a technical reading of Section 29, these third-party vendors 'facilitate' the taking of deposits, since deposits are placed in depository institutions through their services. While these vendors technically are in the business of facilitating the opening of banks' deposit accounts, they rightly have never been characterized by the FDIC as deposit brokers. Categorizing these vendors as deposit brokers would be irrational and would not comport with the legislative intent of Section 29. Therefore, TIAA believes that clearly articulating a vendor exception from the definition of deposit broker would be appropriate and would fit with a core principles-based approach to determining whether deposits should be treated as brokered or core."

- **Comment Letter # 79 - Midfirst Bank**: "More generally, the FDIC should not define the term "deposit broker" expansively to include conceivably any third party involved in the establishment of a deposit account for a customer, especially in light of the significant technological advances driving innovation in deposit products."

- **Comment Letter # 85 - California Bankers Association**: "In the 30 years since the enactment of Section 29, technology, business practices and banking products have evolved to the extent that Section 29's definition of "deposit broker," and the FDIC's excessively broad interpretation of the term, have become archaic and unworkable. The availability of convenient services demanded by today's customers is inhibited by the FDIC's analysis of what constitutes a "brokered deposit." The FDIC's approach limits an IDIs access to deposit funding solely because of the manner in which the customer first comes into contact with the bank, notwithstanding that a stable bank/customer relationship ensues. For instance, under the FDIC's interpretation, deposits that are created through referral programs, internet marketing, marketing through mobile channels, online banking, prepaid debit cards, and myriad other modern methods of creating customer relationships could be considered "brokered deposits" simply because a third party has taken an action that connects the IDI and the customer. Actually, these modern techniques, particularly solicitation through online banking platforms, represent highly cost-effective methods of deposit gathering."

- **Comment Letter # 86 - Consumer Banking Association**: "Often, the best way for a bank to provide customers with a seamless, integrated, and holistic banking experience is to partner with third parties and leverage affiliate relationships. However, because banks' technology driven platforms, products, marketing, and delivery channels are facilitated by third parties, it is increasingly difficult for financial institutions to provide customers with an online banking experience without exposure to brokered deposit rules. Accordingly, many banks today hold brokered deposits that are not risky "hot money" deposits, but nevertheless are captured by the FDIC's expansive definition and interpretation of brokered deposit activity.

  Considering the significant shift in consumer preference away from branch-based banking to online and mobile banking, the FDIC's brokered deposit rules should be revised to account for the resulting shift from core deposits to alternative funding sources as a significant source of stable funding. In particular, the FDIC should ensure that brokered deposit rules do not negatively affect banks that respond to consumer-driven changes to online and mobile products and delivery channels. If a customer uses technology to perform all of the affirmative steps he/she would in a branch, the transaction is akin to a customer depositing core deposits in a branch, meaning the transaction should not be treated as brokered simply because a third party technology platform "facilitates" the customer's placement of his/her deposits with the financial institution.

  Congress intended Section 29 to restrict troubled banks from holding significant amounts of high cost, risky deposits that were bundled by intermediaries. The current body of guidance on brokered deposits does not always clearly reflect the purpose of the statute. The FDIC should revise (or replace) its guidance to, among other updates, clarify that Section 29 does not discourage bank partnerships with third parties

for the purposes of marketing deposits products and services or limit the ability of banks in engage in the types of internet marketing, mobile, and internet-based partnerships that are part of contemporary business practices."

- **Comment Letter # 92 - US Bank**: "A third-party partner is not automatically "engaged in the business of" placing or facilitating the placement of deposits for purposes of being considered a deposit broker merely because a bank engaged it to assist the bank in connecting with potential customers, including those who are not currently utilizing the banking system. Third parties should not be classified as "engaged in the business" of a deposit broker simply because that third-party partner co-produces or assists in the distribution of materials describing banking services available to potential customers and how they can access those services, or partners with banks to deliver those services to customers. These actions are not focused on short-term deposit gathering and do not yield high-denomination, "hot money" deposits of the type Congress intended to address under Section 29. Rather, their focus is engaging with new customers in new ways to create a long-term and broad relationship that meets the needs and expectations of our customers.

  In the ordinary course of the business of banking, banks may also work with other third parties that are well-placed to help banks identify and reach unbanked or underbanked consumers to introduce them to deposit products. Banks engaging in various forms of customer outreach through marketing and referral arrangements to establish relationships with new customers should not need to evaluate every third party with even a tenuous connection to those efforts as a potential deposit broker-Congress did not intend to impede ordinary course customer outreach programs under Section 29."

- **Comment Letter # 97 - Green Dot:** "Our primary concern with the FDIC's current interpretation of what constitutes a "deposit broker" is that it seemingly hinges on the involvement of any third party (including affiliates or subsidiaries of the bank) in sourcing the customer relationship or servicing the customer. By taking such a view, the FDIC has significantly expanded the types of entities considered deposit brokers beyond what was originally contemplated when Section 29 was enacted. As a result, entities such as retailers, employers, technology platforms, advertising and marketing partners, and Fintech partners may currently be classified as deposit brokers, despite the fact that their activities may only be incidentally linked to a deposit account. In light of this, we request that the FDIC limit its determination of what constitutes a "deposit broker" to the narrow scope contemplated by Section 29."

- **Comment Letter # 98 - Middlesex**: "Section 29 lists nine specific exclusions to the definition of deposit broker. Perhaps the most important of those exclusions, and clearly the broadest of the exclusions, is for "an agent or nominee whose primary purpose is not the placement of funds with depository institutions."[7] Despite the breadth of this exclusion, the FDIC historically has applied it narrowly. This approach by the FDIC might have been appropriate many years ago, but in today's environment it unduly limits a depository institution's ability to work in collaboration with third party technology providers to expand the institution's product and service offerings. Technology today is transforming banking and the delivery of financial services beyond the capabilities of our traditional core providers. If community-based financial institutions like Middlesex Federal are to survive and prosper, they must have the ability to work closely with third party technology providers like Novo to meet the competitive challenges of trillion dollar financial institutions with in-house state-of-the-art technology capabilities.

  A depository institution clearly can offer its products and services electronically, including via the Internet. However, institutions wanting to take advantage of these technologies can be faced with the difficult choice of developing or purchasing the technology and incurring those costs, or contracting with technology and online platform providers and potentially incurring increased deposit insurance assessments if that provider's systems somehow make it easier for the institution to acquire deposits. Smaller depository institutions with limited resources, such as the Bank, might have no economically

viable choice other than to contract with a third party technology provider, putting the institution at a competitive disadvantage solely because of deposit insurance costs. The FDIC's current interpretations of the meaning of deposit broker and brokered deposit impede bank innovation and hinder banks' ability to leverage technology to obtain deposits.

We respectfully submit that the FDIC can and should interpret Section 29 so as to allow and encourage depository institutions to contract with third parties for technology services, Internet platform services, and account processing services, without those third parties automatically being treated as deposit brokers."

- **Comment Letter # 102 - Massachusetts Bankers Association:** "With the advent of mobile and digital technologies, community and regional banks in the United States have adapted their business models to remain competitive with the largest financial service companies in the world. The vast majority of MBA member banks offer online and mobile banking, online account opening and remote deposit capture. In the last 5 years, the emergence of fintech companies has further changed the industry landscape. As more and more banks work to partner with emerging technology providers and fintech companies (and in many instances, the most effective partnerships involve the sourcing of deposit accounts), innovation and safe growth could be hampered by the current rules governing brokered deposit relationships. MBA has member banks that have utilized digital tools and fintech relationships to drive deposit growth. If these deposits, which come into banks as bona-fide transactional accounts, continue to be classified as brokered, then the next framework will have not adapted to the modern economy."

- **Relationship Based Deposits & Transaction Account Deposits Should Be Exempt From Regulations:**

  - **<u>Comment Letter # 56 - Kansas Bankers Association</u>:** "We strongly urge the FDIC to modernize its definition of' 'brokered" deposits. As we commented with regard to the changes made for reciprocal deposit treatment, we believe that deposit account products involving a direct, continuing relationship between a customer and an insured depository institution should not be considered "brokered" deposits, even if an unaffiliated third-party is involved in the origination of the deposit. Customer relationships take time to build and for many, being able to place deposits in a local institution cements the relationship -and should be encouraged, not discouraged. Broadening the base helps the customer who wants to continue to do business with his or her local institution, while providing the bank the opportunity to use those dollars to lend back into the community."

  - **<u>Comment Letter # 68 – American Bankers Association</u>**: "Of equal importance is a recognition that certain deposits, such as those where the bank and the customer have a direct relationship, are by definition, not "brokered." Relationship deposits would include those generated from operating and other subsidiaries and affiliates of a bank, and other deposits involving a direct, continuing relationship between a customer and an insured depository institution. Empirical evidence suggests that these deposits are among the most stable,; because the FDIC's current interpretation of "deposit broker" hinges on the involvement of *any* third party, many deposits scoped into current interpretations are actually among the most stable funding sources. Penalizing these deposits is harmful both to banks and their customers.

    Additionally, deposits involving a direct, continuing relationship between a customer and an insured depository institution should be expressly excluded from consideration as "brokered," even if an unaffiliated third-party is involved in the origination of the deposit or maintains an ongoing relationship with the depositor independent of the deposit relationship. There is scant evidence that the relationship deposits gathered through the normal course of providing banking services through affiliates or marketing partners pose enhanced risk to safety and soundness or the deposit insurance fund. On the contrary, the FDIC, together with the other banking regulators, has recognized retail relationship deposits as among the most stable sources of funding through classifications made in rulemakings such as the liquidity coverage ratio and the net stable funding ratio.4 Yet, extant FDIC guidance has also caused many such retail deposits to be classified as "brokered" simply because there is a third party indirectly involved or involved only in sourcing the customer relationship with no ongoing involvement with respect to the deposits."

  - **<u>Comment Letter # 70 – Teachers Insurance and Annuity Association of America (TIAA)</u>**: "Banks operate differently in 2019 than they did in 1989 in ways that Congress did not and could not have anticipated. There are fewer banks, and those banks operate fewer branches. Technology has become ubiquitous, changing the way people interact with their financial institutions. Customers have multiple entry points into financial institutions, and many of those entry points are not themselves banks, although the distinction is often invisible to the customer. Today, deposits in banks often arise through these non-bank entry points, and they should not be treated as brokered unless they pose real risks to the Deposit Insurance Fund. The concept of "relationship" is being fundamentally altered by technology and changes to the regulatory landscape. Ease of doing business is a key competitive advantage and the ability to seamlessly provide financial advice has become a key means to deepen client relationships. While TIAA agrees with the FDIC's position that services such as bill pay and direct deposit deepen banking relationships, we also maintain that client connections through brokerage accounts, IRAs, consolidated web and mobile applications, and insurance products also increase client loyalty and deepen a client's overall relationship with a financial services organization. Moving brokerage accounts from firm to firm requires significant client effort, and similarly, the process for changing insurance carriers is far more complex than that involved in opening a CD with a new bank."

- **Comment Letter # 71 - Nebraska Bankers Association**: "In addition, deposits involving the direct, continuing relationship between a customer and an insured depository institution should be expressly excluded from being designated as brokered deposits."

- **Comment Letter # 84 Independent Community Bankers Association (ICBA)**: "Multi-service relationships where the depositor has another relationship with the bank should also rarely be considered a brokered deposit. Therefore, deposits (such as a checking or savings deposit, CD, MMA, etc.) associated with an individual customer who has another ongoing bona fide financial services relationship with the bank should not be considered to be a brokered deposit."

- **Comment Letter # 97 - Green Dot**: "We also believe that the FDIC should exempt deposits involving a direct, continuing relationship between a customer and an insured depository institution (regardless of how such deposits are generated) from the definition of "brokered deposits." We believe these deposits are inherently stable and pose little risk to the deposit insurance fund."

- **Comment Letter # 98 - Middlesex**: "Another approach would be to exclude all "relationship deposit accounts" from the definition of brokered deposit, defined as transactional deposit accounts where the depositor obtains at least one other banking service from the institution, such as a debit card, another deposit account, a loan, a bill payment service, automated clearing house services, or wire transfer services. This would be consistent with the regulatory recognition, as reflected in the LCR regulations, that such deposits are stable and do not present liquidity risks."

- **Comment Letter # 102 - Massachusetts Bankers Association:** "Finally, we reiterate that the modernization of brokered deposit rules will most effectively mitigate risks for our member banks by identifying the characteristics of deposits that the FDIC would no longer consider to be brokered moving forward. To that end, we would advocate that marketing arrangements or fintech partnerships that result in bona-fide transactional relationships for a bank and its depositors would not result in brokered deposit classification. We believe the original intent of brokered deposit rules was to identify accounts that had high potential to runoff for troubled financial institutions or provided no franchise value to the FDIC in case of a bank failure. Over time, the definition and classification has changed to a point where bona-fide relationship accounts created through technological advancement and innovation are impeded."

- **Comment Letter # 53 - Farm Bureau Bank**: "The FDIC and the other federal bank regulators recognize that deposits are more stable and present fewer liquidity concerns when the account is a transactional account or the depositor maintains multiple relationships with an institution.

  The Liquidity Coverage Ratio ("LCR") rules adopted in 2014 consider "stable retail deposits" to include retail deposits that are entirely covered by deposit insurance where "the depositor has another established relationship with a covered company, such that withdrawal of the deposit 19 would be unlikely." The LCR rules define "stable retail deposit" as "a retail deposit that is entirely covered by deposit insurance" and either (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 20 supervised institution] .... " The established relationship could be another deposit account, loan, bill payment service, or any other service provided to the depositor, so long as the bank can demonstrate that the relationship would make the withdrawal of the deposit "highly unlikely during a liquidity stress event."

- **Comment Letter # 81 - Discover Bank**: "To better align its brokered deposit regulations with the original intent and purpose of the statute, and the FDIC's own stated objectives, the FDIC should clarify that deposits placed directly by a retail customer into a "transactional" account (e.g., a checking account) and deposits placed by a customer who maintains more than one account with the bank, are not "brokered deposits." These types of accounts evidence a more committed customer relationship and are inherently

more stable. They also do not present any of the risks associated with "brokered deposits" that are identified by the FDIC in its advanced notice of proposed rulemaking. For example, such deposits are not of a nature that they can be gathered quickly to fuel rapid growth and they would very likely be viewed as "attractive to the purchasers of failed banks." The federal banking agencies have all publicly acknowledged that transactional and multiple-account relationships with retail customers are generally more stable than other types of deposit accounts. The FDIC has also separately acknowledged that such accounts add to a bank's franchise value and would thus be valuable to the purchaser of a failed institution.

It is entirely consistent with the plain text and expressed purposes of the statute for the FDIC to clarify that deposits placed by customers with more than one relationship with the bank are not "brokered." As noted above, the term "deposit broker" is defined in both the statute and the regulation to include persons, "engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions." It is reasonable for the FDIC to interpret the term "third parties" in this context as excluding a bank's existing customers. This is particularly true given the context in which the statutory restrictions were enacted when "deposit brokers" were used to acquire funding from out-of-market investors with no other connection to the bank. There is also a textual and policy basis to infer from the statute that transactional deposits placed directly by a consumer should be presumed not to have been "facilitated" by a deposit broker, absent unusual circumstances, given the interactive nature of the accounts and the manner in which customers select them. For instance, consumers are typically more selective in deciding where to open a transactional account and they generally are not motivated by higher yields."

- **<u>Comment Letter # 84 - ICBA</u>**: "In the area of transaction accounts including reward-based checking accounts, we have said that this is a source of stable funding and should rarely be considered brokered deposits. In contrast to certificates of deposit, where a depositor makes a fixed, often one-time, placement of funds at a bank, a traditional transaction account is usually the product of a direct and ongoing relationship between the bank and its depositor, involving deposits and withdrawals by the depositor to meet the depositor's transactional needs. As a result, most transactional account customers have a direct, ongoing relationship with the bank, and all deposits from these relationships result in consistent, stable funding for the bank. Furthermore, even where the depositor is introduced to a bank through the mediation of a deposit broker, subsequent deposits placed solely by the depositor through the use of their transactional accounts should not be deemed brokered where the deposit broker does not continue its mediation or placement of deposits."

- **<u>Comment Letter # 98 – Middlesex</u>**: "We also note that the Liquidity Coverage Ratio ("LCR") regulations adopted by the FDIC in 2014 consider "stable retail deposits" to include retail deposits that are entirely covered by deposit insurance if either (1) the deposit is held in a "transactional account" or (2) the "depositor that holds the account has another established relationship with the FDIC-supervised institution .... " The established relationship could be another deposit account, loan, bill payment service, or any other service provided to the depositor, so long as the bank can demonstrate that the relationship would make the withdrawal of the deposit "highly unlikely during a liquidity stress event."

- **Marketing Services, Technology Platforms & Activities Should Not Result In Brokered Deposits**

  - **Comment Letter # 32 - Bankrate**: "Deposit listing services serve a genuine need in the market. Consumers have a desire and a right to research depository institutions and depository products when deciding how to invest their money. Further, seventy-seven percent of American adults own smartphones and undoubtedly look to their phones and the internet for research and guidance in making investment decisions. Services like Bankrate allow consumers to quickly compare which depository institutions offer products and rates that are best for the consumer's needs while simultaneously providing an entry point for the consumer to connect with the institution. Further, such services allow consumers to see their financial picture holistically, and can present a depository institution or product that is specifically beneficial to the consumer based on the criteria provided by the consumer. In addition to benefitting consumers, deposit listing services provide an efficient and increasingly frictionless way for depository institutions to acquire customers, which in turn can lower operating costs and potentially lower the fees charged to customers."

  - **Comment Letter # 54 Bank Policy Institute**: "The FDIC notes in the ANPR that "in determining whether deposits placed through modern deposit placement arrangements are brokered, staff has looked to precedents involving the definition of 'deposit broker' and has attempted to consistently apply that analysis to these new products." Unfortunately, this analysis has the effect of extending a very problematic and limited view of marketing relationships and reducing banks' ability to take advantage of modern methods of marketing and partnering with third parties to identify potential long-term, stable deposit customers. The concept in the existing guidance that marketing must be passive and indirect to avoid resulting in brokered deposits is, of course, nowhere found in Section 29. Ultimately, this constrains customer access to banking services and unfairly penalizes IDIs that use digital marketing methods and other marketing channels to highlight their services to potential customers.

    Current technologies—including the Internet, mobile phones and social media—allow IDIs to reach new customers by marketing their products and services through the websites, applications, social media platforms and emails of marketing partners, advertisers and affinity groups. If the existing guidance is extended to deposits marketed using standard, current marketing methods, those deposits may be deemed brokered for three principal reasons:

    - Internet advertising is based on pricing models such as cost-per-acquisition, which allows an IDI to generate cost savings by focusing advertising on those individuals with demonstrated or reasonably expected interest in the IDI's products and services, or residing in a relevant geographic market. These pricing models have no impact on the stability of the deposits generated. For example, IDIs can leverage a social media platform's data analytics capability to target their advertisements to a particular customer segment that may be more responsive to an IDI's products. In the cost-per-acquisition model, however, the deposits associated with these marketing channels may result in fees that are dependent on the number of accounts opened by a customer or the volume of deposits that result from customers clicking through to the IDI's website or mobile application;

    - because the endorsement of the IDI is done through the marketer's or affinity group's website and/or email and by using the marketer's data or analytics, such endorsements may be viewed as "active" marketing, and, therefore as facilitating the placement of deposits; and

    - if the marketing will be hosted on a marketer's website, or distributed through a podcast or other platform controlled by the marketer, many marketers will often seek to have a view on the style, look or messaging of a particular marketing campaign to provide visual and thematic consistency across the marketer's platform. Under the FDIC's existing guidance, particularly FAQs question

B8, this could also be viewed as active, i.e., unacceptable, marketing because the third party may be involved in the production process of the IDI's marketing materials.

In these marketing arrangements, depositors establish and maintain their deposit relationships directly with the IDI. The third party is not involved in the deposit relationship other than to provide a marketing platform as described above, which represents marketing practices that have become standard in both the financial services industry and across the retail industry more generally. Nevertheless, for the reasons noted above, because of the FDIC's expansive guidance, many of these relationships could be viewed as resulting in brokered deposits.

Going to first principles, the notion that a third party's advertising a bank's selection of account and deposit offerings results in that third party being a deposit broker simply as a result of fees tied to whether or not a customer opens a deposit account—irrespective of the third party's overall business or its relationship with the bank or the potential bank customer—is misguided.

Moreover, such an interpretation of the definition of deposit broker would have the perverse effect of automatically capturing a third party website on which a bank advertises its deposit accounts in exchange for fees tied to the number of accounts opened if visitors to the website click through to the bank's website and open accounts, but with no possible exception available. Because web advertising models frequently are based on a cost-per-acquisition model, such fees arguably can be viewed as volume-based, particularly if, as is often the case, the website's or bank's analytics allow for measurement of whether the customer ultimately opens a deposit account. Considering the purpose of Section 29, this simply is not a reasonable construction of the statute.

An analysis resulting in a determination that the types of marketing and referral relationships described above result in brokered deposit treatment is based on guidance that cannot be applied to modern marketing methods. Under existing FDIC guidance, active marketing may not include selling advertising space at standard rates. In contrast, active marketing does include a third party placing posters and brochure racks relating to an IDI's deposit products in the third party's office or endorsing an IDI's products in a publication produced or distributed by the party providing the endorsement. It simply is not possible to apply these interpretations to modern marketing practices in a logical and consistent manner. For example:

- There may be no standard, flat rate that marketers charge for Internet advertising, but, as described above, one of the "standard rates" instead is arguably also a volume-based fee.

- Mobile and Internet-based marketing partners often require retaining some level of creative or other input on advertisements that they host on their platforms, but, based on existing guidance, IDIs cannot be sure if the FDIC will view this as the marketing partner "producing and distributing" The bank's promotional materials and, therefore, as facilitating the placement of deposits through "active marketing."

Moreover, the FDIC should not expand its guidance to classify deposits raised through such marketing efforts as brokered unless necessary to effectuate Congressional purpose.

Marketing partners of the kind described above are not engaged in the business of facilitating the placement of deposits, but as an incident to their actual business may advertise or endorse a variety of products to their members or the public. Any facilitation of the placement of deposits is merely incidental to their actual businesses. In other words, unlike the business of the archetypal deposit brokers that Section 29 was intended to capture, the business of marketing partners is not primarily to connect depositors with IDIs or to facilitate the placement of deposits, particularly the "hot money," above-

market-rate certificates of deposits that concerned Congress, and the selling of advertisement services to an IDI and/or distributing an IDI's marketing materials are activities that are merely incidental to the primary business of marketing partners. As a result, such marketing partners cannot reasonably be considered to be engaged in the business of placing or facilitating the placement of deposits, and, therefore, are not "deposit brokers" within the meaning of Section 29. For these, and other reasons discussed above, rather than attempt to apply its outdated guidance to modern marketing practices, the FDIC should clarify the application of Section 29 to these modern relationships.

The FDIC should exclude marketing and advertising partners (including affinity groups) that simply market deposits on behalf of, or otherwise refer potential customers to, IDIs from the definition of "deposit broker," regardless of the fee arrangement, unless such partners are, in fact, engaged in the business of either (1) placing or (2) facilitating the placement of deposits. The FDIC should similarly narrow its interpretation of "facilitating" to exclude marketing and referral partnerships that result in the customer entering into a banking relationship directly with the IDI."

- **Comment Letter # 67 – BBVA Compass**: "More examples of why current guidance is more broad than required by Section 29 and how the FDIC' s interpretations of marketing arrangements should be modernized to reflect changes in this area have been separately described to the FDIC. BBV A Compass will not discuss them in detail here, but we would like to emphasize the need for changes in the current regulatory guidance on this topic, and we are especially supportive of the approach advocated by BPI (Bank Policy Institute) that requests the FDIC (a) "exclude marketing and advertising partners (including affinity groups) that market deposits on behalf of, or otherwise refer potential customers to, ID Is from the definition of' deposit broker,' regardless of the fee arrangement, unless such partners are, in fact, engaged in the business of either (1) placing or (2) facilitating the placement of deposits" and (b) "similarly narrow its interpretation of 'facilitating' to exclude marketing and referral partnerships that result in the customer entering into a direct banking relationship with the IDI."

- **Comment Letter # 71 - Nebraska Bankers Association**: "Firms that provide normal course marketing arrangements and practices should not be considered deposit brokers. There is virtually no evidence that deposits gathered through marketing practices widely employed by businesses today pose enhanced risk either to individual banks or the deposit insurance fund. In light of the extensive use of these marketing arrangements by many US corporations, it is difficult to comprehend how the FDIC interprets them as facilitating the placement of deposits for banks."

- **Comment Letter # 81 - Discover Bank**: "Our recommendations below include several ways we believe the FDIC can adjust its brokered deposit regulation and related interpretations to more effectively meet its policy goals, better reflect the modem banking environment, and promote innovation. Specifically, Discover recommends that the FDIC make the following changes:

  - Narrow the interpretation of "deposit broker" in the context of digital marketing

    In establishing the contours of this very broad interpretation of the deposit broker definition, the FDIC has categorized the various forms of activities it believes constitute "facilitating" the placement of deposits, such as certain types of marketing, referral arrangements, third party endorsements, and deposit listing services, among others. Each of these categories has its own set off act-based criteria that must be assessed on a case-by-case basis in order to attempt to determine whether the FDIC would consider the third party to be a "deposit broker." The criteria are at times needlessly complex and typically do not address the underlying stability or quality of the resulting customer relationship. For example, the FDIC generally considers a deposit account to be brokered if it results from a marketing campaign that involves a third party who is compensated based on the volume of accounts or dollar amount of deposits that are derived from the campaign. This volume

based fee criterion does not consider the third party's actual conduct vis-a-vis the depositor (i.e., whether the third party is in fact *facilitating* the placement of another party's deposits), nor does it have a demonstrable correlation with the stability or quality of the resulting deposit account relationship.

Unlike in 1989, or even five or ten years ago, when proximity to a branch office typically determined where a consumer chose to open a bank account, today's consumer increasingly looks to digital channels such as mobile applications, personal finance websites, and social media platforms to shop for financial services. While deposits gathered outside of a bank's geographic branch network may have historically been correlated with less stable, more rate-sensitive behavior characteristics, an increasing number of banks now have the capability to meet their customers' needs without any physical branches at all. This trend includes a growing number of traditional banks that have launched or are planning to launch a digital-only banking platform. With the rise of digital banking, consumers today are less concerned about branch access and increasingly base choice-of-bank decisions on other factors such as the bank's reputation for customer service, the quality of its digital applications, the range of other products and services it offers, the existence of account features like peer-to-peer payments, mobile wallets and budgeting tools, and the rate of return the bank is offering in the form of interest and reward programs. As a result of these significant changes in the banking environment and consumer preferences, the policy underpinnings of what constitutes a "core" deposit has definitely shifted.

As consumers move more and more into digital spaces to shop for financial services, banks have also necessarily shifted their marketing approach to meet consumers where they shop. Unlike traditional marketing platforms such as print, radio, and television, digital marketing is significantly more interactive, which allows businesses to engage and build relations with consumers in ways that traditional marketing did not. For example, businesses today increasingly use tools like social media and marketing partnerships to help define and build awareness for their brand and to learn what consumers want in order to improve their services. Another important distinction is that the results of digital marketing are far easier to measure. This has altered the economics of marketing, leading to the creation of new metrics and entirely new fee structures such as cost-per-click (CPC), cost-per-thousand impressions (CPM), and cost-per-acquisition (CPA).

These new approaches provide banks and other online businesses with powerful tools to more effectively and efficiently allocate their marketing resources. However, when it comes to marketing *deposit* products, banks are often confronted with difficult questions about whether their preferred approach might trigger brokered deposit classification. For example, the use of a results-based fee structure, such as a CPA structure where the business only pays the website publisher if the consumer clicks through a banner advertisement and makes a purchase or opens an account, would raise questions about how the resulting deposits will be treated under the FDIC's rules. With CPA being one of the most common fee. structures in digital advertising today, this can have a significant chilling effect on the way banks are able to market and deliver their products in online environments.

To modernize its rules and address the above concerns, we recommend that the FDIC amend its regulation or issue interpretive guidance to more clearly distinguish between what it means to be "in the business of...facilitating" the placement of deposits and ordinary run-of-the mill marketing in the digital age. This could be achieved in several different ways but one simple approach would be to clarify that deposits placed by a consumer *directly* with a bank, using its normal account opening systems (e.g., the bank's website, mobile application, or phone process), would not be "brokered" regardless of how the consumer came to learn about the bank-be it, for example, after hearing a radio or television advertisement or by clicking on a banner advertisement on a third-

party's website. In such cases, the consumer is choosing to engage with the bank directly, without any intermediation or "facilitation" of a third-party. From the consumer's perspective, the account relationship is virtually indistinguishable.

Further, given the dynamics of modern digital marketing, merely hosting a bank's advertisement on a third party's website should not make the owner of that website a "deposit broker" even if the website owner is compensated based on the effectiveness of the advertisement, as is commonplace in today's environment. We are not aware of any data demonstrating that such a factor has any bearing on the quality or stability of the customer relationship that is established. In our experience there is not a meaningful difference in customer behavior or attrition rates based on marketing fee structures. For these reasons, we believe this change would permit the FDIC to meet its policy objectives while ensuring its rules do not serve as an impediment to banks being able to develop innovative methods to meet the banking needs of *all* consumers, including those that may not live near a traditional bank branch."

- **Comment Letter # 82 - Barclays**: "Volume-based compensation of advertisers should not deem the advertiser a "deposit broker." The FDIC should exclude advertisers that market deposits on behalf of, or otherwise refer potential customers to, IDIs from the definition of "deposit broker," regardless of the fee arrangement because such advertisers are not engaged in the business of either placing or facilitating the placement of deposits. The FDIC identifies three primary concerns as relevant to the restrictions on brokered deposits – rapid growth, volatility, and franchise value – none of these are implicated in volume-based advertiser compensation arrangements.

  Digital advertising is often based on volume pricing models such as cost-per-account, which ensures advertisers focus advertising on those individuals with demonstrated or reasonably expected interest in the IDI's products and services. The alternative to cost-per-account pricing is cost-per-click pricing. Cost-per-click pricing is not based on the volume of deposit accounts or balances obtained. While this method of advertiser compensation avoids conflicting with the FDIC's guidance, it does not incentivize efficient marketing placements because advertisers are incented to drive clicks as opposed to new accounts. We estimate that inefficiency increases costs to the institution by as much as thirty percent. As the advertiser is not involved in any way in the deposit relationship other than to provide a marketing platform and depositors establish and maintain direct relationships with the IDI, the method of compensation should not deem an advertiser a "deposit broker."

- **Comment Letter # 92 - US Bank:**

  "C. The FDIC's approach to marketing relationships should be revised to permit banks to partner with third parties to connect customers with access to traditional and innovative banking services without the risk of any resulting deposits being classified as "brokered."

  The FDIC's historic view of how banks use marketing relationships with third parties potentially limits the ability of consumers to obtain information about banking services and products by classifying deposits indirectly resulting from third-party marketing efforts as brokered. Nothing in the statute dictates this approach to (or even suggests a Congressional intent to curtail) banking partnerships with third parties and potentially limits the ability of banks in engage in the types internet marketing, mobile, and internet-based partnerships which are part of contemporary business practices. These bank partnerships with third parties to reach potential customers do not result in "brokered and high-rate deposits [that are] volatile because deposit brokers (on behalf of customers), or the customers themselves, were drawn to high rates and were prone to leave the bank when they found a better rate ... " Rather, these relationships reflect a strategy to amplify engagement in core and new markets with an enhanced portfolio of digital products and existing services and to build and deepen customer relationships. The FDIC's advisory opinions and the FAQs based on those opinions should be reviewed in this light and replaced by a revised regulatory

framework centered around the narrow Congressional intent behind Section 29. This review should consider the modern business of banking, contemporary and future customer demands, as well as the safe and sound yet innovative banking practices that have evolved in response to those demands."

- **Comment Letter # 94 - Goldman Sachs:**

  "I. Marketing and Referral Arrangements

  a. Standard Marketing Arrangements Should Not Trigger Brokered Treatment Deposits acquired through standard digital marketing activities that are identified as marketing or advertising should not be considered brokered. The FDIC's current interpretative guidance significantly constrains the ability of banks to employ these digital marketing channels, including, for example, marketing through affinity groups or other third parties. In its 2011 Study on Core Deposits and Brokered Deposits (the "Deposits Study"), the FDIC noted that "the most important factor used by the FDIC to determine when a particular affinity group is "facilitating the placement of deposits"...has been whether the affinity group is engaged in active marketing on behalf of the bank." Similarly, the FDIC has suggested that any involvement by a third party in the development and distribution of content will be construed as "active marketing." Digital marketing channels, including podcasts, blogs and social media, are the modern equivalent of an advertisement in the morning newspaper. The FDIC's historical guidance on marketing activities should evolve as the nature of marketing evolves. We therefore recommend that Brokered Deposits Rules clarify the usage of standard marketing practices, including the use of digital marketing channels, will not trigger brokered deposit treatment.

  b. Referrals from and/or Cooperation with Technology Platforms Should Not Trigger Brokered Treatment New innovations in technology and business practices, such as the advent of personal financial management tools ("PFMs") for budgeting and account management, have transformed the financial services landscape, resulting in increased transparency and convenience for consumers. The FDIC has taken the view that third party affinity groups should "not know which members have made deposits with the Bank, nor....keep any records of the amounts, rates or maturities of the deposits." This guidance effectively prevents banks from engaging with PFM providers that prioritize a seamless interaction for customers seeking to open, link and view accounts from an integrated platform. to improve customer access to comprehensive financial platforms. A bank's cooperation with third parties, such as PFMs, does not undermine the relationship with the bank and its customer. It solely enables customers to manage their finances through their preferred platform. Therefore, we recommend that the FDIC clarify that arrangements between banks and third parties, such as PFMs, where the customer contracts with and maintains a direct relationship with its bank will not result in brokered deposit treatment."

- **Comment Letter # 98 - Middlesex**: "One possible approach would be to exclude from the definition of deposit broker any provider of technology, Internet platform, or account processing services (collectively "Technology Services") so long as (1) the depository institution is authorized by applicable law to provide such Technology Services directly, (2) the provider does not receive deposits on behalf of the depository institution, (3) the deposit accounts obtained through the Technology Services are only individual transactional deposit accounts (defined below), (4) the interest rate paid on such deposits is reasonably equivalent to or less than the average rate paid by the institution on all of its similar accounts, and (5) the depository institution enters into deposit account contracts with each resulting deposit customer. For these purposes, "individual transactional deposit account" would include a transactional deposit account offered on an individual basis directly to the depositor rather than a bulk or wholesale deposit in which the third party acquires a large deposit and sells or otherwise distributes pieces of that large deposit to multiple depositors."