April 10, 2020

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: SIFMA Comment on Proposal Revising Brokered Deposits Restrictions (RIN 3064-AE94)

Dear Sirs and Madams:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the proposal by the Federal Deposit Insurance Corporation (the "FDIC") to revise its regulations implementing section 29 of the Federal Deposit Insurance Act ("FDI Act"), which imposes restrictions on the ability of insured depository institutions ("IDIs") to accept brokered deposits, and defines the scope of products and parties that constitute brokered deposits and deposit brokers, respectively (the "Proposal").[2]

SIFMA supports the FDIC's efforts to modernize its regulatory framework for brokered deposits by providing greater clarity and certainty regarding the types of products that constitute brokered deposits. Consistent with SIFMA's membership and organizational focus, our comments in this this letter are focused on the Proposal's application to securities broker-dealers and their brokerage customers. Broker-dealers frequently offer their customers products that involve the placement of deposits at IDIs, such as brokerage accounts that "sweep" customers' uninvested cash balances into deposit accounts at an IDI. These arrangements reduce the level of risk in the customer's portfolio, and also reduce risk to IDIs by providing an additional source of funding that is qualitatively safer and more stable than the types of "hot money" deposits that Congress intended to address with section 29 of the FDI Act. When deposits from brokerage customers are deemed to be brokered deposits under the FDIC's regulations, however, IDIs may be limited in their ability to accept these funds, or may pay lower rates of interest to compensate for higher deposit insurance assessments, which in turn may reduce the customer's return, undercut a

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[1] SIFMA is the leading trade association for broker-dealers, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

[2] 85 Fed. Reg. 7,453 (Feb. 10, 2020). The Proposal follows an advance notice of proposed rulemaking and request for comment published in February 2019 (the "ANPR"). *See* 84 Fed. Reg. 2,366 (Feb. 6, 2019).

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stable source of deposit funding for IDIs, and discourage the allocation of excess customer cash to insured deposits, which are risk-free assets.

In this letter, we offer a range of concrete suggestions to revise the Proposal so as to avoid these harmful and unwarranted results, including recommendations that the FDIC:

1. Adopt a categorical exclusion from deposit broker treatment for broker-dealer affiliates of an IDI, such that IDI affiliates are not required to submit an application to rely on the primary purpose exception.

2. Clarify the meaning of the terms "business line" and "customer assets under management" to reflect the range of broker-dealer business activities and structures, and the realities of how broker-dealers manage their businesses.

3. If broker-dealer affiliates of an IDI are not categorically exempted from deposit broker treatment, allow IDIs to continue to rely on existing firm-specific written determinations by the FDIC that particular arrangements do not constitute deposit brokering, and permanently amend those determinations to incorporate an increase in the existing 10 percent permissible ratio limit to the new 25 percent limit.

4. Codify, or at least confirm the continued applicability of, public guidance from the FDIC providing that particular arrangements do not constitute depository brokering, particularly Advisory Opinion 94-39, which addresses Securities Exchange Act Rule 15c3-3(e) accounts.

5. Provide that an intermediary between an IDI and a third party placing deposits is not "facilitating the placement of deposits" if the third party is itself not a deposit broker and would not be a deposit broker if performing the intermediary's activities directly – even if the intermediary acts in a capacity that is not "purely administrative."

This letter describes and explains the need for each of these changes in turn.

I. The final rule should categorically exclude broker-dealer affiliates of an IDI from deposit broker treatment.

The Proposal would make no distinction between deposit placement by an IDI affiliate and deposit placement by an unaffiliated third party, except in the context of certain wholly-owned subsidiaries of an IDI. Instead, the Proposal would adopt a process by which all IDIs and third parties placing deposits at IDIs, regardless of affiliate status, could apply to the FDIC for a determination that the primary purpose exception to the deposit broker definition applies to that third party. While we appreciate the Proposal's recognition that the primary purpose exception should cover certain broker-dealer placement activities

(subject to the application process), the final rule should not require an application from broker-dealers that are affiliates of an IDI, for at least three reasons.[3]

A. Affiliate-sourced deposits are inherently a more stable source of funding than non-affiliate-sourced deposits.

In its supervision of an IDI's liquidity and funds management, the FDIC generally distinguishes between core deposits and brokered deposits. Core deposits are described as "stable, lower-cost funding sources that typically lag behind other funding sources in repricing during a period of rising interest rates."[4] The relative stability of core deposits arises from the fact that core deposits "are typically funds of local customers that also have a borrowing or other relationship with the institution," as well as such factors as convenient branch locations, superior customer service, extensive ATM networks, and low- or no-fee accounts.[5] By contrast, according to the FDIC, deposits from listing services and other high-rate deposit brokers (which are one source of wholesale funds) are a "less stable source of funding than customers with typical deposit relationships."[6] This is because such deposit brokers and their customers are focused on maximizing yield, and thus "if more attractive returns become available, these customers may rapidly transfer funds to new institutions or investments."[7]

As a conceptual matter, affiliate-sourced deposits are clearly akin to core deposits rather than brokered deposits. Affiliate-sourced deposit customers have an existing "borrowing or other relationship" with one or more of the IDI's broker-dealer affiliates, which collectively offer a suite of financial products and services to customers as component parts of an integrated financial firm. Such customers are inherently less likely to "rapidly transfer funds to new institutions or investments" due to the customers' interconnected relationships with the IDI and its affiliates. Further, the deposit customer has elected to place funds with the IDI due to brand loyalty, convenience, or other factors unrelated to maximizing yield.[8] Additionally, to the extent the affiliate has discretion over the placement of the customer's deposits, the affiliate may have less of an incentive to withdraw those deposits from the IDI.

The FDIC itself has recognized that "[i]n all, sweep deposits from [broker-dealer] affiliates appear to pose fewer problems compared to brokered deposits in general," and that such deposits "are not rate

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[3] Although our comments focus specifically on broker-dealer affiliates of IDIs, these considerations apply more broadly to all IDI affiliates, including non-broker-dealer affiliates.

[4] FDIC, Risk Manual of Examination Policies § 6.1–8.

[5] *Id.* at § 6.1–9.

[6] *Id.* at § 6.1–10.

[7] *Id.*

[8] The FDIC has recognized the relative stability of affiliate-sourced deposits over non-affiliate-sourced deposits in guidance such as Advisory Opinion 05-02 (Feb. 3, 2005), which determined that a broker-dealer sweeping cash balances of retirement account customers into deposit accounts at affiliated IDIs met the primary purpose exception, subject to certain conditions.

responsive" and "may not leave when a bank is under stress."[9] These findings are consistent with institution-specific data that SIFMA members have previously provided to the FDIC.[10]

The FDIC has recognized the relative stability of deposits from broker-dealer affiliates in several contexts, including in the Liquidity Coverage Ratio ("LCR") framework, which provides a lower outflow rate for sweeps from affiliates than sweeps from non-affiliates.[11] And when proposing the Net Stable Funding Ratio ("NSFR") in 2016, the FDIC, together with the Federal Reserve and the OCC, stated:

> A typical brokered sweep deposit arrangement places deposits, usually those in excess of deposit insurance caps, at different banking organizations, with each banking organization receiving the maximum amount that is covered by deposit insurance, according to a priority "waterfall." Within the waterfall structure, affiliates of the deposit broker tend to be the first to receive deposits and the last from which deposits are withdrawn. ***With this affiliate relationship, a covered company is more likely to receive and maintain a steady stream of brokered sweep deposits.*** Based on the reliability of this stream of brokered sweep deposits and the enhanced stability associated with full deposit insurance coverage, the proposed rule would treat this type of brokered deposit, in the aggregate, as more stable than brokered sweep deposits received from unaffiliated institutions.[12]

The agencies' reasoning with respect to brokered sweeps applies with equal force to non-sweep deposit placement activities by affiliated broker-dealers.

B. The text of the Federal Deposit Insurance Act strongly supports the exclusion of broker-dealers from deposit broker treatment.

The primary statutory definition of "deposit broker" is "any person engaged in the business of placing deposits . . . with third parties."[13] The placement of deposits at an IDI plainly is not the *business* of a broker-dealer (whether or not it is affiliated with the IDI). Rather, the business of a broker-dealer is to purchase and sell securities on behalf of customers. The broker-dealer may sweep uninvested customer funds into deposit accounts, or otherwise place customer deposits, at an IDI as an activity incidental to its business, but such incidental activity should not transform the broker-dealer into a deposit broker.

Even if the broker-dealer is viewed as engaged in part in the business of placing deposits, the primary purpose exception clearly applies. In the case of a broker-dealer sweep program, the primary purpose of the arrangement is not the placement of funds with the IDI. Rather, as the FDIC has concluded

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9 FDIC, *Study on Core Deposits and Brokered Deposits* (July 8, 2011) at 55.

10 *E.g.*, Charles Schwab, Liquidity Coverage Ratio: Risk Measurement, Standards, and Monitoring at Appendix A (Jan. 31, 2014) (showing that investor cash balances remained stable and strong during the financial crisis and beyond).

11 *See* 12 C.F.R. §§ 329.32(g)(7), (g)(8), & (g)(9).

12 81 Fed. Reg. 35,124, 35,137 (Jun. 1, 2016) (emphasis added).

13 12 U.S.C. § 1831f(g)(1)(A).

previously, the primary purpose of the arrangement is to facilitate the customers' purchase and sale of securities, including by maintaining uninvested balances in a transaction account from which securities purchases and dividend payments can be funded.[14] Thus, a plain reading of the statutory text supports the exclusion of broker-dealers, the incidental activities of which may include the placing of funds at an IDI to facilitate that business, from deposit broker treatment.

C. The legislative history of the statute supports the exclusion of broker-dealer affiliates of an IDI from deposit broker treatment.

Senator Frank H. Murkowski, one of the authors of the amendment to the Financial Institutions Reform, Recovery, and Enforcement Act that would become section 29 of the FDI Act, repeatedly described the amendment as a "narrowly drawn" provision intended to target "the most flagrant abusers"[15] – troubled institutions that accepted funds from "hot money" brokers as a source of emergency liquidity. This situation is far from that of a broker-dealer that places funds at an IDI as an incidental activity and for the convenience of customers, particularly where the IDI is an affiliate of the broker-dealer.

For each of these reasons, the FDIC should adopt a categorical exclusion from deposit broker treatment for affiliates of an IDI. Such IDI affiliates should not need to apply to the FDIC for a determination under the primary purpose exception, and should not need to satisfy the proposed 25 percent test under the primary purpose exemption.

At the very least, IDI affiliates that satisfy the 25 percent test should not be required to submit an application, but to the extent that the FDIC believed it necessary to collect data on the scope of such arrangements, we would not object to a requirement that such an IDI or its affiliated broker-dealer must submit a *notice* to the FDIC providing the name of the affiliate. To that end, if the final rule were to include more clarity regarding the application of the 25 percent test (as we suggest below), there would be less need for the FDIC to review applications from affiliated broker-dealers.

D. Affiliate-sourced deposits should be subject to similar treatment under the LCR, NSFR, and G-SIB surcharge rules.

For the same three reasons outlined above, affiliate-sourced deposits should also be treated as non-brokered under the regulations governing the LCR and NSFR. SIFMA has raised this issue in a prior comment letter to the FDIC and the other federal banking agencies.[16] Similarly, SIFMA supports aligning the treatment of affiliated-sourced deposits that are non-brokered to the Federal Reserve's capital surcharge for U.S. global systemically important bank holding companies.

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[14] *See* Advisory Opinion 05-02 (Feb. 3, 2005).

[15] *Insured Brokered Deposits and Federal Depository Institutions: Hearing Before the Subcomm. on Gen. Oversight & Investigations of the Comm. on Banking, Fin. & Urban Affairs*, 101st Cong. 9–10, 74 (May 17, 1989) (testimony and prepared statement of Sen. Frank H. Murkowski).

[16] *See* SIFMA, Comment on Liquidity Standards for Large Banking Organizations at 17 (June 21, 2019), available at https://www.sifma.org/resources/submissions/liquidity-standards-for-large-banking-organizations/.

II. The final rule should clarify the application of the 25 percent test under the primary purpose exception with respect to broker-dealers.

For purposes of the primary purpose exception, the Proposal would adopt a presumption that a third party is not a deposit broker where the party places less than 25 percent of its total customer assets under management, for a particular business line, at IDIs (the "25 percent test"). The Proposal would not define the key terms "customer assets under management" or "business line." The final rule should clarify the application of the 25 percent test to broker-dealers, as follows:

- ***Use of the Term "Customer Assets Under Management."*** The term "customer assets under management" itself may be confusingly similar to "assets under management," which is a term of art under U.S. securities laws. For example, the term could be read to suggest that the 25 percent test is only available to third parties that are broker-dealers or investment managers regulated under federal securities laws, and to exclude assets held in a custodial or fiduciary capacity. The final rule should use a term that is more general, such as "customer assets under custody and/or administration."

- ***Definition of "Customer Assets Under Custody and/or Administration."*** The preamble to the Proposal states that "customer assets under management" would include "the total market value of all financial assets (including cash balances) that the [third party] manages on behalf of its customers that participate in a particular business line."[17] The preamble's definition appears to be consistent with a broader understanding of the term "assets under management" and similar terms used in regulatory reporting that encompass assets managed by the third party, as well as assets it holds in a custodial or fiduciary capacity.[18] The FDIC should confirm that these well-established definitions apply, as well as codify those definitions in the final rule text as safe harbors to the general standard discussed in the preamble.

- ***Meaning of "Business Line" in the Context of Brokerage Accounts.*** For the reasons described above, we recommend that broker-dealer affiliates of an IDI should be categorically excluded from deposit broker treatment under the primary purpose exception, without the need to apply for a waiver. However, if the FDIC does not grant such a categorical exclusion, the 25 percent test should be clarified to reduce the need for broker-dealers to submit multiple, duplicative waiver applications to the FDIC. For example, the final rule should provide that all deposit placement activity that is incidental to a securities brokerage business constitutes one business line for this purpose.

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[17] *See* 85 Fed. Reg. at 7,459.

[18] *See, e.g.,* Instructions for Preparation of Banking Organization Systemic Risk Report (Reporting Form FR Y-15), Glossary at 35, https://www.federalreserve.gov/reportforms/forms/FR_Y-1520191231_i.pdf (defining "assets under management," "assets under administration" and "assets under custody"); SEC Form Custody at Item 3.A, https://www.sec.gov/files/formcustody.pdf (requiring reports of broker-dealers that "carry securities accounts . . . for customers"); Instructions for Preparation of Consolidated Reports of Condition and Income (FFIEC 031 and FFIEC 041) at 596, https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201912_i.pdf (describing "custody and safekeeping accounts").

At the very least, the final rule should codify a definition of "business line" that facilitates a more straightforward implementation of the 25 percent test with respect to broker-dealers. The preamble to the Proposal provides one specific example of what constitutes a "business line" in the context of brokerage accounts -- specifically, it notes that brokerage accounts offered by a third party to customers that have a cash sweep option would be considered one business line, but that business line would not include brokerage accounts that do not have a cash sweep option, or accounts in which customers are only able to place funds at IDIs (and not invest in other types of assets).[19] We recommend that the final rule codify this language from the preamble to the Proposal, subject to two clarifications. First, a business line for this purpose should exclude only those accounts in which customers are not *eligible* for a cash sweep, not accounts in which eligible customers have *elected* not to use the sweep. As a practical matter, broker-dealers manage accounts in which customers do not use a cash sweep as part of the same business line as accounts in which customers elect to use the sweep, and the final rule should reflect this reality. Second, a business line for this purpose should expressly include brokerage accounts opened by employees of the IDI on behalf of the broker-dealer affiliate.

III. If broker-dealer affiliates of an IDI are not categorically excluded from deposit broker treatment, then the final rule should expressly provide that IDIs may continue to rely on existing firm-specific written determinations from the FDIC that a particular arrangement does not constitute deposit brokering, without need to apply for and obtain a new determination, and permanently amend those determinations to incorporate an increase in the existing 10 percent permissible ratio limit to the new 25 percent limit.

Many IDIs have obtained individual written determinations from the FDIC that a particular arrangement with third parties (including affiliated broker-dealers) does not constitute deposit brokering under the primary purpose exception. The Proposal does not state whether these determinations would remain in force; however, retaining these determinations would be helpful, particularly if the final rule does not adopt a categorical exclusion from deposit broker treatment for IDI affiliates. In that case, the final rule should provide that IDIs and third parties may continue to rely on existing firm-specific determinations, unless (i) the FDIC specifically rescinds the firm-specific determination, or (ii) the IDI or third party chooses to reapply under the Proposal's waiver process to seek a modification of the conditions imposed in the firm-specific determination and is granted such a waiver. Further, the final rule should provide that these firm-specific determinations remain valid *as amended to incorporate the Proposal's 25 percent test*.

The FDIC granted the existing firm-specific determinations after thorough consideration of a particular set of facts, in a process similar to the application process for determinations under the primary purpose exception laid out in the Proposal. To require the IDI and/or third party to seek a new determination under Proposal's application process would be duplicative and burdensome for the IDI, the third party, and the FDIC, and contrary to the principles of the Paperwork Reduction Act.[20] In addition, IDIs and third

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[19] 85 Fed. Reg. at 7,461. Separately, the Proposal provides that brokered CDs would be treated as a separate business line that is not eligible for the primary purpose exception.

[20] *See* 44 U.S.C. § 3508 (requiring a collection of information to be "necessary for the proper performance of the functions of the agency" and to "have practical utility").

parties may have relied for a considerable amount of time on these firm-specific determinations; requiring such IDIs and third parties to reapply under the Proposal's application process would be harmful to the reliance interests of those IDIs and third parties if the FDIC were to reach a different conclusion regarding the particular deposit arrangement.

In addition to providing that existing firm-specific determinations remain valid, the final rule should also effectively amend all existing firm-specific determinations to allow IDIs and third parties to take advantage of the Proposal's 25 percent test. We note that in an FDIC staff opinion of general applicability, Advisory Opinion 20-01, the FDIC recently increased the permissible ratio from 10 percent to 25 percent on a temporary basis.[21] The final rule should make this increase permanent so as to keep IDIs and their broker-dealer affiliates with existing firm-specific determinations on equal footing with IDIs and broker-dealers that apply for a new waiver under the final rule's application process.

The final rule should therefore expressly provide that IDIs and third parties may continue to rely on existing firm-specific determinations, as amended by Advisory Opinion 20-01 (which should be made permanent), unless specifically rescinded by the FDIC, or unless the IDI or third party chooses to reapply under the application process to seek a modification of the conditions imposed in the existing firm-specific determination.

IV. The final rule should codify public guidance from the FDIC providing that a particular arrangement does not constitute deposit brokering, including Advisory Opinion 94-39, or at least clarify that such guidance will remain in effect.

The preamble to the Proposal indicates that, as part of the rulemaking process, the FDIC is evaluating existing staff advisory opinions, and will codify or rescind staff opinions of general applicability as appropriate.[22] Question 11 of the Proposal asks whether there are particular FDIC staff opinions of general applicability that should or should not be codified as part of the final rule. While SIFMA supports the continued applicability of all of the FDIC's public guidance finding that a party is not a deposit broker,[23] it is particularly important that the FDIC codify Advisory Opinion 94-39 into regulation, or at least allow Advisory Opinion 94-39 to remain in effect as written today. Such public guidance could be particularly helpful while applicants wait for their waiver applications under the primary purpose exception to be granted.

In Advisory Opinion 94-39, the FDIC staff considered whether registered broker-dealers that place customer funds in a Special Reserve Bank Account for the Exclusive Benefit of Customers ("Customer Reserve Account") at an IDI as required pursuant to Securities Exchange Act Rule 15c3-3(e) are deposit

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[21] *See* Advisory Opinion 20-01 (Mar. 19, 2020) (temporarily increasing the permissible ratio contemplated in Advisory Opinion 05-02).

[22] *See* 85 Fed. Reg. at 7,460.

[23] *E.g.*, *Frequently Asked Questions on Identifying, Accepting and Reporting Brokered Deposits*, Financial Institution Letter No. 42-2016 (Jun. 30, 2016) at E3 (providing that "dual-hatted" employees employed exclusively by an IDI may not be deposit brokers).

brokers. The advisory opinion concludes that the placing of funds in a Customer Reserve Account does not constitute deposit brokering under the primary purpose exception because "[t]he funds are placed in the depository institution for a substantial purpose other than to gain deposit insurance coverage," namely, "to satisfy the mandate of Rule 15c3-3(e)."[24]

Advisory Opinion 94-39 remains relevant and applicable. Rule 15c3-3(e) remains in force, and the advisory opinion's rationale for exempting Customer Reserve Accounts from brokered deposit treatment remains valid. The FDIC should therefore codify into regulation the advisory opinion's bright-line exclusion of Customer Reserve Accounts. Codifying this exclusion would prevent broker-dealers from having to seek a new FDIC determination under the Proposal's application process. Without this exclusion, every broker-dealer subject to Rule 15c3-3(e) would need to prepare an application, and the FDIC would need to review and act on numerous, substantially similar applications, each of which will explain that the broker-dealer has established the relationship with the IDI to satisfy the legal requirements of Rule 15c3-3(e) rather than to gain deposit insurance coverage. A regulatory exclusion would preempt this waste of resources. Consistent with Advisory Opinion 94-39, the regulatory exclusion could clarify that compliance with each of the elements of Rule 15c3-3(e) (including its documentation requirements) would be required in order for a broker-dealer or IDI to rely on the exclusion, but that no application or notice to the FDIC is required. At a minimum, however, Advisory Opinion 94-39 should remain in effect and not be rescinded.

V. The final rule should provide that an intermediary between an IDI and a third party placing deposits is not "facilitating the placement of deposits" if the third party is itself not a deposit broker.

The Proposal provides that the "facilitation" prong of the deposit broker definition would include persons acting, directly or indirectly, with respect to the placement of deposits, as an intermediary between a third party that is placing deposits on behalf of a depositor and an IDI.[25] The preamble to the Proposal notes that the intermediary would be facilitating the placement of deposits *even if* the third party were itself not a deposit broker under the primary purpose exception.[26] The only exception would be if the intermediary acts in a "purely administrative capacity."[27] The Proposal's framework for classifying intermediaries as deposit brokers is unduly restrictive, and the final rule should provide that if the third party itself is not a deposit broker, and would not be a deposit broker if performing the activities of the intermediary directly, then the intermediary also is not a deposit broker.

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[24] FDIC Advisory Opinion 94-39 (Aug. 17, 1994).

[25] SIFMA supports comments by other industry groups arguing that the information-sharing component of the proposed facilitation prong of the Proposal, which could capture some of a the activities of a broker-dealer with respect to an IDI affiliate, is overly broad.

[26] *See* 85 Fed. Reg. 7,457 ("For example, if an agent or nominee that meets the primary purpose exception uses an intermediary (in a manner that is not purely administrative) in placing, or facilitating the placement of, deposits, then the intermediary would be a deposit broker, and the resulting deposits would be brokered.").

[27] *See id.* Purely administrative functions would include providing reporting or bookkeeping assistance to the third party, but would not include assisting in decision-making or steering deposits. *Id.*

Broker-dealers frequently engage service providers to assist them in managing their sweeps programs or other, non-sweep deposit-placement products. Broker-dealers may engage such service providers for any number of reasons, including that the broker-dealer lacks the required technological capabilities to manage its sweep program in-house. In the case of broker-dealers that are not a deposit brokers under the primary purpose exception, the Proposal could create an unjustifiable disparity in treatment between a broker-dealer that manages its own sweep program and a broker-dealer that outsources aspects of management of its sweep program to an intermediary. There is no clear reason why the Proposal should penalize the outsourcing of certain activities that would otherwise be permissible if conducted directly by a broker-dealer.

In addition to this potential disparity, the preamble's stated rationale for the Proposal's treatment of intermediaries does not justify the treatment. The preamble to the Proposal indicates that the facilitation prong is generally intended to capture persons with a "level of control or influence" over the deposit arrangement; in particular, the FDIC fears that intermediaries may be able "to directly or indirectly control or influence the movement of funds between insured depository institutions without any involvement or input from the underlying depositor."[28] This fear is unwarranted. The intermediary acts as agent of the third party; thus, to the extent the intermediary has any level of control or influence over the movement of funds, it only does so because the third party has delegated such authority to it. In all cases, the intermediary-agent remains subject to the third party-principal's control. It follows that if the third party is not a deposit broker (under the primary purpose exception or another exception), the intermediary also should not be a deposit broker.

The final rule should therefore provide that an intermediary is not facilitating the placement of deposits if it is (i) acting as agent of a third party that is exempt from the deposit broker definition, and (ii) the third party would not be a deposit broker if performing the activity of the intermediary directly.

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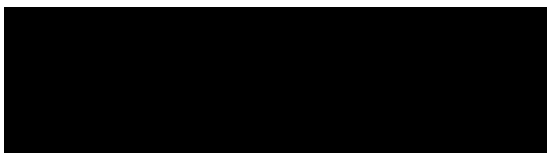
We appreciate the FDIC's consideration of our concerns. If you have any questions, please contact the undersigned at (202) 962-7327 or cmcdowell@sifma.org.

Respectfully submitted,



Carter McDowell
Managing Director and Associate General Counsel

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[28] *See* 85 Fed. Reg. at 7,457–58.