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

Dear Executive Secretary Feldman,

With a 33-year history of supporting and encouraging innovation in the banking industry, QwickRate appreciates the opportunity to comment on the proposed rule intended to modernize FDIC's brokered deposit regulations. The QwickRate deposit listing service was among the first to provide innovative technologies that allowed banks a different avenue for directly interacting with their customers. Today QwickRate continues to provide this valuable non-brokered funding resource for community banks.

The FDIC has a long-standing practice of distinguishing the differences between providing information about deposit accounts and facilitating the placement of deposits. The regulatory framework proposed on February 10, 2020 makes it clear that the FDIC intends to uphold these distinctions. As stated in the FDIC's own commentary to the proposed rule, the facilitation definition is intended to "capture activities that indicate that the person takes an active role in the opening of an account or maintains a level of influence or control over the deposit account even after the account is opened".

For over 30 years deposit listing services have offered a consistent and reliable alternative to community banks who wish to expand their deposit generating capabilities outside of their local market area. From its earliest interpretations of the FDI Act Section 29, the FDIC has consistently maintained, "Where the only function of a deposit listing service is to provide information on the availability and terms of accounts, we believe that the listing service is not facilitating the placement of deposits. Rather it facilitates the decision of the would-be buyer whether (and from whom) to buy a certificate of deposit; it is not facilitating the placement of deposits *per se*."¹ Furthering that position, the FDIC also stated, "It would not be feasible to identify deposits placed as a result of referring to a listing service when the listing service does not actually participate in the placement process."²

As time and technology brought about increased usage of deposit listing services, the FDIC found it necessary to differentiate between the characteristics of non-brokered listing services and those deposit brokers likening themselves to the non-brokered listing service model. Accordingly, the FDIC identified specific criteria² for determining when and whether a listing service should be regarded as a deposit information provider, versus a facilitator of deposit placements. As advances in technology continued,

¹ See FDIC 90-24, FDIC 92-54, FDIC 93-44, FDIC 02-04, FDIC FIL 42-2016 ²
See FDIC 92-54

² See FDIC 92-50, FDIC 92-54, FDIC 02-04, FDIC 04-04 FDIC FIL 42-2016

the FDIC recognized that various administrative functions fell easily into the “information only” category and further refined the listing service criteria to include the following:

1. The person or entity providing the listing service is compensated solely by means of subscription fees (*i.e.*, the fees paid by subscribers as payment for their opportunity to see the rates gathered by the listing service) and/or listing fees (*i.e.*, the fees paid by depository institutions as payment for their opportunity to list or "post" their rates). The listing service does not require a depository institution to pay for other services offered by the listing service or its affiliates as a condition precedent to being listed.
2. The fees paid by depository institutions are flat fees; they are not calculated on the basis of the number of dollar amount of deposits accepted by the depository institution as a result of the listing or posting of the depository institution's rates.
3. In exchange for these fees, the listing service performs no services except: (A) the gathering and transmission of information concerning the availability of deposits; and/or (B) the transmission of messages between depositors and depository institutions (including purchase orders and trade confirmations). In publishing or displaying information about depository institutions, the listing service must not attempt to steer funds toward particular institutions (except that the listing service may rank institutions according to interest rates and also may exclude institutions that do not pay the listing fee). Similarly, in any communications with depositors or potential depositors, the listing service must not attempt to steer funds toward particular institutions.
4. The listing service is not involved in placing deposits. Any funds to be invested in deposit accounts are remitted directly by the depositor to the insured depository institution and not by or through the listing service, either directly or indirectly.

As an additional measure to monitor listing service deposits, the FDIC established a call report line item, allowing the agency and examiners to monitor activity and concentration limits associated with a bank’s “Estimated amount of deposits obtained through the use of deposit listing services that are nonbrokered”.³

Based on call report data as of September 30, 2019 we offer the following analysis:

Number of banks reporting listing service deposits	1326
Percentage of total banks (5265) as of 9/30/2019	25%
Total outstanding listing service deposits	\$77,934,604 Listing
service deposit as a percent of total domestic deposits	.006

Concentrations (as a percentage of domestic deposits)	Number of banks
Greater than 25%	39
Less than 25% but greater than 10%	179
Less than 10%	1108

³ See Consolidated Reports of Condition and Income Schedule RC-E Memorandum item 1(f)

Proposed Definition - Engaged In the Business of Facilitating the Placement of Deposits The first activity in the proposed Part 337 definition of *engaged in the business of facilitating the placement of deposits* states, “The person directly or indirectly shares any third-party information with the insured depository institution.” In light of the listing service criteria established by the FDIC, we believe the agency infers that a person (or entity) is steering funds toward a particular institution; however, without clarification, the term “sharing” could be interpreted to include any means of providing information, including the activities of a non-brokered listing service. Although the FDIC has clearly stated that the nature of its proposed rule is to identify those persons who actively participate in or maintain control over the deposit placement, a listing service exclusion may not be apparent to all who consider this component of the definition.

The fourth activity in the proposed definition references an intermediary,” which again may be interpreted to apply to the depository institution’s (or depositor’s) use of a listing service. While the FDIC refers to an entity acting as an intermediary between a third party placing deposits on behalf of a depositor and an insured depository institution, there is a high probability that some will assume it applies to any intermediary in any deposit placement scenario. False assumptions could require the agency to provide additional clarification regarding the use of a purely information non-brokered listing service.

As requested, QwickRate is offering the following responses to several questions posed in the notice of proposed rulemaking:

Question 2: Is the FDIC's proposed definition of “engaged in the business of facilitating the placement of deposits” appropriate?

The intent of the definition “the person takes an active role in the opening of an account or maintains a level of influence or control over the deposit account” is appropriate. However, as stated above, the generalized use of the terms sharing and intermediary can be easily misconstrued as applying to persons and activities that do not meet the intended definition.

Question 3: Is the FDIC's list of activities that would determine whether a person meets the "facilitation" prong of the "deposit broker" definition appropriate?

We believe that the terms “sharing” and “intermediary” as used in the definition will most certainly subject the FDIC to requests for further interpretation. The term “sharing” in itself doesn’t indicate that the one sharing has or intends to take an active role or influence the acceptance of a deposit account. In the case of digital technology, sharing simply means giving access to digitally stored information. We believe additional clarification should be added, for example “sharing with the intent to actively participate or influence the placement of a deposit account”, would add clarity to the activity and exclude those who do not take an active role.

Secondarily, by definition, the term intermediary could simply refer to something in the middle. Is the marketplace itself an intermediary? The marketplace doesn’t take an active role, specifically; it simply provides a middle ground where participants can interact directly. Again, further clarification is needed to indicate that the intermediary is acting with the intent to participate in, influence or control the deposit placement.

Question 4: Has the FDIC provided sufficient clarity surrounding whether a third-party intermediary would meet the “facilitation” prong of the “deposit broker” definition?

No, further clarification is necessary to differentiate those intermediaries who do not act with intent towards the deposit placement. A listing service would qualify under the definition of an intermediary simply by providing a marketplace; however, as the FDIC has repeatedly stated, “It would not be feasible to identify deposits placed as a result of referring to a listing service [as brokered] when the listing service does not actually participate in the placement process.” Therefore, additional clarity is needed in regard to which types of placement arrangements would not meet the facilitation prong.

Question 5: Should the FDIC provide more clarity regarding whether any specific types of deposit placement arrangements would or would not meet the “facilitation” prong of the “deposit broker” definition? If so, please describe any such deposit placement arrangements.

Yes, The FDIC has consistently maintained the non-brokered status of deposit listing services. The FDIC should provide more clarity to definitively confirm that listing services that abide by the FDIC’s established non-brokered criteria do not present the characteristics assigned to facilitation.

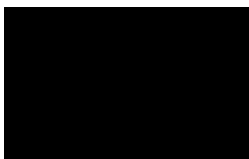
Question 11: Are there particular FDIC staff opinions of general applicability that should or should not be codified as part of the final rule? If so, which ones, and why?

Yes, the contents of FDIC Staff Opinion 02-04 *Opinion regarding whether “listing services” would be considered deposit brokers* should be codified. This staff opinion provides for the description, history and interpretations as well as the FDIC-established criteria that have supported the basis of the nonbrokered classification of deposit listing services for over 30 years. By codifying the description and criteria of the deposit listing service into Part 337, you will be making a distinct clarification regarding the activities associated with providing information versus facilitating the placement of deposits. This distinction will serve to promote and solidify the FDIC’s position regarding listing services and provide full clarity to the financial institutions utilizing this non-brokered funding source.

Often, technological and regulatory advances serve to benefit the largest and most influential industry participants. Listing services serve community banks, providing a valuable funding resource for this less complex, yet extremely important segment of the banking industry. For over three decades, community banks have relied upon FDIC staff opinions and commentary to confirm, preserve and protect the ongoing status of the listing service model as a non-brokered solution. We encourage you to take this opportunity to support community banks, as well as the largest and most influential financial institutions, by formally identifying the listing service model as a non-brokered funding resource.

Thank you for your consideration. Feel free to contact me directly if you have questions or need additional information.

Sincerely,



Shawn O'Brien
President