credit karma

April 14, 2020

DELIVERED BY ELECTRONIC MAIL

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

RE: RIN 3064-AE94, Notice of Proposed Rulemaking and Request for Comment, "Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions"

Dear Mr. Feldman:

Credit Karma, Inc. ("Credit Karma") appreciates the opportunity to comment on the notice of proposed rulemaking published by the Federal Deposit Insurance Corporation ("FDIC") regarding proposed revisions to its regulations relating to restrictions on the acceptance of brokered deposits by insured depository institutions ("IDIs") that are less than well capitalized.[1] The notice is the result of an effort by the FDIC to reconsider its restrictions in light of significant changes in banking business models, financial products, marketing, and technology since the regulations were first adopted in 1989. In February 2019, the FDIC published an advance notice of proposed rulemaking inviting public comment on its regulatory approach, which comments the FDIC considered in drafting the proposed rule.

Credit Karma and its affiliates are a personal finance technology company with more than 100 million members in the United States and Canada, including almost half of all millennials in the United States. Credit Karma and its affiliates provide tools, information, and advice to its members to help them make financial decisions, select financial products and services, and manage their personal finances. Among the tools that Credit Karma offers are a mobile application and a website that collect and organize much of a member's personal financial information and can be used by members to manage their finances. These products and services, which are provided to members without charge, give members greater access to banking and other financial products and services. In cooperation with its lending partners, Credit Karma and its affiliates have facilitated well over $40 billion in credit lines across a range of financial products, including credit cards, personal loans, mortgages, and auto loans. Credit Karma also offers Credit Karma Tax, a free, do-it-yourself tax preparation service.

[1] 85 Fed. Reg. 7453 (Feb. 10, 2020).

In October 2019, Credit Karma launched Credit Karma Savings, a no-fee, high-yield savings account for its members in the United States. Credit Karma is not an IDI. Instead, members may use Credit Karma's mobile application and website as a platform where they may open and manage an individual savings account offered by Credit Karma's bank partner, MVB Bank, Inc., Fairmont, West Virginia ("MVB"). Once an account is established, Credit Karma has no control over these accounts, including the interest paid, or over members' actions regarding these accounts, such as whether to deposit or withdraw funds, or to close an account. Credit Karma may add additional bank partners and make additional types of deposit products available to its members on its platform in the future, giving members a diverse range of deposit products that they would be able to select or manage by a "click."

Credit Karma's member service model, use of technology, and bank partnership motivate the submission of this comment letter and inform its perspective regarding the urgency of modernizing the brokered deposit regulatory environment. Meaningful reform is required to facilitate the kind of innovative community bank-fintech partnership that Credit Karma has launched with MVB through Credit Karma Savings, which Credit Karma believes can benefit both IDIs and its members.

Background of the Proposed Rule

In introducing the proposed rule before the FDIC board of directors, FDIC Chairman Jelena McWilliams noted that the term "brokered deposit" encompasses a broad range of deposit placement arrangements, most of which did not exist when Congress enacted brokered deposit legislation in the 1980s, and which differ in meaningful ways from "brokered CDs" of the type that arose in that era and that Congress sought to address. Chairman McWilliams further observed that the current restrictions on brokered deposits have a real impact on how IDIs deliver products and services to consumers, including more than 20 million unbanked Americans who could otherwise have greater access to banking services but for existing law.[2]

In light of these conditions, Chairman McWilliams referred to four specific goals that the proposed rule was designed to achieve:

- Encourage innovation within the banking industry, allowing IDIs to serve consumers how consumers want to be served and clarifying that various types of existing partnerships between IDIs and other financial service providers that result in consumers establishing a direct relationship with an IDI generally do not result in the placement of a brokered deposit;

- Take a balanced approach in interpreting the Congressional restrictions in Section 29 of the Federal Deposit Insurance Act, including the exemption thereto under the so-called "primary purpose exception," consistent with the statute's plain meaning;

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[2] FDIC, "Statement by FDIC Chairman Jelena McWilliams on the Notice of Proposed Rulemaking on Revisions to the Brokered Deposit Regulations" (Dec. 12, 2019), available at https://www.fdic.gov/news/news/speeches/spdec1219.html.

- Minimize risk to the Deposit Insurance Fund by focusing on the core problems that Congress sought to address in Section 29, such as the use of "brokered CDs" to place large sums of money; and

- Establish an administrative process that is clear, consistent, and easy to follow for obtaining a determination by the FDIC whether an entity is acting as a deposit broker, including an application process for obtaining rulings on the primary purpose exception.[3]

Summary of Comments

In the view of Credit Karma, the proposed rule does far too little to achieve the FDIC's stated goals. Numerous innovations in the marketing of financial products and services, including deposits, and the increasing reliance by the public on mobile devices and the internet to send and receive personal financial information and engage in financial transactions, require that the providers of financial products and services, including IDIs providing "core" banking products such as deposits, cooperate and share information with other enterprises that have direct contact with consumers through their electronic portals and platforms. However, the proposed rule, with only two narrow exceptions carved out for deposit sweep programs and payment processors, continues to place barriers between IDIs and financial innovators, such as Credit Karma, that seek to eliminate the friction associated with opening a savings account by adding innovative deposit products to the growing list of financial products and services conveniently offered to the public through electronic platforms.

Neither logic nor the preamble to the proposed rule support the position taken by the FDIC in the proposed rule itself that an enterprise, such as Credit Karma, that (i) shares *any* information about its members or consumers with an IDI, (ii) provides *any* assistance to its members or consumers in setting deposit terms, (iii) encourages its members or consumers to save as part of a program to build their financial resources, should be treated as a deposit broker. While the FDIC's stated goal is to encourage innovative deposit products, the proposed rule itself does not meaningfully "modernize" the brokered deposit regulations.[4]

The proposed rule also does not explain how the FDIC would handle a request for an interpretation of law or an application for anything but one of the two prescribed primary purpose exceptions. The proposed rule raises several questions regarding whether Credit Karma would be covered by the broad definition of deposit broker, which questions precede the narrower issue whether an exception from the broad definition is available. However, in view of the explicit application procedure that has been provided in the proposed rule for requesting a

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[3] Chairman McWilliams, in her introductory statement to the FDIC board of directors, referred specifically to the remarks she had delivered the previous day at the Brookings Institution, Washington, DC, "Brokered Deposits in the Fintech Age," available at https://www.fdic.gov/news/news/speeches/spdec1119.html. *See also* FDIC, "Fact Sheet: Notice of Proposed Rulemaking on Brokered Deposits Restrictions" (Dec. 12, 2019), available at https://www.fdic.gov/news/brokerdep.pdf, which reiterates that these are the four goals of the FDIC's reform.

[4] *See*, *e.g.*, 85 Fed. Reg. at 7453 and the Fact Sheet, *supra*.

primary purpose exception, FDIC staff may be reluctant or decline altogether to issue additional interpretative guidance in the absence of a similar mandate. Similarly, the standards for granting a general primary purpose exception are unclear, and there is no guidance as to whether current interpretations and exceptions would be grandfathered.

The dragnet definition in the proposed rule of what constitutes facilitating the placement of deposits would harm not only consumers, such as Credit Karma's members, but also IDIs, particularly community banks and thrifts, that seek partnerships like that provided by Credit Karma Savings in order to diversify their deposit base and expand it beyond their immediate geographic footprint. The need for community banks to diversify their deposit bases is particularly pronounced now as community banks seek to meet heightened loan demand as a result of the economic fallout from the COVID-19 pandemic. Even well capitalized IDIs, which constitute the vast majority of the U.S. banking industry, would continue to be discouraged from entering into such partnerships because the deposits they would gather would be pointlessly stigmatized as brokered deposits—irrespective of the absence of actual risk posed thereby to the Deposit Insurance Fund—entailing higher capital and operating costs and unnecessary supervisory scrutiny. As a result, many IDIs would remain needlessly cut off from the mainstream of innovation in the delivery of financial products and services and from the millions of consumers who prefer to manage their financial resources on a broader platform than the IDI's own website.

As more fully described below, Credit Karma has specific recommendations as to how the proposed rule may be revised to avoid the pitfalls described above while still providing the FDIC the tools it needs to manage actual risks to the Deposit Insurance Fund posed by truly risky deposit arrangements.

How Credit Karma Works for Its Members

Credit Karma seeks to provide its members with the information, the financial management tools, and the financial product offerings to empower them to make meaningful progress in taking control of their financial decision-making and building their personal financial resources. Credit Karma does not charge its members a fee for these services. It screens financial products and services offered by third parties, including IDIs, and makes available to its members those products and services that appear to be suitable. Credit Karma generally is paid a fee by the providers of the financial products and services it makes available when a member accepts an offer. Credit Karma is not paid a fee in connection with the opening, maintenance, or use of the Credit Karma Savings accounts established at MVB, but it may receive compensation in connection with other deposit products that may be offered in the future.

Credit Karma Savings is one of the financial products that is available on the Credit Karma platform. It is a no-fee, FDIC-insured savings account offered by MVB. Credit Karma members are able to open an individual savings account at MVB, and have access to their account either by direct deposit at and withdrawal from their account, or by making transfers from or to another account maintained by the member at MVB or another IDI, subject to general regulatory restrictions on the number of preauthorized or automatic transfers or withdrawals that may be made from a savings account. Members may obtain statements and other information

about their Credit Karma Savings account from Credit Karma, and provide instructions regarding their account, through the Credit Karma mobile application or website. Members may also contact Credit Karma member support for assistance regarding their Credit Karma Savings account. Members are not charged a fee for account maintenance or for deposits to or withdrawals from their account. Credit Karma strives for its members to earn interest on their Credit Karma Savings accounts that is comparable to the interest typically paid to individual depositors on larger or more restricted deposit accounts.

Members maintain full control of their Credit Karma Savings accounts. Credit Karma cannot close accounts or cause accounts to be closed (except to address fraud concerns with individual accounts). Members decide how much to deposit into their Credit Karma Savings account and how much and how often to withdraw, subject to regulatory restrictions. Credit Karma does not provide any advice or direction regarding the accounts; it simply provides a platform that its members may use to manage their accounts as they see fit by connecting a member's separate account at an IDI of its choice with the member's Credit Karma Savings account at MVB. Any transaction in a Credit Karma Savings account that is conducted on the Credit Karma platform, such as an ACH transfer, is performed by the transmission by Credit Karma of an instruction to its bank account processing platform, CorePro, a software service administered by Q2 Software, Inc., an independent third party. CorePro instructs MVB or the IDI holding the member's separate account to complete the transaction. Credit Karma does not participate in the communication of instructions by CorePro, or the transfer of funds pursuant to those instructions. Credit Karma does not participate in the execution of any instructions unless it is asked to provide additional information regarding a member or an instruction.

MVB has entered into an agreement with a deposit placement network whereby a majority of the funds deposited by Credit Karma members is placed through the network with other network member banks. Credit Karma is not an IDI or a member or participant in the network. It should be noted, that the FDIC in the current brokered deposit rule has provided a limited exception for deposits placed through such networks from treatment as brokered deposits, and that this exemption would remain intact in the proposed rule.[5]

How the Proposed Rule May Affect Credit Karma

Credit Karma is concerned that it would be treated as a deposit broker under the proposed rule, and that deposits in Credit Karma Savings accounts would be treated as brokered deposits by its bank partner, or any future partner, solely on account of Credit Karma providing information about Credit Karma members, including anonymized information or information about members in the aggregate, to its bank partner in a variety of situations. This could include information shared during negotiations, even preliminary discussions, to establish a relationship to enable members to open deposit accounts at the bank partner; acting as a conduit when transmitting standard instructions by members through CorePro for the management of their Credit Karma Savings accounts; when providing information about Credit Karma members to its bank partner or an affiliate of its bank partner in connection with the offer or sale of a non-deposit financial product or service; or even when providing information about a Credit Karma

[5] *See* 12 C.F.R. § 337.6(e)(1).

member for the purpose of preventing fraud or a violation of anti-money laundering laws or regulations. Any of these actions would appear to be sufficient to cause Credit Karma to be treated as being "engaged in the business of facilitating the placement of deposits of third parties" despite these actions not contributing in any way to the volatility of the deposits or posing any material risks to partner IDIs or the Deposit Insurance Fund. The mere use by members of the Credit Karma mobile application or website to send individual instructions for the member's own purposes does not bear any resemblance to the actions of a deposit broker and should not be treated as such.[6]

Similarly, Credit Karma is concerned that it would be treated as a deposit broker, and that deposits in Credit Karma Savings accounts would be treated as brokered deposits, based on any communication it may have with a bank partner. Under the proposed rule, selecting an IDI to provide Credit Karma Savings accounts to its members, or negotiating any terms of the accounts, may be deemed to be providing sufficient assistance to Credit Karma members to constitute facilitating the placement of member deposits, notwithstanding the paramount fact that Credit Karma would have no ability to cause its members' funds to be withdrawn from such accounts or to cause such accounts to be closed.[7]

Credit Karma's role as a trusted adviser to its members regarding personal financial management is also targeted by the proposed rule. The FDIC has proposed that an agent or nominee for depositors may seek a primary purpose exemption, based on its demonstrating that its primary purpose is something other than the placement of funds at IDIs. The revenue structure of the agent or nominee and its marketing activities to prospective depositors are two factors that the FDIC has specifically indicated would be considered for this purpose.[8] However, the FDIC has also stated that where "the primary purpose for its business relationship with its customers is to place (or assist in the placement of) funds into deposit accounts to 'encourage savings,' 'maximize yield,' 'provide deposit insurance,' or any similar purpose," a primary purpose exception would not be granted.[9] Based on Credit Karma's broad program to help its members manage their personal finances, and its broad electronic platform, offering a variety of financial tools, information, and products and services, it is clear that Credit Karma Savings is only a part of a much broader business line. However, it is not clear whether Credit Karma Savings would be viewed this way or would be treated as a "particular business line" and separately analyzed to determine Credit Karma's primary purpose.[10]

While Credit Karma understands that it is not the FDIC's intent, the practical effect of the proposed rule would be to blackball the promotion of savings through innovative bank-fintech

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6 *See* 12 C.F.R. § 337.6(a)(5)(ii)(A) (proposed), 85 Fed. Reg. at 7472, which defines the activity based on a person directly or indirectly sharing any information about a third party with an IDI.

7 *See* 12 C.F.R. § 337.6(a)(5)(ii)(C) (proposed), *id*., which defines the activity based on providing assistance or being involved in setting the rate, fees, terms, or conditions of a third party's account.

8 85 Fed. Reg. at 7460. *See* 12 C.F.R. § 303.243(b)(4)(iii)(F) – (H) (proposed), 85 Fed. Reg. at 7471.

9 85 Fed. Reg. at 7460.

10 *See* 12 C.F.R. § 303.243(b)(4)(iii)(B) and (C) (proposed), 85 Fed. Reg. at 7471, which requires that an application for a general primary purpose exception include a description of "the particular business line" and "the primary purpose of the particular business line."

partnerships. Even if unintended, a final rule that discourages innovative deposit product partnerships and the promotion of savings as part of wise personal financial management is perhaps the most unlikely public policy position that one could imagine the FDIC to take, and it would be imprudent for several reasons. No entity, including Credit Karma, would have any credibility as a source of sound financial information and advice if it did not "encourage savings" or offer innovative deposit products that allow consumers to make financial progress, and did not advise consumers to "maximize yield" consider their funds' safety. The current financial crisis makes it clearer than ever that these goals, and "any similar purpose," are crucial for millions of consumers. The FDIC encourages the IDIs it insures to convey these very points to their customers, and Credit Karma suspects that the FDIC's senior managers and directors have said as much themselves to friends or family who have asked for their advice. There is no clear explanation in the preamble why Credit Karma or any other entity that offers the same plain good advice, and encourages and facilitates personal savings and sound personal financial management through innovative deposit products as part of a comprehensive program of personal financial management should be lumped in with clearly distinguishable business models that are narrowly focused on chasing yield, and why they should be treated as a threat to an IDI's safety and soundness.

Overall, while the FDIC has stated that the proposed rule is intended "to refine the activities that result in a person being 'engaged in the business of facilitating the placement' of third party deposits at an [IDI]," the limited guidance it has provided regarding activities other than the prescribed carve-outs for sweep deposit programs and payment processors suggests precisely the opposite outcome for entities like Credit Karma.[11] In addition to the four express provisions in the proposed rule that define what constitutes facilitating the placement of deposits, the preamble discusses an opaque standard regarding an entity that "maintains a level of influence or control" over a depositor or a deposit account after an account is opened and may "influence the movement of funds" between institutions.[12] It is not clear what activities may rise to this obscure "level of influence or control" and, since this standard does not appear in the proposed rule, it is also unclear whether or how this concern may be applied by FDIC staff when considering an application for a general primary purpose exception.[13] Even harder to discern is whether or how this concern may be applied if an entity like Credit Karma were to request an interpretation of the term "deposit broker" instead of filing an application for a general primary purpose exception. As noted above, there is no process described in the proposed rule to obtain interpretations, and this omission may discourage FDIC staff from issuing any interpretations—or may encourage staff freely to incorporate concerns originating from outside the four corners of the regulatory text, such as "level of influence or control."[14] Credit Karma is concerned that it

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[11] 85 Fed. Reg. at 7457.

[12] *Id.*

[13] See 12 C.F.R. § 303.243(b)(8)(iv) (proposed), 85 Fed. Reg. at 7471.

[14] A lack of focus on the implementation of the proposed rule is further illustrated in the notice of proposed rulemaking by the FDIC's discussion of administrative law matters. The FDIC has estimated that an IDI or an entity that applies for a general primary purpose exception would require 10 hours on average to gather all the required information and prepare and submit an application, notwithstanding the open-ended nature of the exception, and has ignored the time required to respond to any requests for additional information that the FDIC may issue before it determines that an application is complete. 85 Fed. Reg. at 7466; *see also* 12 C.F.R.

and other fintech companies that are making it easier for consumers to obtain banking services may be unfairly identified by the FDIC as deposit brokers, notwithstanding the absence of control over members' or consumers' deposit accounts after they are opened, because the proposed rule would permit FDIC staff the unfettered discretion to impose an unduly restrictive standard of what constitutes "influence" over members or consumers no matter how immaterial any such activity or "influence" may be.

Recommendations

Credit Karma recommends that the proposed rule be revised to make meaningful changes in the FDIC's brokered deposit rule that would focus the agency's attention on arrangements that indicate that an entity controls or exercises a high degree of influence over third-party deposits that in turn pose material risks to the Deposit Insurance Fund, instead of stigmatizing virtually any third-party relationships with consumers that have little or no relationship to the types of "hot" money that concerned Congress when it adopted Section 29.

Sharing Third Party Information. Credit Karma recommends that the first bracket of the proposed definition of "engaged in the business of facilitating the placement of deposits" be eliminated.[15] It is not apparent from the text of the proposed rule–and the FDIC has neither discussed nor explained in the preamble–why sharing *any* information with an IDI regarding third-party depositors leads to an unstable deposit relationship with those depositors. This bracket not only encompasses the sharing of information related to the placement of deposits; it also covers unrelated information sharing, such as transmitting ordinary instructions by a third party to transfer funds for transactional purposes, sharing information related to a third party's interest in non-deposit financial products, such as credit cards or personal loans, or providing information about a third party to prevent fraud, money laundering or terrorist financing, or other criminal activities. Indeed, if an entity shared *any* information with an IDI regarding one third-party group, it appears that deposits at the IDI by any other third-party group associated with the entity would be treated as brokered deposits, even core deposits that would not otherwise pose material risks to the Deposit Insurance Fund.

In the fourth bracket of the proposed definition, sharing information as an intermediary "in a purely administrative capacity" would be exempt, but, inexplicably, the same exemption is not available in the first bracket.[16] In general, the FDIC appears to have lost sight of the fact that even in the classic brokered deposit scenario, in which a deposit broker bundles its clients' money together into "hot" jumbo certificates of deposit, it is not necessary for the deposit broker to share any information regarding its clients with an IDI. Sharing third-party information *per se* is not an earmark of "hot" money, and the indiscriminate labeling of all deposits associated with the sharing of third-party information as brokered deposits is singularly illogical, useless, and has the potential to stigmatize virtually any deposit product that involves a third-party, as some minimal information sharing is necessary in order to establish any kind of deposit relationship

§ 303.243(b)(4)(iii)(K) (proposed), 85 Fed. Reg. at 7471, which requires an applicant to provide additional information. This estimate is sadly inadequate.

[15] 12 C.F.R. § 337.6(a)(5)(ii)(A) (proposed), 85 Fed. Reg. at 7472.

[16] *Compare* 12 C.F.R. § 337.6(a)(5)(ii)(D).

with an IDI. The FDIC has failed to explain how sharing "any" information about third parties is harmful to IDIs or poses a risk to the Deposit Insurance Fund. Therefore, the first bracket of the proposed definition is an arbitrary, capricious, and unreasonable standard.

If this bracket is retained, it should be revised at a minimum to exempt the sharing of information by an entity with an IDI from or about a third party related to: (i) the opening, closing, management, or change in terms or conditions of any deposit account over which the third party has exclusive control; or (ii) the offer or sale of other financial products or services, because such information cannot be used to create an unstable deposit relationship.

To offer an example, Credit Karma has no authority or ability to close a Credit Karma Savings account (other than in response to an inquiry regarding fraudulent activity, as noted above) or to transfer funds from such an account. When Credit Karma transmits an inquiry or instruction from its member to an IDI regarding the member's Credit Karma Savings account, it is not exercising control or influence over the account. Yet, in the first bracket of the proposed definition, when a member uses the Credit Karma mobile application or website to open a Credit Karma Savings account or to check on an account, the transmission of that information *alone* might be sufficient to classify the funds in the account as brokered deposits. In the absence of control or influence over the funds in the account, Credit Karma is not acting as a deposit broker for the purposes of Section 29 when it shares third-party information to open, close, or manage a member's account, and the first bracket of the definition should be eliminated or revised to prevent the application of the deposit broker label to it.

Providing Assistance in Setting Terms. Credit Karma recommends that the third bracket of the proposed definition of "engaged in the business of facilitating the placement of deposits" also be eliminated. As discussed above, when a consumer has the sole authority to make all decisions regarding the opening, closing, or use of a deposit account, the assistance or involvement of an entity in setting the rates, fees, terms, or conditions for the account does not constitute acting as a deposit broker for the purposes of Section 29, because the account does not expose the IDI to any risks other than those arising from the IDI's own decision-making in setting such terms. Therefore, labeling the resulting deposits as brokered deposits serves no useful purpose and arbitrarily raises the cost to IDIs of having the resulting mislabeled deposits on their balance sheets.

If this bracket of the proposed definition is retained, it should be significantly narrowed to apply only when the FDIC determines that the resulting deposit account has features that make it materially less "sticky" than comparable accounts. In making this finding, the FDIC should be required to consider, in addition to general deposit terms and conditions prevailing at the time in the IDI's market, the effect that the entity's business relationship with third parties has on the "stickiness" of the resulting deposit accounts.[17]

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[17] If the first and third brackets of the definition of "engaged in the business of facilitating the placement of deposits" were retained, Credit Karma recommends that the definition be revised to read as follows (additional text is underlined):

§ 337.6 Brokered deposits.

(a) *Definitions*.

Bright Line Revenue Test. Credit Karma recommends that the FDIC clarify the role that an intermediary's revenue structure would play in the FDIC's review of an application for a general primary purpose exception. In the preamble, the FDIC has stated that an applicant's revenue structure is one of the factors that it would consider when reviewing an application, and that an applicant that received a majority of its revenues from its deposit placement activities would likely not be granted an exception.[18] In the proposed rule, corresponding to this discussion, an intermediary would be required to describe in its application the revenue it generated from its activities related to the placement, or facilitating the placement, of deposits and the revenue it generated from its other activities.[19] However, it is unclear how an applicant that received less than a majority of its revenues from deposit placement activities would be treated. By contrast, the FDIC noted with respect to the narrow primary purpose exception for deposit sweep programs that "a transparent, bright line test is beneficial for all parties" and established such a test if the total amount of customer funds placed at IDIs was less than 25 percent of total customer assets under management by the intermediary in a particular business line.[20] Similarly, under the narrow primary purpose exception for payment processors, if an intermediary places 100 percent of its customer funds into transaction accounts at IDIs, and if no interest, fees, or other remuneration is provided or paid on any customer accounts by the intermediary, then the application will be approved.[21] A similar bright line revenue test should be added to the general primary purpose exception that provides that the FDIC will approve an application for the primary purpose exception if the revenue generated by an applicant from

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(5) *Deposit broker*.

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(ii) *Engaged in the business of facilitating the placement of deposits*.

(A) *General*. A person is engaged in the business of facilitating the placement of deposits of third parties with insured depository institutions, by, while engaged in business, engaging in one or more of the following activities:

(1) The person directly or indirectly shares any third party information with the insured depository institution <u>related to the opening, closing, maintenance, or use of deposit accounts by or for the third parties, other than for a deposit account that is not subject to control by the person or for information shared in an administrative or ministerial capacity</u>;

* * *

(3) The person provides assistance or is involved in setting rates, fees, terms, or conditions for the deposit account<u>, provided that the FDIC determines, taking into consideration the business relationship between the person and the third parties, that the deposits of the third parties are materially less stable than comparable deposits</u>; or

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[18] 85 Fed. Reg. at 7460.

[19] *See* 12 C.F.R. § 303.243(b)(4)(iii)(F) and (G) (proposed), 85 Fed. Reg. at 7471.

[20] 85 Fed. Reg. at 7459; *see* 12 C.F.R. § 303.243(b)(8)(i) (proposed), 85 Fed. Reg. at 7471.

[21] 85 Fed. Reg. at 7459; *see* 12 C.F.R. § 303.243(b)(4)(ii)(A) and (8)(ii) (proposed), 85 Fed. Reg. at 7471.

activities related to the placement, or facilitating the placement, of deposits is less than 25 percent of its total revenues.[22]

Deposits in a Deposit Placement Network. Credit Karma recommends that in any final rule the FDIC address programs in which a majority of the funds deposited by members or consumers are placed by the intermediary's bank partner through a deposit placement network, without any direction by or consultation with the intermediary in the placement decision, any participation by the intermediary in the network's operation, or any compensation to the intermediary. Under these conditions, any potential effect that the deposits of Credit Karma's members may have on MVB, its bank partner, are minimized by the transfer of a majority of the deposited funds to other IDIs in the network. In addition, any potential effect that the deposits may have on those other IDIs is eliminated by the isolation of Credit Karma from any aspect of the network's operation, including that Credit Karma receives no fees or other compensation from the network or in relation to its operation. The placement of the funds from Credit Karma Savings Accounts in a deposit placement network under these conditions does not undermine or interfere with any of the positive network features on which the FDIC relied when it provided its limited exemption in the first place.

The FDIC should amend the current rule to provide that direct deposits by consumers or members through an intermediary with an agent institution will not be treated as brokered deposits when the agent institution places a majority of the funds in the deposits through a deposit placement network with other IDIs, the intermediary does not direct or cause the agent institution to place any of the funds in the deposits through the network, and the intermediary does not receive any compensation based on related to the placement of those funds through the network or the operations or activities of the network.[23]

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[22] Credit Karma recommends that the standards for the FDIC's review of an application for a general primary purpose exception be revised to include a bright line test for general revenue to read as follows (additional text is underlined):

§ 303.243 Brokered deposits.

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(b) *Application for primary purpose exception—*

* * *

(8) *Approvals*. The FDIC will approve an application—

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(iv) Submitted under paragraph (b)(4)(iii), if the total amount of revenue generated from the third party's activities related to the placement, or facilitating the placement, of deposits is less than 25 percent of the total amount of revenue generated from all of the third party's business activities.

(v) Submitted under paragraph (b)(4)(iii), if the applicant demonstrates that, with respect to the particular business line under which the third party places or facilitates the placement of deposits, the primary purpose of the third party, for the particular business line, is a purpose other than the placement, or facilitating the placement, of deposits.

[23] Credit Karma recommends that the definition of deposit broker be revised by adding an additional limitation, to read as follows (additional text is underlined):

Conclusion

Credit Karma believes that the recommendations above would align the proposed rule with the goals of "encourag[ing] innovation within the banking industry, allowing IDIs to serve consumers how consumers want to be served" and "tak[ing] a balanced approach in interpreting the . . . Federal Deposit Insurance Act" more consistently with the original intent of the Act. By clarifying what constitutes permissible information sharing and the acceptable range of assistance to consumers, establishing a bright line revenue test, and expanding the limited exemption for funds placed through a deposit placement network, the recommendations narrow the focus of the proposed rule to true deposit broker activity that presents material risks to the Deposit Insurance Fund, while still encouraging innovation. Credit Karma believes that this outcome is consistent with the original intent of Section 29 of the Federal Deposit Insurance Act and the FDIC's stated objectives regarding the modernization of Section 29.

Credit Karma looks forward to a final rule that reflects the concerns raised above and that produces a brokered deposit regulatory regime that paves the way for innovative partnerships that are a win-win-win for consumers, IDIs, and their technology partners.

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§ 337.6 Brokered deposits.

(a) *Definitions*.

* * *

(5) *Deposit broker*.

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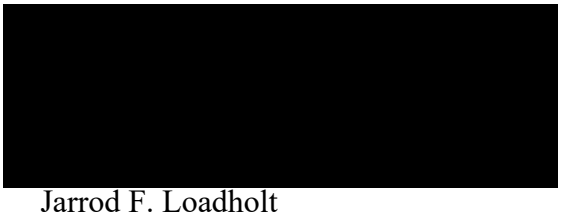
(v) *Deposits placed through a deposit placement network.* Notwithstanding any other provision of this section, a person is not engaged in facilitating the placement of deposits of third parties with insured depository institutions to the extent that:

(A) *Placement.* The agent institution, as defined in subsection (e) of this section, that receives the deposits places a majority of the deposits through a deposit placement network, as defined in subsection (e) of this section;

(B) *Participation.* The person does not direct or cause the agent institution to place any of the deposits through the deposit placement network; and

(C) *Compensation.* The person does not receive, directly or indirectly, any fees or other compensation based on or related to the placement of the deposits through, or the activities or operations of, the deposit placement network.

Respectfully,



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