The Auto Club Group
1 Auto Club Drive
Dearborn, Michigan 48126-2694

John Bruno
Executive Vice President
General Counsel, Secretary &
Chief Human Resources Officer
(313) 336-1795 (office)
(313) 436-7304 (fax)
(614) 361-3028 (cell)
jbruno@acg.aaa.com

April 24, 2020

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

RE: RIN 3064–AE94 "UNSAFE AND UNSOUND BANKING PRACTICES: BROKERED DEPOSITS RESTRICTIONS"

Dear Sir:

Auto Club Trust, FSB ("ACT") appreciates the opportunity to submit these comments in response to the Notice of Proposed Rulemaking ("NPR") on *Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions* (the "Proposed Rulemaking") published by the Federal Deposit Insurance Corporation ("FDIC") in the Federal Register on February 10, 2020. We are fully committed to managing consumer deposits in a prudent manner and we appropriately measure, monitor, and control risks associated with those deposits that have traditionally been characterized as brokered deposits. We urge the FDIC to adopt a proposed rule based on comments received in response to the Proposed Rulemaking NPR.

Executive Summary

We recognize that the Brokered Deposit Restrictions were designed to safeguard the Deposit Insurance Fund ("DIF") from costly misbehavior and mitigate the safety and soundness risks to that which have occurred through irresponsible bank failures, where brokered deposits have been correlated with higher levels of rapid asset growth, higher levels of nonperforming loans, and a lower proportion of core deposit funding.

We believe that the modernized final rule must distinguish those historically irresponsible behaviors from deposits that consumers voluntarily seek to make with trusted organizations in the marketplace. Shifts in consumer preferences have led customers over the past two decades to

often bank where they shop for other products and services. Whether applying for credit cards or making deposits, diversified organizations enjoy the loyalty and trust of customers that derive from their strong affinity-based relationship with branded affiliates.

We are also an affinity-based operation, and as such, the agents of the bank's affiliates are not primarily engaged in placing deposits for the bank. Rather, their primary purpose is to offer insurance products, travel services, and AAA membership benefits. Our agents receive de minimis compensation for assisting our members to choose our bank for deposits. Doing business with the bank is not a requirement for the main business of the agents. Thus, our agents' activities do not represent the risk to the FDIC that the historical Brokered Deposit Restrictions were designed to mitigate, and therefore should be exempt from restriction under the modernized final rule.

Auto Club Trust, FSB

Auto Club Trust ("ACT"), a federal savings bank, is the banking affiliate of three related grandfathered unitary savings and loan holding companies: Auto Club Insurance Association ("ACIA"), a Michigan reciprocal, inter-insurance exchange that offers property and casualty and life insurance products directly or through various subsidiaries, Auto Club Services, Inc., ("ACS") the management company and attorney-in-fact for ACIA and a wholly-owned subsidiary of The Auto Club Group ("ACG"), a Michigan nonprofit membership organization headquartered in Dearborn, MI. ACG serves approximately 12.5 million American Automobile Association ("AAA") members and insureds through 200 branded offices in 13 states and two U.S. territories: Florida, Georgia, central and northern Illinois, northern Indiana, Iowa, Michigan, Minnesota, Nebraska, North Carolina, North Dakota, South Carolina, Tennessee, Wisconsin, Puerto Rico, and the US Virgin Islands. ACIA, ACG, and ACS each or collectively are referred to as "Holding Company." ACG is one of the largest motor clubs in AAA with approximately 9,500 employees and the only AAA club to have a federally chartered savings bank.

ACT has its main office (licensed charter office) within the ACG Dearborn, Michigan headquarters and a loan origination call center in St. Petersburg, Florida. At December 31, 2019, the bank had 65 full-time employees, total assets of $567 million, and capital of $60 million.

Comments on the Proposed Rule

ACT supports the fundamental goals of building a new framework to transform or modernize the regulations that govern brokered deposits in a manner that meets the technological, convenience, and service demands of today's consumers. The need to update the brokered deposit regulation has existed for years and will grow more pressing as digital technology changes, innovation and the financial services industry continue to evolve.

We agree that updating the brokered deposit regulation would enhance consistent regulatory supervision and enable regulated financial institutions (banks) and their affiliates with significant affinity group customer bases to serve more effectively the convenience and deposit needs of their customers. As noted in the proposal, insured institutions could benefit from the rule by having greater certainty and greater access to funding sources that would no longer be designated as brokered deposits, thereby easing their liquidity planning and reducing the likelihood that a liquidity failure of an otherwise viable institution might be precipitated by the brokered deposit regulations. Further, we concur that the proposed rule could incentivize the development of banking relationships between banks and other firms.

We acknowledge that the rule could result in greater access to funding sources that support insured institutions' ability to provide credit. To the extent that the proposed rule supports greater utilization of deposits currently classified as brokered deposits, but classified as non-brokered under the proposed rule, increasing the funds available to insured depository institutions for lending would benefit U.S. consumers.

Our board and senior management team strongly support the original intent of the brokered deposit regulation: to mitigate the safety and soundness risks and costs to the Deposit Insurance Fund ("DIF") that have occurred through irresponsible bank failures, where brokered deposits have been correlated with higher levels of rapid asset growth, higher levels of nonperforming loans, and a lower proportion of core deposit funding. We concur that pragmatic revisions would align with the transformation of the banking industry and, thus reduce the complexity, ambiguity, and burden associated with the regulations.

With this background in mind, we offer the following comments for consideration:

III. Discussion of Proposed Rule

We welcome the FDIC's interest in seeking comment on all aspects of its regulatory approach to brokered deposits and interest rate restrictions, and in particular the following:

1. ***Question 1:* Is the FDIC's proposed definition of "engaged in the business of placing deposits" appropriate?**

   The FDIC's proposed definition of "engaged in the business of placing deposits" is appropriate, as it emphasizes the primary action of *placing* a deposit on behalf of a consumer by mutual agreement with that consumer. Its particular application to brokered deposits can be universally understood to contrast with "the business of facilitating the placement of deposits" discussed further below.

2. ***Question 2:* Is the FDIC's proposed definition of "engaged in the business of facilitating the placement of deposits" appropriate?**

   We acknowledge that, in contrast to the first prong of the Deposit Broker definition, the "facilitation" prong of the deposit broker definition refers to activities where the person does not directly place deposits on behalf of its customers with an insured depository institution. We understand that, historically, the term "facilitating the placement of deposits" has been interpreted by staff at the FDIC to include actions taken by third parties to *connect* insured depository institutions with potential depositors.

   As described in greater detail in response to subsequent questions, we would urge that the definition be further enhanced to clarify that the persons subject to this second prong are "engaged in the *business of facilitating*" in a manner that is substantially more central to that person's business model as an independent third-party facilitator, versus an ancillary aspect of a branded affiliate relationship under a shared corporate structure.

   Auto Club Trust, FSB is a digital bank enjoying the loyalty and trust of our customers that derives from their strong affinity relationship with our AAA-branded affiliates that offer insurance, membership, emergency road service, and travel services. While that loyalty encourages our affiliates' customers to consider our bank's deposit products, each of those

affiliates' business models are grounded in activities other than facilitating deposits. Unlike actions taken by third parties to connect insured depository institutions with potential depositors, our customers establish their own connection between their bank and its family of affiliates as a trusted nationally recognized consumer brand.

3. ***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?**

   In the context of an independent third party, the FDIC's list of activities that would determine whether a person meets the "facilitation" prong of the "deposit broker" definition appears generally appropriate.

   As aforementioned, Auto Club Trust, FSB enjoy a customer-driven affinity relationship with our co-branded affiliates. We do comply with federal and state laws with regard to notifying consumers how we collect, share, and protect consumer personal information among affiliates. As such, federal law gives consumers the right to limit some but not all sharing among affiliates.

   As such, we would propose that the first bullet point be enhanced to document the distinction between independent persons who would share third-party information and affiliates who lawfully collect, share, and protect customer information within the branded family.

   - The person directly or indirectly shares any third-party information with the insured depository institution beyond the lawful sharing among affiliated companies related by common ownership or control that have been previously disclosed to third-party consumers.

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

   The FDIC has provided much clarity. We acknowledge that the proposed "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 open*. The Notice also clarifies that "[u]ltimately, the FDIC believes that if the person is not engaged in any of the activities above, then the needs of the depositor are the primary drivers of the selection of a bank, and therefore the person is not facilitating the placement of deposits."

   Employees of our affiliates act neither as agents nor as nominees with regard to our customers' decisions to open a deposit account with our bank. As such, our employees do not have the authority or ability to undertake an "active" role, nor exercise *any* level of "influence or control" over the deposit account before, during, or after the consumer decides to open the deposit account. The "third-party information" sharing bullet point, as currently drafted, does not grant the lawful distinction that a co-branded affiliate enjoys despite engaging in an active role, influence, or control. Thus, we would reiterate the recommended clarification proposed in our responses to Questions 2 and 3 to avoid the inadvertent characterization of our branded affiliates as "deposit brokers."

5. ***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.***

   Deposits attracted from bank customers who are engaged in an arms-length consumer transaction with an affiliate of the bank should not be considered brokered. Advances in digital technology driven by consumer choice over the past three decades have led to greater reliance by consumers on affinity relationships within trusted brands.

   Inclusive of our aforementioned responses, Auto Club Trust, FSB is a digital bank enjoying the loyalty and trust of our customers that derive from their strong affinity relationship with our AAA-branded affiliates that offer insurance, membership, emergency road service, and travel services. Our internal experience has confirmed that the historical safety and soundness concerns with alleged "hot money" have not materialized as our deposits, attracted through our own affiliates, have remained as stable (at 65% renewal) as those deposits generated solely through bank contact. It has been noted that digital banks funded totally with brokered deposits had the lowest failure rate during the last recession.[1]

6. ***Question 6:*** ***Is it appropriate for a separately incorporated operating subsidiary to be included in the IDI exception?***

   We agree that there is little practical difference between deposits placed at an Insured Deposit Institution ("IDI") by a division of the IDI versus deposits placed by a wholly owned subsidiary of the IDI. We thus support the FDIC proposal that the IDI exception be available to wholly owned operating subsidiaries. And as detailed in our response to Question 7, we urge that the IDI exception be further enhanced to account for affiliates related by common ownership or control who are subject to federal consumer information sharing safeguards under the Gramm-Leach-Bliley Act (GLBA).[2]

7. ***Question 7:*** ***Are the criteria for including an operating subsidiary in the IDI exception too broad or too narrow?***

   The criteria for including an operating subsidiary in the IDI exception is appropriate and should be further expanded to accommodate affiliates related by common ownership or control in a family of companies.

   The Notice acknowledged that the Bank Merger Act and Receivership law treat wholly owned subsidiaries as separate from its parent IDI, whereas Section 23A and Section 23B of the Federal Reserve Act and Call Reports treat wholly owned subsidiaries as part of the parent IDI. Similarly, Section 23A of the Federal Reserve Act recognizes the nature of the relationship between an IDI and its non-bank affiliates owned and controlled by a common parent.[3] While acknowledging the appropriateness of allowing such intercompany transactions, the regulation provides specific guidelines to enforce "terms and conditions that are consistent with safe and sound banking practices."

---

1 Sutton, G. (2018, December 11). *Brokered deposits' bad rap is undeserved*. American Banker, https://www.americanbanker.com/opinion/brokered-deposits-bad-rap-is-undeserved.

2 15 U.S. Code § 6801-6809.

3 12 U.S. Code § 371c.

Implementing prudent criteria to govern the relationship between a bank and its affiliates in the context of Brokered Deposits regulation would similarly serve the modernized affinity interests of consumers while fostering safety and soundness and safeguarding the DIF.

8. ***Question 8:*** ***Is it appropriate to interpret the primary purpose of a third-party's business relationship with its customers as not placement of funds if the third party places less than 25 percent of customer assets under management for its customers, for a particular business line, at depository institutions? Is a bright line test appropriate? If so, is 25 percent an appropriate threshold?***

   We do not offer an opinion regarding this question, as non-bank affiliates in our family of companies do not engage in the placement of customer funds at depository institutions. Further, we have no person engaged in the business of either placing deposits for its customers, or facilitating the placement of deposits for its customers (as clarified in responses heretofore), at insured depository institutions, in the context of the "deposit broker" definition.

9. ***Question 9:*** ***Should the FDIC specifically provide more clarity regarding what is meant by customer assets under "management" by a broker dealer or third party?***

   We do not offer an opinion regarding this question, as we do not own a broker dealer nor does any non-bank affiliate in our family of companies maintain customer assets under “management” nor engage in the placement of customer funds at depository institutions. Further, we have no person engaged in the business of either placing deposits for its customers, or facilitating the placement of deposits for its customers (as clarified in responses heretofore), at insured depository institutions, in the context of the "deposit broker" definition.

10. ***Question 10:*** ***Is it appropriate to make available the primary purpose exception to third parties whose business purpose is to place funds in transactional accounts to enable transactions or make payments?***

    We do not offer an opinion regarding this question, as we do not maintain any third parties whose business purpose is to place funds in transactional accounts to enable transactions or make payments.

11. ***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?***

    Understandably, many historical FDIC staff opinions reflected the circumstances of prior economic cycles, and their analyses evolved as relevant laws and regulations were amended.

    While our review of the FDIC staff opinions confirmed their general inapplicability to our bank and non-bank affiliate structure, the FDIC had addressed the unique circumstances involved in affinity-based relationships.

Advisory Opinion FDIC--93—30, *Affinity Groups Are Not Deposit Brokers for Purposes of Sections 29 and 29A of the FDI Act and 12 C.F.R. § 337.6(a)*[4] represents one such opinion whose balanced approach should be codified as part of the final rule.

General Counsel Byrne's analysis described an Affinity Group program that resonated with our own organization's embodiment of the AAA brand. Among the factors dispositive to the conclusion that the Affinity Groups were neither "engaged in the business of placing deposits" nor "facilitating the placement of deposits", and thus not "deposit brokers" within the meaning of sections 29 and 29A of the FDI Act and section 337.6(a) of the regulations included:

> …
> (b) none of the Affinity Groups directly markets the deposit products for the Bank;
> (c) Affinity Group members who decide to place deposits with the Bank do so directly with the Bank (the Affinity Groups do not receive funds from their members for deposit with the Bank or otherwise process any member deposits);
> (d) the Affinity Groups have exclusive relationships with the Bank and do not endorse deposit products of other institutions;
> (e) most, but not all, of the Affinity Groups receive royalties for endorsing the Bank's deposit products, the amount of which represent a small fraction (in the order of ***) of the market rates paid to others who are considered deposit brokers within the meaning of section 29 of the FDI Act;
> (f) historically, as reported by the Bank, the retention rate for endorsed money market accounts obtained from Affinity Group members ranges from 80% to 85% and for certificates of deposits from 60% to 75% and such accounts and deposits are regarded by the Bank as core deposits of the Bank and are not used to replace core deposit runoff; and
> (g) the Affinity Groups do not know which members have made deposits with the Bank, nor do they keep any records of the amounts, rates, or maturities of the deposits.

Taken all together, the General Counsel had concluded, much as we do at AAA, that the nature of the particular arrangement can reasonably be characterized as passive and indirect and, therefore, outside the scope of the brokered deposits statute and FDIC's regulations.

A similar analysis contained in Advisory Opinion FDIC--93—71 *Whether Certain Affinity Groups that Endorse the Marketing of Consumer Credit and Deposit Products of a National Bank are Considered Deposit Brokers*[5] lends support to codifying the intent of this affinity-based affiliate distinction into the IDI exception without decreasing safety and soundness nor failing to safeguard the DIF.

12. ***<u>Question 12:</u> Has the FDIC provided sufficient clarity regarding what will be considered a "business line"? How can the FDIC provide more clarity? Are there other factors that should be considered in determining an agent's or nominee's business line(s)?***

4 https://www.fdic.gov/regulations/laws/rules/4000-8190.html#fdic400093-30

5 https://www.fdic.gov/regulations/laws/rules/4000-8600.html#fdic400093-71

We do not offer an opinion regarding this question, as we do not maintain a “business line” or affiliate that is "engaged in the business of placing deposits" nor "facilitating the placement of deposits", in accordance with our aforementioned responses. If the final rule were to exclude affiliates within a bank’s family of companies from the IDI exception, then additional scenarios expressly addressing that outcome should be included.

13. ***Question 13:*** ***Are there scenarios where a nonbank third party, as part of the same business line, has different deposit placement arrangements with IDIs?***

    We do not offer an opinion regarding this question, as we do not engage agents or nominees who place, or facilitate the placement of, deposits at our bank or at any other IDI. If the final rule were to exclude affiliates within a bank’s family of companies from the IDI exception, then additional scenarios expressly addressing that outcome should be included.

14. ***Question 14:*** ***Is the application process proposed for the primary purpose exception appropriate? Are there ways the application process could be modified to make it more effective or efficient?***

    We consider the proposed application process for the primary purpose exception both appropriate, and effective and efficient as described.

15. ***Question 15:*** ***Is the application process for IDIs that apply on behalf of a third party workable? Are there ways to improve the process for IDIs that apply on behalf of third parties?***

    We suggest that if the final rule were to include an application process for IDIs to apply on behalf of a third party, that such application be completed and submitted as a joint application between those two parties to establish transparent accountability. This joint responsibility would underscore the shared commitment to continued safety and soundness and consumer depositor protection.

16. ***Question 16:*** ***Are there additional ways that the FDIC could better ensure that the primary purpose exception is applied consistently, transparently, and in accordance with the statute?***

    We consider the description of the intended application process to provide structure, accountability, and transparency. The contemplated Ongoing Reporting (Question 24) and IDI responsibility for monitoring third parties (Question 25) serve as additional controls to promote safety and soundness, safeguard the DIF, and safeguard consumer depositors.

17. ***Question 17:*** ***Should some or all FDIC decisions on applications for the primary purpose exception be publicly available? If so, in what format?***

    We support online public availability of FDIC primary purpose application decisions that disclose information that would provide transparency regarding the process. As with other FDIC publications, we encourage the Agency to maintain confidentiality around application information that would constitute trade secrets, regulatory agency findings, or other information deemed inappropriate for public disclosure.

18. ***Question 18:*** ***Are there commonly known deposit placement arrangements not mentioned above that are sufficiently simple and straightforward that applications for such arrangements should receive expedited application processing, as described above?***

    We do not offer an opinion on this question, as we do not engage in deposit placement arrangements.

19. ***Question 19:*** ***Are there other deposit placement arrangements with respect to which the FDIC should provide additional clarity as part of this rulemaking?***

    We do not offer an opinion on this question, as we do not engage in deposit placement arrangements.

20. ***Question 20:*** ***Are the criteria for considering and approving primary purpose applications for third parties that seek a primary purpose exception based on placing less than 25 percent of customer assets under management at depository institutions appropriate?***

    We do not offer an opinion on this question, as we do not engage in deposit placement arrangements that involve customer assets under management.

21. ***Question 21:*** ***Are the criteria for considering and approving primary purpose applications based on enabling transactions appropriate?***

    We do not offer an opinion on this question, as we do not engage in deposit placement arrangements that involve enabling transactions.

22. ***Question 22:*** ***Are proposed requirements for the application process for business relationships, other than those described in paragraphs (C)(1) and (C)(2), appropriate?***

    We consider the proposed requirements for the application process for business relationships, other than those described in paragraphs (C)(1) and (C)(2), appropriate.

23. ***Question 23:*** ***Is it appropriate to require reporting from nonbank entities that have received approval for a primary purpose exception? Should the FDIC require IDIs to report on behalf of such nonbank entities instead? Are there other ways the FDIC should consider to ensure that applicants that receive the primary purpose exception remain within the relevant standards?***

    We consider the requirement for nonbank entities that have received approval for a primary purpose exception to provide reporting to the FDIC to be appropriate, as it will establish transparent accountability by firms that want to engage in this consumer space. Reiterating our response to Question 15, each subject nonbank entity should also provide that same required reporting directly to the IDI with whom it is subject to a joint application. This joint responsibility would underscore the shared commitment to continued safety and soundness and consumer depositor protection.

24. ***Question 24:*** ***How frequently should the FDIC require reporting?***

    We consider annual reporting sufficient, provided that the FDIC could require more frequent reporting from a third party whose activity has become subject to Agency findings or other heightened proceedings.

25. ***Question 25:*** ***Is it appropriate for the FDIC to require IDIs to monitor third parties for eligibility for the primary purpose exception? Are there additional or better ways to ensure that third parties continue to remain eligible for the exception?***

    We consider it appropriate for the FDIC to require IDIs to monitor third parties for eligibility for the primary purpose exception. This monitoring may best be accomplished by requiring third parties invoking eligibility for the primary purpose exception to engage in an independent review using uniform testing and certification criteria, whose results are then submitted both to the IDI and the FDIC included with its annual reporting.

26. ***Question 26:*** ***Is the FDIC's proposed definition of "accept" appropriate? Would there be substantial operational difficulties for institutions to monitor additions into these existing accounts? Is there another interpretation that would be more appropriate and consistent with the statute?***

    We do not offer an opinion on this question, as we do not engage in placement arrangements of non-maturity deposits.

Effects, Costs, and Benefits of the Proposed Rule

We would urge that the regulation be modernized to explicitly exempt deposits attracted to the bank by the activities of its affiliates due to the strong loyalty expressed by our members to both ACT and ACT's affiliates above described. The consistent and strong renewal ratio for deposits generated by ACT affiliates and, moreover, the fact that the deposits generated through existing affiliate relationships with our members do not present the same risk to the insurance fund as deposits generated through deposit listing services (which are not considered brokered) support our responses. Such deposits generated through our affiliates have shown to perform at the same level as any other deposit and certainly do not pose the high degree of risk to the insurance fund that unaffiliated third-party deposit brokered accounts present.

The proposed rule, inclusive of our comments, would result in a reduction of costs without increasing risk to consumers, safety and soundness, or the DIF. Additional benefits include reduced internal reporting time and costs, improved net non-core funding ratios.

Auto Club Trust, FSB, very much appreciates the FDIC's consideration of the comments and would be pleased to answer any questions the FDIC or the staff might have.

Very truly yours,

John Bruno

rcb

Sent via email to comments@fdic.gov