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VIA EMAIL: comments@fdic.gov
Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Brokered Deposits (RIN 3064-AE94)

Ladies and Gentlemen:

CIT Bank, N.A. ("CIT Bank", "CIT", "we", "our" or "us") appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's notice of proposed rulemaking on brokered deposits, as contained in FDIC, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, Notice of Proposed Rulemaking and Request for Comment, 85 Fed. Reg. 7453 (Feb. 10, 2020) (the "NPR"). CIT Bank is a leading national bank, and the bank subsidiary of CIT Group Inc., that provides banking and related services principally to middle-market companies, small businesses, and individual customers through its branches and its online bank. We are deeply interested in the FDIC's proposed rulemaking relating to brokered deposits.

CIT Bank associates with the Bank Policy Institute ("BPI") and the American Bankers Association ("ABA"), among other bank trade associations, and we have participated in the preparation of comment letters by both BPI and ABA on the NPR. We support many of the positions taken by BPI and ABA in their letters, and we encourage the FDIC to consider them. In particular, CIT supports the positions taken by BPI and ABA relating to listing services and property management firms. In addition, we also wish to emphasize certain perspectives that are unique to CIT Bank. We submit our comments with the intention to promote bank safety and soundness, protect the Deposit Insurance Fund, and to support the regulation of brokered deposits and business practices in a clear manner.

1. "Deposit Broker" Exception for Agent or Nominee whose Primary Purpose is not the Placement of Deposits

Section 29 includes one exception which clearly states without reservation or requiring an application that "[t]he term deposit broker does not include… [a]n agent or nominee whose primary purpose is not the placement of funds with depository institutions". CIT believes that the proposed definition of "deposit broker" in the NPR goes well beyond Section 29, and first expands the actual definition of deposit broker beyond anything contemplated by Section 29, and then requires that deposit broker to

fit within an exception pursuant to an application process. The exceptions in Section 29 should not require an application process. This will be extremely burdensome for CIT and other banks, as well as the FDIC. As an example of how burdensome this would be, for CIT alone, we currently have approximately 1200 relationships with property management companies ("PMC's") who manage properties for homeowner associations, and as part of that management need to collect from the homeowners association dues, fees and assessments that need to be placed with banks so that bills can be paid and the properties managed. That is only one category of agent/nominee that would need to be run through an application process for CIT. CIT suggests that it would be clear and sufficient, when taking and classifying a deposit, for the bank itself to review the relationship between the depositor and the agent/nominee and determine if the agent/nominee's business is "primarily" the placement of funds with depository institutions (as banks do today). CIT also suggests that the term "primary purpose" can be read fairly to mean that if the agent or nominee's primary business is not financial services, and they are primarily providing non-financial services to their customers, then assisting their customers in obtaining deposit accounts should be excluded from brokered deposits. If the agent/nominee's primary purpose is not clear to the bank, then as the BPI letter suggests, there should be a supplementary voluntary application process to qualify under the exception for other activities.

The proposed rule does not include a definition of "engaged in the business of placing deposits." The preamble of the NPR states that a person would be "engaged in the business of placing deposits" if the person "has a business relationship with its customers, and as part of that relationship, places deposits on behalf of the customer." We do not believe that if one small part of the business relationship is the placing of deposits, that the person should be deemed automatically to be a deposit broker. We propose that the "business relationship" needs to be further defined to include additional language such as "primary" underlined and bolded language here: "has a business relationship with its customers, and as a **primary** part of that relationship, places deposits on behalf of the customer."

Under the proposed rule, relevant factors are:

- if, while engaged in business, the person has legal authority, contractual or otherwise, to close the deposit account or move the third party's funds to another bank;
- if, while engaged in business, the person "directly or indirectly shares any third-party information with the insured depository institution";
- if, while engaged in business, the person "provides assistance or is involved in setting rates, fees, terms, or conditions for the deposit account".

This proposed definition is overly broad and would classify agent/nominees that are primarily engaged in other businesses on behalf of depositors, with the placing of deposits a smaller part of the overall business, to be facilitating the placement of deposits on behalf of depositors. Similar to our comment on the deposit broker definition, above, this comment is intended to create clarity around who is actually "engaged in the business of" facilitating the placement of deposits. A person should not be deemed to be "engaged in the business" of deposit placing or facilitating deposit placement unless deposit placement or facilitation is a primary part of that relationship. If the primary purpose of the business relationship is non-financial in nature, then the agent/nominee should not be deemed to be primarily engaged in the business of placing or facilitating the placement of deposits.

Addressing the relevant factors:

If the depositor has the legal authority, contractual or otherwise, to fire or otherwise terminate its relationship with the agent/nominee, and the agent/nominee thereafter does not have any authority with respect to the deposit account, and cannot otherwise move the depositor's funds to another bank, the agent/nominee should not be deemed to be engaged in the business of placing or facilitating the placement of deposits.

- If the agent/nominee, while engaged in business, "directly or indirectly shares any third-party information with the insured depository institution", the agent/nominee should not be deemed to be facilitating the placement of deposits at all. Not only is this test entirely too broad, but it is not specifically related to deposit placement and should be deleted.

2. In the FDIC's proposed definition of "engaged in the business of facilitating the placement of deposits" the third-party information sharing prong should be removed.

Under the proposal, a person would satisfy the definition of "facilitation" by, engaging in anyone, or more than one, of the following activities:

A. The person directly or indirectly shares any third-party information with the insured depository institution;
B. The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution;
C. The person provides assistance or is involved in setting rates, fees, terms, or conditions for the deposit account; or,
D. The person is 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 insured depository institution, other than in a purely administrative capacity.

We believe the language set forth in the first proposed criteria is problematic. As proposed, the language "directly or indirectly shares" broadens the scope of the FDIC's existing interpretations and captures arrangements the FDIC has previously determined do not result in brokered deposit treatment and is inconsistent with the FDIC's intent to bring more clarity to the brokered deposits regulatory framework. For example, with the proposed third party information sharing prong, listing services that transmit messages between potential depositors and banks, and are not compensated through funded deposit volume-based fees, will now be defined as deposit brokers, as these types of arrangements necessarily involve sharing of some information, as future depositors transition from listing service website to the bank's website.

Based on both the FDIC's historical positions and its stated purposes in proposing the revised brokered deposit regulations, we assume that that the FDIC would not view certain relationships as falling within the proposed "facilitating" definition. In particular, the FDIC should confirm that the following relationships do not result in a person being engaged in the business of facilitating the placement of deposits:

- Listing services: In today's digital ecosystem banks use digital listing services for customer and core deposit acquisition. The listings services are compensated based on fees

determined by number of clicks or leads driven to bank's website and application process and not by volume of funded deposits by new or existing customers. The listing services are not involved in the physical placement of deposits. The FDIC should confirm that listing services that meet these criteria are not within the "facilitating" definition.

- Marketing/advertising arrangements: Marketing and advertising relationships are arrangements that generally result in direct customer relationships between the bank and a depositor. We have marketing relationships with several websites or affiliates which meet this definition and depend upon these relationships to source retail customers to the bank. The FDIC should confirm that marketing arrangements are not within the "facilitating" definition, as long as the arrangement results in a direct relationship between a depositor and a bank (i.e., the advertiser does not receive funds from a customer for deposit with a bank), and the advertiser does not have an ongoing contractual or other right to move the depositor's funds to another bank.

3. <u>The "Primary Purpose Exception"</u>

CIT's comments above clearly support the "primary purpose exception", even if it is determined that the primary purpose exception process is necessary to review (as opposed to codifying that definition into the definition of deposit broker above, as CIT has suggested). It is extremely important to consider the fact that in enacting Section 29, Congress specifically did not intend to capture those agent/nominee's whose primary purpose in its business is something other than the placement of deposits with banks. As stated in Section 29, "[t]he term deposit broker does not include… [a]n agent or nominee whose primary purpose is not the placement of funds with depository institutions".

A. Deposit Placements that Enable Transactions. The concept of deposits being placed to "enable transactions" is very important and should be broadened and clarified. If the primary purpose of an agent/nominee's business is not to place deposits, and the agent/nominee assists in placing deposits together with the depositor at a bank, so that the agent/nominee can assist the depositor in running the depositor's business (i.e., making payments as business requirements necessitate, essentially using the bank as a "back office" payment processor to make sure the agent/nominee runs the depositor's business efficiently), then clearly those deposits are being placed to enable transactions as a service provided by the agent/nominee. The final rule should not require placement of 100% of customer funds into transaction accounts. That is only one potential aspect of demonstrating whether the deposits are placed at the bank for the purpose of enabling transactions on behalf of the depositor. If the agent/nominee and/or depositor can demonstrate to the bank that the deposits are being placed to enable transactions-either immediately, meaning the deposits would need to be in transaction accounts-or both immediately or sometime later, meaning part of the deposits can be placed in, for example, savings accounts in reserve for future expenses, and the rest can be placed in transaction accounts, and the savings can be moved to the transaction accounts later as needed. If the agent/nominee can demonstrate that the monies are being placed at the bank to help meet budgeted and rainy day expenses of the depositor's business, and the purpose of the agent/nominee is to assist the depositor in managing service providers and paying for those expenses through the bank, it should not matter whether initially "100%" of the monies are deposited in a transaction account-that is unfair to the depositor.

As an example of enabling transactions, as previously mentioned, CIT currently has relationships with approximately 1200 PMC's and receives deposits from homeowner associations through these PMC's as part of servicing those homeowner association relationships. CIT receives such deposits to assist the PMC's in the maintenance, upkeep, collection of rent or homeowners' fees, management of facilities, payment of expenses, and allocation of profits, at the direction of underlying property owners and their homeowner associations. The PMC's are also responsible for managerial services, including coordinating and communicating with outside vendors that handle maintenance and repair of the property, such as landscaping services, snow removal (where applicable), roadways and sidewalks, clubhouses, pools, tennis courts, restaurants and other amenities, and roofs and other exteriors of the buildings. The deposits are placed at CIT so that the PMC can assist the homeowner associations in managing their properties-the PMC's need services from the bank in order to do their jobs on behalf of the homeowner associations. Under these circumstances, it is the view of CIT that the PMC's primary purpose is not to assist their homeowner association clients in placing deposits at CIT but rather to assist the property owners and homeowner associations to efficiently run their business, manage their properties, pay bills and enable banking transactions. Sometimes the deposits are in transaction accounts and sometimes they are saved in savings accounts as reserves for longer term/rainy day purposes, such as quarterly or annual property tax or insurance expenses or long-term capital reserves. Thus, these deposits would be covered by the primary purpose exception for the purpose of enabling transactions and would be consistent with prior Advisory Opinions of the FDIC.

B. Payment of remuneration to the Agent/Nominee or depositor.

Under the proposed rule for deposit placements that enable transactions, as part of the application process, the applicant must provide information with respect to any interest, fees or other remuneration. The Preamble to the final rule notes that if any remuneration is paid (including minimal interest paid to the deposit account), the FDIC "would more closely scrutinize the agent or nominee's business to determine whether the primary purpose is truly to enable payments." Section 29 places its emphasis on whether the primary purpose of the agent or nominee is the placement of funds. As recommended above, the bank should itself always review the relationship between the agent/nominee and the depositor. If remuneration is paid, then the bank should, as the FDIC says in the proposed rule, "more closely scrutinize the agent or nominee's business".

C. Other Business Relationships. In the proposed rule, the FDIC considers whether there may be other business relationships that may meet the primary purpose exception. If CIT's suggestions in 2 A and B above are not acceptable, then CIT clearly supports the considerations in the "other business relationships" prong, specifically because the proposal considers exactly what CIT is proposing above in reviewing the language of Section 29 which clearly and completely excludes from the definition of deposit broker an agent or nominee whose primary purpose is not the placement of funds with depository institutions. This section is specifying what information needs to be provided to the FDIC as part of the application process. CIT emphasizes that the bank itself should be considering this information in making its own determination. A bank should be able to demonstrate to the FDIC as either part of an examination, or upon after the fact notice, what it has considered, in making a determination of the agent/nominee's primary business, rather than filing an application. In addition to the underlying agreements, the bank would need to consider:

(1) the agent/nominee's principal lines of business, whether those are financial in nature of not, and (if any) the total amount of assets under management by the agent/nominee;

(2) revenue generated from the agent/nominee's activities related to the placement, or the facilitating of the placement, of deposits;

(3) revenue generated from the agent/nominee's activities not related to the placement, or the facilitating of the placement, of deposits.

If that analysis reveals that the primary business of the agent/nominee is not the placement of deposits, then the agent/nominee should not be deemed a deposit broker, under the clear language of Section 29.

Thank you for considering our comments. Should you have any questions or otherwise wish to discuss them with us, please contact the undersigned (telephone – 626-535-8544; e-mail -- Steve.Solk@cit.com) or my colleagues, Jim Shanahan (telephone -- 973-740-5371; e-mail -- James.Shanahan@cit.com) or Doug Witte (telephone -- 973-740-5393; e-mail -- Doug.Witte@cit.com).

Very truly yours,

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