KASASA

June 9, 2020

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429
(comments@fdic.gov)

Re: Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, RIN 3064-AE94

Dear Mr. Feldman:

As the CEO of Kasasa, Ltd. ("Kasasa"), I am writing this letter to supplement the comment letter Kasasa sent to the FDIC on May 27, 2020. This letter focuses on listing services.

For the reasons set forth in our May 27 comment letter, we believe that the FDIC's proposal regarding the modernization of the brokered deposits regime ("Proposal") would expand the deposits that are ensnared by the Proposal. Broadening the types of deposits that are determined to be "brokered" would adversely impact the capital requirements for community banks, as well as their deposit insurance assessments, resulting in a de facto prohibition on community banks' acceptance of such deposits.

We appreciate the clarification in the FDIC staff memorandum released on March 2, 2020 concluding that "[m]arket research or advertising by simply including a link on a website" would not be covered by the proposed "facilitating" definition, absent more involvement. However, the plain language of the Proposal does not clearly permit listing services when individual deposit relationships are established by the insured depository institution ("IDI") through a listing service. Moreover, historically, FDIC staff advisory opinions interpreting the regulatory framework for brokered deposits have created uncertainty with respect to how community banks can leverage listing services and the compensation models that would be permitted.[1]

We believe the brokered deposits analysis codified in the FDIC's eventual final rule should focus on the strength and characteristics of the direct depositor relationship between the individual depositor and the IDI and the stable nature of that depositor's associated funds, rather than on the institution's use of a third-party service provider, so long as the third party has (1) no contractual relationship with the individual depositor to place or control the individual depositor's deposits, banking decisions, or financial activities; and (2) no authority to control the terms of the deposit account. That is, if a third-party listing service, for example, does not have control over the relationship that the individual depositor establishes with the deposit-holding IDI, the FDIC should make clear that such a listing service would not be covered by the "facilitation" definition. Specifically, the FDIC should modify the proposed definition of "facilitation" to expressly provide that a third party that has control over a deposit account is engaged in facilitation, but should also expressly exclude from the facilitation definition a third party that does not have such control over a deposit account.

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[1] *Compare* FDIC-15-02 (June 6, 2014) (requiring that the company "amend its agreements with client IDIs so that the [rewards checking account] program will not include "Success Fees." Such fees will be replaced by "Rewards Servicing Fees," which will be associated with [the Company's] rewards platform, and not with the [rewards checking account] marketing program") *with* FDIC-20-01 (Mar. 19, 2020) ("fees paid by the Bank to [broker dealer] are "flat" fees (i.e., a "per account" or "per customer" fee), represent payment for recordkeeping or administrative services, and are not payment for placing deposits").

There are clear, control-related distinctions to be made between third parties that support direct deposit relationships being established between an individual depositor and their bank, and programmatic deposits managed by "deposit controllers" (as discussed in our May 27th letter) that have the potential to create safety and soundness risk for less than well-capitalized financial institutions and the Deposit Insurance Fund ("DIF"). By focusing on the "direct relationship established between an individual depositor and the bank of their own choosing" and whether or not the third party has control of the depositor's funds, rather than making determinations based on "the activities of a third party," the FDIC would enable entrepreneurs to develop solutions to address many of the structural challenges that community banks face when trying to compete with megabanks and fintechs, as discussed further herein. Deposits enabled through listing services should be excluded from the definition of "deposit broker" where a depositor purposefully selects a listed institution, an institution establishes a bona fide independent relationship with that selected institution and where that depositor maintains exclusive control over her/his funds. Furthermore, we encourage the FDIC staff to remove the compensation restrictions applied to listing services, in particular, whether the listing service is compensated on a "per account" or "pay-for-performance" basis, as such compensation models can ultimately reduce community banks' overall costs and operational risks and are commonplace in many industries. The compensation structure should be irrelevant in determining whether a third party is a deposit broker when the third party has no control over the deposit account relationship.

For example, it should not matter if the listing service is compensated for each deposit account that the IDI acquires through the service (i.e., on a "per account" basis), provided that the consumer overtly selects an IDI of her/his own choosing from the service and the third party <u>has no</u> independent legal authority outside of executing contracted services for and acting on behalf of the IDI to (a) set rates, fees or other terms of an account; (b) decision applications and accept new accounts on behalf of an IDI; (c) execute transactions within an account; or (d) close an account or move an account to another IDI. The form of compensation does not change the fundamental nature of the direct relationship established exclusively between an individual depositor and the IDI or the fact that the ultimate control of the depositor relationship is maintained by the IDI. A third party offering a listing service <u>should not</u> be confused with a deposit controller that has the ability to control the depositor relationship, contractual or otherwise, to open an account, close or move an account to another IDI for reasons other than risk of loss to the depositor, execute transactions within an account, or set rates, fees, or other terms of the account.

If the FDIC clarifies that it does not intend to treat as brokered deposits residing in transaction or relationship-based accounts, where a bona fide independent relationship has been established directly between an individual depositor and a bank, and where that bank owns and controls that depositor relationship, to be treated as brokered, notwithstanding that the account relationship may have been cultivated through a link on a third-party website (or some other digital touchpoint) without control by the third party, then I believe community banks would be empowered to more appropriately promote themselves in digital acquisition channels. I expect that this would be the case, because I know that my company would like to invest in providing community banks with the tools they need to compete in this arena so they can establish direct depositor relationships with prospective individual depositor customers. Contrary to deposit controllers like Chime, my company would offer these capabilities for the primary purpose of enabling each participating IDI to own and control the individual depositor relationships they garner through the listing service.

<u>I Strongly Encourage the FDIC to Clarify Community Banks' Ability to Utilize Listing Services.</u>

Community banking is at a tipping point. The deck is stacked against community banks, but this clarification would be an important step to empower community banks to compete with megabanks and fintechs. Individually, a single small institution cannot keep pace with the ability of fintechs and the megabanks to introduce new innovations. They lack the data and analytic tools these organizations can leverage; they can't match the technology and marketing budgets that these massive companies have to spend; and they can't replicate the economic and operational efficiencies these large competitors enjoy.

As is evidenced by the current COVID-19 pandemic, the future belongs to organizations that have a "digital first" mindset; massive amounts of data; huge technology and marketing budgets; and that recognize that local proximity isn't measured in miles but in keystrokes. Currently, consumers are flocking to megabanks and fintechs, as a result of the structural disadvantages community banks face, including, but not limited to, the following:

- Each community bank's customer base is so small and in disparate "data silos" that the benefits of real "big data" are simply out of the question. The average asset size for the 4,381 community banks with less than one billion in assets is $263,967,956, and they have an average of 17,000 customers. By contrast, Bank of America, Wells Fargo, and Chase have 66MM, 70MM, and 63MM customers, respectively. Even with a sophisticated data modeling tool, the data set provided by the community bank's small number of consumers is not adequate to leverage the promise and capability of modern data-driven consumer insight and marketing capabilities in the fashion that a megabank would.
- In 2018, the 27 leading U.S. banks spent more than $13 billion dollars on marketing, with five banks spending over a billion dollars each (JPMorgan Chase ($3.3 billion), American Express ($2.6 billion), Capital One ($2.2 billion), Bank of America ($1.5 billion), and Citibank ($1.4 billion)).[2] The average sub-one-billion-dollar asset bank has a $189,529 annual marketing budget. Even in local markets, the marketing power of a single community bank will not be adequate to prevent the bank from being nibbled to death by nimbler and stronger, digitally enabled fintech and megabank marketers.
- Most community financial institutions ("FIs") rely on their core processor and a handful of other vendors to power their products, and, thus, the ability to create a new product is limited by the capabilities of these legacy systems. Developing and/or purchasing new software, then implementing it, to power new consumer-centric capabilities is time consuming and expensive. It is also risky because predicting consumer behavior is hard and requires significant iterative testing to achieve a well-performing outcome. The cost of these activities, is simply out of reach for most community banks—both from a dollars and a human resources perspective. This leaves most community banks lagging behind as they are out innovated into obsolesce.

Like FDIC leadership, I am laser-focused on developing a world in which community banks can compete on an equal basis with fintech companies and megabanks. To do so, community banks must have: (a) a flexible core processor who could enable them to deploy innovative financial products and services on a continuous basis; (b) an awesome website featuring pay-per-click advertisements and optimized for local search requests; (c) a best-in-class online banking system with account opening capabilities; (d) a digital customer journey pathway and elegant user experience software; and (e) a world-class marketing department to promote their institution.

To meet these requirements, community banks need to rely on service providers that have a technology stack that rivals the capabilities of the most sophisticated fintech company. The service providers would:

- Feature an end-to-end digital platform that would remove all friction from every consumer financial transaction;
- Leverage artificial intelligence and a massive amount of data, to the extent permitted by applicable law, to provide insights into customer behavior and financial needs;

[2] EMI Strategic Marketing, Mar. 1, 2019.

- Feature an automated marketing platform that would enable community banks to constantly communicate with their current and future customers on an ongoing basis with relevant and tailored messages;
- Provide product development resources and services to deliver a constant flow of innovative products and services that community bank could deploy within their communities;
- Employ the world's best designers to deliver an elegant user interface across all digital devices;
- Provide automated compliance guidance to ensure consumer awareness and transparency;
- Provide consulting services to increase consumer satisfaction and account profitability;
- Provide online education to assist institutions in training their personnel;
- Promote community banking to raise consumer awareness across all media channels; and
- In our case, as previously discussed, ensure that every depositor relationship was directly established with and owned by the community bank.

Community Bank Cooperatives Can Solve this Problem.

Leveraging everything articulated above, the business model I have in mind would mirror a fintech organization with two significant twists: (a) all depositor relationships would be established and owned by participating community banks; and (b) all participating community banks would pool their data repositories, subject to applicable law, and technology and marketing budgets, to help create and maintain the scaled capabilities that the fintechs and megabanks currently enjoy and that individual community banks can't match.

The business model is simple. Community banks that want to participate in the cooperative simply pay a subscription fee to be a member of the consortium; share their customer and transaction data in an anonymous and secure manner with the cooperative; contribute a portion of their technology and marketing budgets in exchange for ongoing investments in technology infrastructure and marketing capabilities; and pay for the additional services the cooperative provides via an affordable "per account" or "pay-for-performance" compensation model that reduces their overall costs and operational risks.

The business model leverages the contributions of the small entities to create the scaled benefits of a larger entity providing those benefits back to each individual participant in an affordable, economic fashion. Each participating community bank would continue to operate their businesses as they do today, but with the added benefits of massive data, an end-to-end digital banking and delivery platform, and a formidable marketing budget. This cooperative would enable community banks to pool their individual resources to gain economic benefits and operational efficiencies that would rival the capabilities of the most sophisticated fintechs and megabanks.

The centerpiece of the business model would be a web of digital touchpoints where a consumer could search for, or be presented with, financial products and services offered by community banks that meet the consumer's needs. Such touchpoints may include a consumer-facing website that would enable a consumer to search for community banks offering deposit products, using search terms like "community banks in zip code 20429." The site would return detailed information on all participating financial institutions that meet the criteria and the consumer could then continue their research by filtering information on each institution's locations, offerings, rates, fees, digital services, benefits, etc.

Upon selecting a financial institution to do business with, whether through the above-described website or through any of the other digital touchpoints, and upon expressly electing to open an account with that chosen institution, the consumer would be presented with all regulatory disclosures associated with that chosen institution's offering(s), and then the consumer would go through an application process—including review, decisioning, and approval—controlled exclusively by the financial institution. If denied, the declining institution would provide all appropriate denial information to the consumer through the website. If approved, the chosen institution would provide the consumer with all appropriate information regarding their account; establish the account within the institution's core processor; and provide the consumer with funding instructions and any account passwords and access as appropriate. For clarity, the depositor relationship is established directly between the depositor and the chosen institution, and funds are placed by the depositor directly with the chosen institution. At that point, the chosen institution owns and controls the depositor relationship, without influence or control by the cooperative. The cooperative is merely acting as a technology platform conducting administrative services that aid both the consumer and the participating institutions.

Once the depositor's account is established, the chosen institution can begin to utilize the cooperative's capabilities to serve the customer and expand their relationship with the accountholder. The institution could leverage the cooperative's digital delivery capabilities to send appropriate account alerts, next-best-actions and special promotions based on the accountholder's buying behavior and geolocation. Financial advice could be provided by the institution based on an analysis of the accountholder's profile and life stage. Expanded services like insurance and wealth management might be offered by the institution directly or through additional digital touchpoints to provide additional financial security.

Essentially, the bank would do everything they would want to do, but currently can't do, because they don't have the nimble technology, the data intelligence, or the digital delivery capabilities to deliver what the fintechs and megabanks do as a normal course of their business.

This business model solves the challenges that individual community banks are faced with due to their small size:

- The ability to pool the consumer data across a common product set, to the extent permitted by applicable law, allows community banks to gain insights as it relates to how to improve customer satisfaction, raise per-account profitability, and increase products per household.
- Combining just a fraction of community banks' budgets could create a far larger combined marketing budget to drive consumers into local institutions that are hungry to serve as a depositor's primary FI.

In service to the strategic needs of community banks, informed by the collective data of these FIs, a company based on the business model described above could ideate new products, test them with consumers, refine marketing methodologies, then support the community FIs as a metaphorical "wholesaler" of the capabilities that allow the FI to "retail" the products to their end customer. This allows the FI to be more confident that a new product will perform as promised as it regards supporting them in their strategic objectives. The web of digital touchpoints described above would serve as distribution support for new products and would also help the FI achieve higher levels of consumer acquisition success with more marketing predictability.

Although I want to build Kasasa into the type of company described in this letter, by developing a listing service called Kasasa Finder, I believe that there would be a whole host of other "like business models," which would help create a web of digital touchpoints, a financial marketplace, if you will, that would benefit both consumers and all participating community banks. For example, I can foresee businesses building capabilities to offer:

- **Small business operating systems:** There is a growing number of firms seeking to integrate services like CRM, point-of-sale processing, online marketing, and accounting. These small business operating systems could be sold (wholesale) to community FIs to provide services (retail) to their small business customers. The small business operating system company could have its own version of Kasasa Finder to drive small business clients to community banks.
- **Financial literacy/starter account:** Financial literacy providers could partner with community banks to offer consumers financial literacy content paired with a starter, credit-builder account. This account and associated financial literacy content could be distributed through its own version of Kasasa Finder.
- **Rewards checking accounts that contribute to 529 savings:** Providers of 529 savings plan products could partner with local banks to offer checking paired with a 529 where the rewards from the local FI's rewards account are contributed to the 529. Again, this could be distributed through a model similar to Kasasa Finder.
- **Budgeting and money management:** There are numerous providers of budgeting and money management tools. These tools could be integrated into a local FI's digital offering and marketed, with attached DDA, by the budgeting/money management company to drive consumers back to the FI.

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COVID-19 has taught us that the future belongs to companies that embrace a "digital first" mindset and culture. The fintechs and megabanks have spent the better part of the last decade investing billions of dollars in building and deploying end-to-end digital banking platforms, payment systems and elegant user interfaces. Community bankers are just now recognizing the importance of these capabilities. Allow me and other innovators to create solutions that will enable community banks to compete and survive in a post-COVID-19 world, where end-to-end digital banking platforms and elegant user interfaces will be "table stakes."

Sincerely,

[redacted]

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