June 9, 2020

Submitted via email (comments@fdic.gov)

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

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

Dear Mr. Feldman,

This letter is submitted by Green Dot Corporation ("Green Dot"), a publicly traded financial technology leader and bank holding company with a mission to power the banking industry's branchless future.[1] We appreciate the opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") notice of proposed rulemaking on brokered deposits restrictions (the "Proposed Rule").

Green Dot responded to the FDIC's Advanced Notice of Proposed Rulemaking regarding brokered deposits in May 2019, and we continue to support the FDIC's review of the regulations, interpretations, guidance and other policies that make up its approach to brokered deposits. We appreciate the substantial steps the FDIC has taken with the Proposed Rule in furtherance of its intent "to modernize its brokered deposit regulations to reflect recent technological changes and innovations". However, we believe that the Proposed Rule does not fully address the concerns we previously raised regarding the potential determination by the FDIC that a "deposit broker" exists in many scenarios where a third party (including an affiliate or subsidiary of an insured depository institution) sources the customer relationship or services the customer, but does not maintain a level of influence or control over the deposit account.

[1] Our proprietary technology and our wholly-owned bank (Green Dot Bank) are used by America's most prominent consumer and technology companies to design and deploy banking solutions to their customers and partners. We also use that same integrated technology and banking platform to design and deploy our own leading collection of banking and financial services products directly to consumers through one of the largest retail banking distribution platforms in America. Our products can be acquired through more than 100,000 retailers nationwide, thousands of corporate paycard partners, several "direct-to-consumer" branded websites, thousands of tax return preparation offices and accounting firms, thousands of neighborhood check cashing locations and both of the leading app stores.

In light of our concerns, we recommend that the FDIC consider the following revisions to the Proposed Rule:

1. Define "facilitation" to cover only those activities which clearly demonstrate that a third party plays an active role in the opening of the account or maintains a level of influence or control over the deposit account after it is opened. We believe that the Proposed Rule still fails to prevent entities such as retailers, employers, technology platforms, advertising and marketing partners, affiliates of an insured depository institution, Fintech partners and others from being classified as deposit brokers, despite the fact that their activities may only be incidentally linked to the opening or maintenance of a deposit account. We believe that third parties may engage in account opening or maintenance activities without violating the principle that the needs of the depositor be the primary driver of the selection of a bank. Specifically, we do not believe that merely sharing third party information with an insured depository institution constitutes a level of "control" that should be dispositive in determining "facilitation". Additionally, we believe that there are a broad range of activities that are "administrative" in nature that may be performed by third parties but do not evidence "control" over the deposit account. We therefore urge the FDIC to further clarify activities that fall within the concept of acting in a purely administrative capacity.
2. Exclude affiliates of an Insured Depository Institution from the definition of "deposit broker".
3. Simplify the process for determining whether the primary purpose exception is satisfied, including eliminating the application process. We appreciate the steps the FDIC has taken in the Proposed Rule to provide additional clarity and guidance regarding the primary purpose exception. However, we believe that the framework set out in the Proposed Rule regarding the primary purpose exception should be simplified. Specifically, we believe that the FDIC should establish bright-line criteria where the primary purpose exception will apply without the need for an application. For example, the FDIC should consider establishing a formal framework for satisfying the test of whether an agent or nominee is placing depositors' funds into transactional accounts for the purpose of enabling payments. We note that if the FDIC were to establish such a framework, the payment of interest or fees, or remuneration, should not be fatal in the determination. Finally, if the application process is retained, we urge the FDIC to promote efficiency by allowing insured depository institutions to rely on a previous approved application as precedent for multiple and/or unrelated third-party relationships where the same or substantially similar facts are present.

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We appreciate the opportunity to comment on the Proposed Rule and look forward to the FDIC's continued efforts to modernize its brokered deposit regulations. If you have any questions about the comments in this letter, please do not hesitate to contact me at 626.765.2243 or jricci@greendot.com.

Sincerely,

John Ricci
General Counsel
Green Dot Corporation