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April 1, 2019

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 and Interest Rate Restrictions”

Dear Sir:

Auto Club Trust, FSB (“ACT”) appreciates the opportunity to submit these comments in response to the Advanced Notice of Proposed Rulemaking (“ANPR”) on *Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions* (the “Proposed Rulemaking”) published by the Federal Deposit Insurance Corporation (“FDIC”) in the Federal Register on February 6, 2019. 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 develop a proposed rule based on comments received in response to the Proposed Rulemaking ANPR.

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 9.8 million American Automobile Association (“AAA”) members and insureds through 200 branded offices in 11 states and two U.S. territories: Florida, Georgia, central and northern Illinois, northern Indiana, Iowa, Michigan, Minnesota, Nebraska, North Dakota, 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 8,000 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, 2018, the bank had 83 full-time employees, total assets of \$506 million, and capital of \$54 million.

Comments on the Proposed Guidance

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 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. 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. Request for Comments

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. Are there types of deposits that are currently considered brokered that should not be considered brokered? If so, please explain why.***

Deposits attracted from bank customers who are engaged in an arm's-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.

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. 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 76% 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

As noted in the Proposed Rulemaking, Section 29 of the Federal Deposit Insurance Act ("FDI") does not directly define a "brokered deposit," but rather, it defines a "deposit broker" for purposes of the restrictions. Thus, the meaning of the term "brokered deposit" turns upon the definition of "deposit broker." Restrictions on brokered deposits are tied to the statutory definition of "deposit broker" that Congress adopted in 1989 as part of the legislative response to the bank and thrift crisis. This "deposit broker" definition is subject to nine statutory exceptions, including "9) an agent or nominee whose *primary purpose is not* the placement of funds with depository institutions." The primary purpose exception applies to "an agent or nominee whose primary purpose is not the placement of funds with depository institutions. When acting in that capacity, the third-party agent/nominee is limited to the principal's goals and objectives, and is for a substantial purpose other than to provide 1) deposit insurance, or 2) a deposit-placement service. In analyzing this principle, staff has considered whether the deposit-placement activity is incidental to some other purpose.

The statute also provides an exception for an Insured Deposit Institution ("IDI") with respect to funds placed with that IDI. Staff notes in the Proposed Regulation that based on the plain language of the statute, staff has consistently applied this exception strictly to the IDI itself and not to separately incorporated legal entities such as other affiliates.

We acknowledge the FDIC's admission that determining what constitutes a deposit broker, and thus a brokered deposit, is very fact-specific and requires a close review of the arrangement, the documents governing the arrangement, and the

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

third-party's remuneration, among other things. We further understand that, given the wide, and evolving, variety of third-party arrangements, FDIC staff review them on a case-by-case basis, applying the statutory provisions to the facts and circumstances presented, including whether the third-party's deposit placement activities, if any, are directed at the general public as opposed to being directed at members (or "affinity groups") or clients.

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). 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.

- 2. Are there specific changes that have occurred in the financial services industry since the brokered deposits regulation was adopted that the FDIC should be cognizant of as it reviews the regulation? If so, please explain.***

Reiterating our response to the prior question, modern consumers have demonstrated a preference for obtaining financial products from single-trusted sources in a manner that would not have been contemplated during the passage of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). The safety and soundness concerns that FIRREA and FDICIA sought to resolve predated even the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994. The banking environment has changed drastically since then and today consumers increasingly seek to aggregate traditional banking, investment management, and insurance products within single relationships that can be conveniently managed from their computers, laptops, and mobile devices.

- 3. Do institutions currently have sufficient clarity regarding who is or is not a deposit broker and what is or is not a brokered deposit? Are there ways the FDIC can provide additional clarity through updates to the brokered deposits regulation, consistent with the statute and the policy considerations described above?***

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Consistent with our prior comments, we would encourage the FDIC to broaden the regulations that effectuate the statutory Insured Deposit Institution (“IDI”) exception beyond strictly the IDI itself to encompass separately incorporated legal entities that share an affinity relationship such as other affiliates.

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,

A large black rectangular redaction box covering the signature area.

John Bruno

rcb

Sent via email to comments@fdic.gov