May 7, 2019

Via Electronic Mail

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

Re: Brokered Deposits (RIN 3064-AE94)

Ladies and Gentlemen:

Barclays Bank Delaware (BBD) submits this letter on its behalf in response to the Federal Deposit Insurance Corporation's (FDIC) advance notice of proposed rulemaking (ANPR) in connection with the FDIC's comprehensive review of its regulatory approach to brokered deposits.[1] We very much appreciate the FDIC's initiative to modernize its regulation of brokered deposits, particularly because technology, business practices, and products have changed greatly since these regulations were adopted.

BBD is a state chartered non-member insured depository institution (IDI) headquartered in Wilmington, Delaware. BBD offers Barclays-branded consumer retail digitally based savings accounts and certificates of deposit. BBD appreciates the opportunity to share its views with regard to the ANPR, especially implications for digitally based institutions.

We recommend that: (1) the FDIC revise the application of interest rate restrictions to digitally based institutions; and (2) the FDIC revise its treatment of marketing relationships and referral arrangements to remove stable deposits from the scope of those classified as brokered.

I. The FDIC should revise the application of interest rate restrictions to digitally based institutions.

We believe the FDIC's calculation of the national rate cap has become outdated and not evolved with technological advancements and business practices in banking, including the growth of digitally based institutions (such as BBD) and, therefore, does not reflect the true market rate for the digital marketplace. We strongly support Chairman McWilliams' comments that the "banking industry has undergone significant changes since [the brokered deposit] regulations were put into place," and that the FDIC should consider

[1] 84 Fed. Reg. 2,366 (Feb. 6, 2019).

"the impact of changes in technology, business models, and products since the brokered deposit requirements were adopted."[2]

The FDIC's current methodology for calculating the rate cap does not accurately reflect the cost of deposits for banks that are supported by extensive physical branch networks and which differs from how digital banks source these deposits; this means that in today's rate environment the FDIC's market average rates fall significantly below those of the digital deposit market. Banks that are branchless and digitally based are a growing and important market segment. As the FDIC has acknowledged in its ANPR, "because the national rate is an [simple] average for all banks and branches, the largest banks with large numbers of branches have had a disproportional effect on average interest rates. Even as other interest rates have begun to rise, the average has stayed low as the largest banks have been slow to increase interest rates on deposits."[3] Digitally based banks must use this skewed average, which does not consider the actual market in which digitally based banks compete, for determining whether the offering of an interest rate is "significantly higher" (*i.e.,* more than 75 basis points) above the national rate.

Without the cost of extensive branch networks, digitally based institutions are able to consistently offer higher interest rates. Higher interest rates simply reflect a lower cost of doing business and not a desire to fund rapid growth through volatile deposits.

Additionally, the impact of the FDIC's national rate calculation becomes an unintended binding supervisory constraint on well-capitalized institutions. In many cases, examination and supervisory staff take the view that a bank that is offering interest rates that are "significantly higher" than the national rate is funding its operations with " high risk" and volatile deposits. This discourages well-capitalized institutions from raising or holding what should be considered stable deposits in a manner that is permitted by both Section 29 and the FDIC's regulations. Further, the offering of an interest rate that is more than 75 basis points above the national rate is not necessarily indicative of an unsafe or unsound practice, but is a reflection of an outdated national rate calculation. As a result, the FDIC's method for calculating the national rate creates an unnecessary supervisory concern for well-capitalized institutions when such concerns are not warranted. It should be noted that enforcing the current national rate restriction on a bank that becomes less than well-capitalized could potentially turn a capital event into a liquidity event when the bank is required to lower its interest rates.

We recommend that the FDIC revise its methodology for the calculation of the national rate to account for the varying interest rates that are offered to source a variety of stable deposits. As the FDIC has acknowledged in its ANPR, "institutions also have created new products that do not fit into the posted national rates and rate cap."[4] The FDIC should revise its definition of "normal market area" to reflect the appropriate market for digitally based banks with non-branch deposit channels.

[2] Statement of FDIC Chairman Jelena McWilliams on Implementation of the EGRRCPA, before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (October 2, 2018).
[3] 84 Fed. Reg. 2,375.
[4] *Id.*

II. Marketing Relationships

A. The FDIC should exclude affinity group from the definition of "deposit broker."

Affinity groups connect their members and the public to a wide variety of products and services. Unlike the business of the archetypal deposit brokers that Section 29 was intended to capture, the business of affinity groups is not primarily to connect depositors with IDIs or to facilitate the placement of deposits. The affinity group is not involved in any way in the deposit relationship other than to provide a marketing platform. Depositors establish and maintain direct relationships with the IDI. Based on current FDIC guidance, deposits marketed using affinity groups could be deemed brokered deposits. This reduces banks' ability to take advantage of affinity relationships in marketing and unfairly penalizes IDIs that use these channels to highlight their services to potential customers.

The FDIC should clarify the application of Section 29 by excluding affinity groups from the definition of "deposit brokers" by expanding the application of the primary purpose exemption. Under Section 29, the term "deposit broker" does not include "an agent or nominee whose primary purpose is not the placement of funds with depository institutions." As noted in the ANPR, the primary purpose exception to the definition of deposit broker applies only to "an agent or nominee," and it is difficult to see how an affinity group is an agent or nominee of the depositor.[5]

B. Volume-based compensation of advertisers should not deem the advertiser a "deposit broker."

The FDIC should exclude advertisers that market deposits on behalf of, or otherwise refer potential customers to, IDIs from the definition of "deposit broker," regardless of the fee arrangement because such advertisers are not engaged in the business of either placing or facilitating the placement of deposits. The FDIC identifies three primary concerns as relevant to the restrictions on brokered deposits – rapid growth, volatility, and franchise value – none of these are implicated in volume-based advertiser compensation arrangements.[6]

Digital advertising is often based on volume pricing models such as cost-per-account, which ensures advertisers focus advertising on those individuals with demonstrated or reasonably expected interest in the IDI's products and services. The alternative to cost-per-account pricing is cost-per-click pricing. Cost-per-click pricing is not based on the volume of deposit accounts or balances obtained. While this method of advertiser compensation avoids conflicting with the FDIC's guidance, it does not incentivize efficient marketing placements because advertisers are incented to drive clicks as opposed to new accounts.[7] We estimate that inefficiency increases costs to the institution by as much as thirty percent. As the advertiser is not involved in any way in the deposit relationship other than to provide a marketing platform and depositors establish and maintain direct relationships with the IDI, the method of compensation should not deem an advertiser a "deposit broker."

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[5] See, *e.g.*, 84 Fed. Reg. at 2,372; FDIC Advisory Opinion No. 05-02 (Feb. 3, 2005).
[6] See 84 Fed. Reg. at 2,369.
[7] FDIC FAQs question B4. (June 30, 2016).

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We appreciate the opportunity to provide our comments and would welcome the opportunity to discuss them further with you during the rulemaking process. If you have any questions or if we can provide any additional information, please contact the undersigned.

Sincerely,

[redacted]

Andrew Harris
Managing Director, Head of Banking Products
Barclays Bank Delaware