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Goldman Sachs

May 7, 2019

Via Email

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429
RIN 3064–AE 94

Re: Brokered Deposits

Dear Mr. Feldman:

Goldman Sachs Bank USA ("GS Bank") is pleased to have the opportunity to comment on the Advance Notice of Proposed Rulemaking ("ANPR") issued by the Federal Deposit Insurance Corporation ("FDIC") addressing the FDIC's regulatory approach to "brokered deposits."[1] GS Bank is a New York State-chartered bank and the primary lending and deposit taking entity of The Goldman Sachs Group, Inc. GS Bank's depositors include corporations, its affiliates, clients of third-party broker-dealers, private bank clients and U.S. consumers. Substantially all of GS Bank's consumer lending and consumer deposit-taking activities are conducted through its digital platform, *Marcus: by Goldman Sachs*. As of December 31, 2018, GS Bank had $137.8 billion in deposits.

Since the issuance of Section 29 of the Federal Deposit Insurance Act and Part 337.6 of the FDIC's regulations (together, the "Brokered Deposits Rules"), the deposits marketplace has experienced rapid and systemic change, particularly with respect to digital banking. We thank the FDIC for undertaking a modernization of the Broker Deposit Rules.[2]

We participated in the preparation of the comment letters written by Bank Policy Institute and the American Bankers Association (the "Industry Letters"), and we support the comments and recommendations in those letters. Given the digital nature of GS Bank's deposit activities and the

[1] 84 Fed. Reg. 2366 (February 6, 2019).
[2] A modernized definition of "brokered deposits" is critical now that it is relied upon for other regulatory purposes, such as the Liquidity Coverage Ratio (79 Fed. Reg. 61440 (October 10, 2014)), the proposed Net Stable Funding Ratio (81 Fed. Reg. 35124 (June 1, 2016)) and the capital surcharge for U.S. global systemically important bank holding companies (83 Fed. Reg. 17317 (April 19, 2018)).

integration of our firm's overall wealth offerings, we want to highlight a few points that are further addressed in the Industry Letters. In particular, we urge the FDIC to:

- Narrow the current understanding of "facilitation" to exclude standard marketing and referral arrangements where the customer develops a direct relationship with a particular bank; and

- Exercise its authority under the "primary purpose" exception to exclude bank affiliates that are referring potential depositors from being treated as a deposit brokers.

I. Marketing and Referral Arrangements

a. Standard Marketing Arrangements Should Not Trigger Brokered Treatment

Deposits acquired through standard digital marketing activities that are identified as marketing or advertising should not be considered brokered. The FDIC's current interpretative guidance significantly constrains the ability of banks to employ these digital marketing channels, including, for example, marketing through affinity groups or other third parties. In its 2011 Study on Core Deposits and Brokered Deposits (the "Deposits Study"), the FDIC noted that "the most important factor used by the FDIC to determine when a particular affinity group is "facilitating the placement of deposits"...has been whether the affinity group is engaged in active marketing on behalf of the bank."[3] Similarly, the FDIC has suggested that any involvement by a third party in the development and distribution of content will be construed as "active marketing."[4]

Digital marketing channels, including podcasts, blogs and social media, are the modern equivalent of an advertisement in the morning newspaper. The FDIC's historical guidance on marketing activities[5] should evolve as the nature of marketing evolves. We therefore recommend that Brokered Deposits Rules clarify the usage of standard marketing practices, including the use of digital marketing channels, will not trigger brokered deposit treatment.

b. Referrals from and/or Cooperation with Technology Platforms Should Not Trigger Brokered Treatment

New innovations in technology and business practices, such as the advent of personal financial management tools ("PFMs") for budgeting and account management, have transformed the financial services landscape, resulting in increased transparency and convenience for consumers. The FDIC has taken the view that third party affinity groups should "not know which members have made deposits with the Bank, nor....keep any records of the amounts, rates or maturities of the deposits."[6] This guidance effectively prevents banks from engaging with PFM providers that prioritize a seamless interaction for customers seeking to open, link and view accounts from an integrated platform. to improve customer access to comprehensive financial platforms.

A bank's cooperation with third parties, such as PFMs, does not undermine the relationship with the bank and its customer. It solely enables customers to manage their finances through their

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[3] Deposits Study at 24.
[4] *See* B8 at FIL-42-2016, Frequently Asked Questions on Identifying, Accepting and Reporting Brokered Deposits (June 30, 2016, revised July 14, 2016) (the "FAQs").
[5] FDIC Advisory Opinion No. 92-79 (Nov. 10, 1992) and Questions B7 and D3 of FAQs.
[6] FDIC Advisory Opinion 93-30.

preferred platform. Therefore, we recommend that the FDIC clarify that arrangements between banks and third parties, such as PFMs, where the customer contracts with and maintains a direct relationship with its bank will not result in brokered deposit treatment.

II. Treatment of Affiliates

Customers expect diversified financial institution to provide a "one-stop shop" experience from which they can access the full range of products and services offered by the institution. The mere provision of comprehensive customer service assistance by employees of a bank affiliate does not cause the affiliate to be "engaged in the business" of either placing or facilitating the placement of deposits, nor is the "primary purpose" of the customer assistance the provision of deposit-placement services. The FDIC's existing guidance suggests that the mere mention of an affiliated bank's products, no matter how passively introduced, may cause such affiliate to be treated as a "deposit broker." We urge the FDIC to clarify that when the "primary purpose" of the affiliate's involvement is a substantial purpose other than to provide customers with a deposit-placement service, the fact that affiliate employees also introduce customers to the bank should not result in brokered deposit treatment.

In closing, thank you again for this opportunity to comment. We wish to reiterate our support for the efforts of the FDIC in reconsidering its regulatory approach to brokered deposits and to express our desire to assist the FDIC in any way that would be helpful.

Sincerely,

Carey Halio
Chief Executive Officer
Goldman Sachs Bank USA