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June 3, 2020

Robert E. Feldman, Executive Secretary
Attention: Comments/RIN 3064-AE94
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, DC 20429

Via Email: comments@fdic.gov.

Re: RIN 3064-AE94

Mr. Feldman,

The following comments are submitted on behalf of the Independent Bankers Association of Texas ("IBAT"), a trade association representing more than 350 independent, community banks domiciled in Texas. All its bank members will be adversely affected by the proposal as currently presented.

IBAT submits these comments in response to the Federal Deposit Insurance Corporation ("FDIC") notice of proposed rulemaking (proposal) regarding Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions.

The Proposed Rule would: (1) add a definition of 'facilitating the placement of deposits' to the 'deposit broker' definition; (2) amend the 'primary purpose' exception to the definition of deposit broker; (3) extend the exception for insured depository institutions (IDIs) to wholly owned operating subsidiaries of parent IDIs; and (4) expressly designate brokered CDs as brokered deposits.

The restrictions on brokered deposits under Section 29 and Part 337 apply directly to community banks that are less than 'well capitalized.' Nonetheless, the Proposed Rule could have a far broader impact. For example, classifying a deposit as 'brokered' can impact a well-capitalized community bank's core deposit ratio, liquidity coverage ratio and capital planning. In addition, community banks may be reluctant to make significant investments in deposit programs that may be at risk if the bank's capital position changes.

A. Deposit Broker Definition

The Proposed Rule would add a new subsection 6(a)(5)(ii) to the definition of deposit broker that sets forth the meaning of the term 'engaged in the business of facilitating the placement of deposits of third parties.' The further clarification of "facilitating" includes "[t]he person directly or indirectly shares any third-party information with the depository institution," as well as "...provides assistance or is involved in setting rates, fees, terms or conditions for the deposit account..."

This overly broad definition will unnecessarily result in community banks having to classify more deposits as 'brokered deposits.' Rather than fine tuning the definition of 'brokered deposits,' it would cast a much broader net. For example, many service providers share information with IDIs in the account opening process, including consumer reporting agencies like ChexSystems and others. Further, the customer identification programs of IDIs rely on numerous third

parties for information needed to verify identity. This again includes consumer reporting agencies, which provide critical information used in online account opening identity verification. The current COVID-19 pandemic has made such online services vital to the economic health of community banks and the customers they serve. Other third parties provide assistance (but not the final determination) in setting rates, fees, terms or conditions for various attractive deposit account programs.

In short, numerous third parties would be categorized as deposit brokers even though the bank ultimately determines the account terms and pricing offered directly to the individual deposit customer, and the third party has no control over the terms or the deposit relationship.

Access to third parties for information and product development assistance is particularly important to IBAT members because to one degree or another, community banks often lack critical resources, budgets and technical expertise to develop and deploy innovative products and services to the communities they serve. As proposed, this broad definition of 'deposit broker' will stifle community banks' ability to secure core deposits, offer innovative products and services that compete with larger banks and credit unions, and meet the needs of the communities they serve. These products typically become core deposits, which are an important source of liquidity.

The definition of 'brokered deposits' needs to be crafted narrowly to exempt all third parties that provide services to a community bank where the bank offers deposit accounts directly to individual depositors and the third party has no contractual relationship with any individual depositor to place, manage or control any of the depositors funds.

B. Exceptions to the Deposit Broker Definition

The Proposed Rule would both amend and marry the existing 'primary purpose' exception to the definition of 'deposit broker' and establish an application procedure for all third parties seeking exception approval under the 'primary purpose exception.'

By marrying the 'primary purpose exception' to the overly broad definition of 'deposit broker,' virtually all community bank service providers would be forced to apply for the 'primary purpose exception' through an application process that would be codified in Part 303. For example, many community banks rely upon third-party service providers as part of the Customer Identification Program. Because of the sweeping definition of a 'deposit broker,' those service providers would need to apply for the 'primary purpose exception' or any relationship obtained using that third party would be a 'brokered deposit.'

An 'exception' that requires virtually every service provider to apply for it is no 'exception.'

C. Brokered Deposits and Assessments

While we understand that the FDIC plans to consider modifications to the assessment regulations in light of any changes made to the brokered deposits regulation, we are hopeful that a narrowed and carefully crafted definition of 'brokered deposits' would exclude deposits in which the bank offers deposit accounts directly to individual depositors and the third party has no contractual relationship with any individual depositor to place, manage or control any of the depositors funds. Community banks should not be paying a higher assessment of deposits misclassified as 'brokered deposits' when they are in fact core deposits.

D. Reporting of Certain Deposits on Call Reports

The FDIC will consider—at a later date—requiring reporting of deposits that are excluded from being reported as 'brokered deposits' because of the application of the 'primary purpose exception.' This is counterintuitive to efforts to reduce an already cumbersome call report. To establish a framework, however flawed, to exclude a deposit from the definition of a 'brokered deposit' and yet require it to be reported as an exception seems illogical.

E. *Treatment of Non-Maturity Deposits for Purposes of the Brokered Deposits Restrictions*

“Under this proposed interpretation, brokered balances in a money market demand account or other savings account, as well as transaction accounts, at the time an institution falls below well capitalized, would not be subject to the brokered deposits restrictions. However, if brokered funds were deposited into such an account after the institution became less than well capitalized, the entire balance of the account would be subject to the brokered deposits restrictions. If, however, the same customer deposited brokered funds into a new account and the balance in that account was subject to the brokered deposits restrictions, the balance in the initial account would continue to not be subject to the brokered deposits restrictions so long as no additional funds were accepted. Brokered deposits restrictions also generally apply to any new non-maturity brokered deposit accounts opened after the institution falls to below well capitalized.”

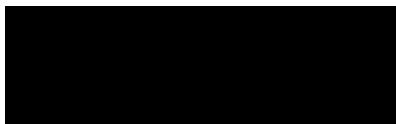
This has the potential to create a classification nightmare for community banks that fall below ‘well capitalized.’

F. *Additional Supervisory Matters*

In the supplementary information accompanying the Proposed Rule, the FDIC says it intends to evaluate staff opinions to identify the ones that are outdated based on revisions made to the brokered deposit regulations. As part of any final rule, the FDIC plans to codify staff opinions of general applicability that remain applicable and rescind those that do not. These statements by the FDIC create uncertainty in the near term for community banks and third parties that rely on established advisory opinions, and the evaluation process could have an adverse impact on community banks or third parties that could lose the basis for their historical classification of deposits without the procedural safeguards to which they should be entitled.

IBAT supports simplification and clarification of ‘brokered deposits’ and is appreciative of FDIC efforts in this direction. However, the FDIC should establish ‘bright line’ tests that a community bank can easily apply and rely on with confidence. These proposed rules simply do not accomplish the objectives outlined by the FDIC.

Sincerely,

A solid black rectangular redaction box covering the signature of Karen M. Neeley.

Karen M. Neeley
IBAT General Counsel