June 5, 2020

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

By Email: comments@fdic.gov

Re: RIN 3064-AE94: Brokered Deposits, Notice of Proposed Rulemaking

Dear Mr. Feldman:

Wealthfront Corporation ("Wealthfront") welcomes the opportunity to comment on the Notice of Proposed Rulemaking ("Proposed Rule") of the Federal Deposit Insurance Corporation ("FDIC") that would update the FDIC's brokered deposit regulation.[1] Given the significant changes affecting the financial services industry, the FDIC is correct to revisit what constitutes a "brokered deposit" under Section 29 of the Federal Deposit Insurance Act ("FDIA").[2] We also commend the FDIC for engaging in a rulemaking subject to notice and comment, which provides a transparent and objective process allowing affected stakeholders to participate.

Wealthfront is a software based aggregator of financial services. We leverage technology to gather our customers' financial data and offer them an easily accessible platform to enable them to view such information, analyze it and act on it to improve their financial well-being. Whether our clients hold five, twenty-five or a hundred percent of their assets in cash, is irrelevant to a determination of our intent. Our intent, and that of other aggregators like us, is to process financial information to improve our clients' finances.

We believe we need to be part of this debate, because insured depository institutions offer a risk profile that is of particular importance to our clients' needs. Accordingly, we wish to make the following three principal points on the substance of the proposed rulemaking process:

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1 FDIC, Notice of Proposed Rulemaking and Request for Comment, Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions, 85 Federal Register 7453, 7465 (February 10, 2020).

2 12 U.S.C.§ 1831f.

1. We agree that regarding the "primary purpose" exception, there should be no distinction made between affiliated sweep accounts and similar arrangements with unaffiliated banks. This historical distinction has no underlying justification and does not reduce systemic risk, and indeed, in certain cases, increases it.
2. We believe the proposed 25%-of-assets-under-management presumption – which has no statutory basis – is an inappropriate manner of interpreting the term "primary purpose" as used in Section 29 of the FDIA. Like other bright-line approaches, it fosters arbitrary distinctions, and, as pointed out in the preamble to the Proposed Rule, could exclude many appropriate FINRA-regulated broker-dealers.[3] We believe the FDIC should replace this presumption in the final rule with an expanded facts-and-circumstances approach closer to its historical practice.
3. The proposal to limit the definition of persons acting in an intermediary capacity to third-parties who act in a "purely administrative capacity" is too narrow and has the potential to disproportionately impact fintech and other companies involved in financial innovation.[4]

Technological Developments in Banking Require a New Regulation

Brokered deposit regulation needs to be revisited because technology in the banking industry has advanced at a rapid rate since 1992, the last time the FDIC revised brokered deposit regulations.[5]

The FDIC recently recognized the importance of technological change and innovation in permitting banking institutions to meet the needs of consumers and the communities where they live.

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3 85 Fed. Reg. at 7459.

4 *Id*. at 7454.

5 FDIC, Final Rule, Unsafe and Unsound Banking Practices, 57 Federal Register 23933, 23040 (June 5, 1992).

As Chairman McWilliams has stated:

> [I]f our regulatory framework is unable to evolve with technological advances, the United States may cease to be a place where ideas become concepts and those concepts become the products and services that improve people's lives . . . . It is my goal that the FDIC lays the foundation for the next chapter of banking by encouraging innovation that meets consumer demand, promotes community banking, reduces compliance burdens, and modernizes our supervision.[6]

It is precisely this understanding of the impact of technology and innovation that we understand drives the proposed rulemaking:

> The new framework was designed with four specific goals in mind. The first goal is to develop a framework that encourages innovation within the industry . . . . Striking the right balance in how we interpret the brokered deposits statute is key to this goal, as we seek to remove regulatory hurdles to innovative partnerships between banks and nonbanks, and avoid discouraging banks from offering products and services through online and mobile channels.[7]

Wealthfront strongly supports Chairman McWilliams' statements, and encourages the FDIC to embrace financial innovation to create brokered deposit rules that reflect technological advancement, as doing so will "encourage innovation and allow banks to serv[e] customers the way customers want to be served."[8]

Wealthfront

Our Company

Wealthfront is a software-based company that aggregates financial services on behalf of its clients. Our mission is to build a financial system that favors people, not institutions. We believe very strongly that technology is a powerful tool to permit a better and more appropriate aggregation of financial services.

Our platform has successfully attracted nearly 400,000 clients. Clients have entrusted Wealthfront Advisers LLC ("Wealthfront Advisers") and Wealthfront Brokerage LLC ("WBC") with management of over $18 billion of their assets, including cash sweep account balances.

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6 Keynote Remarks by FDIC Chairman Jelena McWilliams on the "The Future of Banking" at The Federal Reserve Bank of St. Louis; St. Louis, Missouri (October 1, 2019).

7 Keynote Remarks by FDIC Chairman Jelena McWilliams on "Brokered Deposits in the Fintech Age" at the Brookings Institution, Washington, D.C. (December 11, 2019).

8 *Id.*

Wealthfront was the first company to offer low cost automated investment management to a retail audience, a service that is now widely accepted and emulated. Wealthfront also offers a cash sweep program that allows clients to earn a relatively high rate of interest on cash balances awaiting investment. By offering a combined suite of automated investment and cash sweep products, Wealthfront has pushed the industry to become more efficient, competitive and partial to consumers.

Many firms, both traditional and digital, have attempted to copy Wealthfront's model, however they serve a different audience. Wealthfront reaches an important demographic that has historically been underserved by the traditional financial sector – young adults who are in the early stages of wealth accumulation.

Our Products and Services

Wealthfront offers an integrated group of financial solutions, including free automated financial planning, investment management and, related to its investment products, cash management.

Free Financial Planning

In December 2018, Wealthfront became the first financial services company to offer a free software-based financial planning engine directly to consumers. Our financial planning engine offers financial advice based on data accessed, with customers' consent, from their financial accounts (including banks, brokerage firms, 401(k) accounts, credit card accounts, and mortgages) and from third-party sources like Redfin and Zillow for home pricing estimates and the Department of Education for college tuition costs. Because Wealthfront links directly to its clients' finances, they never have to manually update their information. If they start saving more or get a raise, their plan automatically updates. There is no need for a traditional financial planner. We believe this approach leads to better financial outcomes for our clients.

Investment Management

Wealthfront Advisers offers clients a personalized, diversified and rebalanced portfolio of low-cost ETFs which it manages on a fully discretionary basis. In addition, Wealthfront Advisers offers a broad suite of tax efficient passive investment products. These strategies, known as PassivePlus®, which traditionally have only been available to the very wealthy, are grounded in

academic research and made possible through implementation in software. Wealthfront Advisers offers its investment services through a range of account types, including (i) individual, joint and trust non-retirement accounts, (ii) Roth, traditional, SEP IRAs, and (iii) 529 College Savings Plan accounts.

Cash Management

WBC launched the Wealthfront Cash Account in February 2019 as our next important step towards automating and aggregating clients' finances. The account currently offers an interest rate of 0.35% and pass-through FDIC insurance. The account is not a time deposit, and no brokered certificates of deposit are offered. The account offers unlimited free transfers to and from a client's investment account.

Wealthfront's strategy is to use technology to deliver a superior solution at a lower cost to meet all our clients' financial needs, whether that's offering investment management services, cash management services, financial planning or introductions to insurance and mortgages. You can therefore think of us as an *aggregator* of financial services.

Sweep Programs Using Unaffiliated Banks Should be Treated No Differently Than Affiliated Deposit Sweeps

Wealthfront commends the FDIC for not making distinctions in the Proposed Rule between affiliated sweep accounts and other means of providing similar services to investors, but rather taking a more general approach to the "primary purpose" exception. The FDIC should adhere to this approach in a final rule.

The market for brokerage and asset management services is expanding with new entrants. As Wealthfront's experience shows, technology has reduced transaction costs and expanded consumers' access. Competition among firms offering financial services continues to increase rapidly, and consumers are benefiting from the ensuing variety of choices. The FDIC should not hinder competition and the accompanying benefit to consumers by providing better treatment to firms that are affiliated with a bank on the basis of such affiliation.

If any distinction needs to be drawn, we believe it should be founded on the basis of the potential risk that intercompany relations inject into the system. Sweep arrangements from broker-dealers to affiliated banks could potentially be more risky, because they encourage the concentration of funds "under one roof." When there is concern with the financial condition of

such a consolidated entity, as there was in the Financial Crisis, customers may logically flee both their broker-dealer and their bank, raising the type of run risk that the brokered deposit regulation seeks to minimize. An unaffiliated program simply does not raise the same risk.[9]

In addition, there is reason to believe the problems the FDIC has identified with brokered deposits – rapid growth, volatility, and lack of franchise value[10] – depend more on the particular institutions in question than the affiliation status of the program. A new affiliated program implemented by a well-established broker-dealer could more easily lead to rapid deposit growth than an unaffiliated program, because there would be a significant number of customers being directed to the affiliated banks at inception. So, too, volatility is affected by a variety of factors, including the overall health of the consolidated group, as mentioned above. As for franchise value, the FDIC's Study itself noted it may also depend on the particular circumstances of the affiliated broker-dealer, and that "[t]he value and behavior of these deposits has not been tested to any extent in actual bank or affiliate failures."[11]

As a statutory matter, whether a bank at which funds are deposited is a corporate affiliate of the brokerage firm or not has no bearing on the question of "primary purpose." Section 29 of the FDIA provides an exception for "***an agent or nominee whose*** primary purpose is not the placement of funds with depository institutions."[12] What the statute focuses on is the purpose of the agent or nominee who is involved in the placement of funds, not its affiliation.

In the Final Rule, the FDIC Should Abandon the 25%-of-Assets-Under-Management Presumption In Favor of a Broader Facts and Circumstances Approach

For the following reasons, we believe the proposed creation of an application process for firms where customer deposits make up less than 25% of assets under management would be a mistake:

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9 Indeed, in other areas of federal banking law, such as Sections 23A and 23B of the Federal Reserve Act, affiliate relationships are generally viewed as raising safety and soundness concerns.

10 *See generally* FDIC, Study on Core Deposits and Brokered Deposits (July 8, 2011).

11 *Id.* at 55. Indeed, one thing that is clear from the FDIC's Study is that there is very little actual data on which to ground an affiliate versus non-affiliate distinction. This is the case even though the Study was written after the FDIC conducted material loss reviews for a number of banks that failed in the Financial Crisis, including, significantly, Indymac. **A distinction between affiliate and non-affiliate programs should not be perpetuated based on speculation**.

12 *See* 12 U.S.C. § 1831f(g)(1)(A) (emphasis added).

First, the presumption has no basis in the statutory text. Section 29 provides an exception for a customer's "agent or nominee whose primary purpose is not the placement of funds with depository institutions."[13] Nothing in that definition gives a basis for an arbitrary line separating broker-dealers and asset management firms that have less than 25% of assets under management in deposits from those that do not.

Second, with respect to financial aggregators like Wealthfront, the proposed presumption does not provide any indication of the primary purpose of the customers' agent. Rather, it simply reflects the manner in which customers choose to allocate their assets. Financial aggregators such as Wealthfront receive deposits because cash management is just one part of a larger set of financial services provided. How customers choose to allocate their assets through a variety of market conditions is not reflective of the financial aggregator's purpose in creating a deposit sweep program.

Third, because it is a bright-line rule, application of the presumption will lead to arbitrary effects. The preamble accompanying the proposed rule itself estimates that many broker-dealers will not be able to qualify for the presumption. As such, the proposed rule will unnecessarily discriminate against a swath of financial firms. Such discrimination threatens to reduce the tangible benefits that such companies provide to the financial system, including:

- Providing banks access to a more geographically diverse source of deposits,
- Reducing the consolidation of deposits in large banking institutions, and
- Helping a new generation of investors access quality financial services

For these reasons, we recommend that, in developing an application procedure, the FDIC eliminate the 25%-of-assets-under-management presumption and instead revert to its historical facts-and-circumstances approach for ***all*** institutions seeking a primary purpose exception.

In addition to information the Proposed Rule sets forth under "Application Contents for Other Business Relationships That May Meet the Primary Purpose Exception," we urge the FDIC to consider the following context:

- The extent to which higher customer cash balances relates to the agent's aggregation of multiple financial services;

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[13] *Id.*

- The extent to which the agent makes the decision on the allocation of customer assets between deposit products and non-deposit products to ensure they offer an optimized financial hub.

Each of these factors directly relates to the "purpose" behind the placement of deposits, and therefore should, as a statutory matter, be considered in all applications.

Finally, the FDIC notes in the release that marketing activities may be a factor in determining the primary purpose of organizations that exceed the 25% test threshold. In considering the facts and circumstances, the FDIC should not condition the availability of the primary purpose exception on an entity's not marketing the encouragement of savings or encouraging investment.

In the brokerage context, customers keep certain amounts of their investable assets in cash, in order to purchase securities and other assets at an appropriate time. It is a fundamental aspect of the marketing strategy of a financial aggregator offering financial planning and other financial services to advertise investment and savings in the context of multiple strategies, including a "rainy day" fund, a first-home purchase, planning for college tuition, or maximizing income in retirement. Such advertisements are not inconsistent with stable funding, unlike a campaign focused on high interest rates alone. For these reasons, in the Final Rule, the FDIC should not restrict advertising and marketing campaigns focused on encouraging savings and investment.

The Proposed Rule's Construction of "Purely Administrative Services" Is Too Narrow When Applied to Third Party Vendors Providing Deposit-Related Services

With respect to the definition of "facilitating the placement of deposits," the FDIC has taken a restrictive approach with respect to third party vendors providing administrative services to customer agents. The preamble to the Proposed Rule states:

> The proposal would also define any person that acts as an intermediary between another person that is placing deposits on behalf of a depositor and an insured depository institution, other than in a purely administrative capacity, as facilitating the placement of deposits. In other words, any assistance provided by such intermediaries, outside of providing purely administrative functions, would result in the intermediary meeting the "deposit broker" definition and ***any deposits placed through the assistance of such intermediaries would be brokered deposits***.[14]

[14] 85 Fed. Reg. at 7457 (emphasis added).

The preamble also indicates that administrative services may be limited to bookkeeping and reporting functions.[15]

Such a narrow construction has the potential to significantly undermine the benefits of the primary purpose exemption when an agent makes use of a third-party vendor to develop a cash sweep program. Such vendor relationships have become common with the growth of fintech and other companies involved in financial innovation and are a key component of an aggregator's approach to providing a range of financial services to clients. It is far more efficient as an economic matter for an aggregator to use such vendor relationships than to develop such services itself from scratch.

In order to avoid undermining the "primary purpose" exception for qualified fintech firms, in the Final Rule, the FDIC should clarify that the use of a third party vendor by a firm that meets the primary purpose exception will not result in a finding that the vendor itself is facilitating the placement of deposits unless (i) the vendor itself markets particular depository institutions to customers or (ii) is involved in influencing a customer's selection of a deposit product over a non-deposit product. If the vendor is not involved in marketing particular depository institutions to customers or influencing the selection of deposit products over non-deposit products, the fact that the vendor is engaged in allocating, via preset criteria, customer funds that the customer has independently determined to place in deposit accounts, or in providing criteria to the customer's agent on which to base a cash sweep program's participating banks, should not result in a brokered deposit finding.

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[15] *See Id.*

The FDIC is to be commended for seeking to bring its deposit brokerage regulation into the fintech age. Our comments are intended to demonstrate where certain aspects of the Proposed Rule may undercut the purposes of innovation and customer empowerment – important goals that are a critical part of Wealthfront's own mission – that underlie the FDIC's actions. We very much appreciate the FDIC's consideration of our comments. If you have any questions or would like to discuss these comments, please do not hesitate to contact me at david@wealthfront.com or our Chief Legal Officer, Julius Leiman-Carbia at juliusleimancarbia@wealthfront.com.

Respectfully,

David Fortunato
President
Wealthfront Corporation