

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

June 9, 2020

Re: “Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions”

Dear Mr. Feldman:

Goldman Sachs Bank USA (“GS Bank”) is pleased to have the opportunity to provide comments on the Notice of Proposed Rulemaking (“NPR”) 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, clients of third party broker-dealers, private bank clients and U.S. consumers. As of March 31, 2020, GS Bank had \$180.5 billion in deposits.

We have participated in the preparation of industry letters, including the comment letters from the Bank Policy Institute, American Bankers Association and Securities Industry and Financial Markets Association, and support the views expressed therein. In this letter, we would like to emphasize two key issues covered in those letters that we believe would significantly improve the brokered deposits framework.

In particular, we urge the FDIC to remove the restriction on the sharing of “any third party information” (the “Third Party Information Sharing Restriction”), which would harm consumers as insured depository institutions (“IDIs”) elect not to leverage new technologies or turn away certain deposits origination channels. We also recommend the FDIC work with the other agencies to align the treatment of deposits that are considered non-brokered with other prudential rulemakings.²

I. Third Party Information Sharing Restriction should be removed

As we highlighted in our comment letter to the Advanced Notice of Proposed Rulemaking³, the deposits marketplace has undergone rapid and systemic change as new

¹ 85 Fed. Reg. 7453 (February 10, 2020).

² In addition to the restrictions under 12 C.F.R. 337.6, brokered deposits are treated punitively under the Liquidity Coverage Ratio (79 Fed. Reg. 61440 (October 10, 2014)) (“LCR”), the proposed Net Stable Funding Ratio (81 Fed. Reg. 35124 (June 1, 2016)) (“Proposed NSFR”) and the capital surcharge for U.S. global systemically important bank holding companies (83 Fed. Reg. 17317 (April 19, 2018)) (“GSIB Surcharge”).

³ See GS Bank, Comment on Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions (May 7, 2019), available at <https://www.fdic.gov/regulations/laws/federal/2019/2019-unsafe-and-unsound-banking-practices-3064-ae94-c-094.pdf>.

technologies and business models have altered the way consumers interface with their IDIs. Technological innovations, including the proliferation of application programming interfaces, or “APIs,” have made it easier for IDIs to seamlessly share and receive information, as well as integrate third party functionality into their platforms. IDIs routinely rely on such arrangements to mitigate potential fraud, market to potential depositors and deliver customized solutions to consumers. Consumers increasingly expect the modern banking experience to enable seamless connectivity to their accounts through proprietary and third party interfaces, which necessitates the sharing of basic information.

The Third Party Information Sharing Restriction, however, constrains the ability of IDIs to leverage such innovations to benefit consumers. This creates two challenges. First, it *broadens* the scope of the brokered deposits framework. For example, the following consumer-driven arrangements would cause any related deposits to be treated as brokered:

- “Personal financial management” and other aggregation tools that allow consumers – on their own initiative – to open, link and view accounts from a centralized location
- Passive marketing channels (e.g., listing services, affinity groups) not compensated by volume, in which a consumer’s contact and other information may be shared with the IDI
- Pre-configuration of user preferences (e.g., paper delivery) based on data provided by third parties, including affiliates of the IDI

Second, it continues to treat as brokered certain other arrangements that should not be treated as brokered under the FDIC’s revised definition of “facilitation”:

- Deposits products integrated into, offered and marketed through APIs on third party platforms, including websites and smartphone apps
- Subject to a consumer’s consent, pre-population of account applications with customer information held by third parties

In all of these examples, the IDI and the depositor maintain a direct relationship and the sharing of information is by virtue of modern marketing channels and/or the consumer’s preferences. At all times, the IDI and the consumer maintain a contractual relationship, the consumer opens and funds the account directly and the consumer engages with the IDI directly for services. Any information shared by or with the IDI would be at the consumer’s election. Absent some other indicia of control or influence, the “needs of the depositor” remain “the primary drivers of the selection of a bank.”⁴ If anything, such features serve to enhance, rather than detract from, the relationship that a depositor forms with their IDI.

In order to appropriately accommodate the needs of modern banking, we recommend that the Third Party Information Sharing Restriction be removed from the proposed definition of “facilitation” or, at a minimum, that such restriction be narrowed such that the mere

⁴ NPR at 7547.

authorization by a consumer to share their information with an IDI does not trigger a ‘brokered’ determination.

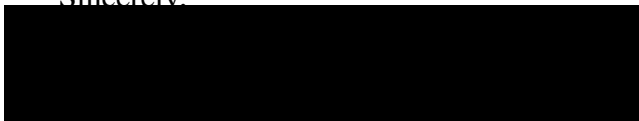
II. Conforming changes should be made to the LCR, NSFR and GSIB Surcharge

As noted in the industry letters, certain arrangements that would qualify as ‘non-brokered’ pursuant to a “deposit broker” exception may nevertheless be treated as ‘brokered’ under other rulemakings.⁵ For example, sweep deposits that either meet the existing or proposed “primary purpose” exception would still be treated as brokered under the LCR, Proposed NSFR and GSIB Surcharge. This inconsistency would deter IDIs, including well-capitalized ones, from applying for the “primary purpose” exception as they would continue to face adverse liquidity and capital consequences for accepting such deposits. Sweep deposits from affiliates, in particular, are stable and do not implicate the same risk and volatility concerns that spurred Congress to enact Section 29 of the Federal Deposit Insurance Act. We therefore urge the FDIC to work with the other agencies to harmonize the treatment of these deposits across other rulemakings.

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In closing, we thank you again for this opportunity to comment on the NPR. We also reiterate our support for the efforts of the FDIC in modernizing the brokered deposits framework, and express our desire to assist the FDIC in any way that would be helpful.

Sincerely,



Carey Halio
Chief Executive Officer
Goldman Sachs Bank USA

⁵ We support the FDIC’s efforts to revise the “primary purpose” exception, although we agree with the recommendations made by other commenters to clarify and streamline the proposed framework.