



Via Electronic Submission

December 9, 2024

Mr. James Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions

Dear Mr. Sheesley:

The American Securities Association¹ (“ASA”) submits these comments in response to the Federal Deposit Insurance Corporation’s (“FDIC”) proposed rule regarding brokered deposit restrictions and applicable exemptions under the Federal Deposit Insurance Act (“Proposal”).

The Proposal is unsupported by any evidence of customer harm or increased risk of market failure. If adopted, it would adversely affect several institutions that have relationships with banks – including broker-dealers and investment advisers – and the customers of those institutions. Accordingly, we call on the FDIC to abandon this Proposal in its entirety.

In 2020, the FDIC adopted reforms that redefined and clarified the circumstances by which a third party meets the definition of “deposit broker.” The 2020 rules were adopted after a lengthy and comprehensive rulemaking process that included an advanced notice of proposed rulemaking (ANPR) and a proposed rulemaking issued in December 2019. The rules clearly defined when an entity engages in the practice of placing deposits with insured depository institutions (IDI), including a stipulation that an entity is a deposit broker if it deposits funds at more than one IDI. The FDIC carefully considered commenter input when finalizing these new reforms.

Less than four years after the 2020 rules were put in place, the FDIC is now seeking – without sufficient data or evidence – to disrupt current market practice and reverse course on several provisions of the 2020 rule. It is baffling, to say the least, why the FDIC would want to change rules that have been in effect for so little time and by no reasonable perspective have changed IDI safety and soundness.

¹ ASA is a trade association that represents the retail and institutional capital markets interests of regional financial services firms who provide Main Street businesses with access to capital and advise hardworking Americans how to create and preserve wealth. ASA’s mission is to promote trust and confidence among investors, facilitate capital formation, and support efficient and competitively balanced capital markets. This mission advances financial independence, stimulates job creation, and increases prosperity. ASA has a geographically diverse membership base that spans the Heartland, Southwest, Southeast, Atlantic, and Pacific Northwest regions of the United States.



Potential Unintended Consequences

The ASA is concerned that the Proposal, if implemented, could have several unintended consequences:

- **Reduced consumer choice**: The Proposal needlessly disrupts an already properly functioning marketplace. By limiting the ability of broker-dealers and investment advisers to offer cash management services, the Proposal could reduce options available to consumers for managing their cash, finances, investment, and payment preferences in a holistic way.
- **Increased systemic risk**: By attempting to limit brokered deposits, the Proposal could concentrate deposits in fewer institutions, which would increase systemic risk. This was not addressed in the Proposal and by itself should give the FDIC pause.

The ASA's concerns with specific aspects of the Proposal are outlined in more detail below.

The narrowing of the designated business exemption is arbitrary and will disrupt existing relationships that have been previously accepted by the FDIC

The Proposal would narrow the designated business exemption (DBE) for broker-dealers and investment advisers only if less than 10% of the BD or IA's assets under management (AUM) are placed into non-maturity accounts at one or more IDIs. The 10% threshold would be a decrease from the current 25% threshold. There is no evidentiary justification offered for decrease of the threshold by more than 50%. The Proposal would also potentially limit the types of deposits that can qualify for a DBE. Taken together, these actions would contradict twenty years' worth of opinion letters and FDIC views that BDs, IAs, and other industry participants have relied upon.

A 10% threshold is arbitrary and entirely too limiting. Market conditions, such as economic downturns or periods of market volatility, may lead customers to hold more cash as a defensive measure which could make the new rules more cyclical and volatile and provide an incentive to turn away deposit customers. These types of scenarios are not examined or even considered as part of the Proposal. This change puts a fine point on our concern that the FDIC does not understand how markets work and investor behavior can impact market conditions.

Additionally, the Proposal would mandate the use of AUM rather than "assets under administration" as the denominator for the DBE. The ASA opposes this change as it introduces uncertainty about what kinds of brokerage accounts are included in the denominator. We believe "assets under administration" more accurately includes the types of brokerage accounts that are relevant to the FDIC's rules.





The Proposal is not authorized by statute

The Proposal would expand the definition of “deposit broker” in a manner that includes broker-dealers who were not considered to be “deposit brokers” by Congress. Under the FDIA, the definition of “deposit broker” excludes “an agent or nominee whose primary purpose is not the placement of funds with depository institutions.”² The primary purpose and mission of broker-dealers is to provide advice and access to the securities markets for retail investors or to serve the needs of institutional customers. The broker dealer’s purpose is not to place funds with depository institutions.

The Proposal adds a new condition regarding the payment of fees to the definition of “engaged in the business of placing or facilitating the placement of deposits.” Adding a fee prong would be overly inclusive and treat institutions as deposit brokers even if they do not facilitate the placement of deposits with IDIs. To be clear, these specific changes are NOT set forth or authorized by the FDIA and the FIDC has failed to offer any supporting evidence for why they are necessary.

Conclusion

The ASA calls on the FDIC to refrain from taking any further action on the Proposal. The ASA looks forward to serving as a resource for the FDIC on these matters.

Sincerely,



Jessica R. Giroux
General Counsel
American Securities Association

² <https://www.fdic.gov/federal-deposit-insurance-act/section-29-brokered-deposits#fdic1000sec.29>

