

November 6, 2024

James P. Sheesley
Assistant Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington D.C. 20429

Re: Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions RIN 3064-AF99

Dear Mr. Sheesley,

I would like to thank the FDIC for the opportunity to share our thoughts on its August 23, 2024, proposed revisions to the 2020 Final Rule on brokered deposits.

I am Chairman, President & CEO of Farmers & Merchants Bank which has five locations in the Southwest Dayton Ohio area. Farmers & Merchants Bank was founded in 1923 and is one of the last locally owned and independent banks in the area. We focus on serving residents and small businesses who are often ignored by the area's larger banks, and we invest deposits back into the local community in the form of loans to individuals for homes, autos, education and to businesses for new equipment, construction, additions and other operational and strategic needs. We also are the only local bank to consistently give back to our communities from sponsoring T-Ball teams to last year sponsoring a \$100,000 donation for a new playground.

We don't usually do brokered deposits (on average we have less than 4%) but we value access to diverse funding sources when we need deposits. For example, we turned to StoneCastle, a deposit placement firm, during the Coronavirus crisis so we could provide our local businesses with the immediate funding they needed.

In addition to funding small businesses, we want to make sure we are attracting new consumers and serving our customers in the manner they want to be served which is why we use third-party service providers to assist us with our mobile app, online banking services, social media marketing and other customer support activities. Online account opening for example has become a focus as consumer preferences for digital services shifted dramatically during the pandemic and we must now compete in a "phygital" world.

The FDIC's proposed revisions appear to me to significantly broadening the definition of "deposit broker"; unnecessarily restricting our institution's access to the diverse funding sources that are essential for serving our communities; inexplicably limiting our ability to use third parties and digital channels to attract new depositors and their associated deposits and making the primary purpose exception process more subjective and complex.

A major concern is the proposed inclusion of the "compensation prong" in the definition of "deposit broker." Interpreted literally, this prong would encompass any third party receiving any form of compensation, from any source, for assisting any insured depository institution ("IDIs") in gathering or retaining any deposits.

In today's digital age, community banks cannot thrive without partnering with third parties to attract and retain depositors. These institutions not only need to offer competitive deposit products but must also provide the technological innovations that accompany them. With limited time, money, resources, and technical expertise, smaller banks are compelled to collaborate with third parties to develop and maintain the digital banking platforms that enable consumers to open accounts, manage daily transactions, and handle personal finances.

Smaller institutions simply cannot compete without external partnerships, and third parties cannot offer their services and capabilities to insured depository institutions without fair compensation.

This focus on third-party compensation will also undermine our ability to offer customers bonuses for referring others to our institution. Can it really be the FDIC's intention to prevent satisfied customers from recommending our bank to their friends, family, and colleagues? Satisfied customers are our greatest advocates, but as I interpret the proposed rule, any deposits referred by them would now need to be reported as brokered.

Likewise, I disagree with the FDIC's restrictions on how listing services are compensated. There seems to be no valid reason why online comparison sites or mobile apps should be limited to flat-rate or subscription-based compensation models. Nor should listing services be restricted from providing any information or services other than displaying rate and listing participating institutions.

Like other media platforms, listing services should have the flexibility to charge IDIs based on the value of the service provided—whether it be higher fees for premium placement, variable pricing tied to the volume of deposits generated, or acquisition fees for each new account opened and funded. The impact of paying more for better positioning or performance-based fees is no different than a bank increasing its advertising spend in newspapers, billboards, or social media to enhance visibility and attract potential customers. A consumer engaging with a listing service is no different from one responding to a traditional advertisement.

I am also concerned with the proposed revisions to the primary purpose exception application and notification process. Given the potential increase in deposit arrangements affected by the proposed rulemaking, the subjective nature of this evaluation process, and the lack of protections for existing arrangements codified within the 2020 Final Rule, I anticipate a large amount of primary purpose applications to flood the FDIC and the agency will struggle to opine on these arrangements in a timely fashion.

It is with these thoughts as background, that I offer the following recommendations for the final rule:

- **Establish an Express Exclusion for Consumer Transaction Accounts:** The FDIC should exclude consumer transaction accounts from the "brokered deposits" definition where the account is (a) fully insured; (b) opened by and held in the name of an individual; (c) regularly used by that individual to make payments and receive funds; and (d) the same individual is the sole party recognized by the institution as authorized to manage the account's closure and withdrawals.
- **Establish an Express Exclusion for Reward-Based Transaction Accounts:** The FDIC should explicitly exclude reward-based deposit accounts from the definition of "brokered deposits" if the account meets specific criteria: (a) fully insured by deposit insurance; (b) opened by and held in the name of an individual; (c) regularly used by that individual for payments, transactions, receiving funds, savings goals, and earning rewards tied to banking activities set by the institution; and (d) only that individual is authorized by the bank to close the account and manage withdrawals or payments.

These accounts reflect direct, one-on-one relationships that we own and manage with individual depositors in our communities. These customers use multiple products and services from our institution (e.g., savings accounts, loans, credit cards, and online banking, etc.) demonstrating the stability nature of these individual relationships. The deposits residing in these accounts are a stable, low-cost source of funds that do not pose risks to our institution's financial condition or to the Deposit Insurance Fund.

- **Establish an Express Exclusion for Listing Services:** Listing services serve a valuable role by providing consumers with detailed, objective information about financial institutions. The FDIC should exclude listing services from the "deposit broker" definition as long as they allow consumers to choose institutions and apply for accounts directly, without the service having authority to manage accounts or move funds, set rates or terms, or control deposit allocations.
- **Create An Express Exclusion for Specific Third Parties:** The FDIC should create an express exclusion from the definition of "deposit broker" for third-party service providers that enable insured depository institutions to establish independent, individually sourced, direct depositor relationships where the IDI owns and controls the relationship and the third party does not have the legal authority to close an account or move a depositor's funds among one or more IDIs; is not involved in negotiating or setting rates, fees, terms or conditions of any deposit account offered by any participating IDI; does not propose, allocate, or determine deposit distributions among participating IDIs, and the third party's platform does not serve as the system of record for the IDI's deposits and deposit transactions.

To the extent that the FDIC does not create an express exclusion for third-party service providers under the definition of a deposit broker, the FDIC should create an explicit primary purpose exception for third-party service providers who (a) enable IDIs to offer deposit accounts that are (i) entirely covered by deposit insurance; (ii) governed by terms established by the IDI; (iii) opened directly by an individual depositor; (iv) held in the name of that same depositor; (v) utilized regularly by that same depositor to make payments, receive funds; conduct financial transactions, reach savings goals or earn rewards as a function of satisfying specific banking activities established by the IDI or (b) provides services to an insured depository institution in connection with a deposit account established directly between the insured depository institution and the individual depositor, and the third party (i) has no contractual relationship with the individual depositor to place, manage or control the individual's deposits, banking decisions or financial activities; (ii) does not have the legal authority to close an account or move a depositor's funds from one IDI to another IDI; (iii) is not involved in negotiating or setting rates, fees, terms, or conditions of any deposit account offered by the insured depository institution; (iv) does not propose, allocate, or determine deposit distributions among participating IDIs, and (v) whose platform does not serve as the system of record for the institution's deposits or transactions.

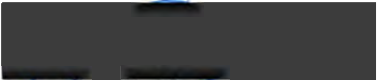
- **Clarify Brokered Bank-Fintech Deposit Relationships:** To address concerns related to middleware providers like Synapse and non-bank organizations like Chime, the FDIC should amend the deposit broker definition to include entities that manage deposit and transaction records rather than the insured depository institution. This would more accurately capture the risks the FDIC seeks to address.

Finally, the FDIC should consider working with Congress to replace Section 29 of the FDI Act with a restriction on asset growth, as proposed in the Asset Growth Restriction Act (S.3962 (2020) and S.5347 (2022)), to achieve Congress's intended public policy goals while streamlining FDIC administration.

We understand the challenges associated with implementing Section 29 of the FDI Act. Unfortunately, without reasoned revisions to the proposed rulemaking, we believe the FDIC's initiative hurts rather than helps community banks. The proposed revisions penalize us for being small and paying external resource to assist us in our deposit gathering activities. Community banks are responsible for well over half of all small business loans. In times of crisis and in times of economic prosperity, institutions like mine play an important role in funding our local, and by extension, our nation's economy. Please don't make it harder for me to compete with fintech providers, credit unions and megabanks for the deposits I need to fulfill our institution's mission and to serve our communities.

Thank you for allowing me to express my concerns and suggestions. I strongly encourage the FDIC to incorporate the above recommendations into the final rule so that community banks can continue to serve our local towns, farmers and small businesses.

Respectfully,



Shon B. Meyer
Chairman, President & CEO
Farmers & Merchants Bank
Miamisburg, OH