FIRST INTERNATIONAL BANK & TRUST
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Member FDIC

November 21, 2024

Submitted Electronically

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

RE: Comment, RIN 3064-AF-99

To Whom It May Concern:

On behalf of First International Bank & Trust ("FIBT), this letter is respectfully submitted to the Federal Deposit Insurance Corporation ("FDIC") in response to its August 23, 2024, proposed rule entitled *Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions* ("Proposed Rule"). We appreciate the opportunity to provide comment on the Proposed Rule and welcome any opportunity for further dialogue on this important subject.

FIBT is a fourth-generation, family-owned, $5.5 billion community bank headquartered in Watford City, North Dakota with locations in North Dakota, Minnesota, South Dakota, and Arizona. In addition to our branch presence in these markets, we are a top-40 ACH originator. In 2024, we expect to originate over 60 million ACH transactions totaling over $100 billion. Our Kotapay division is responsible for a substantial portion of FIBT's ACH volume. Kotapay's primary business vertical is facilitating ACH direct deposit services for over 3,200 companies providing payroll processing services to over 115,000 employers and their 2.5 million employees nationwide. Kotapay's success can best be traced to well-structured partnerships with third party payroll technology companies, a commitment to sound risk management, and rigorous third-party oversight.

Like all community banks over the past few years, FIBT has found itself navigating liquidity challenges and the need to find diverse sources of deposits. Our Kotapay division and more recent banking-as-a-service ("BaaS") initiatives have alleviated some of the pressure associated with funding our growth solely from our rural markets. In fact, these deposits have diversified our funding sources, better protected us from deposit crunches associated with local economic downturns, and assisted us in managing through an unprecedented rate environment. If finalized in its current form, the Proposed Rule not only erects unnecessary barriers to bank innovation but shackles our ability to tap into additional sources of liquidity, which adversely affects our ability to serve our main street customers.

Specifically, under the Proposed Rule, our BaaS partners, and arguably even our Kotapay payroll processors, would be considered "deposit brokers," and the corresponding deposits would be classified as "brokered deposits" despite the customer retaining full, direct control of where their deposits are placed and the terms under which the deposits are maintained. Third party technology partners may provide a platform or design the user experience and a marketing campaigns, but these partners rarely control the actual placement of deposits and have no unilateral ability to move such deposits. Perhaps most importantly, deposits gathered through these relationships are commonly interest-free or carry a cost well below what would be necessary to gather the equivalent amount of core deposits.

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") authorized the FDIC to curtail the business of placing "hot money" deposits, thereby appropriately protecting the deposit insurance fund from banks' over-reliance on high-cost, volatile funding sources, the control of which was too-often concentrated and easily moved when more attractive rates could be negotiated elsewhere. Since the passage of FIRREA, applying the definitions of "deposit broker" and "brokered deposit" commonly required a fact-specific analysis, often on a relationship-by-relationship basis. Nowhere can we find that Congress intended for the definition of "deposit broker" to be so expansive as to cover an entire industry's relationship with banks, especially when the characteristics of such relationships lack the risks of "hot money" deposits. Rather, it appears most evident that the authorizing legislation is being contorted by the Proposed Rule in a manner never intended by Congress to ostracize an entire industry and thereby dissuade banks from entering into legitimate deposit gathering arrangements.

Finally, the FDIC has failed to supply evidence and data supporting how the Proposed Rule advances the fundamental tenants of the underlying statute: to protect the deposit insurance fund, to minimize dependency on unstable, high-cost deposits, and to improve transparency through public disclosure in quarterly call reports. Further, despite claims by FDIC senior leadership and staff on July 30, 2024, the agency is unable to establish a causal correlation between the existing brokered deposit rule, as modified in 2020, and the fallout from the collapse of Synapse Financial Technologies, Inc. The FDIC has also failed to demonstrate how the Proposed Rule would have prevented this fallout if the Proposed Rule was already in place. In the absence of advancing the intentions and purpose of the statute, we can only conclude the Proposed Rule was simply the most convenient vehicle for sidestepping the statutory requirements associated with de novo rulemaking and yet still accomplish the real goal of frustrating partnerships between banks and third-party technology companies.

Agency time and resources could be more productively expended by publishing best practices, written guidance, and examination manual revisions to include criteria and standards for designing and evaluating safe and sound bank-fintech relationships. Such an effort would benefit banks and examination staff, who in our experience are equally hindered by the absence of uniformity and clarity. To this end, the FDIC should withdraw the Proposed Rule in its entirety, focus its efforts on clarifying the existing brokered deposit FAQs, and improve guidance for community banks like FIBT to remain competitive through responsible innovation.

Sincerely,

[redacted]

Trent Sorbe
Executive Vice President/Chief Payments Officer