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April 14, 2020

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

Re: Unsafe and Unsound Banking Practices: Brokered Deposit Restrictions RIN 3064-AE94

Dear Mr. Feldman,

Thank you for the opportunity to respond to the FDIC's proposed new rule regarding brokered deposits and to offer my thoughts on revisions that I would like to see incorporated into the agency's final rule.

My name is Hugh Hitchcock and I am the President & CEO of Davis Trust Company, a wholly owned subsidiary of the Davis Trust Financial Corporation. Opened in June of 1901, we have served Elkins, West Virginia and the surrounding Randolph County region continuously for over 119 years. We take great pride in our history and being an active part of our community. We continue to practice community banking the way it was meant to be, by providing superior customer service while striving to provide the latest in "state of the art" banking technologies to our customers. Our business and our success is based on the personal relationships that we forge with residents who live in our community and with the owners of the small businesses that operate in our market.

Yet as I read the FDIC's proposed rule regarding brokered deposits, I am concerned if enacted as currently written, I will not be able to fulfill my promise of practicing community banking the way that it was meant to be because the FDIC will have limited my ability to engage the very industry innovators that enable me to offer the modern banking products and services that my customers want and that I am committed to delivering.

Perhaps I am misinterpreting the language of the proposed rule but it seems that the "facilitating the placement of deposits" definition as well as the prolonged "primary purpose exception process" are inhibiting me from using a variety of outsourcing partners who help us serve our communities, support our small businesses and establish the important personal relationships with individuals who live in our market area.

The simple fact is that the proposed "facilitation" definition needs to be narrowed so that it addresses third parties who actively control the movement of a depositor's funds and does not inappropriately cover third parties who have no agreement with a depositor to represent or authority to move their deposits and who help, rather than hinder, the bank establish a direct relationship with an individual depositor – a relationship the bank owns and retains. The proposed language is exceedingly broad and does not accomplish its objective of capturing the activities of those entities that take an active role in opening a deposits account on behalf of another individual and maintain control over that individual's funds.

In addition, the proposed rule (a) focuses on the actions of third parties rather than on the direct relationships that they assist banks to establish with individual depositors and (b) fails to recognize the stable nature of the deposits that are associated with these direct depositor relationships via the transaction and savings accounts that they individually open and maintain on their own behalf.

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The FDIC should exclude transaction account deposits and other deposits associated with directly established relationships between individual depositors and their chosen bank from the definition of “brokered deposits” and the agency should exclude all third-party service providers (a) who have no contractual authority to control an individual’s deposits and (b) who help banks establish and own direct relationships with individual depositors from the “deposit broker” definition.

If the FDIC is unable to directly exclude third-party service providers from the definition of “deposit brokers” then the agency should exempt them from having to go through the proposed primary purpose exception application and determination process as their primary purpose is clearly to assist banks form, maintain and own, the direct relationship with the depositor.

These recommendations are supported by many of the comment letters the FDIC received when it initially decided to review the current brokered deposit rule in December of 2018. There are scores of other comment letters the FDIC received during that original comment period that support our recommendation but I submit these two quotes to remind you of the wide industry support our suggestions have:

- **Comment Letter # 86 - Consumer Banking Association:** “Often, the best way for a bank to provide customers with a seamless, integrated, and holistic banking experience is to partner with third parties and leverage affiliate relationships. However, because banks’ technology driven platforms, products, marketing, and delivery channels are facilitated by third parties, it is increasingly difficult for financial institutions to provide customers with an online banking experience without exposure to brokered deposit rules. Accordingly, many banks today hold brokered deposits that are not risky “hot money” deposits, but nevertheless are captured by the FDIC’s expansive definition and interpretation of brokered deposit activity.

Considering the significant shift in consumer preference away from branch-based banking to online and mobile banking, the FDIC’s brokered deposit rules should be revised to account for the resulting shift from core deposits to alternative funding sources as a significant source of stable funding. In particular, the FDIC should ensure that brokered deposit rules do not negatively affect banks that respond to consumer-driven changes to online and mobile products and delivery channels. If a customer uses technology to perform all of the affirmative steps he/she would in a branch, the transaction is akin to a customer depositing core deposits in a branch, meaning the transaction should not be treated as brokered simply because a third party technology platform “facilitates” the customer’s placement of his/her deposits with the financial institution.

Congress intended Section 29 to restrict troubled banks from holding significant amounts of high cost, risky deposits that were bundled by intermediaries. The current body of guidance on brokered deposits does not always clearly reflect the purpose of the statute. The FDIC should revise (or replace) its guidance to, among other updates, clarify that Section 29 does not discourage bank partnerships with third parties for the purposes of marketing deposits products and services or limit the ability of banks in engage in the types of internet marketing, mobile, and internet-based partnerships that are part of contemporary business practices.”

- **Comment Letter # 71 - Nebraska Bankers Association:** “In addition, deposits involving the direct, continuing relationship between a customer and an insured depository institution should be expressly excluded from being designated as brokered deposits.”

Thank you for your efforts to modernize the current rule to reflect current banking practices and the way that our customers want to be supported. We need clarity regarding our ability to attract new relationships and stable deposits. As it is written, the proposed rule introduces uncertainty that is not conducive in how we must proactively work with our customers to provide the banking services they demand.

Respectfully,


Hugh G. Hitchcock, President/CEO