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April 8, 2020

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

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

Dear Mr. Feldman,

I am writing to respond to the FDIC's request for public feedback on its proposed rule regarding brokered deposits.

I am the President of the William Mills Agency. We serve dozens of banks, fintech companies, bank associations and third-party service providers working within the financial services industry. Directly aligned with our client's business strategies and operating under the direct supervision of their senior executives, we provide branding, lead generation, marketing and media services to assist our clients raise consumer awareness, attract new customers, gain market share and respond to business opportunities. Established in 1977, we are proud to have been recognized by the Atlanta Business Chronicle as the largest provider of press relations and marketing services for companies participating in the financial service industry.

We are concerned that our business, as well as the insured depository institutions we support, will be negatively impacted by the FDIC proposed rule. As we read it, the rule's proposed "facilitating the placement of deposits" definition is so broadly worded that it restricts banks from receiving third-party information (and by extension, all associated insights); prohibits their ability to engage consultants or receive advisory services regarding their deposit offerings and limits third parties from performing anything other than "administrative services" (which are undefined within the rule) if the third party plays any role in the institutions deposit gathering activities. We appreciate the Staff Memo, published on March 2, 2020, as we believe it was submitted to mitigate some of our concerns but the language within the rule is nonetheless what we must respond to and the Staff Memo itself is also rather broad.

Clearly, by providing lead generation, branding and marketing services to our clients, one might interpret the proposed language to conclude that our agency is involved in our client's deposit gathering activities and thus, because of the information we share and the services we provide, our clients would have to declare any deposits garnered through our services to be brokered.

In a world of instant access to information, always on personalized and contextual messaging and digital banking services, we do not believe and cannot accept that the FDIC's is requiring all insured depository institutions to plan, build and execute entire branding and omnichannel marketing programs using only "in-house" resources. Many of the community banks we work with simply do not have the personnel, the experience, the expertise or the technical platforms to make such programs successful on their own. Without assistance from firms like ours, smaller institutions will be not be able to compete in today's

financial service marketplace and fintech players and the large regional and national banks will gain market share by default as they have the internal capabilities to develop and execute comprehensive marketing campaigns and customer communication programs.

We are also concerned with the proposed rule's primary purpose exception process as it introduces a time consuming and cumbersome process by which all third-party service providers like our agency would be required to apply for (and hopefully receive) an exception to the brokered deposit rules based on the primary intent of our business, the services we provide, the role we play in our clients deposit related activities and the compensation and contractual relationship that we establish with our clients.

We provide traditional and digital marketing services. We provide our services directly to insured depository institutions and we execute our services on behalf of and for the benefit of our clients. We have no relationship of any kind with any depositor and we have no control, influence or authority to place or move any depositor funds nor any power to close any depositor account. It seems bureaucratic and unnecessary to require third parties who provide commonly accepted marketing services directly to banks and who have no contractual relationship with any depositor to have to apply for and wait four months to receive an primary purpose exception from the FDIC so that we can continue to offer our capabilities to insured depository institutions.

By issuing its proposed rule, we believe the FDIC is trying to address industry participants who have a contractual relationship with a depositor to place, move and manage that depositor's funds and who have the contractual authority to close that depositor's account at any insured depository institution. These types of individuals or firms own the depositor relationship and control the movement of their associated funds and the FDIC is wise to restrict their involvement with insured depository institution as their authority and actions can result in liquidity problems for certain banks and introduce risk to the Deposit Insurance Fund (DIF).

However, and as previously articulated, the proposed "facilitation" definition language is exceedingly broad and as such, may inappropriately capture services like those that our agency provides resulting in our firm being declared to be a "deposit broker." As such, we encourage the FDIC to consider and incorporate the following recommendations within its final rule to enable banks to use third-party service providers like our company:

- **Overt Exclusion From The Deposit Broker Definition:** Overtly exclude from the deposit broker definition, all third-party service providers who enable insured depository institutions to offer deposit accounts to the general public and whose services enable such institutions to establish direct relationships with individual depositors that the institution owns, controls and manages all aspects of that depositor's relationship.
- **Overt Primary Purpose Exception:** If the FDIC is unwilling or unable to provide the overt exclusion as communicated above, then provide all third-party service providers who enable insured depository institution to offer deposit accounts to the general public and whose services enable such institutions to establish direct relationship with individual depositors that the institution owns, controls and manages all aspects of that depositor's relationship with an overt primary purpose exception from the brokered deposit rules without requiring the third party to go through the proposed primary purpose exception process.
- **Narrow The "Facilitation" Definition:** If the FDIC is unwilling or unable to implement either of these two recommendation, then we respectfully request that the FDIC narrow the proposed "facilitation" definition so that it applies solely to individuals or firms who own and control the

depositor relationship. The definition should not apply to third parties like William Mills and to the services that we provide. We recommend:

- The first prong within the proposed rule should be stricken as we know no reason why the exchange of third party information makes a deposit unstable or a risk to the DIF.
- The third prong within the proposed rule should be revised to allow consulting and advisory services to be offered to and received by insured depository institutions. This can be accomplished with the following edits: “(BC) ~~The person provides assistance or is involved in setting~~ negotiates or sets the rates, fees, terms, or conditions for of the deposit account; or
- The fourth prong within the proposed rule should be revised to make it overtly clear that services offered by third parties who enable insured depository institutions to establish and own direct relationships with individual depositors should be permissible. This could be accomplished via the following edits: (CD) ~~The person is acting, directly or indirectly, with respect to the placement of deposits, as an intermediary between a third party that is placing deposits on behalf of a depositor and an insured depository institution, other than in a purely administrative capacity~~ as a service provider to the insured depository institution for the purposes of creating and maintaining the insured depository institution’s depositor relationship.

My recommendations are substantiated by many of the comment letters the FDIC received in response to its initial December 19, 2018 Advance Notice of Proposed Rulemaking. While there are many examples that I could include, I have provided brief quotes from two such letters to demonstrate the wide support the banking industry has for the revisions that we have proposed:

- **Goldman Sachs:** “Deposits acquired through standard digital marketing activities that are identified as marketing or advertising should not be considered brokered. The FDIC’s current interpretative guidance significantly constrains the ability of banks to employ these digital marketing channels, including, for example, marketing through affinity groups or other third parties. In its 2011 Study on Core Deposits and Brokered Deposits (the “Deposits Study”), the FDIC noted that “the most important factor used by the FDIC to determine when a particular affinity group is “facilitating the placement of deposits”...has been whether the affinity group is engaged in active marketing on behalf of the bank.” Similarly, the FDIC has suggested that any involvement by a third party in the development and distribution of content will be construed as “active marketing.” Digital marketing channels, including podcasts, blogs and social media, are the modern equivalent of an advertisement in the morning newspaper. The FDIC’s historical guidance on marketing activities should evolve as the nature of marketing evolves. We therefore recommend that Brokered Deposits Rules clarify the usage of standard marketing practices, including the use of digital marketing channels, will not trigger brokered deposit treatment.”
- **Nebraska Bankers Association:** “Firms that provide normal course marketing arrangements and practices should not be considered deposit brokers. There is virtually no evidence that deposits gathered through marketing practices widely employed by businesses today pose enhanced risk either to individual banks or the deposit insurance fund. In light of the extensive use of these marketing arrangements by many US corporations, it is difficult to comprehend how the FDIC interprets them as facilitating the placement of deposits for banks.”

The Williams Mills Agency has proudly served the financial services industry for forty-three (43) years. With the outbreak of the Coronavirus, now more than ever, our industry must be empowered to serve the needs of the small businesses and communities that are suffering from this pandemic.

Banks, especially community banks, must have the liquidity necessary to make the SBA loans that Congress approved in the CARES Act. Deposits are a major source of liquidity and our nation's community financial institution must be able to use third-party service providers like our agency to help them establish direct relationships with individual deposits so they can use the stable deposits that are associated with those relationships to satisfy the credit needs of their communities and to facilitate the recovery of their local economies.

With appreciation,



Scott Mills
President
William Mills Agency