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October 26, 2018

Via Electronic Submission

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS,
Federal Deposit Insurance Corporation
550 17th Street, NW, Washington, DC 20429

Re: Limited Exception for a Capped Amount of Reciprocal Deposits from Treatment as Brokered Deposits

Dear Mr. Feldman:

We appreciate the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) proposal to implement Section 202 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The proposal would align FDIC regulations with the statute in order to allow, under certain circumstances, insured depository institutions to except reciprocal deposits from treatment as brokered deposits. We support the proposal. We also concur with the comments written by Capital Bank of New Jersey regarding the special rate cap for *de novo* banks.[1]

As a general matter, we believe that the FDIC has viewed brokered deposits through an outdated lens, failing to keep up with the extensive statutory, technological, and market changes that have significantly changed bank structure and the methods by, and sources from, which banks gather deposits and interact with their customers. Accordingly, we support and appreciate the FDIC's announcement, issued together with the request for comments, that the agency will revisit its brokered deposit rules, and we encourage prompt action. We agree with Chairman McWilliams' statement that "since the rules were put in place, the industry has seen significant changes in technology, business models, and product types, and later this year we will ask for public comment on how best to update the rules to reflect such change."[2] Modern banking and technology, including an increased diversity of commercial bank affiliations, partnerships and significant growth in online, mobile, and digital banking, allows banks to gather stable deposits from outside of traditional branch networks in ways that customers increasingly prefer.

In adopting Section 29 of the Federal Deposit Insurance Act in 1989, Congress intended to prevent institutions in a weakened capital position from accumulating expensive funding that provided little franchise value to the bank accepting the funds. Over the 30 years since Section 29's enactment, however, the FDIC has continually applied an ever broader interpretation of who is considered a "deposit broker," unnecessarily subjecting a broad swath of deposits to supervisory stigma, limits,

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[1] https://www.fdic.gov/regulations/laws/federal/2018/2018-limited-exception-capped-amount-reciprocal-deposits-3064-ae89-c-002.pdf

[2] https://www.fdic.gov/news/news/press/2018/pr18060.html

and additional regulatory costs, even when held by well-capitalized banks. The supervisory scope is far reaching, given the broad application of the FDIC's interpretation to across interagency rules and supervision. This, in turn, limits bank of all sizes and business models access to more diversified and stable sources of deposits both in the normal course and under stressed conditions.

There is a particularly urgent need for the FDIC to revisit the national rate cap and how it is applied to community banks through the examination process. Many examiners use the national rate cap as a proxy for "volatile" deposits, regardless of when the deposit was originated or the depositor's relationship with the bank. This treatment is contrary to the intent of Section 29. Moreover, in a rising rate environment, it is becoming clear that the current rate cap does not accurately reflect the cost of deposits. The inaccuracy of the rate cap is caused by, among other things, not weighting the number of branches considered in the average rate, and excluding the rates offered by credit unions, branchless banks, and other banks offering CD specials The inaccuracy of the rate is due to, among other things, not weighting the number of branches considered in the average rate, excluding the rates offered by credit unions, branchless banks, and other banks offering CD specials and the lack of segmentation across different deposit types or markets. Imposing an artificially low regulatory rate in a rising rate environment, combined with an overly broad application of what constitutes a brokered or volatile deposit, runs the risk of fomenting unnecessary liquidity crunches induced by inapposite regulation.

We appreciate and support the proposed rule, a useful first step by the FDIC toward modernizing the brokered deposits rules. We intend to provide detailed comments in response to the FDIC's request for information on additional ways to improve and modernize the FDIC's approach to brokered deposits, and we encourage the other agencies to similarly review their consideration of brokered deposits. We hope that the FDIC, through a modernization proposal, begins a thorough review of what is considered a brokered deposit, including whether the term itself is applicable in today's business environment and if the FDIC's policy goals are aligned either the intent of Section 29 and modern banking.

Accordingly, we urge the FDIC to proceed expeditiously with issuing an ANPR to provide an opportunity for the public and the industry to share views on how to make improvements that will facilitate the ability of banks to serve their customers.

If you have any questions about these comments, please contact the undersigned at (202) 663-5182 or email: atouhey@aba.com.

Sincerely,

Alison Touhey
Vice President and Senior Regulatory Advisor