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FDIC changes tack and proposes significant expansion of brokered deposit rule

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The FDIC's proposed brokered deposit rule would expand the definition of deposit broker and eliminate and narrow exceptions. Changes would affect sweep deposit and fintech arrangements.

Four years after finalizing revisions to its brokered deposit rule, the Federal Deposit Insurance Corporation (FDIC) has changed tack and proposed new changes to the brokered deposit rule (the Proposed Rule). The Proposed Rule would expand the universe of deposits classified as brokered and, correspondingly, "non-core."[1] Comments are due on the Proposed Rule 60 days after publication in the Federal Register. This due date will likely fall in early October.

Background

Section 29 of the Federal Deposit Insurance Act prohibits insured depository institutions (IDIs) that are not well-capitalized from accepting "funds obtained, directly or indirectly, by or through any deposit broker."[2] A deposit broker is defined in Section 29 as any person:

- engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with IDIs or the business of placing deposits with IDIs for the purpose of selling interests in those deposits to third parties; or
- an agent or trustee who establishes a deposit account to facilitate a business arrangement with an IDI to use the proceeds of the account to fund a prearranged loan.[3]

There are nine statutory exclusions from this definition, including for "an agent or nominee whose primary purpose is not the placement of funds with depository institutions," which has become known as the primary purpose exception (PPE).[4] The FDIC has issued implementing regulations that elaborate on the statutory definition of deposit broker. These regulations were substantively revised in 2020 (the 2020 Rule)[5] and define a deposit broker as a person engaged in the following activities.

- Any person engaged in the business of **placing** deposits, meaning they receive third party funds and deposit those funds at more than one IDI.
- Any person engaged in the business of **facilitating** the placement of deposits of third parties with IDIs, meaning the person falls in one of the following categories with respect to deposits placed at more than one IDI:
  - has **legal authority**, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution;
  - is involved in **negotiating or setting rates, fees, terms, or conditions** for the deposit account; or
  - engages in **matchmaking** activities. Matchmaking is proposing deposit allocations at, or between, multiple IDIs based upon both the particular deposit objectives of a specific depositor or the depositor's agent and the particular deposit objectives of specific banks, except in the case of deposits placed by a depositor's agent with a bank affiliated with the depositor's agent.

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- Any person engaged in the business of placing deposits with IDIs for the purpose of selling those deposits or interests in those deposits to third parties.
- An agent or trustee who establishes a deposit account to facilitate a business arrangement with an IDI to use the proceeds of the account to fund a prearranged loan.

The 2020 Rule reflected an effort to modernize the FDIC's implementing regulations and codify existing advisory opinions to account for changes in technology and business models of deposit brokers. The Proposed Rule would reverse a number of the changes made by the 2020 Rule. In particular, the 2020 Rule made changes to clarify who qualified as a deposit broker, most notably by:

- Attempting to clarify when a person is engaged in the business of facilitating the placement of deposits by identifying the three definite categories of facilitation activity described above. The preamble to the 2020 Rule stated that the intent of these changes was to "capture activities that indicate that the third party takes an active role in the opening of an account or maintains a level of influence or control over the deposit account."[6]
  - The receipt of fees in exchange for deposit placement or facilitation, while a factor previously discussed in staff advisory opinions, was not included in the 2020 regulatory definition.
  - As noted above, the 2020 Rule created the matchmaking category but specifically carved out activities conducted between an IDI and an affiliated third party.[7]
- Clarifying that deposit brokers who have an exclusive relationship to place deposits at only a single IDI were not within the scope of the deposit broker definition. This determination was based on a novel reading of the use of the plural "insured depository institutions" in the statutory definition of deposit broker.[8]
- Specifying 14 designated business relationships that would be deemed to satisfy the PPE. Most of these codified prior advisory opinions, but two new exceptions were created:
  - Agents or nominees that place less than 25% of the total assets that the agent or nominee has under administration for its customers in a particular business line at IDIs were deemed to satisfy the PPE (the 25% test).[9]
  - Agents or nominees that place or assist in placing 100% of customer funds in a particular business line into transaction accounts that do not pay any fees or other remuneration to the depositor were deemed to satisfy the PPE (the Enabling Transactions Exception). This exception was intended to exempt entities whose business purpose was to place funds at IDIs to enable customer transactions or payments.[10]

Notably, the 2020 Rule did not make any changes to how brokered certificates of deposit (CDs) were treated despite multiple comments urging the FDIC to do so.[11]

The 2020 Rule was not without controversy. Then-Chairman Jelena McWilliams acknowledged the challenges associated with adapting Section 29 by rule to such a broad set of activities and suggested legislative replacement of Section 29 with restrictions on asset growth would be a better means of addressing brokered deposit risks.[12] Then-Director, and current Chairman Marty Gruenberg issued a lengthy dissent arguing that the changes went beyond simply addressing technological change, ignored historical evidence of the risks of brokered deposits and posed a risk to safety and soundness.[13] Gruenberg singled out the exclusive relationship carve-out based on procedural objections—the final text was only provided the day before the vote on the final rule. He also raised substantive objections, namely that reliance on a single deposit broker actually posed heightened risks and that the interpretation of Section 29 upon which the carve-out was based was "a complete departure from the FDIC's historical interpretation of the statute."[14]

The 2020 Rule went into effect in April 2021 with significant impact. Over the course of the first quarter in which the 2020 Rule took effect, reported brokered deposits declined by 31.8%, according to the preamble to the Proposed Rule.

The risks posed by different types of deposit brokers: an unsettled but crucial policy question

The preamble to the Proposed Rule describes the narrowing effects of the 2020 rule as "problematic because deposits [that were consequently classified as non-brokered] continue to present the same risks as before" the 2020 Rule. This argument—that the narrower scope of the 2020 Rule is inconsistent with the risks posed by brokered deposits—is the primary policy justification for the Proposed Rule.[15] It is also contested. During discussion of the Proposed Rule at the board meeting where it was approved, Consumer Financial Protection Bureau Director Chopra stated that he thought the enactment of the 2020 Rule was arbitrary and capricious because of the lack of evidence on diminished risks of the types of deposit broker relationships that were carved out. Conversely, at the same meeting Vice Chairman Travis Hill and

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Director Jonathan McKernan voiced concerns that the historical evidence of brokered deposit risks cited in the preamble was inapplicable to some types of brokered deposits and did not provide evidentiary support for the full scope of the proposed revisions.

The preamble to the Proposed Rule cites to FDIC studies, covering the period from 1988 to 2017, that indicate a correlation between greater brokered deposit concentrations and bank failure rates.[16] The overall statistical conclusions in those studies do not differentiate by each sub-type of brokered deposit. Vice Chairman Hill has called for conducting an updated study.[17]

Summary of changes

Expanded definition of deposit broker

The Proposed Rule would make several changes to the definition of deposit broker:

- **Combines the placing and facilitation prongs of the deposit broker definition**. The 2020 Rule separated the placement and facilitation prongs of the deposit broker definition, so that a separate analysis is needed for each prong to determine whether any particular deposit is brokered. The preamble to the Proposed Rule asserts that this definitional structure has caused confusion among IDIs. The Proposed Rule would combine these activities into a single prong in an attempt to improve understanding and better align the regulatory brokered deposit definition with the text of Section 29. The sub-categories that are currently under the placement and facilitation prong would move under this combined prong with the changes described below.
- **Replaces the term matchmaking**. The 2020 Rule defines the term "matchmaking" as a part of the facilitation prong in the deposit broker definition. The Proposed Rule would remove this term and concept. Instead, a "person that proposes or determines deposit allocations at one or more [IDIs] (including through operating or using an algorithm, or any other program or technology that is functionally similar)" would be considered a deposit broker.
  - This change would remove the existing detail in the regulation on what it means to propose deposit allocations, apparently making whether a person bases such a proposal on specific deposit objectives irrelevant.
  - The preamble to the Proposed Rule states that the references to the use of an algorithm or similar technology is meant to capture situations where the algorithm "proposes or determines deposit allocations among IDIs by directing the flow, or facilitating the flow, of third-party funds." It is not clear what it means to direct or facilitate the flow of funds but, if this interpretation is applied broadly, the deposit allocation prong and its reference to "operating or using an algorithm" could capture a number of entities not clearly covered by the current rule that provide technology and other services used in calculating the day-to-day movement of funds needed to administer a deposit sweep program.
  - The preamble observes that the current matchmaking definition has proven operationally difficult for IDIs to implement, especially given difficulties in evaluating the status of third-party service providers due to limited access to contracts and other information relevant to the relationship between service providers and broker-dealers. It describes the replacement of the matchmaking definition as an effort to make the rule more operationally workable.
  - This change would also remove the carve-out for persons proposing deposit allocations with respect to deposits placed by a depositor's agent with an IDI affiliated with the agent. The preamble describes this change as a reaction to recent experience, such as the First Republic failure, which the FDIC believes shows that affiliated sweep deposits may not be stickier than unaffiliated sweep deposits.
- **Adds a new independent sub-category related to fees**. Under the Proposed Rule, a person would be considered to be engaged in the business of placing or facilitating the placement of deposits if they have "a relationship or arrangement with an [IDI] or customer where the [IDI] or customer pays the person a fee or provides other remuneration in exchange for deposits being placed at one or more [IDIs]."
  - This proposed definition is framed as a return to pre-2020 practices where the FDIC considered fees as part of case-by-case determinations of deposit broker status, but it may prove to be an expansion. Prior to 2020, the FDIC regularly considered fees in deposit broker advisory opinions, but fees were often one factor out of many.[18] Under the Proposed Rule, the receipt of any compensation in exchange for deposits may prove dispositive.
  - The proposed amended text of the deposit broker definition only refers to fees in exchange for the placement of deposits, but the preamble to the Proposed Rule indicates that fees related to facilitation activities may also be covered.[19] This discretion, as well as the types of fee arrangements that result in brokered deposit status, likely will

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be a focus of comments on the Proposed Rule.

  - For example, the preamble states that subscription fees paid to listing services are not "in exchange" for deposits, which may indicate similar fee structures would not trigger the deposit broker definition.

- **Eliminates the exception for exclusive deposit arrangements**. The 2020 Rule for the first time interpreted the plural reference to "insured depository institutions" in Section 29 to support the exclusion of persons that place deposits at only one bank from the definition of deposit broker, but notably declined to extend this logic to the placement of CDs. The Proposed Rule would reverse this change.
  - The preamble to the Proposed Rule expresses a concern that exclusive deposit placement relationships could lead to a less than well-capitalized IDI relying on a single counterparty for 100% of its deposits. The FDIC also claims that an IDI could have multiple "exclusive" third-party deposit placement relationships without any of the deposits being considered brokered.
  - As discussed above, then-Director Gruenberg objected to this aspect of the 2020 Rule at the time. Director Chopra has expressed the view that this decision was not evidence-based and, thus, was arbitrary and capricious. At the meeting where publication of the Proposed Rule was authorized, in response to a question posed by Director Chopra, FDIC staff said that the decision to carve out exclusive deposit relationships was not based on supervisory experience.

Changes to the Primary Purpose Exception

The Proposed Rule would limit the circumstances in which the PPE is available in several ways:

- **Revising the meaning of having a primary purpose other than the placement of deposits.** The Proposed Rule would add text requiring that an agent or nominee's "primary purpose in placing customer deposits at [IDIs] is for a substantial purpose other than to provide a deposit-placement service or to obtain FDIC deposit insurance with respect to particular business lines between the individual [IDI] and the agent or nominee" in order for the PPE to apply.
  - In proposing this change, the FDIC asserts that the primary purpose test requires understanding "the intent" of the third party in placing deposits at one or more IDIs. The test thus requires consideration of the primary purpose of two relationships: the customer-third party relationship and the third-party IDI relationship. The FDIC's explanation for this two-part test is that "the primary purpose of a customer's business relationship with a third party may be distinct from the intention of the third party in placing those customer funds at particular IDIs."[20]
  - According to the preamble to the Proposed Rule, the FDIC believes the remaining existing designated PPEs—i.e., those other than the 25% test or Enabling Transactions Exception, which would be eliminated by the rule—would satisfy the new substantial purpose formulation of the primary purposes test, so this change is most relevant for persons that would need to apply for a case-by-case PPE determination under the Proposed Rule.[21]
  - The choice to use both "primary" and "substantial" to modify purpose in the new text is not explained. It is unclear whether the FDIC is suggesting that satisfying the test requires not merely a determination of whether a purpose is "primary", but also whether it is "substantial". If so, that has the potential to vest additional discretion for any such determination in the FDIC.
  - The adopting preamble for the 2020 Rule described business line to "refer to the business relationships an agent or nominee has *with a group of customers*."[22] This definition of business line may be inconsistent with the emphasis in the preamble to the Proposed Rule on examining business relationships with IDIs and with customers.

- **Eliminating the Enabling Transactions Exception**. In the FDIC's view, the current Enabling Transactions Exception is inconsistent with the overarching changes to the primary purpose exception described above because there is no relevant difference between an agent or nominee's purpose in placing deposits to enable transactions and placing deposits to access a deposit account and deposit insurance. The Proposed Rule would eliminate the exception. Existing approvals authorizing IDIs to rely on this exception would be revoked, and IDIs would need to rely on another designated exception or file a case-by-case PPE application.
- **Replacing the 25% test with a broker-dealer sweep exception (BDSE).** In the FDIC's view, placing less than 25% of assets under administration at an IDI is insufficient to demonstrate a substantial purpose other than to provide deposit insurance or a deposit placement service. The preamble to the Proposed Rule also describes under-reporting of brokered deposits related to what it characterizes as misunderstanding of the interaction of the 25% test and the role of third-party service providers. The preamble acknowledges challenges among IDIs in evaluating third-party participants in sweep relationships where the broker-dealer meets the 25% test, in particular challenges obtaining contracts between broker-dealers and third-party matchmakers. Consequently, the Proposed Rule would replace the

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25% test with the BDSE.

- Only Securities and Exchange Commission (SEC)-registered broker-dealers and investment advisers would qualify for the BDSE. Those entities must place less than 10% of assets under management[23] for customers with respect to a particular business line at IDIs and no additional third parties, such as technology service providers, could be involved for the BDSE to apply. The Proposed Rule does not address how entities that benefit from an exemption from SEC registration would be treated.
- The notice process for the BDSE would be more involved and slower than the existing 25% test notice process. IDIs, not third parties, would be required to submit a notice to the FDIC of their intent to rely on the BDSE for each instance of reliance. The FDIC would have a 90 day period to review the notice, which it could extend to 180 days. Under the current rule, a third-party filer or an IDI may rely upon the 25% test exemption from the date the FDIC receives and acknowledges notice of the third party's intent to do so.[24] Under the proposed BDSE notice process, an IDI would only be able to rely on the exemption if it has not received a written disapproval from the FDIC within 90 days after submission (which the FDIC may extend for an additional 90 days).
- Broker-dealers or investment advisers that otherwise meet the criteria for the BDSE but utilize the services of a third party that is not itself a deposit broker would not qualify for the BDSE. Instead, an IDI would need to file a PPE application with respect to such an arrangement, as described below.
- Any PPE exceptions based on the existing 25% test would be revoked by the Proposed Rule.

New PPE application requirements

The Proposed Rule would create a new application process for relationships that utilize additional third parties but otherwise meet the requirements of the BDSE. IDIs would be required to file this application and provide a significant amount of information on the relationship, including all third-party contracts relevant to the relationship. The FDIC would have 120 days to review the application and could extend the review by an additional 120 days or longer if necessary. The application would be approved only if it demonstrated to the FDIC's satisfaction that the additional third party is not a deposit broker.

Changes to the existing PPE application process

The Proposed Rule would also modify the existing application process for a PPE that does not fall within one of the designated exceptions. Most notably, only IDIs, not third parties, would be permitted to file such an application. An IDI would need to submit an application for each specific deposit placement arrangement that it has with a third party. The same review timing as for a BDSE application would apply.

The informational requirements for a case-by-case PPE application would be expanded. IDIs would be required to include copies of all relevant contracts, including third-party contracts. IDIs would also be required to include information on the fees paid to the deposit broker, the discretion of the deposit broker to choose at which IDIs deposits are placed, and any legal obligation of the deposit broker to disburse funds to customer deposit accounts. The preamble to the Proposed Rule indicates that this new information corresponds to the addition of three new factors in the FDIC's analysis of whether the PPE applies:

- The amount in fees an agent or nominee receives from an IDI or customer for deposits placed with the IDI and how such fees are determined.
- Whether a third party has discretion to steer customer deposits to IDIs based on factors, such as interest rate competition or fees, that could result in the deposits being less stable.
- Whether a third party is placing deposits with an IDI to meet a legal obligation. This may indicate that such deposits will be more stable and that the third party has a substantial purpose other than to provide deposit placement services or access to FDIC insurance.

The preamble states that these new factors would be balanced with consideration of existing factors in determining whether a case-by-case PPE should be granted.

Alternative proposals for the PPE

In the preamble to the Proposed Rule the FDIC stated that it was also considering two alternatives to the Proposed Rule's treatment of the PPE:

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- **Eliminate completely the designated business sweep exception for deposits**. Under this alternative, there would be no BDSE. All sweep deposits would be presumptively classified as brokered deposits because any SEC-registered broker-dealer or investment adviser would meet the definition of deposit broker. An IDI receiving sweep deposits could, however, apply to treat the deposits as not brokered under the general PPE if the arrangement otherwise meets the requirements for that exception. The percentage of customer funds placed at one or more IDIs (i.e., the "de minimis" ceiling of 10%) would not be a qualifying factor.[25]
- **Restrict the BDSE to sweeps to affiliated IDIs**. Under this alternative, the BDSE would be further narrowed to arrangements involving an SEC-registered broker-dealer or investment adviser that meets the following conditions:
  - The broker-dealer or investment adviser places or facilitates the placement of swept funds into non-maturity deposits at an affiliated IDI;
  - The amount of swept funds are less than 10% of the total assets under management of the broker-dealer or investment adviser (in other words, the percentage would be based on the aggregate total, not on a business line); and
  - The related fees paid by the IDI to the affiliated broker-dealer or investment adviser are flat fees (per account or per customer) as payment for recordkeeping or administrative purposes and not for placing deposits.[26]

Clarifications to the reciprocal deposit exception

Finally, the Proposed Rule would clarify the process by which an IDI that is a former agent institution could regain agent status for the purpose of the reciprocal deposit exception. An agent institution is an IDI that places a covered deposit through a deposit placement network at other IDIs in amounts that are less than or equal to the standard maximum deposit insurance amount and meets certain other criteria, such as receiving a CAMELS rating of outstanding or good on its most recent examination and being well capitalized.[27]

Agent institutions benefit from the reciprocal deposit exception, which excludes reciprocal deposits up to a cap from being classified as brokered deposits.[28] If an agent institution loses agent status, for example through a negative supervisory rating, it becomes subject to a special lower cap. The current brokered deposit regulations do not specify how agent status can be regained.

The Proposed Rule would specify timing and criteria for regaining agent status. An IDI could regain agent status in the following ways under the Proposed Rule:

- If well capitalized, the IDI would regain agent status on the date it is notified its CAMELS composite condition is outstanding or good.
- If its CAMELS composite condition is rated as outstanding or good, the IDI would regain agent status on the date it is notified or deemed to have notice that it is well capitalized.
- After applying for a waiver from the prohibition on less than well capitalized IDIs accepting brokered deposits, the IDI would regain agent status on the date the FDIC grants such a waiver.
- If three consecutive calendar quarters have passed during which the IDI does not receive reciprocal deposits causing total reciprocal deposits to exceed the special cap, the IDI would regain agent status on the last day of the third such quarter.

Potential effects on IDIs

The FDIC acknowledges that the potential effects of the Proposed Rule include, among others, an increase in the amount of deposits classified as brokered deposits; a potential restructuring of affected IDIs' liabilities as a result; potential changes to affected IDIs' Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR) for those IDIs subject to those requirements; potential changes to affected IDIs' organizational structures; costs associated with making changes to affected IDIs' internal systems, policies and procedures relating to deposit placement arrangements; an increase in the number of brokered deposit PPE applications; and affected IDIs' FDIC deposit insurance assessments. Except for estimating the cost of additional PPE applications, the FDIC stated that it either does not have the data or the information to estimate the amount of these potential costs.[29]

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[1] Core deposits are not defined by statute but are defined for analytical and examination purposes in the Uniform Bank Performance Report (UBPR) administered by the Federal Financial Institutions Examination Council (FFIEC). They are composed of deposit types that are considered to be stable and lower-cost and do not include brokered deposits. *See* Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, 84 Fed. Reg. 2366, 2377, 2385 (Feb. 6, 2019). Banks with a relatively greater ratio of non-core to core deposits can face higher deposit insurance assessments and increased supervisory scrutiny.

[2] 12 U.S.C. § 1831f(a).

[3] 12 U.S.C. § 1831f(g)(1).

[4] *See* 12 U.S.C. § 1831f(g)(2)(I).

[5] Unsafe and Unsound Banking Practices: Brokered Deposits and Interest Rate Restrictions, 86 Fed. Reg. 6742 (Jan. 22, 2021). The final rule was published in the Federal Register in 2021 but the FDIC approved the rule in 2020. *See* FDIC, PR-136-2020, FDIC Board Approves Final Rule on Brokered Deposit and Interest Rate Restrictions (Dec. 15, 2020), available at https://www.fdic.gov/news/press-releases/2020/pr20136.html.

[6] 86 Fed. Reg at 6746.

[7] *Id.* at 6747.

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[8] *See* 12 U.S.C. § 1831f(g)(1)(A) ("The term 'deposit broker' means…any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions…").

[9] 86 Fed. Reg. at 6751. 12 C.F.R. § 337.6(a)(5)(v)(I)(1)(i).

[10] 86 Fed. Reg. at 6752.

[11] *See id.* at 6748 ("Nevertheless, under the final rule, without exception, … brokered CDs continue to be classified as brokered. Brokered CDs, which were offered well before Section 29 of the FDI Act was enacted, were specifically intended to be included as part of the statute. Moreover, and as provided in the ANPR, brokered CDs have caused significant losses to the DIF.").

[12] Statement by FDIC Chairman Jelena McWilliams on the Combined Final Rule on Brokered Deposits and Interest Rate Restrictions at the FDIC Board Meeting (Dec. 15, 2020), available at https://www.fdic.gov/news/speeches/2020/spdec1520b.html.

[13] Statement by FDIC Board Member Martin J. Gruenberg on the Final Rule: Brokered Deposits and Interest Rate Restrictions at the FDIC Board Meeting (Dec. 15, 2020), available at https://www.fdic.gov/news/speeches/2020/spdec1520f.html.

[14] *Id.*

[15] The preamble to the Proposed Rule also describes certain administrability concerns discussed elsewhere in this update.

[16] *See* 84 Fed. Reg. at 2386. As the preamble to the Proposed Rule briefly acknowledges, the correlation with bank failure rates was likely driven by the substitution effect of brokered deposits for core deposits and equity rather than greater riskiness of brokered deposits compared to other non-core liabilities. According to the most recent study, when controlling for levels of core deposits and equity, brokered deposits had no statistically significant effect on failure rate, suggesting that "brokered deposits can be substituted for other bank liabilities without any statistically measureable [sic] effect on a bank's failure probability, provided that a bank's share of equity and core deposit funding and its asset risk characteristics remain unchanged." *Id.*

[17] Remarks by Vice Chairman Travis Hill at the American Enterprise Institute "Reflections on Bank Regulatory and Resolution Issues" (Ju. 24, 2024), available at https://www.fdic.gov/news/speeches/2024/remarks-vice-chairman-travis-hill-american-enterprise-institute-reflections-bank.

[18] *See* FDIC, Study on Core and Brokered Deposits, 23, 26-27 (2011) (describing fee levels as one of seven factors in analyzing the status of deposit marketers, describing fees as one of three criteria in determining whether an investment company met the PPE), available at https://www.fdic.gov/regulations/reform/coredeposit-study.pdf.

[19] *See* Proposed Rule at 32-33 ("As such, the FDIC believes that including fees or other remuneration in determining whether a third party meets the 'deposit broker' definition is consistent with the statute as the receipt of fees indicates that the third party is engaged in the business of providing deposit placement services or facilitating the placement of deposits. Fees that would be covered under the proposed 'deposit broker' definition would include fees for administrative services provided in connection with a deposit placement arrangement.").

[20] Proposed Rule at 37-38.

[21] Proposed Rule at 55 ("The FDIC believes the remaining existing designated business exceptions are narrowly tailored to address specific business lines or functions and would satisfy the proposed primary purpose exception analysis in that the primary purpose of these arrangements in placing customer deposits at IDIs is for a substantial purpose other than to provide a deposit-placement service or FDIC deposit insurance.").

[22] 86 Fed. Reg. at 6756 (emphasis added).

[23] The proposed change in denominator from assets under administration to assets under management is intended to reflect the types of services provided by broker-dealers and investment advisers, which according to the proposed new definition of "assets under management" would refer to the provision of "continuous and regular supervisory and management services". Proposed Rule at 48-49.

[24] 86 Fed. Reg. at 6756; FDIC, Questions & Answers Related to Brokered Deposits Rule, D.1 (Jul. 15, 2022).

[25] Proposed Rule at 58-59.

[26] *Id.* at 59.

[27] 12 C.F.R. § 337.6(e)(2)(i). CAMELS rating refers to the rating system used in examinations conducted pursuant to section 10(d) of the Federal Deposit Insurance Act, 12 U.S.C. § 1820(d).

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[28] Reciprocal deposits are deposits received from a deposit network for which the IDI places an equal aggregate amount of deposits of the same maturity at other network banks 12 C.F.R. § 337.6(e)(2)(v).

[29] Proposed Rule at 61, 64, 65, 67.

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