



State Street Corporation

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June 9, 2020

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

Via email: comments@fdic.gov

Re: Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions (RIN 3064-AE94)

Dear Mr. Feldman:

State Street Corporation ("State Street") appreciates the opportunity to respond to the Federal Deposit Insurance Corporation's ("FDIC") proposed rulemaking ("proposed rule") on revisions to its regulations relating to brokered deposits.¹ The proposed rule creates a new framework for analyzing provisions of the deposit broker definition, and amendments to certain exceptions, including the insured depository institution exception ("IDI exception") and the primary purpose exception.

Headquartered in Boston, Massachusetts, State Street is a global custodian bank which specializes in the provision of financial services to institutional investor clients. This includes the provision of investment servicing, investment management, data and analytics, and investment research and trading. With \$31.864 trillion in assets under custody and administration and \$2.689 trillion in assets under management, State Street operates in more than 100 geographic markets globally.² State Street is organized as a United States bank holding company, with operations conducted through several entities, primarily its wholly-owned state-chartered insured depository institution ("IDI"), State Street Bank and Trust Company.

¹ Available at https://www.govinfo.gov/content/pkg/FR-2020-02-10/pdf/2019-28275.pdf?utm_medium=email&utm_campaign=subscription+mailing+list&utm_source=federalregister.gov.

² As of March 31, 2020.

State Street broadly supports the FDIC's efforts to modernize the regulatory framework related to brokered deposits to reflect the many changes to the financial system landscape since the regulation was first enacted. Notwithstanding our broad support, we recommend some adjustments to address potential unintended consequences of the proposed rule. This includes: the elimination of the information sharing prong; clarifications related to the IDI exception and the primary purpose exception; and relief from the primary purpose exception's filing requirement if an institution meets the respective criteria.

Information Sharing Prong

The proposed rule defines a deposit broker as "any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties." The proposed rule further identifies certain activities that would meet the definition of "engaged in the business of facilitating the placement of deposits" ("the facilitation prong") including directly or indirectly sharing any third-party information with the IDI ("the information sharing prong".)

State Street believes that as proposed the information sharing prong is overly stringent since any sharing of third-party information would trigger the facilitation prong. This includes the sharing of customer lists among a bank and its affiliates which we believe should not fall within the scope of facilitation. Indeed, the mere sharing of information does not indicate a level of influence or control over an account and may actually be indicative of a deeper, more stable client relationship. Referrals may actually strengthen relationships with customers, are incidental to the primary business and although referrals assist in connecting the customer, the direct relationship is with the affiliate.

As such, facilitation should focus on the actual "influence and control" that a facilitator has over the respective deposits. Therefore, we recommend removing the information sharing prong of the definition of "engaged in the business of facilitating the placement of deposits" in its entirety.

IDI Exception

The proposed rule extends the IDI exception to wholly-owned operating subsidiaries provided that the subsidiary meets the following criteria:

- "The subsidiary is a wholly-owned subsidiary of the IDI, meaning that the IDI owns 100% of the subsidiary's outstanding stock;
- The subsidiary places deposits of retail customers exclusively with the parent IDI; and
- The subsidiary engages only in activities permissible for the parent IDI."

State Street strongly supports the extension of the IDI exception to wholly-owned operating subsidiaries. We agree with the FDIC's acknowledgment that "[t]here is little practical difference between deposits placed at an IDI by a division of the IDI versus deposits placed by a wholly-owned operating subsidiary of the IDI." However, clarification regarding reference to the placement of "deposits of retail customers exclusively with the parent IDI" is necessary, along with the extension of the IDI exception to include

affiliates that are wholly-owned by the IDI's bank holding company. Specifically, there is uncertainty as to whether the second criterion of the IDI exception noted above is intended to limit the exception solely to deposits from a retail customer, or if it is intended to ensure that retail deposits would only benefit from the IDI exception if exclusively placed with the parent IDI, a distinction which has important implications for the custody banks, such as State Street, which specialize in the provision of financial services to institutional investor clients. These institutional clients, which include asset owners, asset managers and official sector institutions, contract with custody banks to ensure the proper safekeeping of their investment assets, as well as the provision of a broad range of related financial services. These services include: access to the global settlement infrastructure in order to complete the purchase or sale of investment securities; various asset administration functions, such as the processing of income and other interest payments, corporate action events, tax reclamations and client subscriptions and redemptions; and the provision of banking services, notably access to deposit accounts used to facilitate day-to-day transactional activities.

Consistent with their highly specialized business model, custody banks generally do not accept deposits from retail clients, they make relatively few, if any, retail loans, and they do not engage in loan securitizations. Furthermore, custody banks have balance sheets which are constructed differently than other banks with extensive retail, trading and investment banking operations. Specifically, the custody bank balance sheet is liability driven and expands not through asset growth, but through the organic development of client servicing relationships with institutional investors that, over time, translate into increased volumes of highly stable deposits. These deposits, rather than various sources of wholesale funding, provide the largest part of the custody banks' liabilities. As such, custody banks do not rely extensively on various sources of wholesale funding to manage their balance sheets and their day-to-day business activities.

As such, we request clarification from the FDIC that the proposed IDI exception is not limited to deposits of retail customers, and that deposits of institutional clients may also qualify provided that all other criteria specific to the IDI exception are met. As an example, the FDIC may wish, in any final rule, to remove the reference to "retail" as follows: "The subsidiary places deposits of ~~retail~~ customers exclusively with the parent IDI."

Additionally, State Street believes that the IDI exception should also be extended to include affiliates that are wholly-owned by an IDI's bank holding company. If a full exemption for such affiliates is viewed by the FDIC as too expansive, then we recommend that the FDIC exclude both the information-sharing and marketing partnerships restrictions between an IDI and its wholly-owned affiliates under the facilitation prong.

Primary Purpose Exception

As proposed, the primary purpose exception applies when the agent or nominee's primary purpose is not the placement of funds with depository institutions and, as such, any deposits that it places with the IDI is not considered brokered. Among other matters, the FDIC proposes that the application of the primary purpose exception be based on the business relationship between the agent or nominee and its customers, and that the primary purpose of the business relationship is not considered the placement of its customers funds if less than 25 percent of total "assets under management" in a particular business line.

We are concerned that this approach may unnecessarily limit the scope of the intended exception. As such, we recommend several targeted adjustments designed to clarify and streamline the application of the primary purpose exception.

First, we believe that the manner in which a business line is defined could be construed too narrowly and therefore suggest that institutions be given discretion to determine what constitutes a business line for the primary purpose exception in accordance with FDIC guidance, to the extent available and applicable. For instance, business line could be defined using criteria currently utilized for reporting or risk management purposes.

Second, we believe that the use of “assets under management” for the primary purpose test is too narrowly focused as it implies managed accounts, thereby potentially excluding financial activities conducted by other financial institutions, such as broker-dealers. Therefore, we recommend the use of the broader term “assets under administration” which appropriately includes additional financial services activities for the primary purpose test. Finally, we believe that if an institution meets the criteria for the primary purpose exception, it should be relieved of the administrative burden of having to apply for the exception and instead should be provided discretion to determine its compliance without the need for explicit approval from the FDIC.

Conclusion

Thank you once again for the opportunity to respond to the proposed rule. While we strongly support efforts to modernize and improve the regulatory framework for brokered deposits, we believe that our recommendations relative to the information sharing prong, the IDI exception and the primary purpose exception will better enable the FDIC to appropriately classify deposits as brokered.

These recommendations include: eliminating the information sharing prong; clarifying that the IDI exception applies to custody and other institutional client deposits; providing firms flexibility and discretion in defining its own business line; permitting the use of “assets under administration” for the primary purpose exception; and removing the filing requirement for institutions who determine, using appropriate policies and practices, that they meet the primary purpose exception’s respective criteria.

Please feel free to contact me at jjbarry@statestreet.com should you wish to discuss State Street’s submission in further detail.

Sincerely,

A handwritten signature in black ink, appearing to read "JJ Barry", with a stylized, flowing script.

Joseph J. Barry