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FDIC Finalizes Rule to Modernize Official FDIC Signs and Advertising Statement Requirements for Insured Depository Institutions

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The Federal Deposit Insurance Corporation ("FDIC") has adopted a final rule ("Final Rule") to modernize the requirements governing use of the official FDIC signs and advertising statements, and to clarify the FDIC's regulations regarding false advertising, misrepresentations of deposit insurance coverage, and misuse of the FDIC's name or logo.

The Final Rule, which amends Part 328 of the FDIC regulations ("Part 328"), also addresses specific scenarios where consumers may be misled as to whether they are conducting business with an insured depository institution ("IDI") and whether their funds are protected by federal deposit insurance.

I. Overview

For IDIs, the Final Rule:

- Modernizes the rules governing the display of the FDIC official sign in branches and extends the application of sign requirements to other physical premises where consumers can obtain assistance remotely, have the ability to make a deposit without a teller, or otherwise conduct a transaction with their account (e.g., café-style locations);
- Establishes and requires the display of the FDIC official digital sign on bank websites, mobile applications, and certain IDI automated teller machines ("ATMs") and similar devices;
- Requires the use of signs that differentiate insured deposits from non-deposit products across banking channels and disclosure that certain financial products *are not insured by the FDIC, are not deposits, and may lose value;*
- Requires a one-time per web session notification when a logged-in bank customer leaves the IDI's digital deposit-taking channel[1] (for example, through a hyperlink) to access non–deposit products on a non-bank third party's website;
- Provides IDIs with additional flexibility for satisfying official sign and advertising statement requirements such as having the option to use "FDIC-Insured" as a short form of the official advertising statement;
- Requires IDIs to establish and maintain written policies and procedures addressing compliance with Part 328 which must include, as appropriate, provisions related to monitoring and evaluating activities of certain third parties that provide services to IDIs or offer certain IDI products;
- Require IDIs to display the FDIC official digital sign on its digital deposit taking channels "clearly and conspicuously" in a continuous manner, near the top of the relevant page or screen, and in close proximity to the IDI's name; and

- Requires that IDIs' ATMs or like devices that accept deposits and are put into service after January 1, 2025 display the official digital sign on the device screen (with no option to satisfy the requirement through display of the physical official sign).

For any person, including IDIs or non-bank entities, the Final Rule clarifies that:

- Use of the FDIC's official advertising statement or FDIC associated terms or images in a manner that inaccurately states or implies that a person other than an IDI is insured by the FDIC is a misrepresentation unless the advertising statement is next to the name of one or more IDIs;
- If a non-bank makes statements regarding deposit insurance for its customers, it is a material omission for the non-bank to fail to clearly and conspicuously disclose that it is not itself an FDIC-insured institution and that the FDIC's deposit insurance coverage only protects against the failure of an FDIC-insured depository institution;
- If a person makes statements regarding deposit insurance in a context where deposits and non-deposit products are both offered on a website in close proximity, it is a material omission to fail to disclose that non-deposit products are not insured by the FDIC; are not deposits; and may lose value, subject to certain limited exceptions; and
- If a person makes statements regarding pass-through deposit insurance for its customers' funds, it is a material omission to fail to clearly and conspicuously disclose that certain conditions must be satisfied for pass-through deposit insurance coverage to apply.

II. The Final Rule

FDIC Official Sign

The FDIC will continue to use the existing design of the official sign, which, in addition to prominently bearing the name of the FDIC, includes statements indicating that each depositor is insured up to at least $250,000 and that the FDIC's deposit insurance is backed by the full faith and credit of the U.S. government.

Sign Requirements Within an IDI's Physical Premises

a. Official Sign Within an IDI's Physical Premises

The FDIC is revising § 328.3(b) to require that each IDI must continuously, clearly, and conspicuously display the official FDIC sign at each place of business where consumers have access to or transact with deposits, including all of its branches.

Under the Final Rule, the signage requirements apply to an IDI's places of business where consumers have access to, or transact with, deposits, including branches and other physical premises (e.g., café-style locations). For example, under a scenario where an IDI usually and normally receives insured deposits at a teller window or station and at other areas within the same premises, then the IDI is required to display the official FDIC sign for each such area in accordance with the signage requirements in § 328.3(b).

b. Display of Official Sign When Deposits Received at Teller Windows or Stations

The Final Rule continues to require that IDIs display the official FDIC sign at each teller window or station in a size of 7" by 3" or larger, with black lettering on a gold background, if insured deposits are usually and normally

received at teller windows or stations. However, the agency believes that it is appropriate to allow additional flexibility with respect to display of the official FDIC sign in instances when the IDI usually and normally receives deposits at teller windows and stations and only offers insured deposit products on the premises. In such cases, the requirement to display the official FDIC sign at each teller window or station may be satisfied by displaying the sign in one or more locations that are visible from the teller windows or stations, in a size large enough to be legible from anywhere in that area. This flexible display option would only apply to branches that do not offer non-deposit products on the same premises, even if the IDI's other locations offer non-deposit products.

c. Display of Official Sign When Deposits Received in Areas Other Than Teller Windows or Stations

The Final Rule provides that if insured deposits are usually and normally received in areas of the premises other than teller windows or stations (e.g., café-style locations), the IDI is required to display the official sign in one or more locations in a size large enough to be legible anywhere in those deposit-taking areas.[2]

d. Non-Deposit Signage Within an IDI's Physical Premises

The Final Rule's sign requirements for non-deposit products apply to both an IDI's places of business where deposits are received at teller windows or stations, and an IDI's places of business where deposits are received in areas other than teller windows or stations (e.g., café-style locations). Under the Final Rule, an IDI generally must physically segregate the areas where non-deposit products are offered from the areas where insured deposits are usually and normally accepted, and display a sign in the non-deposit areas indicating that non-deposit products are not insured by the FDIC; are not deposits; and may lose value. An IDI is required to continuously, clearly, and conspicuously display this non-deposit sign, although the Final Rule does not include specific design or size requirements. To minimize the potential for consumer confusion, the Final Rule prohibits displaying non-deposit signs in close proximity to the official FDIC sign.

Note that the Final Rule defines a non-deposit product as: "[A]ny product that is not a 'deposit', including, but not limited to: insurance products, annuities, mutual funds, securities, and crypto-assets. For purposes of this definition, credit products and safe deposit box services are not non-deposit products."[3]

e. Use of Electronic Media or Varied Signs to Satisfy Official Sign and Non-Deposit Sign Requirements on IDIs' Premises

The Final Rule provides IDIs the flexibility to utilize electronic media to satisfy applicable sign requirements on an IDI's premises. This provision allowing IDIs to use electronic signs applies to both a display of the official FDIC sign and non-deposit signage, where required. The use of electronic signage would remain subject to the continuous, clear, and conspicuous display standard. Accordingly, a rotating display will not satisfy the "continuous" requirement applicable to the display of official sign and non-deposit sign.

Sign Requirements for Digital Deposit-Taking Channels

a. FDIC Official Digital Sign

The FDIC will require IDIs to display the FDIC official digital sign on its digital deposit taking channels "clearly and conspicuously" in a continuous manner, near the top of the relevant page or screen, and in close proximity to the IDI's name. The FDIC is finalizing a design for the FDIC official digital sign that consists of "FDIC" along with the following text: "FDIC-Insured - Backed by the full faith and credit of the U.S. Government."

The Final Rule specifies the color, size, and font to establish an easily recognizable, consistent digital sign to convey the certainty and confidence historically provided by the FDIC official sign at IDI's teller windows.

The Final Rule also requires "FDIC" in the FDIC official digital sign to be displayed with a wordmark size of 37.36 x 15.74px in navy blue (hexadecimal color code #003256), with "FDIC-Insured - Backed by the full faith and credit of the U.S. Government" in Source Sans Pro Web font (regular 400 italic), 12.8px, displayed in black (hexadecimal color code #000000) lettering.

The FDIC official digital sign aligns with the statutory provisions in Section 18 of the Federal Deposit Insurance ("FDI") Act on the display of signage at each IDI's principal place of business relating to the insurability of deposits and, consistent with Section 18 of the FDI Act, the FDIC official digital sign includes a statement that insured deposits are backed by the full faith and credit of the U.S. Government.

b. Digital Display of Non-Deposit Signage

The Final Rule requires an IDI to clearly and conspicuously display the "static" non-deposit signage on its digital deposit-taking channel if such channel offers access to both deposits at the IDI and non-deposit products. The IDI must clearly and conspicuously display signage indicating that the non-deposit products are not insured by the FDIC; are not deposits; and may lose value. This signage must be displayed on each IDI page relating to non-deposit products and may not be displayed in close proximity to the FDIC digital sign.

Under the Final Rule, IDIs will also be required to display a one-time notification when a bank customer accesses non-deposit products from a non-bank third party via an IDI's digital deposit-taking channel such as through a hyperlink (or similar weblinking feature). This "one time" notification requirement will not apply broadly to all consumers accessing the IDI's website; instead, it will only apply to bank customers that have logged into their respective account at a particular IDI website. The "one time" notification will be required per web session, which is the period of interaction between a bank customer and the IDI's digital channel, starting when the customer logs in and ending when the customer logs off. The "one time" notification must be dismissed by an action of the bank customer before initially accessing the third party's online platform and must be clearly and conspicuously displayed and indicate that the non-deposit products are not insured by the FDIC; are not deposits; and may lose value.

Automated Teller Machines and Similar Devices

For an IDI's ATM or like device that receives deposits but does not offer access to non-deposit products, the Final Rule provides flexibility to meet the signage requirement by either (1) displaying the FDIC official digital sign on ATM screens as described in § 328.5, or (2) displaying the physical official sign by attaching or posting it to the ATM as described in § 328.2. However, IDIs' ATMs or like devices that accept deposits and are put into service after

January 1, 2025 must display the official digital sign (with no option to satisfy the requirement through display of the physical official sign).

For an IDI's ATM or like device that both receives deposits and offers access to non-deposit products, the Final Rule requires that such ATMs must: (a) display the FDIC official digital sign clearly, continuously, and conspicuously on the home page or screen and on each transaction page or screen relating to deposits; and (b) clearly, continuously, and conspicuously indicate that non-deposit products are not insured by the FDIC, are not deposits, and may lose value on each transaction page or screen.

Note that if an IDI's remote electronic facility receives deposits and is labeled an Interactive Teller Machine ("ITM") (instead of an ATM), the official sign requirements in Part 328 apply; however, if an ITM does not receive deposits, it is not subject to the Final Rule.

Official Advertising Statement for IDIs

Under the Final Rule, IDIs will have the option to use "FDIC-Insured" as a short form of the official advertising statement to satisfy advertising statement requirements. Subject to limited exceptions, IDIs are required to include the official advertising statement in all advertisements that promote either deposit products and services or non-specific banking products and services offered by the institution. The advertising statement must be in a size and print to be clearly legible.

Misrepresentations and Material Omissions by Any Person

The Final Rule provides additional examples that violate Part 328, making clear when specific statements or omissions constitute a misrepresentation under Section 18(a)(4) of the FDI Act. For example, if a person makes statements regarding deposit insurance in a context that involves both deposits and non-deposit products, it is a material omission to fail to disclose that non-deposit products are not insured by the FDIC, are not deposits, and may lose value. In addition, if a person makes statements regarding pass-through deposit insurance for its customers' funds, it is a material omission to fail to clearly and conspicuously disclose that certain conditions must be satisfied for pass-through deposit insurance coverage to apply.

Note that the FDIC reiterates that the specific examples set forth in the Final Rule are part of a non-exhaustive list of conduct that violates Part 328. The FDIC has the authority to take action against conduct that constitutes a prohibited misrepresentation about deposit insurance, regardless of whether it is among the non-exhaustive list of examples included in the Final Rule.

Policies and Procedures for IDIs

As part of the Final Rule, IDIs must establish and maintain written policies and procedures to achieve compliance with Part 328. Such policies and procedures must be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the IDI and must include, as appropriate, provisions related to monitoring and evaluating activities of persons that provide deposit-related services to the IDI or offer the IDI's deposit-related products or services to other parties.

Crypto-Assets

While "crypto-asset" is included in the products listed in the definition of "uninsured financial product," the FDIC is not including a specific definition of "crypto-asset" in Part 328. The FDIC believes this approach will signal that representations regarding deposit insurance in the crypto-asset marketplace are subject to the prohibitions of Section 18(a) of the FDI Act and Part 328, like other financial products, without relying on a specific regulatory definition of "crypto-asset" that could quickly become obsolete. The FDIC has publicly stated that crypto-assets are not insured by the FDIC.

III. Conclusion

The Final Rule is intended to enable consumers to better understand when they are doing business with an IDI and when their funds are protected by the FDIC's deposit insurance coverage. The amendments made by the Final Rule will take effect on April 1, 2024 with full compliance with the Final Rule extended to January 1, 2025.

This advisory is a general overview of the Final Rule and is not intended as legal advice. The Final Rule is very detailed and should be reviewed in its totality. If you have any questions about the Final Rule, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at **jsimon@cullenllp.com**, Elizabeth A. Murphy at (516) 296-9154, or via email at **emurphy@cullenllp.com**, or Gabriela Morales at (516) 357-3850 or via email at **gmorales@cullenllp.com**.

Footnotes

[1] Digital deposit-taking channel means websites, banking applications, and any other electronic communications method through which an IDI accepts deposits.

[2] Whether the display of the official sign is "large enough to be legible from anywhere in that area" means that the average customer can easily see and read the sign from a reasonable distance from that area depending on factors specific to the layout of the bank's physical branch and the sign used, such as the size and shape of the physical location, the area where deposits are usually and normally accepted, a sign's placement, a sign's size, and its font and colors.

[3] 12 CFR §§ 328.1, 328.101.

Practices

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