

Regulatory Alert

Regulatory Insights for Financial Services

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FDIC Deposit Insurance Signage and Advertising: Final Rule

KPMG Insights:

- **Responsible Advertising:** Further codifies the regulatory focus on advertising that may mislead or confuse consumers, specifically relative to insured versus non-insured products.
- **Digital Service:** New digital version of the official FDIC sign (e.g., for ATMs, websites, and mobile apps).
- **Physical Locations:** New requirements for use of the official FDIC sign across physical locations (e.g., electronically-staffed kiosks, interactive ATMs with remote teller assistance, teller-less cafés).
- **Clarity of Products:** Amended definition for “non-deposit products” and “uninsured financial products” to include crypto-assets, and requirements for applicable signage.

The Federal Deposit Insurance Corporation (FDIC) adopts a [final rule](#) to amend and modernize Part 328 of the Federal Deposit Insurance (FDI) Act, which outlines the FDIC’s rules regarding official signage and advertising requirements. Part 328 prohibits any person (as defined in Part 328) from:

- Misusing the name or logo of the FDIC.
- Engaging in false advertising or making known misrepresentations about deposit insurance, including the extent or manner of insurance for customer deposits, “non-deposit products” or “uninsured financial products” (as defined).

The final rule is intended to reflect current banking practices, including the growing use of digital and mobile channels (where IDIs may offer both deposit and non-deposit products), as well as the increasing number of non-banks operating under arrangements with IDIs (creating the potential for consumer confusion regarding which products and services are covered by deposit insurance).

Applicability and Scope. Part 328 prohibits misuse of the name or logo of the FDIC or false advertising or misrepresentations about deposit insurance by any person. The final rule amends Part 328 with specific signage and procedural requirements for IDIs, as well as clarification around which products are FDIC-insured given the increase of non-deposit products and uninsured products being offered through the same channels.

Signage Requirements. The final rule requires IDIs to display three distinct signs relating to deposit insurance:

- **Official Sign:** The FDIC official sign in all places of business, including branches and other physical premises (e.g., electronically-staffed kiosks, interactive ATMs with remote teller assistance, and teller-less cafés).
- **Digital Sign:** A digital (abbreviated) FDIC official sign displayed “clearly and conspicuously” in a continuous manner, near the top of the relevant page or screen for digital deposit-taking channels (ATMs, online banking websites and mobile applications).

- Non-Deposit Sign: A non-deposit sign to be displayed when an IDI offers both insured deposits and non-deposit products through the same banking channel (e.g., both insured deposit products and non-deposit products are offered at physical premises, ATMs, or on an IDI's website or mobile applications). This sign is intended to address potential consumer confusion regarding deposit insurance coverage.

Note: Existing rules in Part 328 require nonbanks, such as crypto firms and FinTech companies, when highlighting the FDIC's name or logo or representing that a product is insured by the FDIC, to support those claims and identify the IDI(s) with which they have existing business relationships and into which consumers' deposits may be placed. The final rule amends this requirement to expressly state that it is a "material omission" for a nonbank "to fail to *clearly and conspicuously* identify the IDI(s)" with which they have a direct or indirect business relationship.

Misrepresentations and Non-Deposit/Uninsured Products. The final rule also amends the following:

- Provisions of subpart B of Part 328 ("False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo") to provide clarity on the application of the misrepresentation statute in specific situations where consumers may misunderstand or be misled as to whether an entity is insured by the FDIC or the nature and extent of deposit insurance coverage.
- The definition of "Non-Deposit Product" in subpart A ("Advertisement of Membership") to include crypto-assets, requiring use of the non-deposit sign. Likewise, the definitions of "Non-Deposit Product" and "Uninsured Financial Product" in subpart B are also amended to include crypto-assets. (Note: In a change from the proposed rule, FDIC did not adopt a specific definition for crypto-assets, suggesting that their inclusion in these definitions 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...without relying on a specific regulatory definition of 'crypto-asset' that could quickly become obsolete.")

Written Policies & Procedures Requirements. The final rule also contains requirements for IDIs to establish written policies and procedures to facilitate compliance with the Part 328 requirements that are commensurate with the nature, size, complexity, scope, and potential risk of the IDI's deposit-taking activities.

The policies and procedures should 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 third parties.

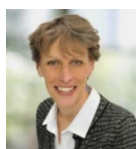
Compliance Dates. The final rule is effective on April 1, 2024, with an extended compliance date of January 1, 2025.

Related Enforcement Actions. Throughout 2023, FDIC has prioritized enforcement of the rules under Part 328 with several actions against investment and FinTech companies, a "neobank", and a cryptocurrency exchange, scrutinizing the following activities:

- Stating, implying, or suggesting false or misleading information about:
 - FDIC deposit insurance status.
 - The extent or manner of protection (insurance) for customer deposits and non-deposit products (e.g., crypto and digital assets).
 - A company's access to the Deposit Insurance Fund in the event of potential failure of the company.
- Inadequately identifying the IDI(s) with which a company has direct or indirect relationships for the placement of deposits and into which such consumers' funds may be deposited.

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