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April 7, 2023

Mr. James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

Dear Ladies and Gentlemen:

The Independent Community Bankers of America (“ICBA”)¹ appreciates the opportunity to comment on the proposed rule titled “FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo” (“Proposal”). This Proposal is being put forth by the Federal Deposit Insurance Corporation (“FDIC”) in response to the continued evolution of the way consumers and businesses conduct daily banking activities with a greater reliance on internet and mobile banking channels. Banks of all sizes are continuing to find ways to reach their customers through the use of digital platforms for both deposit and non-deposit products. However, such efforts have increased the risk that bank customers misunderstand when their deposit funds are protected by FDIC deposit insurance. Additionally, relationships have developed where an entity makes a misleading representation about the presence of deposit insurance to its participating customer, which can result in harm to the customer if they are not made fully aware of the extent of the FDIC guarantee in the relationship.

The FDIC is proposing to update sign requirements across all banking channels to clearly distinguish insured deposits from noninsured deposits with the goal of better identifying the FDIC guarantee in both the traditional physical space and the digital space. With the proposal, the FDIC also is updating rules

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly \$5.9 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.

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regarding misrepresentation of deposit insurance coverage to prevent the use of misleading statements to customers with regard to the safety of their funds. With this proposed rule the FDIC aims to ensure that bank customers are better aware of when their funds are protected by FDIC deposit insurance while also allowing banks some flexibility in the marketing of their deposit products across internet and mobile banking channels. The FDIC also wants to ensure that relationships between banks and nonbanks are not confusing to customers with regard to deposit insurance protection.

ICBA fully supports the FDIC's proposal and welcomes updated sign requirements across all banking channels to ensure that bank customers are made fully aware of situations where deposit insurance is present and is separate and distinct from product offerings that do not include deposit insurance. ICBA acknowledges the increased use of digital banking channels on internet and mobile devices and continually reviews the effectiveness of current deposit insurance signage across bank operations with community banks of different sizes. As community bank customers increase their reliance on digital banking channels over traditional branch banking services in physical locations, the FDIC will need to remain vigilant to ensure that community bank customers are fully aware of whether a financial product is FDIC insured or not.

The Proposal

The FDIC proposes to amend sign requirements for the use of the official FDIC sign, the use of the digital sign, and the use of a non-deposit sign when both insured deposits and non-deposit products are offered in the same channel. The FDIC official sign indicates that each depositor is insured up to at least \$250,000 and that FDIC deposit insurance is backed by the full faith and credit of the U.S. government.

Sign Requirement. When using the official sign in branches, the FDIC's requirement to display the official sign at each teller window would be granted increased flexibility. The official sign requirement could be met by displaying the official sign in one or more locations visible from each teller window if the sign is large enough to view. When the branch also offers non-deposit products and deposit products together in the same location, display of the official sign would be required at each teller window. When the physical banking location receives deposits in areas other than a teller window, like a café-style retail branch format, the bank would be required to display the official sign in one or more locations with the size of the sign being big enough to be viewable in those areas.

Non-deposit Products. When a banking location offers both deposit products and non-deposit products, those activities must be conducted in separate areas. In the areas where non-deposit products are offered, a sign indicating that non-deposit products are not insured by the FDIC, are not deposits, and may lose value must be clearly displayed. This non-deposit sign cannot be displayed near the official FDIC sign. Under the proposed rule, FDIC sign requirements can be met using electronic media for both the deposit

and non-deposit product signs when the display is continuous. A rotating sign that displays alternating signage in a loop would not satisfy the continuous display requirement.

Digital Banking Channels. For activities conducted under the bank’s digital channels like websites and mobile applications, the home page, landing page, and transactional pages involving deposits would have a digital sign indicating that consumers are doing business with a bank entity. The display would include the presence of FDIC insurance. Display of the digital sign would be required near the top of the page near the name of the bank. Display of the sign solely at the bottom of the page would not be permitted. Signs displayed in the digital channel are permitted to be an abbreviated version of the official sign as long as they have the name of the FDIC and a statement that insured deposits are backed by the full faith and credit of the U.S. government. Note that to the extent the digital channel includes pages or views that are considered advertisements, the bank must comply with the FDIC’s existing official advertising statement requirements.

When the digital deposit-taking channel also offers access to non-deposit products, the bank would be required to continuously display a sign indicating that non-deposit products are not insured by the FDIC, are not deposits, and may lose value. The bank would be required to include a notification that the consumer would need to dismiss before accessing the non-deposit products. Each page where non-deposit products are offered would be required to include non-deposit signage and would not be permitted to be displayed near the digital FDIC sign.

Banking Kiosks. For automated teller machines and other electronic devices that accept deposits like interactive kiosks, display of the official FDIC sign is required to be on the device but could be displayed electronically on the home page and each transaction page of the device as long as it is clear and conspicuous. When the electronic device offers access to both deposit products and non-deposit products, non-deposit signage would be required indicating that non deposit products are not insured by the FDIC, are not deposits, and may lose value. The required non-deposit signage would be displayed on each landing page that relates to non-deposit products.

When banks currently advertise their deposit products, they are permitted to use the short statement “Member of FDIC” or “Member FDIC”. Under the proposed rule, banks would now be permitted to use the short statement “FDIC-insured”.

Bank and Non-bank Partnerships. When non-bank entities state that their customer deposits are placed at a FDIC-insured institution, they make statements concerning the presence of FDIC deposit insurance for those deposits. Under the proposed rule, if a non-bank makes such statements, it is considered a material omission if the non-bank fails to 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. The non-bank does have flexibility in applying this proposed statement. For example, the

non-bank could say that they are not an FDIC-insured bank and deposit insurance covers the failure of an insured bank. When bank or non-bank firms make statements about deposit insurance where both deposit and non-deposit products are involved, such entity is considered to have made a material omission if it fails to disclose that non-deposit products not insured by the FDIC, are not deposits, and may lose value.

Pass-through Deposit Insurance. In some cases an arrangement can be made where the FDIC offers pass-through deposit insurance, where deposits exceeding the deposit insurance limit are placed by the customer's bank with one or more other banks when certain regulatory requirements are satisfied. Under the proposed rule, when a party makes a claim regarding pass through deposit insurance, 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. Specific conditions do not need to be listed; only the reference to existing conditions must be made to satisfy the disclosure requirement.

Policies and Procedures. Each FDIC-insured depository institution must document policies and procedures regarding signage requirements including the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the bank. Such documentation could include measures that the bank would take when changing an advertising strategy or adopting a new deposit-taking channel to ensure compliance.

When an FDIC-insured depository institution partners with a third-party enterprise, the third party may act as a deposit-taking channel for the depository institution. Under the proposed rule, the depository institution must establish policies and procedures that include the deposit-related services that the third party provides to the bank or deposit-related products or services offered by the third party to other parties. Policies and procedures should include language stating that marketing and advertising materials provided to prospective depositors by the third party do not misrepresent the insurability of financial products. The depository institution should consider the inclusion of policies and procedures related to mitigation of risk where the third party misrepresents deposit insurance and causes confusion and harm to the consumer.

Cryptocurrencies. To address the increased adoption of cryptocurrencies and the misrepresentation of insurance coverage related to crypto assets, the proposed rule would amend the definitions of non-deposit products and uninsured financial products to include a crypto asset, which it would define as a digital asset implemented using cryptographic techniques. All non-deposit sign requirements would apply to crypto assets.

ICBA's Comments

ICBA appreciates the tremendous effort that the FDIC has expended toward ensuring that depositors in community banks are made fully aware of the deposit insurance available to them and the important

delineations that must be made between deposit services offered that have a guarantee and non-deposit products offered by the bank where the guarantee is not provided. ICBA fully supports all efforts by the FDIC to make sure that signage is prominently displayed where needed to provide immediate notice to the customer as to the availability of deposit insurance.

ICBA welcomes the agency's efforts to provide flexibility to financial institutions when they display deposit signage through the use of electronic formats that can just as effectively bring notice to the customer as a traditional sign with the added ability to quickly and efficiently update sign requirements when needed. This electronic sign accommodation with flexibility on presentation will be important for both banks that offer banking services through electronic devices and the customers that increasingly rely on such offerings to complete their daily deposit transactions.

Regulators will need to pay close attention to the rapidly expanding landscape of bank offerings of non-deposit products through electronic channels, particularly as those offerings involve cryptocurrencies and tokenized assets that reside on blockchains. As tokenization increases in popularity, the risk of a traded asset being confused with a bank deposit will increase as bank customers navigate complex product offerings that blur the lines between guaranteed bank deposits and non-bank deposit products. A prime example of this confusion lies with tokenized dollar offerings, where the asset may maintain the fungibility of a bank deposit but may not directly possess deposit insurance.

Regulators should clarify the policies and procedures banks should adhere to, or at least provide tangible guidance for situations where a partnership with a third party becomes compromised. Questions will continue to arise regarding a bank's liability when it engages in partnerships with nonbank third parties, and the third-party partner is impacted by the actions of another entity. An example of such dispute could arise when an entity misrepresents the presence of deposit insurance on a product offered by the bank's third-party partner with the deposits held by the bank. **Banks should not be liable for the actions of an entity that is not involved in the partnership between the bank and the third party.** The compliance costs required by the bank to monitor the relationship with the third party and any other parties that conduct business with the third party could quickly become very expensive and unworkable, especially if the third-party partner expands their other business dealings. As such, the bank's risk management framework documentation should be limited to the relationship with the third-party partner.

ICBA appreciates the opportunity to provide comment on this Proposal and hopes that the FDIC will consider our observations. If you have any questions or would like additional information, please do not hesitate to contact me at james.kendrick@icba.org.

Sincerely,

/s/

James Kendrick
First Vice President, Accounting & Capital Policy

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