Federal Deposit Insurance Corporation

ADVISORY

Advisory to FDIC-Insured Institutions Regarding FDIC Deposit Insurance and Dealings with Crypto Companies

RISKS AND CONCERNS

- The FDIC is concerned about the risks of consumer confusion or harm arising from crypto assets offered by, through, or in connection with insured depository institutions (insured banks). Risks are elevated when a non-bank entity offers crypto assets to the non-bank's customers, while also offering an insured bank's deposit products.

- Inaccurate representations about deposit insurance by non-banks, including crypto companies, may confuse the non-bank's customers and cause those customers to mistakenly believe they are protected against any type of loss. Moreover, non-bank customers may not understand the role of the bank as it relates to the activities of the non-bank, or the speculative nature of certain crypto assets as compared to deposit products.

- More broadly, customers can be confused about:

    - <u>When FDIC deposit insurance applies.</u> In the unlikely event of an insured-bank failure, the FDIC protects depositors of insured banks against the loss of their deposits, up to at least $250,000. The FDIC only pays deposit insurance after an *insured bank* fails. FDIC insurance does not protect a non-bank's customers against the default, insolvency, or bankruptcy of any non-bank entity, including crypto custodians, exchanges, brokers, wallet providers, or other entities that appear to mimic banks but are not, called "neobanks."

    - <u>What products are FDIC insured</u>. FDIC deposit insurance covers deposit products offered by insured banks, such as checking accounts and savings accounts. Deposit insurance does not apply to non-deposit products, such as stocks, bonds, money market mutual funds, securities, commodities, or crypto assets.

- In addition to potential consumer harm, customer confusion can lead to legal risks for banks if a crypto company, or other third-party partner of an insured bank with whom they are dealing, makes misrepresentations about the nature and scope of deposit insurance.

- Moreover, misrepresentations and customer confusion could cause concerned consumers with insured-bank relationships to move funds, which could result in liquidity risk to banks and in turn, could potentially result in earnings and capital risks.

RISK MANAGEMENT AND GOVERNANCE CONSIDERATIONS

- Insured banks need to be aware of how FDIC insurance operates and need to assess, manage, and control risks arising from all third-party relationships, including those with crypto companies.
- In their dealings with crypto companies, insured banks should confirm and monitor that these companies do not misrepresent the availability of deposit insurance in order to measure and control risks to the bank, and should take appropriate action to address such misrepresentations.
- Communications related to deposit insurance need to be clear and conspicuous. Non-bank entities, such as crypto companies, that advertise or offer FDIC-insured products in relationships with insured banks could reduce consumer confusion by clearly, conspicuously: (a) stating that they are not an insured bank; (b) identifying the insured bank(s) where any customer funds may be held on deposit; and (c) communicating that crypto assets are not FDIC-insured products and may lose value.
- Insured banks that are involved in relationships with non-bank entities that offer deposit products as well as non-deposit products, such as crypto assets, can help minimize customer confusion and harm by carefully reviewing and regularly monitoring the non-bank's marketing material and related disclosures to ensure accuracy and clarity.
- For safe and sound operation, the insured bank should have appropriate risk management policies and processes to ensure that any services provided by, or deposits received from any third-party, including a crypto company, are, and remain, in compliance with all laws and regulations.
- In addition, Part 328, Subpart B of the FDIC's Rules and Regulations titled *False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Log*, can apply to non-banks, such as crypto companies. Accordingly, insured banks should determine if its third-party risk management policies and procedures effectively manage crypto-asset-related risks, including compliance risks related to Part 328 Subpart B.

ADDITIONAL RESOURCES

- The FDIC's website provides more information to help bankers understand deposit insurance coverage, including pass-through deposit insurance (https://www.fdic.gov/deposit/diguidebankers/fiduciary-accounts.html).

- The FDIC’s website provides more information to help consumers understand deposit insurance coverage (https://www.fdic.gov/resources/deposit-insurance/).

- The FDIC maintains a portal for submission of complaints about suspected misrepresentations regarding deposit insurance (https://ask.fdic.gov/fdicinformationandsupportcenter/s/fdicdimcomplaintform/?language=en_US).

- The FDIC’s regulations governing deposit insurance coverage are found at 12 C.F.R. Part 330 (https://www.ecfr.gov/current/title-12/chapter-III/subchapter-B/part-330).

- The FDIC’s regulation relating to false advertising, misrepresentations about insured status, and misuse of the FDIC’s name or logo is found at 12 C.F.R. Part 328 (https://www.ecfr.gov/current/title-12/chapter-III/subchapter-B/part-328).

- The FDIC’s Fact Sheet: What the Public Needs to Know About FDIC Deposit Insurance and Crypto Companies is found at https://www.fdic.gov/news/fact-sheets/crypto-fact-sheet-7-28-22.pdf

For FDIC Supervised Institutions:

- The FDIC’s Guidance For Managing Third-Party Risk is found at https://www.fdic.gov/news/financial-institution-letters/2008/fil08044a.html.

- The FDIC’s Statement on Providing Banking Services is found at https://www.fdic.gov/news/financial-institution-letters/2015/fil15005.html