INTERNATIONAL BANCSHARES
CORPORATION

April 5, 2023

Via email: Comments@fdic.gov

Federal Deposit Insurance Corporation
Mr. James P. Sheesley, Assistant Executive Secretary
Attn: Comments - RIN 3064-AF26
550 17th Street N.W.
Washington, D.C. 20429

Re: Comments on Notice of Proposed Rulemaking Regarding FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo (RIN 3064-AF26)

Dear Sir:

The following comments are submitted by International Bancshares Corporation ("IBC"), a publicly-traded, multi-bank financial holding company headquartered in Laredo, Texas. IBC maintains 167 facilities and 257 ATMs, serving 75 communities in Texas and Oklahoma through five separately chartered banks ("IBC Banks") ranging in size from approximately $450 million to $8.75 billion, with consolidated assets totaling approximately $15.5 billion. IBC is one of the largest independent commercial bank holding companies headquartered in Texas.

This letter responds to the notice of proposed rulemaking ("Notice") by the Federal Deposit Insurance Corporation ("FDIC") related to a proposed rule amending certain regulations regarding the FDIC official sign and advertising requirements, false advertising, misrepresentation of insured status, and misuse of the FDIC's name or logo. The FDIC's stated purpose for the rule is to

> modernize the rules governing use of the official FDIC sign and insured depository institutions' (IDIs) advertising statements to reflect how depositors do business with IDIs today, including through digital and mobile channels. The proposed rule also would clarify the FDIC's regulations regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where consumers may be misled as to whether they are doing business with an IDI and whether their funds are protected by deposit insurance. The proposal 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. [Notice at 78017]

In general, the FDIC believes the proposed rule would:

> (1) modernize and amend the rules governing the display of the official sign in branches, to, for example, apply the rules to non-traditional IDI branches; (2) require the use of the FDIC official sign, a new digital sign, and other signs

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differentiating deposits and non-deposit products across all banking channels, including automated teller machines (ATMs) and evolving digital channels (which functionally serve as digital teller windows); (3) clarify the FDIC's rules regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where information provided to consumers may be misleading; (4) amend definitions of "non-deposit product" to include crypto-assets; and (5) require IDIs to maintain policies and procedures addressing compliance with part 328. [Notice at 78018]

The proposed changes were spurred, in large part, by an increase in online and mobile banking engagement and a similar uptick in misleading and confusing online material related to insured and non-insured deposit and non-deposit products and services. [Notice at 78018] Specifically, the FDIC wants online and digital commerce channels to provide the same certainty and confidence historically provided by the FDIC sign at traditional bank branch teller windows. In the FDIC's opinion, "[t]hese channels serve as the digital teller windows of the modern banking landscape." [Notice at 78018]

The Notice invites input on several general and specific issues related to the proposed rule. IBC has provided its comments below.

General Comments

IBC wholeheartedly supports the FDIC making clear that it has the authority, and will use such authority, to investigate and hold accountable any person and/or entity that violates Section 18(a)(4), regardless of whether such person/entity is an IDI or IDI-affiliated party ("IAP"). The rise in fintechs and novel financial service providers has resulted in a flood of marketplace participants that are not traditionally familiar with, or respectful of, the highly regulated nature of the financial services space. These new, cavalier participants generally have not operated in highly regulated industries before, and do not appreciate the intricate and burdensome regulatory framework, let alone why it exists. The increase in these parties has led to, whether through ignorance or willful wrongdoing, an increase in misuse, deception, and false statements regarding FDIC insurance and related protections. IDIs understand the nature of the industry, and the absolute importance of regulatory compliance. IBC strongly supports the FDIC in its application of the rules to all parties that may misuse, misrepresent, or otherwise make falsehoods regarding FDIC insurance and protections.

IBC has a fundamental issue with the FDIC's approach of punishing banks for becoming more inclusive by offering digital banking access and services. The FDIC notes the drastic rise in mobile and digital banking as a primary channel for accessing banking services and uses those statistics as support for its position that a bank's online presence should include the same FDIC signage as a traditional branch. [Notice at 78019] Instead of rewarding banks for continuing to reach un- and under-banked households and individuals or providing any support for the implementation of online and digital banking channels, the FDIC now wants to insert itself in the process by requiring onerous digital signage requirements. Again, the FDIC fails to note any issues with IDIs under the currently applicable FDIC signage rules. Rather, fintechs and non-bank actors are the primary bad actors, yet the FDIC is not focusing its efforts on addressing those entities. Again, the FDIC has chosen the easiest target for its ire: heavily regulated banks.

At some point, the FDIC has to stop patronizing consumers, and consumers have to accept responsibility for the financial decisions they make. If a consumer truly cannot be bothered to understand that crypto assets are not insured deposits, then the consumer should not be purchasing such volatile, unregulated assets. This also applies to the other new and non-insured financial products the FDIC notes have increased through both IDIs and fintechs. If the FDIC is so concerned with consumer education, perhaps it should undertake an educational campaign itself and not punt its responsibility to its regulated IDIs.

Moreover, IBC has concerns about the proposed rule, and regulator comments regarding the proposed rule, likely having a chilling effect on financial product and service innovation. CFPB Director Rohit Chopra released a statement on the proposed rule (in his role as an FDIC director).[1] He stated that "convoluted bank-nonbank partnerships" were the target of the proposed rule and specified that "pass-through deposit insurance coverage is not automatic or certain." These statements, as well as the proposed rule, will certainly unsettle many financial marketplace participants who have been accustomed to the legal certainty provided in the current brokered deposit and deposit insurance coverage rules. This certainty and stability has led to a thriving, competitive marketplace for deposits, which is more necessary now than ever given the current state of the industry. If that certainty is taken away or questioned, innovation will decrease, as will consumer confidence in and access to the banking system.

Specific Requests for Comment

Physical Signage

1. Are there any aspects of the proposed rule's on-premises signage requirements that would be challenging to satisfy in a non-traditional footprint branch? How could the proposed rule be modified to better accommodate signage needs in such branches while also satisfying the FDIC's objectives?

2. With respect to the proposed rule's non-deposit signage requirements, are there better alternative methods by which IDIs might help consumers distinguish insured deposits from nondeposit products?

> **IBC Comment:** The proposed rule would require banks to "physically segregate the areas where non-deposit products are offered from areas where insured deposits are usually and normally accepted" and continuously display a separate sign in the non-deposit areas indicating that non-deposit products (1) are not insured by the FDIC, (2) are not deposits, and (3) may lose value. [Notice at 78021]

[1] CFPB, *Statement of CFPB Director Rohit Chopra* (Dec. 13, 2022), https://www.consumerfinance.gov/about-us/newsroom/statement-of-director-chopra-notice-of-proposed-rulemaking-on-fdic-official-sign-and-false-advertising-rule/.

The Notice also states that "[t]o minimize the potential for consumer confusion, the proposed rule would prohibit display of non- deposit signs in close proximity to the official FDIC sign." [Notice at 78021] This is incredibly onerous for small and mid-sized banks that have structured their branch footprint to be as efficient, safe, and sound as possible. Requiring such drastic segregation and posting will require significant renovation and other investment in facilities in order to comply with the proposed rule. Again, the FDIC points to numerous examples of fintechs and non-IDIs flaunting the signage rules, yet its solution is to simply impose more restrictions and requirements on IDIs, which will have an outsized effect on community banks. Small and mid-sized institutions do not have the resources and flexibility to implement such broad changes to their physical footprint. Thanks to draconian restrictions on a bank's ability to own its own facilities, many banks choose to rent their branch property instead of own. By placing more obligations on the structure of the branch space will lead to smaller bank footprints and will have a negative effect on un- and underbanked populations. Banks located in urban areas will not escape the negative effects of the new rule, as branches in those areas are primarily rented and thus renovations are generally subject to landlord input and oversight. This is to say nothing of a regulators response when it sees the capital expenditures that will be necessary to comply with the proposed rule. Banks will be placed between a rock and a hard place: either they spend the resources to comply and potentially get in trouble for property expenditures, or they fail to comply with the proposed rule.

Digital Channels

4. Are there any particular aspects of a potential design or the placement of the digital sign that might improve its presentation or readability for consumers, or minimize the any potential technical challenges of introducing this sign into digital interfaces?

IBC Comment: IBC strongly urges the FDIC to not require affirmative consumer action to dismiss the proposed one-time notification for digital channels that offer access to both deposit and non-deposit products. It is clear the FDIC severely underestimates the options and features available to banks when they implement digital banking channels. Even twenty years after its passage, it can be a monumental lift to merely implement a digital banking channel that is compliant with Regulation E and ESIGN. Requiring an additional "pop-up" or other "speedbump" that the consumer must affirmatively dismiss on pages that offer both deposit and non-deposit products will simply be too much for most small and mid-sized banks that do not have the resources to build proprietary digital channels and instead are at the mercy of technology vendors. Community banks simply do not have the negotiating leverage to force these vendors to implement compliant solutions in a short time frame, if at all. At most, the FDIC should require non-deposit disclosures to be included statically on the applicable pages, and not require affirmative consumer action regarding such disclosure. Moreover, the addition of more pop-ups and other obstacles in digital banking channels will only overwhelm consumers and make the consumer experience feel more like an unsavory phishing expedition. Consumers are already overwhelmed by website pop-ups and requests for action or personal information, and they should not expect that experience when engaging in digital banking activities. Banks' digital channels should not be made to look like scam websites, with numerous pop-ups and user input requirements. Banks' digital channels should appear as trustworthy as their physical branches, and banks should have the authority to curate their digital channels as they see fit. If banks are not provided this flexibility, the overly prescriptive digital channel requirements will result in consumer fatigue. Consumers are already overwhelmed by online "noise" including cookie pop-ups, newsletter subscription or reward program pop-ups, advertisements, and more. If banks' digital channels become the same morass of noise, consumer disclosures will be useless as consumer will be further trained to simply click and close without consideration or review. The FDIC's proposed rule will likely have the opposite effect that it intends, and consumers will begin to ignore important disclosures because they are bombarded with pop-ups and noise on every page of a bank's digital channel.

Furthermore, if the FDIC and other regulators are going to continue to pile on burdensome requirements for digital banking channels, then perhaps they should consider providing white label website building for small and mid-sized banks that otherwise will be at the mercy of tech vendors who provide website building and maintenance services. If the FDIC and other federal regulators are so concerned with banks' digital presence, maybe it should provide a safe harbor template for websites, similar to how template regulatory disclosure forms are provided.

5. Would it be beneficial to consumers to require the digital sign on other pages in addition to the homepage, application, landing, login, and transactional pages of an IDI's digital channels, including websites and mobile applications?

IBC Comment: No. Again, consumer fatigue is real and well-documented. Adding more disclosures and required actions to dismiss them will only add to the noise and increase unwanted consumer behavior (i.e. clicking through digital roadblocks without review or consideration).

<u>ATMs and Similar Devices</u>

8. Does the proposed rule's requirement to display the digital version of the FDIC official sign on ATMs and similar devices present technical challenges? If so, are there ways address those challenges while still displaying clear signage on deposit insurance coverage for consumers?

IBC Comment: Yes, the requirement to display the digital version of the FDIC signage on ATMs presents significant challenges and, as always, the costs related to these challenges will disproportionately affect community banks who rely on third parties to provide the ATM operating software. Small and mid-sized banks rely heavily on vendors in order to provide ATM access to consumers. Banks are not coding the machines, and instead rely on these vendors to provide and maintain the operating software. Any request for changes to the software takes substantial time, and most small and mid-sized banks will be pushed to the back of the line as vendors focus on servicing big banks first because of their larger financial benefit to the vendor. If the FDIC implements this requirement, it absolutely needs to provide ample time for compliance.

10. Given potential requirements for signs in physical branches, ATMs, and digital channels, how long would it take to revise systems and process for the purposes of complying with a rule; what should the compliance date(s) for the rule be?

IBC Comment: No requirements for digital signage should be effective until banks have had at least a year to comply.

IDI Policies and Procedures

11. With respect to the proposed requirement for IDI's to establish policies and procedures to comply with part 328, are there additional, or more specific, criteria that institutions should consider as part of its policies and procedures?

IBC Comment: Under the proposed rule, banks would be forced to conduct a comprehensive review of all their third party relationships, including reviewing all applicable contracts, marketing materials, employee manuals and compliance checklists. Banks would, *again*, be placed in the inappropriate position of having to supervise other regulated entities, such as broker-dealers. Bank regulators cannot broaden their jurisdiction through backdoors. Banks cannot be deputized to oversee other regulated entities writ large. This required supervision would need to be included in contractual provisions between banks and broker-dealers or fintechs. Moreover, the FDIC could bring an enforcement action against a bank if it fails to monitor and supervise its third-party relationships in compliance with the proposed rule. This is just another example of the FDIC and other bank regulators outsourcing their enforcement responsibilities to banks.

Thank you for the opportunity to share IBC's view.

INTERNATIONAL BANCSHARES CORPORATION

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Dennis E. Nixon, President and CEO