

**VIA ELECTRONIC SUBMISSION**

July 1<sup>st</sup>, 2021

Re: Notice of Proposed Rule Making Comment Letter  
False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo  
Document Number: **RIN 3064-AF71**

Federal Deposit Insurance Corporation (FDIC)  
Attn: Richard M. Schwartz, Michael P. Farrell

To Whom It May Concern,

nbkc bank appreciates the opportunity to comment on the Federal Deposit Insurance Corporation (FDIC) Request for Comments on the Notice of Proposed Rulemaking ("NPR") entitled "Proposed Rule Regarding False Advertising, Misrepresentations About Insured Status, and Misuse of the FDIC's Name or Logo". As described below, this is an issue with which nbkc bank has experience and significant interest in and we hope that the general comments outlined below are taken into consideration before the rule is made final.

nbkc bank offers traditional banking products direct-to-consumer and direct-to-business through local branches in the Kansas City MSA and nationwide through the bank's website. In 2018 nbkc bank embarked on a strategic initiative to offer banking as a service to financial technology companies ("Fintechs"). The strategic partnerships include the bank issuing deposit accounts and debit cards pursuant to a license from Visa® as a "Sponsor Bank".

Since the launch of the bank's Fintech partnerships, one area of significant focus for the bank has been ensuring the Fintech programs market and advertise the banking products under the existing rules and guidance issued by regulatory agencies. Unfortunately, the existing set of rules is outdated, having not been updated since 2006. Because of the increase breadth of financial technology companies entering the market which require the use of bank charters to offer their products to consumers, this is an area that we have a particular interest in receiving updated rules and guidance. In general, nbkc bank strives to ensure that consumers are informed in the placement of their finances and have adequate information available to make informed decisions before committing to do business with any one or multiple parties.

In addition to the feedback and comments below, we desire to have clear rules and guidance which can then be incorporated into the bank's compliance oversight program to ensure adherence by the Fintech programs sponsored by the bank. Updated rules will also allow transparency to the Fintech companies operating in the space and will allow for consistency in the industry between financial institutions operating as a Sponsor Bank. Through our discussions with our own Fintech companies and with other financial institutions, there is a large degree of differences in opinion and practices on how each financial institution requires their Fintech companies to use disclosures on public material. We have found this to be difficult to communicate to our own Fintech companies when we are approached with the "but Fintech ABC does not do this" or "why is this not required of Fintech XYZ".

We ask there to be a focus on a sound compliance management system, acknowledging that unintended errors may occur but that the focus should be on whether a sufficient program exist. If an error or omission occurs by the Fintech, the bank's oversight and monitoring process should be sufficient to identify the issue in a timely manner and make any changes.

We welcome additional guidance in this area, particularly considering the increased amount of interest at the federal and state examination levels.

**Notification of Violations, Additional Notice to Sponsor Bank.** We agree with the FDIC's proposal for notification of violations to the company involved. In nbkc bank's position (as a Sponsor Bank), we would propose an additional step in this process. If the FDIC identifies any violation that would require notice to a company, and that company is a Fintech company sponsored by an FDIC institution, we believe the FDIC should also provide a notice to the Sponsoring Bank. We recommend this step for multiple reasons:

1. Notice allows the Sponsor Bank to be aware of the potential violation;
2. Notice allows the Sponsor Bank to ensure the Fintech company responds to the FDIC's request for information or correction requirements;
3. Notice allows the Sponsor Bank to review their internal compliance oversight processes to determine if items were missed in standard reviews;
4. Notice allows the Sponsor Bank to document the violation and monitor for continued compliance (or take potential action allowed under the contract agreement between the bank and Fintech).

**Standard Disclosure Language.** As mentioned, we have been faced with difficult conversations with our Fintech companies in the proper use of the bank's name and the disclosure of FDIC insurance. This is particularly true because there are significant differences between financial institutions on how disclosures should be provided to consumers.

We desire to have consistency between financial institutions and we encourage the FDIC to create standard disclosures for use in these situations:

- Disclosure of the Sponsoring Bank name. Examples include; "BANK NAME, Member FDIC"
- Disclosure of FDIC insurance coverage for deposit accounts. Examples include; "FDIC-insured up to \$250,000 per depositor through BANK NAME, Member FDIC."
- Issuer statement. This statement informs the consumer of the Sponsor Bank's name and their responsibility to the consumer for the products and services offered; Example: "Banking Services provided by BANK NAME, Member FDIC".
- Fintech statement. This statement informs the consumer of what the Fintech is and their responsibility to the consumer; this statement should disclose that the Fintech is not a financial institution. A recent settlement<sup>1</sup> between Chime and The Department of Financial Protection and Innovation of the State of California provided examples of what the agency deemed acceptable language for disclosure; Example: "Fintech ABC is a financial technology company, not a bank".

**Placement of Standard Disclosure Language.** In addition to the standard statement language, we often face difficulty in the Fintech accepting the bank's requirements on the physical placement of the standard disclosure language. For example, a disclosure placed next to other statements when a footnote dagger is required and when a footnote placed at the bottom of a website is sufficient. We would encourage the FDIC to take a similar approach as is currently established in other laws and regulations such as, Regulation DD and Regulation Z, with common "triggering terms" that would require additional disclosures. Further, we agree that disclosures should be made in bold font and/or increased font size in a clear and conspicuous manner and that the disclosure is placed in close proximity to the use of any banking terminology.

We also recommend adding requirements and/or best practices around how consumers can locate additional disclosures. The financial industry has become accustomed to the "one-click rule" in marketing, wherein additional (full) disclosures can be found by the consumer clicking a link that is placed next, or within, the advertisement and the landing page in which the consumer clicked contains additional

---

<sup>1</sup> The Commissioner of Financial Protection and Innovation vs. Chime Financial, Inc., March 29<sup>th</sup>, 2021.

information and disclosures. Because the “one-click” rule has become industry standard and common practice, we would encourage this standard to be adopted for disclosure of FDIC insurance information. Financial institutions have adopted this approach for many years however Fintech companies have been slow to adopt, which creates gap in expectations.

**Social Media Advertisements.** We find that social media is the new frontier of advertising banking products and services, alongside advertisements on websites and search engines such as Google. Often times these advertisements are limited in space or characters. In addition, there are limitations due to font size and whether the disclosure information is visible on a mobile device versus a website. As well as new platforms launching rapidly and utilizing different media constraints (i.e. snapchat, tiktok) All of these are constraints that require special attention by the bank when approving marketing collateral from our Fintech programs. We view the disclosure limitations as a balancing effort between customer experience (and advertising effectiveness) and consumer protection. In our view, there should be sufficient information contained within, or in close proximity to the advertising, for the average consumer to identify the associated FDIC insurance and FDIC insured financial institution. Regardless of the channel (i.e., Twitter, Instagram, Google Ads, etc.) or medium used (i.e. video, graphic) there is sufficient space to include enough information for a reasonable consumer to identify the FDIC insured institutions. We also recommend the “one-click” rule be added to social media and internet advertising.

**Allow or Forbid Certain Phrases.** Another area of continuous discussion between the bank and our Fintech partners is the use of certain terms which are used to describe the product and service offering. Common phrases that require additional discussion include the terms: “banking”, “checking account”, “bank account”, and “mobile banking”. We encourage the FDIC to clarify whether these phrases are allowed or whether they should not be used in describing the products. We believe these terms are appropriate for use and we allow our Fintech programs to use these terms. We have had significant discussion on this topic and determined the use of the terms is describing the product exactly as it is (a “bank account”) and attempting to create new verbiage would cause confusion to consumers and could lead to UDAAP concerns. For example, not using the term “bank account” could lead the customer to not knowing they are opening a true bank account. Further, we encourage clarification on the use of terms such as “through” or “with” when using terminology such as “open a bank account **with** Fintech ABC” versus “Open a bank account **through** Fintech ABC”.

On the contrary, we have prohibited our Fintech programs from using terms such as “bank”, “financial institution”, etc. With this being said, we do require additional disclosure language when using certain terminology. In the market, we have identified phrases used by other Fintech companies that we would not allow for use by our sponsor programs; for example “The bank for modern lifestyles” or phrases that imply the Fintech is a bank such as “We’re better than an average bank”. We have also identified instances where Fintech companies will use website URLs that infer they are a bank (ex., [www.fintechnamebank.com](http://www.fintechnamebank.com))

Another alternative that we propose is establishing a set of “triggering terms” that would require additional disclosures. For example, the use of “bank account”, “banking experience”, and any other “banking” terminology that could imply the Fintech is a bank.

**In regard to Question #1 & #2.** We believe that a non-insured FDIC company should not use the FDIC logo within websites, marketing, or advertising. Doing so creates conflict and confusion for customers. We believe the general concepts outlined within the proposal, along with additional recommends, sufficiently captures the situations in which FDIC insurance representations could be false or misleading.

**In regard to Question #10.** nbkc bank has a practice of monitoring the Fintech program’s public information, such as websites, mobile applications, and marketing efforts to ensure they are in compliance

with existing rules. We find that many Fintech companies are unaware of the technical requirements embedded in various laws and regulations and therefore the bank is required to take a more “hands-on” approach in reviewing material prior to public distribution. As part of our compliance management program, we require the Fintech programs to maintain certain policies and procedures applicable to their product offering. In addition, we require Fintech employees in certain areas of their company (i.e., marketing departments) to complete training on the laws and regulations that are applicable to their product offering. For example, a deposit product offering would require training on Regulation DD advertising rules. One constraint in this requirement is that no standard of training is available publicly for the Fintech’s employees to complete. Often times, the Fintech is required to purchase training from a third party at their own cost (the bank will approve the third party prior to purchase to ensure it is sufficient). We have engaged in conversations of whether the bank should provide the training direct to the Fintech employees, however due to resource constraints and other priorities, this is not an area the bank has engaged in at this time.

Advertising Guide. The bank has established an “Advertising Guide” which is used for two main purposes; 1. includes contractual requirements that must be upheld by the Fintech when conducting marketing or advertising, or for general publication of the bank-sponsored products; 2. provides training, education, and resources to the Fintech’s employees for use during the development of the public material. The Advertising Guide includes a section specific to how the bank’s name, likeness, and FDIC insurance discloser must be included.

During the onboarding process, and prior to a program’s public launch, the bank creates standard disclosures that must be used when a Fintech references the bank products, services, FDIC insurance coverage, or bank name. The standard disclosures are then provided to the Fintech and agreed to for use. On occasion, the bank will amend the standard disclosure for a particular program, such as times when a new product or service is introduced. This practice is meant to ensure complete agreement between the bank and Fintech on the correct language and use of the language in each circumstance.

During the due diligence and/or onboarding period (after contract execution but before public program launch), the bank requires the Fintech to provide all onboarding workflows, website and mobile application designs, and any initial marketing initiatives. The bank provides an official approval of these materials before public use.

To ensure compliance with laws and regulations as well as the contractual requirements between the bank and Fintech, the bank maintains a compliance oversight program which includes a review of the Fintech’s marketing and advertising practices. Oversight consists of monthly reviews conducted by the bank’s Compliance Department of the Fintech’s website, mobile application, public marketing and advertising campaigns, and social media posts. Any exceptions or errors identified are documented by the bank. In certain circumstances the bank requires the Fintech to remove the content from public view. If continued non-compliance is identified, additional corrective action is taken by the bank.

We would be happy to engage with federal regulatory agencies further regarding this issue. Please contact me directly if we can answer any specific questions and thank you for your consideration of this submission.

Sincerely,

Brian Fellows  
Director of Risk Management, SVP