



April 5, 2023

Via Electronic Submission

James P. Sheesley, Assistant Executive Secretary
Federal Deposit Insurance Corporation

Attention: Comments — RIN 3064-AF26

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Cross River Bank’s Comments, FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo

Dear Mr. Sheesley,

On behalf of Cross River Bank (“Cross River” or “the Bank”), I thank you for the opportunity to comment on the Federal Deposit Insurance Corporation’s (“FDIC”) Notice of Proposed Rulemaking (“NPRM”) on official sign and advertising requirements, false advertising, misrepresentation of insured status, and misuse of the FDIC’s name or logo. Cross River is a New Jersey State Chartered FDIC-insured bank that provides technology infrastructure powering the future of financial services to serve communities across the nation. To do this, Cross River partners with some of the largest fintech companies across the financial services space.

As noted in FDIC’s NPRM, Insured Depository Institutions (“IDIs”) “have been increasingly entering into business relationships with non-bank third parties to provide banking products and other financial services to new customers and expand the IDIs’ access to deposits”.¹ Initially starting as a community bank with branches in Teaneck, New Jersey and Brooklyn, New York, Cross River abided by the FDIC sign and advertising for physical locations. As the Cross River and fintech industry grew, the Bank developed its operations in mobile and online channels via responsible partnerships with fintech companies.

In each of its partnerships with fintech companies, the Bank pursues rigorous due diligence and continuous monitoring of its partners to ensure strong compliance in all fintech markets. Cross River believes its focus on ensuring proper adherence to FDIC’s official sign and advertising

¹ Notice of Proposed Rulemaking and Request for Comment, FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo, RIN 3064-AF26, 87 FR 244 (Dec. 21, 2022).

requirements is especially important during a time when trust in deposit insurance afforded to consumers by the Deposit Insurance Fund is so crucial. Thus, Cross River agrees, in principle, with the FDIC's proposed modernization of the agency's sign and advertising requirements to fit the modern banking system, including for those entities operating in a mobile or online banking channels.

Cross River's Compliance Management Program

As noted above, Cross River takes its responsibility to ensure compliance with all applicable FDIC sign and advertising requirements by the Bank and its partners seriously. Cross River believes that consumers engaging with the Bank's fintech partners must understand the manner and extent to which financial services marketed or offered through a bank-fintech partnership are FDIC-insured and how various deposit and non-deposit products and services differ. Cross River works diligently to ensure that the Bank and its partners reduce ambiguity related to FDIC insurance offered for consumers engaging with both deposit and non-deposit products in a digital environment.

To ensure that the Bank's partners comply with applicable FDIC sign and advertising requirements, Cross has implemented a compliance management system that includes controls as part of the Bank's robust onboarding processes and remain throughout the partnership through continuous compliance monitoring. Specifically, the Bank establishes a contractual obligation with the fintech partner to ensure compliance with established FDIC sign and advertising requirements during the onboarding process. Further, Cross River reviews any proposed changes to how the Bank's products are conveyed to consumers by the fintech partner prior to the launch of the product, webpage, social and email channels, or other consumer communication. The Bank also reviews the merchants' websites, social media and email channels for those lending partners that work with merchants who have direct interaction with end consumers.

In addition to initial compliance monitoring, Cross River continuously reviews each mention of the Bank's products on a fintech partner's website. Further, the Bank requires fintech partners to conduct their own compliance monitoring of "partner undertaken activities" (including change management, issue management, and their ongoing oversight of their vendor relationships), which they submit to the Bank for review.

As a result of the Bank's continuous enhancements to its compliance management program, customer base, and suite of products and services, Cross River is well positioned to offer the below recommendations for FDIC's consideration as the agency finalizes this rulemaking.

Ensuring a Proper Balance in FDIC Online Channel Disclosure Requirements

Cross River recognizes and appreciates FDIC's stated commitment to ensure that bank and non-bank financial institutions have flexibility in the way that non-deposit products are marketed and disclosed to consumers in an online environment. However, in the Bank's experience, the timing,

cadence, and amount of various online notifications requiring consumer action can have a negative correlation with the consumer's experience if done in excess.

In an increasingly competitive online marketplace, ensuring consumers have a positive experience with the bank or non-bank online channel is important to the success of an institution. Speed and convenience are important factors that consumers consider when engaging with online financial services offerings.² Further, consumers are quick to end their online experience with a given retailer if they are overly burdened by steps and information that they perceive to be unnecessary—i.e., they experience what research refers to as an abundance of “friction” in their online experience.

Cross River recognizes that unlike other online experiences, consumers seeking financial services online must be properly informed about all aspects of the product or service with which the consumer seeks to engage. Within the competitive online financial services market, there is a unique importance of both ensuring that consumers receive the necessary information about the depository status of a given financial product or service while not overburdening them with frictions in their consumer journey and ultimately removing the convenience the consumer seeks. In this vein, the Bank advocates for “good frictions” that will provide the proper information to consumers in a manner befitting of the bank or non-bank platform, product, or service with which the consumer is engaging.

Thus, Cross River recommends that FDIC give careful consideration to the notification requirements it imposes on online channels to ensure that that they are not overly prescriptive about the type of consumer notification system for banks or their non-bank providers, and do not prescribe specific requirements about the timing, cadence, and number of online notifications requiring consumer action during an individual online session. The Bank appreciates the examples of “pop-ups”, “speedbumps”, or “overlays” that FDIC suggest should be implemented in consumers' online experiences to notify consumers of non-deposit products and ensure that they remain properly informed.³ However, to reflect the various business models, products, and services, as well as adequately respect the importance of consumer's experience in the increasingly competitive online financial services market, Cross River recommends that FDIC allow banks to work with their non-bank partners to ensure proper disclosure and ensure that these disclosures are properly applied to the various online platforms and consumer experiences. Cross River further recommends that FDIC maintain a principles-based approach to its requirements in this area and rely on a “reasonable person test” when assessing a bank's implementation of these requirements to ensure that the requirements and assessments do not stymie emerging technologies and business models.

Examiner Manual Modernization

² U.S. Government Accountability Office, *Financial Technology: Additional Steps by Regulators Could Better Protect Consumers and Aid Regulatory Oversight*, (Washington, D.C., Mar. 22, 2018) available at <https://www.gao.gov/products/gao-18-254>.

³ RIN 3064-AF26, 87 FR 244, page 78023.

Mobile and online banking channels present evolving challenges and opportunities for ensuring compliance throughout the customer journey. As noted above, Cross River has developed a compliance management system that is reasonably designed to ensure both the Bank and its partners are able to comply with FDIC requirements, including existing sign and advertising requirements. Cross River appreciates the focus FDIC has on ensuring that banks' compliance management systems are commensurate with complexity of the banking and partnership activities they are meant to oversee. However, as business models continue to evolve in the modern banking system, and FDIC continues to adapt traditional banking requirements to mobile and online banking channels, Cross River recommends that the agency review its examination manuals and train its staff to ensure that the regulatory requirements and their implementation provide clear parameters for banks and their non-bank partners and do not stymie emerging business models.

Conclusion

Cross River's focus on compliance and consumer protection through its bank fintech partnerships has proven beneficial across the lending, payments, and banking-as-a-service markets. Within each of these areas, Cross River has worked to ensure that FDIC's requirements, including those related to sign, advertising, and the insurance status of a given product or service, are included in both Cross River's compliance management and that of its partners. However, to ensure that the proposed changes to FDIC's requirements are effective in digital channels and not overly burdensome to consumers or industry participants, the Bank requests that FDIC carefully consider the recommendations discussed in the preceding sections. We greatly appreciate FDIC's consideration of our recommendations and look forward to continued engagement on this NPRM. Any questions or concerns should be directed to Arlen Gelbard, General Counsel, at

Sincerely,

Ian P. Moloney
Head of Policy and Regulatory Affairs | Cross River