



April 7, 2023

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; RIN 3064-AF26; 87 Fed. Reg. 78,017

Dear Mr. Sheesley:

Better Markets¹ appreciates the opportunity to comment on the proposed rule, “FDIC Official Sign and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo.”² The Proposal would update and strengthen the rules governing signage, advertising, and other representations surrounding FDIC deposit insurance. Those rules are set forth in Subpart A and Subpart B in the Part 328 rules administered by the Federal Deposit Insurance Corporation (“FDIC”).³

The regulatory objective of the Proposal is to enable consumers to better understand when they are doing business with an insured depository institution (“IDI”) and when their funds are protected by the FDIC’s deposit insurance coverage. As has been too often painfully illustrated recently (as discussed below), consumers can suffer significant financial losses if they do not understand the scope of FDIC insurance coverage or mistakenly rely on false or misleading statements about its applicability when making financial decisions about where to maintain their funds. In fact, the FDIC has observed an increase in misleading representations about deposit insurance in internet banking channels, posing an even greater risk of consumer confusion and harm. As noted in the preamble, these types of misleading statements create uncertainty and can

¹ Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system, one that protects and promotes Americans’ jobs, savings, retirements, and more.

² See generally 87 Fed. Reg. 78,017 (proposed Dec. 21, 2022) [hereinafter the “Proposal”].

³ See *id.* at 78,033–37 (to be codified at 12 C.F.R. Part 328).

inflict broader harm by diluting and weakening the “confidence that underpins banks and our nation’s broader financial system.”⁴

As to this latter threat, we note that “the confidence that underpins banks and our nation’s broader financial system” is at an inflection point.⁵ The United States has seen the first major bank runs and collapses since the financial crisis of 2008, and the fear and uncertainty of depositors have been a driving force behind the current turmoil. It is thus imperative that the FDIC issue a final rule that protects consumer confidence to the greatest extent possible—and that it does so with all alacrity.

We support the Proposal, and in this comment letter we focus our attention on the Subpart B amendments aimed at addressing misrepresentations surrounding FDIC deposit insurance. We urge the FDIC to strengthen those measures in a number of important respects.

BACKGROUND AND OVERVIEW

The Proposal is inspired by a number of important trends in the financial services industry. As the preamble explains,

“In recent years there have been significant changes in the banking landscape, including **continued evolution of bank branches** and their role in serving depositors, substantially **increased reliance on internet and mobile banking channels** to access IDI banking services, and **growth in financial technology (fintech) companies** that seek to offer new options for accessing banking products and services. While these developments are beneficial, they may make it more difficult for depositors and consumers to understand when they are doing business with an IDI and when their funds are protected by the FDIC’s deposit insurance. In addition, the FDIC has observed increased **misleading representations** about deposit insurance in internet banking channels.”⁶

The preamble notes that “[b]anking customers are also offered an increasingly wide array of products and services, regardless of whether they are in a branch, using an ATM, or connecting with an IDI through digital channels. In many instances, IDIs offer **both deposit and non-deposit** products to consumers. For example, IDIs might allow depositors in their branches to consult with an investment adviser and purchase securities or mutual funds.”⁷ Yet further change is reflected in the growth of the fintech sector, which threatens to intensify confusion regarding deposit insurance coverage. “**Business arrangements between IDIs and non-banks** can take many forms and continue to evolve at a rapid pace. For example, an IDI might enter into an arrangement with the fintech company to offer the IDI’s products to the fintech company’s customers. In other instances, fintech companies might deposit their customers’ funds at an IDI. In such cases, the fintech company might state to its customers that their funds are FDIC-insured, or that they are insured by the FDIC on a ‘pass-through’ basis, without an accurate explanation of what this

⁴ *Id.* at 78,018.

⁵ *Id.*

⁶ *Id.* (emphasis added).

⁷ *Id.* at 78,019.

means.”⁸ The bottom line is that the proliferation of relationships, products, and disclosures in the banking sector and the overlapping nonbank sector poses a heightened risk of confusion among consumers “as to whether they are dealing with an IDI, whether their funds are insured by the FDIC, and the risks they are protected against.”⁹

In response to these developments, and to better protect consumers from the confusion that these trends can and do create, the Proposal would generally:

- 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 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.

Specifically with respect to the provisions aimed at addressing misrepresentations, the FDIC intends to clarify “specific situations where consumers may be misled as to whether an entity is insured by the FDIC or the nature and extent of deposit insurance coverage” and especially to “mak[e] clear when specific statements or omissions constitute a misrepresentation under [S]ection 18(a)(4)” of the Federal Deposit Insurance Act.¹⁰ These situations include, *inter alia*, use of FDIC-associated terms or images, failures to disclose the uninsured status of a non-bank entity, failure to state the non-insured status of non-deposit products, and failure to state that “conditions” apply to pass-through insurance.¹¹ The Subpart B amendments also seek to adapt the FDIC’s rules on digital assets, largely due to “a number of misrepresentations of insurance coverage and crypto-assets.”¹² These provisions are the primary focus of our comments.

COMMENTS

I. The 2022 Subpart B rule has not stopped misrepresentations by digital asset firms.

We commend the FDIC for moving swiftly to update its Subpart B rules. Less than a full year ago, the agency issued its first final rule implementing Section 18(a)(4) of the Federal Deposit

⁸ *Id.* (emphasis added).

⁹ *Id.*

¹⁰ *Id.* at 78,023.

¹¹ *See id.* at 78,023–25.

¹² *Id.* at 78,026.

Insurance Act, which prohibits false advertising, misuse of FDIC names, and misrepresentation of insured status.¹³ This rule, which created Subpart B, intended to address “an increasing number of instances where financial service providers” or other entities were misleading or defrauding consumers with claims of federal insurance.¹⁴

Unfortunately, those efforts have quickly proved insufficient to respond to what appears to be widespread violations of the law and an epidemic of misleading or false claims that have inflicted serious damage on individuals and the credibility of the FDIC’s insurance program. Those events have already made clear that Subpart B must be reinforced and extended if it is to punish and deter continued deception around FDIC insurance—especially deception originating from the digital asset sector.

Barely three weeks after the final Subpart B rules took effect, the FDIC issued a cease-and-letter to Voyager Digital, a prominent cryptocurrency platform, for numerous misrepresentations in apparent violation of Section 18(a)(4).¹⁵ And ***less than one month later***, the FDIC took enforcement actions against five more cryptocurrency-related entities for similarly apparent violations.¹⁶ One of these entities, of course, was FTX US, the supposedly more reputable and better-managed subsidiary of the now-infamous FTX cryptocurrency empire.¹⁷ ***More recently***, the FDIC has issued more enforcement actions to four more cryptocurrency-related entities for similar apparent violations.¹⁸ Given the difficulty of identifying such violations, it has to be assumed that these are not isolated cases, but likely representative of an epidemic of false and misleading statements regarding insurance coverage. Thus, we can only expect further violations to come to light from this sector unless the FDIC acts quickly and forcefully to fortify Subpart B.

We write to provide some additional examples of problematic practices by digital asset firms and how the FDIC could refine the proposed rule to address them. The most salient and informative of these examples is the Gemini Earn fiasco. As recounted in an enforcement action brought by the Securities and Exchange Commission, Gemini Trust Company partnered with Genesis Global Capital to “raise[] billions of dollars’ worth of crypto assets, principally from U.S. retail investors,” by offering high interest rates in exchange for those investors depositing their

¹³ See False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo, 87 Fed. Reg. 33,415, 33,415 (June 2, 2022) (citing 12 U.S.C. § 1828(a)(4)).

¹⁴ *Id.*

¹⁵ See Letter from Seth P. Rosebrock, Asst. Gen. Counsel, FDIC, & Jason A. Gonzalez, Asst. Gen. Counsel, Bd. of Govs. of the Fed. Rsrv. Sys., to Stephen Ehrlich, Voyager CEO, & David Brosgol, Voyager Gen. Counsel (July 28, 2022), <https://www.fdic.gov/news/press-releases/2022/pr22056a.pdf>.

¹⁶ See *FDIC Issues Cease and Desist Letters to Five Companies For Making Crypto-Related False or Misleading Representations about Deposit Insurance*, FDIC (Aug. 19, 2022), <https://www.fdic.gov/news/press-releases/2022/pr22060.html>.

¹⁷ See Letter from Seth P. Rosebrock, Asst. Gen. Counsel, FDIC, to Brett Harrison, President, FTX US, and Dan Friedberg, Chief Regul. Officer, FTX US (Aug. 18, 2022), <https://www.fdic.gov/news/press-releases/2022/ftx-harrison-letter.pdf>.

¹⁸ See *FDIC Demands Utopia Inc. and Its Officers Cease Making False or Misleading Representations about Deposit Insurance in English and Spanish*, FDIC (Mar. 27, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23024.html>; *FDIC Demands Four Entities Cease Making False or Misleading Representations about Deposit Insurance*, FDIC (Feb. 15, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23009.html>.

assets into a Gemini Earn account.¹⁹ Of course, this scheme collapsed in late 2022 once Genesis froze withdrawals by Earn account holders, who then had approximately \$900 million invested.²⁰ Genesis filed for bankruptcy in January 2023.²¹

Public reporting suggests that at least some individual investors were drawn to Gemini Earn and its related stablecoin after being misled into believing their funds and cryptocurrency assets were safely held, in the same way bank deposits are secure. The news website Axios recounts the story of one (relatively sophisticated) investor:

“Customers who put their cash and cryptocurrency into Gemini Earn thought it was secure, akin to a savings account at a bank. “It sounded really safe,” Peter Chen, a data scientist in San Diego, who started putting money in Earn in late 2021, told Axios. . . . He used dollars to buy Gemini’s stablecoins, called GUSD, and then held them at Earn. The company would pay him interest on those holdings. Its website said you could *withdraw your money* at any time.”²²

Unsurprisingly, the same Mr. Chen “got nervous” as other cryptocurrency outfits went up in flames in mid-2022, and he, therefore, contacted Gemini to ask if his funds would be safe in the event of Gemini’s demise.²³ The company responded very quickly but very misleadingly:

“All fiat currency held by Gemini to redeem your GUSD is ***held by our partner financial institutions in a secure account and is eligible for FDIC insurance.***’ [Gemini] referred Chen to a web page about the Gemini dollar.”²⁴

This response left Mr. Chen “reassured” thanks to the “vague impression that [Gemini Earn] was FDIC-insured.”²⁵ That impression was wrong, and Mr. Chen had been misled.

Mr. Chen, sadly, was not the only such victim as the Gemini Earn program unraveled. Not long after telling Mr. Chen’s story, Axios published an article based on its review of more Gemini responses to customer inquiries about federal insurance.²⁶ Its conclusion:

¹⁹ Complaint 1, *SEC v. Genesis Glob. Cap., LLC*, No. 23-cv-287 (S.D.N.Y. Jan. 12, 2023).

²⁰ *See id.* 7.

²¹ *See, e.g.*, Rohan Goswami & MacKenzie Sigalos, *Winklevoss twins’ crypto exchange Gemini to contribute \$100 million to Genesis bankruptcy recovery*, CNBC (Feb. 7, 2023) (“[C]rypto lender Genesis . . . filed for bankruptcy protection in New York on Jan. 19 . . .”), <https://www.cnbc.com/2023/02/06/gemini-to-contribute-100-million-to-genesis-bankruptcy-recovery-plan.html#:~:text=Crypto%20exchange%20Gemini%20will%20contribute,frozen%20when%20Genesis%20paused%20withdrawals>.

²² Emily Peck, *Gemini Earn customers thought their money was safe — now it’s gone*, AXIOS (Jan. 17, 2023) (emphasis added), <https://www.axios.com/2023/01/17/gemini-earn-customers-cryptocurrency-savings>.

²³ *Id.* (“In June, Chen watched the collapse of another stablecoin — called luna — and got nervous. He sent an email to Gemini customer service, viewed by Axios, and asked: “Will something like this happen to GUSD? Is my money safe?””).

²⁴ *Id.* (emphasis added).

²⁵ *Id.*

²⁶ *See* Emily Peck & Matt Phillips, *As crypto cratered, Gemini talked to customers about FDIC insurance*, AXIOS (Jan. 30, 2023), <https://www.axios.com/2023/01/30/as-crypto-cratered-gemini-talked-to-customers-about-fdic-insurance>.

“Customers say [Gemini] led them to believe their accounts were insured by the government agency. They weren’t.”²⁷

More specifically,

“Gemini’s discussion of FDIC insurance appeared to reference the firm’s deposits at outside banks — not its own products. But customers said they did not appreciate that distinction. Plus, the safety claims concern its stablecoin, GUSD — but not the yield-bearing Earn product itself.”²⁸

Axios recounts the experience of three Gemini investors other than Mr. Chen, including at least one financially sophisticated enough to *work in investment banking*, who now realize that they were misled by claims of insurance “eligib[ility],” “secure” funds, possible pass-through insurance, or even *repeated references to the FDIC on the Gemini website*.²⁹ The point of Gemini’s slippery and persistent messaging should be obvious, as Better Markets has publicly explained:

“The goal in using language like this appears to be to ‘get legitimization’ and provide ‘false comfort’ to people to convince them to keep their money with the company.”³⁰

Yet even a public exposé does not seem to have compelled Gemini to be more forthright with its customers. *To this day, Gemini’s website contains multiple pages referencing FDIC insurance with substantially the same language identified by customers as misleading in the Axios reporting*.³¹ Gemini does have a more technical, legalistic description of FDIC deposit insurance buried deep in its user agreement contract.³² But it is doubtful that most customers found this hidden explanation, much less read and digested it fully, and at least some of the extant webpage references to FDIC eligibility do not have proximate links to the user agreement.³³

We know from Axios’ reporting that similar disclaimers about the risk of total loss from Gemini Earn deposits did nothing to correct the false impression of safety that Gemini cultivated.³⁴ Of course, that is the point and that is why the FDIC must finalize this rule as quickly as possible and bring additional enforcement actions to stop the damage being inflicted by these lawbreakers.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* (quoting Dennis Kelleher, President and Co-Founder of Better Markets).

³¹ See *Education & Other Topics: Are my funds insured?*, GEMINI (last visited Mar. 22, 2023), <https://support.gemini.com/hc/en-us/articles/205823016-Are-my-funds-insured->; *Gemini dollar™*, GEMINI (last visited Mar. 22, 2023), <https://www.gemini.com/dollar>.

³² See *User Agreement*, GEMINI (Mar. 16, 2023) (“FDIC Insurance” section), <https://www.gemini.com/legal/user-agreement>.

³³ See *Gemini dollar™*, GEMINI (last visited Mar. 22, 2023), <https://www.gemini.com/dollar>.

³⁴ See Emily Peck & Matt Phillips, *As crypto cratered, Gemini talked to customers about FDIC insurance*, AXIOS (Jan. 30, 2023), <https://www.axios.com/2023/01/30/as-crypto-cratered-gemini-talked-to-customers-about-fdic-insurance>.

II. The final rule should have stronger measures to combat misrepresentation and deception by digital asset firms.

As the repeated violations by digital asset firms make clear, the 2022 rule creating Subpart B has not adequately protected the public. The proposed amendments are an admirable move towards more effective regulation, but the final amendments should reflect a stronger stance against continued deception by entities in the digital asset space. In particular, the FDIC should consider the following improvements for its final rule.

First, the final rules should include a presumption that *any references to or suggestions of deposit insurance* in an advertisement, web page, or other communications for digital assets are false or misleading. The industry’s recent history has proven beyond a doubt not only that investors are uniquely vulnerable when trying to understand the true regulatory status and safety of such products but also that firms offering crypto investments will try to skirt any regulatory boundary they can identify. And compliance would impose minimal costs: Digital asset firms should simply state in a clear fashion, at the first point of customer contact and in subsequent contacts, that their accounts, products, or customer funds *do not have* federal deposit insurance protection. Ideally, the final rule would pair this requirement with a mandate that digital asset firms affirmatively acknowledge the inherent risk to investors in their products. At least one European nation has adopted that sort of mandate,³⁵ and the FDIC could do so too, as a logical and reasonable extension of its existing regulations regarding misrepresentations and false advertising.

Second, the proposed amendments do far too little to prevent confusion or deception around pass-through insurance.³⁶ The public reporting on Gemini demonstrates that individual investors *will* be misled by and rely on carefully crafted but false claims that certain accounts or digital assets “may be eligible” for pass-through insurance. The proposed requirement to “simply referenc[e] that conditions must be satisfied” for pass-through insurance is grossly insufficient to rein in an industry hellbent on ensuring there is no clarity in this area;³⁷ the proposal puts far too much of the onus on *each* individual investor to carefully parse hyper-technical language and determine what those conditions are and whether they have been or will be satisfied. Statements regarding the theoretical possibility of pass-through insurance are useless and need to be banned entirely.

Nor will it help investors if a digital asset firm simply inserts a link to a hundred-page contract in which one or a few paragraphs make hyper-qualified claims about pass-through protections in the densest legalese the firm’s lawyers might congeal. That obfuscation, undoubtedly intentional, clearly made things worse for Gemini customers who were in fact misled as intended. That’s why it is imperative that the final rule require digital asset firms like Gemini to make a clear, conspicuous, and unqualified declaration that an account, product, or funds will be or will not be protected by pass-through insurance. Qualified or conditional claims or statements, whether using the ambiguous “may” or not, simply must be prohibited. That is illustrated by at least one prominent digital asset firm employing something approaching an affirmative statement on pass-through insurance, but even those statements are ambiguous,

³⁵ See Jack Schickler, *Belgian Crypto Ads Must Warn of Risks Under New Rules*, CoinDesk (Mar. 20, 2023), <https://www.coindesk.com/policy/2023/03/20/belgian-crypto-ads-must-warn-of-risks-under-new-rules/>.

³⁶ See Proposal, 87 Fed. Reg. at 78,037 (to be codified at 12 C.F.R. § 328.102 (b)(5)(iv)).

³⁷ *Id.*

indicating that pass-through insurance is “available,” leaving open whether the coverage does in fact apply. At best, such statements have to be very carefully read several times and, even then, will undoubtedly mislead most people into concluding that there is FDIC insurance coverage.³⁸

While this declaration might expose the firm to some risk of misapplying the FDIC’s rules on pass-through eligibility, the firm, and the industry as a whole, is far better situated to bear that risk than individual investors who are being barraged with misleading claims that are often subtly worded to mislead. Digital asset firms have far more resources to understand the law, including compliance teams and legal counsel, and they of course have more insight into their own operations, products, and future actions than anyone else (likely including even supervisory regulators). The firm, moreover, can and should seek guidance from the FDIC or other regulators about its representations *before* it risks deception and harm to investors. Doing so only helps mitigate the firm’s own contingent liabilities under Section 18(a)(4). And to the extent they get it wrong through no fault of the investor, it is obviously appropriate to lay responsibility for such errors at the feet of the promoter seeking investors’ money.

And a clear, affirmative declaration of pass-through protections can aid *ex post* enforcement and compensation; by requiring an unqualified representation on which investors can and would rely, the FDIC could give the victims a better chance to claw back ill-gotten gains from digital asset firms or their management, even if insolvent.³⁹ In fact, requiring this declaration is likely to help better-governed digital asset firms signal their compliance investments and thereby reduce the adverse selection of underhanded operators who now hide behind equivocation if not outright false claims. Clarity, in other words, can be a marker for distinguishing the safer firms from the riskier ones. A stronger rule on pass-through insurance would thus serve not only the goal of investor protection but that of market-wide allocative efficiency, too.

Finally, and most importantly, the FDIC must reconsider its *enforcement* of Section 18(a)(4) under the current and proposed Subpart B. In a mildly positive step, the proposed rule would extend the list of *per se* knowing violations to anyone making misleading statements after being advised by the Consumer Financial Protection Bureau that certain or similar representations are false or misleading.⁴⁰ While not formally necessary to establish a knowing violation,⁴¹ this amendment at least ensures that any future violators cannot claim to lack fair notice, and the FDIC can more easily establish a knowing violation and civil monetary penalties against digital asset

³⁸ See *How is Coinbase insured?*, COINBASE (Mar. 2023) (“Our custodial accounts have been established in a manner to make pass-through FDIC insurance available up to the per-depositor coverage limit then in place (currently \$250,000 per individual). . . . FDIC insurance coverage is contingent upon Coinbase maintaining accurate records and on determinations of the FDIC as receiver at the time of a receivership of a bank holding a custodial account.”), <https://help.coinbase.com/en/coinbase/other-topics/legal-policies/how-is-coinbase-insured>.

³⁹ See 11 U.S.C. § 523(a)(2)(A) (creating an exception to discharge for liabilities “for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud”).

⁴⁰ See Proposal, 87 Fed. Reg. at 78,037 (to be codified at 12 C.F.R. § 328.102(b)(6)(ii)).

⁴¹ Under the current 12 C.F.R. § 328.102(b)(6)(ii), the Consumer Financial Protection Bureau would already qualify as “another governmental or regulatory authority.”

firms that simply ignore the Bureau’s May 2022 Circular on insurance claims regarding “digital assets, including crypto-assets.”⁴²

But much more is needed. Despite (1) the Bureau’s Circular, (2) the 2022 issuance of the final Subpart B rules, (3) the FDIC’s July 2022 Fact Sheet on FDIC Deposit Insurance and Crypto Companies,⁴³ (4) the FDIC’s five August cease-and-desist orders,⁴⁴ (5) the public catastrophe with the Gemini Earn accounts, (6) a three-agency Joint Statement on Crypto-Asset Risks to Banking Organizations,⁴⁵ (7) the FDIC’s other four cease-and-desist orders in February and March 2023,⁴⁶ and (8) the many well-known laws against false and misleading statements and claims, some digital asset firms like Gemini continue to use representations about deposit insurance that have been proven to mislead, deceive, and harm even sophisticated consumers.

The FDIC must make clear in the final rule, through the preamble discussion if nothing else, that the digital asset sector has been on notice of its illegal conduct for far too long—and that further violations will be treated as presumptively knowing under even current rules and will be subject to harsh civil penalties, injunctive relief, and automatic consideration for criminal referrals wherever the facts warrant. As is clearly evidenced by the conduct of too many, another handful or two of cease-and-desist letters will not suffice. Unquestionably strong enforcement actions are needed by the FDIC and others like the Department of Justice to cure the intransigence of an industry founded on the clear belief that it is beyond the law and can continue to knowingly and repeatedly ignore and violate clear FDIC rules.

⁴² *Consumer Financial Protection Circular 2022-02*, CFPB (May 17, 2022), <https://www.consumerfinance.gov/compliance/circulars/circular-2022-02-deception-representations-involving-the-fdics-name-or-logo-or-deposit-insurance/>.

⁴³ See FDIC, FACT SHEET: WHAT THE PUBLIC NEEDS TO KNOW ABOUT FDIC DEPOSIT INSURANCE AND CRYPTO COMPANIES (2022), <https://www.fdic.gov/news/fact-sheets/crypto-fact-sheet-7-28-22.pdf>.

⁴⁴ See *FDIC Issues Cease and Desist Letters to Five Companies For Making Crypto-Related False or Misleading Representations about Deposit Insurance*, FDIC (Aug. 19, 2022), <https://www.fdic.gov/news/press-releases/2022/pr22060.html>

⁴⁵ BD. OF GOVS. OF THE FED. RSRV. SYS., FDIC, & OFF. OF THE COMPTROLLER OF THE CURRENCY, JOINT STATEMENT ON CRYPTO-ASSET RISKS TO BANKING ORGANIZATIONS (2023) (including as a risk “[i]naccurate or misleading representations and disclosures by crypto-asset companies, including misrepresentations regarding federal deposit insurance, and other practices that may be unfair, deceptive, or abusive, contributing to significant harm to retail and institutional investors, customers, and counterparties”), <https://www.fdic.gov/news/press-releases/2023/pr23002a.pdf>.

⁴⁶ See *FDIC Demands Utoppia Inc. and Its Officers Cease Making False or Misleading Representations about Deposit Insurance in English and Spanish*, FDIC (Mar. 27, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23024.html>; *FDIC Demands Four Entities Cease Making False or Misleading Representations about Deposit Insurance*, FDIC (Feb. 15, 2023), <https://www.fdic.gov/news/press-releases/2023/pr23009.html>.

CONCLUSION

We appreciate the FDIC's consideration of our comments, and we hope they are helpful as the FDIC finalizes the Proposal.

Sincerely,



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