

Via Overnight Mail and Email

January 19, 2024

Paul Caldwell, Chairman and CEO
Andrew Finn, Chief Operating Officer
ORGANO Payments, Inc.
ORGANO USA
2390 Peace Portal Dr. #270
Blaine, WA 987230
support@ogpay.com

RE: Notice to Cease and Desist Potential Violations of Section 18(a)(4) of the Federal Deposit Insurance Act

Dear Messrs. Caldwell and Finn,

The Federal Deposit Insurance Corporation (“FDIC”) has reason to believe that ORGANO Payments, Inc. and its subsidiary OGPAY, as well as its officers, have made false and misleading statements, directly or by implication, concerning OGPAY’s insured status, in violation of section 18(a)(4) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1828(a)(4) (“Section 18(a)(4)”), and its implementing regulation, 12 C.F.R. Part 328, Subpart B (“Part 328”). We hereby demand that you cease and desist and take immediate corrective actions to address these false and misleading statements, as more fully set forth below.

Section 18(a)(4) and Part 328 prohibit any person from representing that an uninsured financial product is insured, or knowingly misrepresenting the extent or manner in which a deposit or obligation is insured under the FDI Act, whether by making affirmative statements or by omitting material information. Under Part 328, no person may represent or imply that any uninsured financial product is insured or guaranteed by the FDIC as part of an advertisement, solicitation, or other publication or dissemination. 12 C.F.R. § 328.102(a)(2). Further, pursuant to Part 328, “a statement regarding deposit insurance would be deemed to omit material information if the absence of such information could result in a reasonable consumer being unable to understand the extent or manner of deposit insurance provided.” 12 C.F.R. § 328.102(b)(5). For example, it is a material omission for a non-insured entity that advertises deposit insurance to fail to identify the insured depository institution (IDI) with which the “representing party has a direct or indirect business relationship for the placement of deposits and into which the consumer’s deposits may be placed.” 12 C.F.R. § 328.102(b)(5). The FDIC has the authority to enforce these provisions against any person or entity. Enforcement tools available to the FDIC include the authority to issue cease-and-desist orders and to assess civil money penalties for violations of Section 18(a)(4) and Part 328. See 12 C.F.R. §§ 328.104-107.

Certain statements by ORGANO appearing on the OGPAY website and other media (such as articles and social media), have come to the attention of the FDIC as containing apparent misrepresentations about FDIC deposit insurance. These statements include, but are not limited to, the following:

- OGPAY's X social media account, handle @ogpayapp, describes the OGPAY app as "¹⁰⁰ FDIC Insured" immediately after it states "Buy/Sell/Settle Crypto." See <https://x.com/ogpayapp>.
- OGPAY's Facebook page contains multiples posts stating that OGPAY is FDIC insured. See www.facebook.com/OGPAYApp.
- OGPAY's Apps on Google Play and Apple store download sites state that funds in the OGPAY wallet and on the OGPAY Mastercard prepaid debit card are FDIC insured. See <https://play.google.com/store/apps/details?id=com.ogpay.ogpayconsumer>; and <https://apps.apple.com/us/app/ogpay/id6446909849>.
- A hyperlink titled "Partners," accessed through the OGPAY website, indicates "Global mobile wallet, debit card, digital assets, FDIC insured accounts" next to the OGPAY heading without delineating the extent or manner of FDIC insurance. See <https://odc.inc>.
- A video dialogue next to "An Overview of OGPAY" that states OGPAY is FDIC insured. See <https://ogpay.com/news-and-views> (at marker 00:45).
- A link on OGPAY's News & Views webpage titled "ATM Access Page" leads to a blog/article that describes the OGPAY Mobile Wallet as FDIC insured. See <https://ogpay.com/news-and-views> and <https://www.prnewswire.com/news-releases/ogpay-now-offers-direct-cash-outs-with-nationwide-atm-access-301614085.html>.

The statements on OGPAY's X and Facebook social media accounts that OGPAY is FDIC insured in the same post advertising OGPAY's cryptocurrencies as well as statements on OGPAY's websites and blogs that its mobile wallet is FDIC insured appear to falsely imply that uninsured financial products are insured by the FDIC.

None of the above statements explain the extent or manner in which FDIC deposit insurance may be provided. These statements either state or imply that OGPAY itself is FDIC-insured and that OGPAY provides deposit insurance directly to consumers. In fact, OGPAY is not an FDIC-insured institution, and FDIC deposit insurance does not insure OGPAY or its accounts directly. Accordingly, OGPAY's statements appear to violate Section 18(a)(4) and Part 328.

Furthermore, some of OGPAY's representations regarding the availability of FDIC deposit insurance

appear to fail to identify the IDI(s) into which consumers' deposits may be placed. Without any disclosures that OGPAY accounts are only insured through an FDIC-insured partner bank(s) in near proximity to the deposit insurance representations, these representations may mislead a reasonable consumer as to the extent or manner of deposit insurance provided, in violation of Part 328.

Based on the information available to the FDIC, it appears that the statements discussed above regarding deposit insurance violate Section 18(a)(4) of the FDI Act and Part 328. Consequently, the FDIC hereby demands the following corrective actions:

1. You shall immediately remove any and all statements, representations, or references that suggest in any way, explicitly or implicitly, that: (a) OGPAY itself is FDIC-insured, (b) FDIC deposit insurance applies to digital or crypto assets, (c) FDIC deposit insurance may provide coverage for any event other than the failure of an IDI; or (d) FDIC deposit insurance provides protection or coverage in any manner or extent other than those set forth in the FDI Act from OGPAY's website (including any pop-ups, hyperlinks, or chatbots) and any other websites owned by ORGANO and its subsidiaries, X, Facebook, and any other social media platforms (including both corporate accounts and personal accounts of senior management of OGPAY and ORGANO, and any paid advertisement on these platforms), the mobile app, online outlet, and any other forms (electronic or hard copy) of marketing, advertising, or other consumer-facing publications.
2. You shall cease and desist from making any statements, representations, or references that suggest in any way, explicitly or implicitly, that: (a) OGPAY itself is FDIC-insured, (b) FDIC deposit insurance applies to digital or crypto assets, (c) FDIC deposit insurance may provide coverage for any event other than the failure of an IDI; or (d) FDIC deposit insurance provides protection or coverage in any manner or extent other than those set forth in the FDI Act from OGPAY's website (including any pop-ups, hyperlinks, or chatbots) and any other websites owned by ORGANO and its subsidiaries, X, Facebook, and any other social media platforms (including both corporate accounts and personal accounts of senior management of OGPAY and ORGANO, and any paid advertisement on these platforms), the mobile app, online outlet, and any other forms (electronic or hard copy) of marketing, advertising, or other consumer-facing publications.
3. To the extent that OGPAY's representations relate to pass-through deposit insurance arising from the placement of consumer deposits into accounts at IDIs, you shall amend such statements to: (1) clearly and accurately identify the nature of such deposit insurance, and (2) identify the IDI(s) with which OGPAY has a direct or indirect relationship for the placement of deposits and into which consumers' funds may be deposited.
4. Within fifteen (15) days of receipt of this letter, you shall provide written confirmation to the FDIC that OGPAY and ORGANO fully complied with the requests set forth above. Such

confirmation shall detail all efforts undertaken to comply with this letter, including all efforts to identify and locate all misrepresentations and the specific actions you took.

If you believe that any statement OGPAY, ORGANO, or its officers have made related to FDIC deposit insurance as it relates to its accounts is true and accurate, please provide a full listing of all such statements about deposit insurance on any medium or platform, which you allege to be true and accurate, together with information and documentation supporting the basis for your belief in the accuracy of all such statements, no later than fifteen (15) days from the date of this letter.

Failure to timely respond to this letter may result in the FDIC taking appropriate action as authorized by the FDI Act and any other applicable law or regulation. Be advised that this letter is intended to address only potential violations of Section 18(a)(4) and Part 328, as described above. Your response to this matter may or may not affect our conclusions as to the potential violations identified above, and does not preclude the FDIC from taking any further action, as appropriate, with respect to the foregoing or any other violations of laws or regulations. Moreover, nothing in this matter bars or estops any other federal or state agency from investigating, or pursuing actions for, violations of other laws and regulations.

This letter constitutes an advisory letter within the meaning of 12 C.F.R. § 328.106. Accordingly, pursuant to 12 C.F.R. § 328.102(b)(6), continuing and/or future false or misleading deposit insurance representations may be deemed to have been knowingly made.

Should you have any questions about the contents of this letter, please contact [REDACTED] at [REDACTED] or [REDACTED] [@fdic.gov](mailto:[REDACTED]@fdic.gov).

Sincerely,

/s/

Seth P. Rosebrock
Assistant General Counsel, Enforcement Section
Federal Deposit Insurance Corporation