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FDIC Advisory to FDIC-Insured Institutions Regarding Deposit Insurance and Crypto Firms

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AUTHORED ARTICLE | Summer 2022

Published in the Summer 2022 issue of *The Bankers' Statement*

The Federal Deposit Insurance Corporation (FDIC) has taken several actions in recent weeks to highlight its concerns around the misrepresentations and potential customer confusion relating to crypto companies and the scope of FDIC insurance coverage. Of particular importance to banks and other financial institutions is the agency's July 29, 2022, *Advisory to FDIC-Insured Institutions Regarding FDIC Deposit Insurance and Dealings with Crypto Companies.*

The FDIC issued the advisory over alleged misrepresentations made by crypto companies about the applicability of FDIC insurance coverage to crypto assets, as well as general customer confusion on the topic. The Advisory points out that inaccurate or misleading representations about deposit insurance can lead to confusion about when, and to what products, FDIC deposit insurance applies. As such, the advisory offers a reminder that the FDIC pays out deposit insurance only after an insured bank fails, not when a non-bank crypto broker, exchange, or wallet provider suffers insolvency. It also underlines the fact that FDIC deposit insurance covers only deposit products, and stock bonds, crypto assets and other non-deposit products. The advisory also points to an elevated risk of consumer harm or confusion about the applicability of deposit insurance when a crypto firm partners with a bank to offer deposit products. The advisory goes on to spell out how the potential customer confusion or harm can translate to legal, reputational, and even liquidity risk for the partner bank.

While the advisory is primarily aimed at those financial institutions partnering with crypto companies and other non-bank third-parties offering crypto assets, it recommends every bank have appropriate risk management policies and procedures in place for all third-party relationships. Specific to deposit insurance, these policies should ensure non-bank entities sufficiently and accurately identify which parties and products are insured. This can be accomplished by, among other means, reviewing and monitoring third-party websites and marketing materials for the appropriate disclosures.

The timing of the FDIC's advisory is no accident. The significant drop in value and other stresses to the crypto market during the second quarter have led to some well-publicized bankruptcy filings and the inability of customers to access or make withdrawals of their crypto assets. Accordingly, the FDIC also finalized rules on May 17, 2022, clarifying their ability to enforce existing prohibitions on making false or misleading statements about deposit insurance or misuse of the FDIC's logo against non-banks and non-bank products. These new rules have already resulted in the FDIC issuing letter to a large crypto firm, ordering the company to cease-and-desist from making false and misleading statements about the company's FDIC deposit insurance status.

Conclusions

In light of the FDIC's renewed focus in this area, banks should ensure their third-party risk management policies and procedures include the review and monitoring of deposit insurance disclosures and statements by those third-parties for compliance with the FDIC's rule and regulations. This is especially true for those banks partnering with third-parties to offer deposit and non-deposit products, including crypto assets.