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Why Fintechs and Crypto Companies Should Pay Attention to the FDIC's Latest Round of Cease-and-Desist Letters

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On February 15th, the Federal Deposit Insurance Corporation (FDIC) issued another round of cease-and-desist letters demanding that companies stop making false and misleading statements regarding deposit insurance coverage. The FDIC sent letters to a cryptocurrency exchange, crypto review websites, and (most notably) a non-crypto fintech offering high-yield deposit accounts. In addition to making false or misleading statements, the FDIC claimed that the crypto exchange and fintech violated a new FDIC rule by failing to identify the insured depository institution(s) in which customers' funds may be placed when making deposit insurance claims. This round of cease-and-desist letters could signal that the FDIC's scrutiny of deposit insurance claims is expanding beyond crypto-related businesses.

Deposit insurance claims by crypto-related businesses

The FDIC sent three of its four cease-and-desist letters to a crypto exchange and two crypto information websites reviewing the exchange. In its letter to the exchange, the FDIC highlighted the following problematic statement on the exchange's website: "U.S. dollars held in your [exchange] fiat currency wallet are FDIC-insured up to $250,000 per account." According to the FDIC, this statement is false or misleading in violation of the Federal Deposit Insurance Act (FDI Act) because the FDIC does not insure any cryptocurrency exchange. The two crypto review websites received cease-and-desist letters for repeating substantially the same deposit insurance claim in articles reviewing the exchange.

In the cease-and-desist letter to the crypto exchange, the FDIC also noted that the exchange failed to identify the insured depository institution(s) in which customers' fund may be placed when making that claim that its wallets are FDIC-insured. This omission violated the new False Advertising, Misrepresentations of Insured Status, and Misuse of the FDIC's Name or Logo rule, which the FDIC finalized in May 2022.

Within 15 days of receiving the letter, the cryptocurrency exchange and the review websites must remove all statements and references in customer-facing materials (including social media accounts) suggesting that (i) the exchange is FDIC-insured, (ii) any funds held in cryptocurrency are protected by FDIC insurance, and (iii) FDIC insurance provides protection or coverage in any manner or extent other than as set forth in the FDI Act. The cryptocurrency exchange must also clearly and accurately identify the nature and extent of FDIC insurance available with its products. Finally, when making FDIC-insurance claims, the exchange must identify the insured depository institution(s), with which the exchange has a direct or indirect relationship for the placement of deposits and into which customers' funds may be deposited.

Deposit insurance claims by the fintech

A fintech offering deposit accounts with an eye-popping 3% interest per month also received a cease-and-desist letter from the FDIC, which provided the following examples of problematic deposit insurance statements on the fintech's website:

"With a minimum of $500 and with no max limit, your deposits are secured with the FDIC."

In a FAQ asking "How safe is This," the Fintech answered, "the FDIC www.fdic.gov LEGAL DIVISION Federal Deposit Insurance Corporation (Federal Deposit Insurance Corporation) insures our accounts up to $250,000."

In a FAQ asking "What Will Happen to My Funds if [the Fintech] Collapses," the Fintech answered, "as long as our total value of accounts do not exceed FDIC limits you will not lose any portion of your funds if [the Fintech] collapses."

According to the FDIC, these statements indicated or implied that the fintech is itself FDIC-insured, that funds deposited with the fintech will be insured by the FDIC with no maximum limit, and that FDIC insurance will provide protection in the event of the fintech's failure—statements that FDIC purport to be false or misleading in violation of the FDI Act.

Similar to the crypto exchange, the FDIC noted that the fintech failed to identify the insured depository institution(s), with which the fintech has a direct or indirect relationship for the placement of deposits and into which customers' funds may be placed when the fintech made FDIC insurance claims. In addition to prohibiting false and misleading statements, the FDIC ordered the fintech to identify such insured depository institutions(s) and to clearly and accurately describe the nature and extent of deposit insurance with its products if pass-through FDIC insurance is available.

What this means to you

The FDIC issued these cease-and-desist letters pursuant to the FDI Act, which prohibits any person from representing or implying that an uninsured product is FDIC-insured or from knowingly misrepresenting the extent and manner of deposit insurance. This prohibition applies to any person and primarily impacts nonbanks that are not insured by the FDIC. In addition to cease-and-desist letters, the FDIC may assess civil money penalties for false or misleading statements regarding FDIC insurance coverage.

The FDIC's latest round of cease-and-desist letters follows another batch sent in August 2022 to five crypto-related companies including the now infamous FTX. At the time of the initial cease-and-desist letters, the FDIC had warned of an increase in deposit insurance misrepresentations that jeopardized the integrity of the FDIC insurance system and create consumer harm.

The latest round of letters could signal that the FDIC's scrutiny of deposit insurance claims is expanding beyond crypto-related companies to nonbank fintechs and product review websites more generally. The letters also evidence that the FDIC is monitoring compliance with its new False Advertising, Misrepresentations of Insured Status, and Misuse of the FDIC's Name or Logo rule. The rule includes a process for the public to report suspected violations to the FDIC and could put more companies on the FDIC's radar. Nonbanks and review websites should prioritize vetting any deposit insurance claims it makes to consumers.

Contact us

If you have questions about regulatory considerations when making deposit insurance claims, please reach out to Susan Seaman, Daniel Wilkinson, or your Husch Blackwell attorney.