



August 8, 2023

ANOTHER WARNING ON INSURANCE CLAIMS

The Federal Deposit Insurance Corporation (FDIC) has issued a cease and desist letter to Unbanked, Inc. concerning potential violations of Section 18(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. § 1828(a)(4)) for deceptive statements suggesting that various crypto-related products may be covered by FDIC deposit insurance. Unbanked, a nonbank, maintains relationships with insured banks.

Section 18(a)(4) and 12 C.F.R. Part 328, Subpart B (*False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo*) prohibit misrepresenting that uninsured financial products are insured or misrepresenting the nature and extent of insurance by making affirmative statements or omitting material information. Problematic statements that the FDIC identified included (i) tweets that stated that Unbanked offers "FDIC-insured crypto bank accounts" and FDIC-insured "crypto accounts," (ii) discussion of the availability of FDIC-insured checking accounts in too close proximity with references to trading crypto assets, without appropriately disclaiming that the referenced crypto assets are not FDIC-insured or guaranteed, (iii) unqualified broad statements that "our accounts are FDIC insured," etc. The FDIC also noted that Unbanked's insured bank partners were not adequately identified with regard to offered deposit accounts.

The FDIC has issued warnings to FDIC-insured institutions regarding misrepresentations made by some companies involved with cryptocurrencies (digital assets) previously. See FIL-35-2022 (July 29, 2022) and the accompanying Advisory and Fact Sheet. The FDIC has generally advised that communications related to deposit insurance need to be clear and conspicuous, ensuring that consumers understand when FDIC deposit insurance does and does not apply and how (e.g., that FDIC deposit insurance protects insured depositors only after an insured bank fails and only to the extent of applicable coverage). More specifically, nonbanks (such as companies dealing in digital assets like custodians, exchanges and neobanks) that may advertise or offer FDIC-insured products provided by insured banks, alongside other products and services, can reduce consumer confusion by clearly and conspicuously:

(1) Stating that they (nonbanks) are not an insured bank;

- (2) Identifying the insured bank(s) where any customer funds may be held on deposit; and
- (3) Communicating that digital assets are not FDIC-insured products and may lose value.

Similar charges have been leveled against nonbanks with regard to the nature and extent of Securities Investor Protection Corporation (SIPC) protection for certain cash management accounts that similarly may be neither FDIC-insured nor fully fungible in nature to FDIC-insured accounts.

Relatedly, a number of "neobanks" and "challenger banks" have been the subject of state actions where the related nonbank entity has inappropriately used the term "bank" in their name or other identifying materials such as website addresses. See *Commissioner v. Chime Financial, Inc., Settlement Agreement* (Mar. 29, 2021).

These newer concerns join more traditional bank-nonbank relationship concerns like "true creditor." See, e.g., our ALERTS of [Nov. 10, 2022](#) and [Sept. 22, 2022](#). Most recently, the federal banking agencies issued updated guidance on managing risks in third-party relationships. See our ALERT of [June 12, 2023](#).

We have helped numerous clients navigate the various obstacles involved in bank chartering, bank acquisition, bank partnerships and challenger banks. Every effort is unique and may require some creative maneuvering to achieve a successful conclusion. If considering entry or access into banking, including the development of so-called "neobanks" or "challenger" banks, let us know how we can help you reach your objectives successfully.

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