



FDIC EXTENDS COMMENT PERIOD FOR PROPOSED CUSTODIAL ACCOUNTS RULE

The Federal Deposit Insurance Corporation (“FDIC”) announced this week that it is extending the comment period for the proposed rule on Custodial Deposit Accounts with Transactional Features and Prompt Payment of Deposit Insurance to Depositors from the rule’s original December 2, 2024 comment deadline to January 16, 2025.

Proposed in the wake of the Synapse collapse and the growth of banking-as-a-service arrangements, the rule seeks to strengthen recordkeeping for bank deposits received as part of third-party arrangements wherein the third-party non-bank company accepts deposits on behalf of consumers and businesses.

The proposed rule applies to insured depository institutions (“IDIs”) that hold “custodial deposit accounts with transaction features”, defined as a deposit account that (i) is established for the benefit of beneficial owner(s); (ii) holds commingled deposits of multiple beneficial owners and (iii) a beneficial owner may authorize or direct a transfer through the account holder from the account to a party other than the account holder or beneficial owner. The proposal expressly exempts certain custodial deposit accounts with transaction features, generally where such accounts are otherwise subject to heightened oversight, including, but not limited to, accounts (i) that hold only trust deposits, (ii) established by government depositors, (iii) established by brokers or dealers under the Securities and Exchange Act of 1934 and (iv) where federal or state law prohibits the disclosure of the identities of the beneficial owners of the deposits.

In general, the rule would require IDIs with accounts subject to the rule to maintain records establishing, for each custodial account, (i) the beneficial owners of the custodial deposit account, (ii) the balance attributable to each beneficial owner and (iii) the ownership category in which the beneficial owner holds the deposited funds. The records must be maintained in a specific electronic file format, in part to facilitate prompt payment of deposit insurance in the event of the IDI’s failure. IDIs may maintain records through the use of a third party, subject to certain additional requirements. For example, the IDI must have direct, continuous and unrestricted access to records maintained by the third party for the IDI, even in the event of a business interruption of the third party, and the IDI must have a direct contractual relationship with the third party that includes certain risk

mitigation measures.

Additionally, the rule would require IDIs to maintain appropriate internal controls, including (i) maintaining accurate deposit account balances showing the respective individual beneficial ownership interests associated with the custodial deposit account and (ii) conducting reconciliations against the beneficial ownership records no less frequently than daily.

As the relationships between banks, “middleware providers” (like Synapse) and financial technology companies continue to become more complex, so too do the rules, regulations and guidances surrounding those relationships. See our ALERTS of [June 12, 2023](#) and [Sep. 22, 2022](#). The FDIC’s proposed rule would add another layer to the compliance landscape banks and fintechs must navigate in entering bank-fintech arrangements. However, given the upcoming change in presidential administration in January 2025, the FDIC’s position regarding this proposed rule could also change.

Regardless, careful recordkeeping and risk management are essential elements of a properly structured bank-fintech arrangement, particularly for banks intent on ensuring the safety and soundness of their institution. We will continue to monitor the status of this proposed rule and provide updates when they become available. □

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