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FDIC's Final Rule on Official Signs, Advertising Requirements, and False Advertising*

On December 20, 2023, the FDIC adopted a final rule that amends Subpart A to 12 CFR Part 328 entitled, "*FDIC Official Signs, Advertisement of Membership, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo*," ("Final Rule"). Briefly, the Final Rule modernizes the prior 2006 regulations governing an insured depository institutions' (IDIs) use of the official FDIC signs and advertising statements, and also clarifies the regulations regarding false advertisement, misrepresentations of deposit insurance coverage, and misuse of the FDIC's name or logo.

The banking industry has significantly changed since the prior regulations were last updated in 2006. For example, consumers have increasingly relied on the internet and mobile banking channels to access banking services. Also, IDIs have progressively begun operating physical premises with diverse layouts and designs including electronically staffed kiosks, interactive automated teller machines (ATMs) that provide remote assistance with a teller, and teller-less cafes with internet access where deposits can be accepted on tablets or through ATMs. The Final Rule's purpose is to empower consumers to better understand when they are conducting business with an IDI, including digital and mobile channels, and when their funds are protected by the FDIC's deposit insurance coverage. Additionally, the Final Rule's amendments on misrepresentations of deposit insurance coverage are intended to address specific scenarios where information provided to consumers may be misleading with respect to deposit insurance coverage. As a result, the Final Rule clarifies the FDIC's procedures for evaluating potential violations.

Generally, the Final Rule includes the following requirements:

1. Modernizes and amends the rules governing the display of the official sign in branches to include, for example, the rules to the IDIs' physical premises with different layouts and designs where consumers have access to or transact with deposits;
2. Establishes and requires the display of the FDIC's official digital sign on bank websites, mobile applications, and certain IDI ATMs and other devices;
3. Requires the use of disclosures differentiating deposits and non-deposit products across all banking channels, including digital channels;

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4. Clarifies the FDIC's rules regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where information provided to consumers may be misleading;

5. Amends the definition of "non-deposit product" to include crypto-assets and specifically addresses safe deposit box services; and

6. Requires IDIs to establish and maintain written policies and procedures addressing compliance with Part 328.

The Final Rule becomes effective on April 1, 2024, with an extended compliance date of January 1, 2025.

Bankers' Compliance Group will be covering the Final Rule in detail at an upcoming monthly telephone briefing. For more information on the Final Rule, contact Anne McEvilly at **AMcEvilly@ABLAWYERS.COM**.