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BLOG

FDIC Issues Crypto Advisory Concerning Alleged Misrepresentations to Consumers

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The recent cessation of operations by some cryptocurrency exchange companies has led the Federal Deposit Insurance Company (FDIC) to increase its scrutiny of bank/digital asset partnerships, particularly of how those partnerships are marketed and the extent of federal deposit insurance coverage. As a result, on July 29, 2022, the FDIC issued an advisory (the Advisory) regarding the applicability of deposit insurance for bank accounts linked to "crypto companies." The Advisory was issued one day after the FDIC and the Federal Reserve Board accused Voyager Digital (Voyager), a cryptocurrency exchange company, of misleading consumers about its federal deposit insurance arrangements.

Why This Matters

- Historically, the FDIC has not taken an active role in regulating the digital asset space.
- The recent market volatility resulting from the insolvency of digital asset businesses has led the FDIC, along with other prudential regulators, to increase scrutiny of bank partnerships with digital asset companies.
- Digital asset companies and their partners should ensure that customers are clearly informed of the limitations of FDIC deposit insurance.
- Failure to clearly inform customers can result in the FDIC or other federal bank regulators taking an enforcement action.

The Context

In July 2022, Voyager filed for bankruptcy, leading several customers to question what would happen to their non-cryptocurrency deposits held with the company. On July 28, 2022, the FDIC and the Board of Governors of the Federal Reserve System (collectively, the Agencies) issued a cease and desist letter to Voyager requesting it stop making "false or misleading statements" that allegedly confused consumers about whether their funds or the company itself were protected by the FDIC. The Agencies alleged that Voyager made various misrepresentations to its customers online, suggesting that: (i) Voyager's accounts are FDIC-insured; (ii) customers who invested with the

Voyager cryptocurrency platform would receive FDIC insurance coverage for funds provided to, held by, on, or with Voyager, and (iii) the FDIC would insure customers against the failure of Voyager itself.

The FDIC stated that Voyager, in making these alleged misrepresentations, violated the Federal Deposit Insurance Act of 1933, as amended, which prohibits anyone from implying that deposits are insured when they are not. The alleged misrepresentations, the FDIC claimed, had the potential to be particularly confusing for customers because Voyager maintains one or more deposit accounts at Metropolitan Commercial Bank (MCB), an FDIC-insured depository institution, for the benefit of persons who make U.S. dollar deposits in their Voyager accounts. Consequently, the FDIC clarified that while MCB is FDIC-insured, Voyager is not. As such, customers of the Voyager cryptocurrency platform do not receive FDIC insurance coverage for all funds provided to, held by, on, or with Voyager. Most importantly, the FDIC does not insure customers against the failure of Voyager itself. The agencies demanded that Voyager remove any statements suggesting anything to the contrary.

The FDIC Advisory

One day later, on July 29, 2022, the FDIC published the Advisory to address misconceptions about the scope of federal deposit insurance coverage. The FDIC expressed its concern regarding the risks of consumer confusion or harm arising from crypto assets offered by, through, or in connection with insured depository institutions. In particular, the FDIC expressed concern regarding confusion by non-bank customers who might “mistakenly believe they are protected against any type of loss” or might “not understand the role of the bank as it relates to the activities of the non-bank, or the speculative nature of certain crypto assets as compared to deposit products.”

The FDIC contemporaneously published a Fact Sheet in further effort to address misrepresentations about FDIC deposit insurance by some “crypto companies.” The Fact Sheet makes clear that the FDIC *only* insures deposits held at insured banks and savings associations and—most relevantly—*only in the unlikely event of an insured bank’s failure*. The FDIC does not insure digital assets issued by non-bank entities, such as crypto companies. Specifically, FDIC insurance does not protect against the default, insolvency, or bankruptcy of any non-bank entity, including crypto custodians, exchanges, brokers, wallet providers, and neobanks. As a result, it is more technically accurate to say that a cryptocurrency exchange holds its money at a U.S., FDIC-insured bank, rather than representing that the cryptocurrency exchange is insured by the FDIC.

Winston & Strawn is closely monitoring these developments. We will provide our clients and friends of the firm with more information on this topic as it comes available.
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