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Protecting Depositors by Enforcing Proper Advertising of FDIC Insurance

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During an open session of the Federal Deposit Insurance Corporation ("FDIC") this week, the Board of Directors voted to finalize a new regulation that will give the FDIC, and the public, better tools to ensure that deposits advertising does not mislead the public, consumers and businesses alike, regarding whether the deposits will be insured. The Consumer Financial Protection Bureau ("CFPB") issued the first of its regulatory Circulars to provide guidance regarding the same issues, but extended the scope of products that could include misleading advertising regarding deposit insurance to certain kinds of cryptocurrency products that purport to offer stability that is akin to deposits. As the FDIC explains in the Federal Register notice that contains the final rule, the FDIC has broad statutory authority to address these kinds of problems in the marketplace, but to date has not put into place specific regulations. The rule, which will be published as 12 CFR Part 328, is focused upon advertising that: (1) falsely represents that any deposit is FDIC-insured by using the FDIC's name or logo; (2) knowingly misrepresents that any deposit is insured by the FDIC if such an item is not so insured; or (3) knowingly misrepresents the extent to which or the manner in which any deposit is insured by the FDIC, if such an item is not insured to the extent or manner represented. In addition, anyone that "aids or abets another in any of the foregoing" is also viewed as being in violation of the rule, which extends the potential liability for violations of the rule well beyond just the advertiser, but also possibly advertising agencies or others involved in the dissemination of such advertising.