

October 12, 2006

MEMORANDUM TO: The Board of Directors

FROM: Sandra L. Thompson
Acting Director
Division of Supervision and
Consumer Protection

Douglas H. Jones
Acting General Counsel

SUBJECT: Final Rule Regarding the Official FDIC Sign and Advertising of
FDIC Membership

RECOMMENDATION:

We recommend that the Board of Directors (Board) of the Federal Deposit Insurance Corporation (FDIC) authorize the Executive Secretary to publish in the *Federal Register* a final rule regarding the official FDIC sign and advertising of FDIC membership.

DISCUSSION:

1. Proposed Rule.

Pursuant to section 18(a) of the Federal Deposit Insurance Act (FDI Act), as amended by section 2(c)(2) of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005, Pub. L. No. 109-173, 119 Stat. 3601-19 (FDIRCA Act), the FDIC must promulgate regulations prescribing a sign or signs that each insured depository institution will be required to display at each place of business it maintains.

On July 17, 2006, the FDIC published a notice of proposed rulemaking (NPR) in the Federal Register, at 71 Fed. Reg. 40440, proposing to revise its regulations regarding the official FDIC sign and advertising of FDIC membership, which are codified at title 12, part 328 of the Code of Federal Regulations (Part 328). The NPR proposed to: (1) replace the separate signs used by banks and savings associations with a new sign which would be used by all insured depository institutions; (2) revise the advertising requirements in section 328.3 of Part 328 by extending the requirements to savings associations and by simplifying the exceptions to the requirements; and (3) make other clarifying, non-substantive, and conforming revisions to Part 328.

2. Comments Received.

The FDIC received twelve comments from the general public on the NPR. Nine of the comments were from insured depository institutions and three were from trade associations. The comments raised four key issues:

- A. Whether insured depository institutions should be required to display only the official black-and-gold sign at stations or windows where insured deposits are received (teller windows), or whether they should continue to be allowed to display – at their own expense – signs that vary from the official sign in size, color, and materials at teller windows;
- B. Whether the revisions to the advertising requirements should be clarified to alleviate commenters’ concerns that items currently excepted from the requirements might, under the proposed rule, be interpreted to be subject to the requirements;
- C. Whether the final rule should include a provision restricting use of the official advertising statement in advertisements involving non-deposit products (NDPs); and
- D. Whether the effective date of the final rule should be more than six months after its publication in the Federal Register, as proposed in the NPR.

3. Staff Recommendation.

The staff recommends that the Board authorize publication in the Federal Register of a final rule, attached as Exhibit 1, which would address the foregoing issues as follows:

A. *Varied signs at Teller Windows.*

The final rule would allow insured depository institutions to display – at their own expense – signs that vary from the official sign in size, color, and materials at teller windows, provided that any such varied signs that are displayed at teller windows must not be smaller in size than the official sign (*i.e.*, 7” by 3”) and must have the same color for the text and symbols. Three commenters argued that institutions should be allowed to change the color scheme of the official sign to match their corporate signage as long as the integrity of the design is not affected. They maintained that the FDIC has allowed varied signs at teller windows since the early 1990’s, pursuant to advisory opinions, and that there is no reason to change that policy. While the staff believes the FDIC has a legitimate concern about making sure that the official sign remains easily recognizable to the general public, there is no evidence at present that having varied signs at teller windows has caused problems in this regard.

B. *Clarifying the Advertising Requirements.*

The final rule would clarify the advertising requirements in section 328.3 in two ways. First, the final rule substitutes the phrase “generally promote banking services” with the phrase “promote non-specific banking products and services,” so that the advertising requirements apply

to all advertisements that either promote deposit products and services or promote non-specific banking products and services. Under the final rule, an advertisement promotes non-specific banking products and services if it includes the name of the insured depository institution but does not list or describe particular products or services offered by the institution – *e.g.*, “Anytown Bank, offering a full range of banking services.”

Second, the final rule adds to the list of exceptions set forth in section 328.3(d) of the proposed rule those exceptions listed in section 328.3(c)(1), (2), (4), (5) and (6) of the current rule. These exceptions have been explicitly listed to address commenters’ concerns that the proposed rule was so vague that it might have been read to include items that are currently excepted from the advertising requirements pursuant to section 328.3(c). The preamble to the final rule explains that the purpose of consolidating the exceptions to the advertising requirements was to make it easier to understand when the requirements apply and when they do not apply, not to expand the scope of the advertising requirements.

C. NDP Provision.

The final rule would include a provision restricting use of the official advertising statement in advertisements involving NDPs. The final rule defines the term “non-deposit product” to include, without limitation, insurance products, annuities, mutual funds, and securities. The products specifically included in the definition of non-deposit product are products that, in the staff’s experience, may be mistaken by customers as being FDIC-insured. Credit products are excluded from the definition of non-deposit product. The term “hybrid product” is defined as a product or service that has both deposit product features and non-deposit product features – *e.g.*, a sweep account.

Under the final rule, insured depository institutions will be prohibited from using the official advertising statement in advertisements containing information only about NDPs or hybrid products. In mixed advertisements, containing information about both NDPs or hybrid products and insured deposit products, the official advertising statement will have to be clearly segregated from information about the NDPs or hybrid products. The NPR specifically requested comment on whether the final rule should have such a provision restricting use of the official advertising statement in advertisements involving NDPs. The FDIC received six comments on the NDP proposal. Five commenters supported having such a provision in the final rule. The sixth commenter thought such a provision is unnecessary but recommended that, if the provision is adopted, it should be part of a separate rulemaking. The staff does not believe a separate rulemaking is necessary.

D. Effective Date.

The final rule would have an effective date of one year after its publication in the Federal Register. The NPR proposed that the final rule would become effective six months after its publication in the Federal Register. However, based on concerns raised by commenters, the staff recommends extending the effective date.

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Attachments:

- Exhibit 1 – Final Rule
- Exhibit 2 – Official Sign
- Exhibit 3 – Resolution