

**MEMO**

**TO:** The Board of Directors

**FROM:** Shawn Khani  
Acting Director, Division of Resolutions and Receiverships

Mark Pearce  
Director, Division of Depositor and Consumer Protection

**DATE:** September 17, 2024

**RE:** Notice of Proposed Rulemaking on Requirements for Custodial Deposit Accounts with Transactional Features and Prompt Payment of Deposit Insurance to Depositors

**RECOMMENDATION**

Staff recommends that the FDIC’s Board of Directors (“Board”) authorize publication of the attached notice of proposed rulemaking (“NPR,” “proposed rule,” or “the proposal”) with a 60-day comment period.

**SUMMARY**

The proposal would seek to strengthen FDIC-insured depository institutions’ (“IDIs”) recordkeeping for custodial deposit accounts with transactional features. The proposed rule is intended to promote the FDIC’s ability to promptly make deposit insurance determinations and, if necessary, pay deposit insurance claims “as soon as possible” in the event of the failure of an IDI. The proposed requirements are also expected to result in depositor and consumer protection benefits, such as promoting timely access by consumers to their funds, even in the absence of the failure of an IDI.

**BACKGROUND**

The business of deposit taking in the digital age has evolved, creating new opportunities for IDIs to gain access to deposits through third parties in increasingly complex relationships. This evolution has included the widespread use of digital channels, including websites and mobile applications, which created new opportunities and options to deliver financial products and services to consumer. However, it has also created risks for consumers, including confusion regarding the applicability and availability of deposit insurance to protect their money from loss.

Concur:

Harrel M. Pettway  
General Counsel

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Recent events have underscored issues that can be associated with some IDI arrangements with third parties to deliver IDI deposit products and services. For example, the bankruptcy of Synapse Financial Technologies, Inc. (Synapse), a technology company that worked with several IDIs and numerous financial technology (fintech) companies, has affected the ability of consumers to access funds placed at IDIs for a number of months, resulting in significant and ongoing harm to those consumers. In many cases, it was advertised that the funds were FDIC-insured, and consumers may have believed that their funds would remain safe and accessible due to representations made regarding placement of those funds in IDIs. Published reports further suggest that some of those consumers affected by the Synapse bankruptcy had placed the funds in accounts through a fintech that they used for day-to-day living expenses thereby intensifying the effect of their loss of access.

In the wake of this bankruptcy, including the fact that IDIs encountered significant difficulties in obtaining, reviewing, and reconciling Synapse's records, staff believes that these circumstances have raised concerns about the accuracy and integrity of those records.

These events highlight substantial risks with respect to the prompt and accurate payment of deposit insurance in the case of an IDI's failure. If an IDI has an arrangement with a third party where custodial deposit account recordkeeping is inadequate or unreliable, this would impede the FDIC's ability to promptly make deposit insurance determinations in the event of its failure. In addition, these events also have exposed the risks to consumers of being unable to access funds at IDIs, even in the absence of the failure of an IDI.

#### *Pass-Through Deposit Insurance*

The FDIC has long recognized the significance of custodial deposit accounts in the banking system, and specifically accommodates these types of accounts in its deposit insurance regulations through the concept of pass-through deposit insurance. Pass-through deposit insurance provides a mechanism for recognizing the owners of deposited funds and insuring their interests in the deposits to the same extent as if the owners had deposited the funds directly at the bank, provided certain conditions are met.<sup>1</sup> The FDIC makes determinations with respect to pass-through deposit insurance coverage at the time an IDI fails.<sup>2</sup>

Under the pass-through insurance regulations, the FDIC may rely on records of parties other than a failed IDI in making deposit insurance determinations, if such records are maintained in good faith and in the regular course of business. If the regulatory pass-through insurance requirements are satisfied, each owner's interest in the deposit at the IDI is separately insured up to the statutory deposit insurance limit of \$250,000 for deposits held in each deposit ownership category. If the pass-through insurance requirements are not satisfied, the deposit is insured to the person named on the IDI's records and aggregated with any other deposits that person holds at the same IDI in the same ownership category.

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<sup>1</sup> The FDIC is statutorily required to aggregate, for purposes of the deposit insurance limit, deposits maintained by a depositor "either in the name of the depositor or in the name of any other person..." 12 U.S.C. 1821(a)(1)(C).

<sup>2</sup> By statute, the FDIC is required to pay deposit insurance "as soon as possible" following the liquidation, closing, or winding up of any IDI. 12 U.S.C. 1821(f)(1).

### *Custodial Deposit Accounts and Technology Developments*

For purposes of this proposal, a “custodial deposit account” arrangement is a relationship where one party is responsible for opening a deposit account at a bank on behalf of others, who may own the funds but often lack a direct relationship with the bank.<sup>3</sup> Coupled with technological innovations and advancements, custodial deposit account arrangements have transformed the industry in many respects over the years, resulting in new business models for providing banking and financial services. More recently, this evolution of banking and financial services has increasingly included nonbank financial technology (fintech) companies offering consumers new alternatives for accessing banking products and services. Many consumers are choosing to open deposit accounts indirectly through fintech companies to make purchases, send or receive money, and pay bills. Fintech companies’ accounts at IDIs frequently, though not always, are custodial deposit accounts.

### *Synapse Bankruptcy*

Synapse was a “middleware provider” for numerous fintech companies, meaning that its software bridged the information technology systems of fintech companies and IDIs. More specifically, Synapse provided application programming interfaces (APIs) and technological infrastructure that allowed businesses to integrate banking services into their own applications. In these arrangements, the IDIs did not maintain the ledgers of the customers or the deposit amounts attributed to each individual customer.

Synapse filed for bankruptcy protection in late April 2024. The bankruptcy of Synapse resulted in severe hardship for consumers that is deeply troubling. In early May 2024, one of the IDIs that partnered with Synapse froze deposits that had been placed at the IDI through relationships with Synapse and the fintech companies that Synapse serviced. According to court filings, the IDI stated at the time that it froze the accounts because Synapse denied the IDI access to an essential system through which the IDI accessed information on end users, deposits, and transactions. As a result, consumers who had deposited funds through these fintech companies that partnered with Synapse were unable to access their funds held at the IDI.

The bankruptcy court appointed a trustee for Synapse on May 24, 2024, and both the bankruptcy court and the trustee have sought to facilitate the release of the fintech customers’ funds that are being held at the IDIs as quickly as possible. Court filings show that the trustee had difficulty obtaining access to Synapse’s data and even after obtaining access to such data, the trustee and IDIs have experienced difficulties reviewing and reconciling this data. The trustee sent a letter to federal banking regulators on June 20, 2024, seeking assistance in communicating with end users whose funds are affected by the Synapse bankruptcy, and noting that the bankruptcy’s impact on end users of the fintechs has been devastating.

### *Need for Rulemaking*

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<sup>3</sup> The term “custodial account” may have different meanings in other banking contexts, and this NPR is not intended to address or affect any requirements that might apply in other contexts in which the term “custodial account” is used.

It has become apparent from the events described above that IDIs' recordkeeping practices should be enhanced with respect to certain custodial deposit account arrangements. Staff believes it would be beneficial to address these issues in a consistent manner across the industry through rulemaking, rather than rely on the supervisory and enforcement processes.

As described above, custodial deposit account arrangements between IDIs and nonbanks are becoming more common and more complex, warranting enhanced recordkeeping requirements to support the prompt payment of deposit insurance in the event of an IDI's failure. In addition, recent events have exposed potential risks to beneficial owners, including consumers, of deposits at FDIC-insured institutions, even in the absence of the failure of an IDI.

## PROPOSED RULE

### *Custodial Deposit Accounts with Transactional Features*

The proposed rule's requirements would apply to IDIs that hold "custodial deposit accounts with transactional features," except for those custodial deposit accounts specifically exempted as described below. The proposed requirements would apply regardless of the date a particular custodial deposit account was established.

The term "custodial deposit accounts with transactional features" would be defined as a deposit account that meets three requirements: (1) the account is established for the benefit of beneficial owners; (2) the account holds commingled deposits of multiple beneficial owners; and (3) 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.

"Beneficial owner" is defined as "a person or entity that owns, under applicable law, the funds in a custodial deposit account."<sup>4</sup> The proposal distinguishes a "beneficial owner" from an "account holder," with "account holder" defined as "the person or entity who opens or establishes a custodial deposit account with transactional features with an insured depository institution." This definition does not require that the "account holder" be the titled owner of the account.

For a custodial deposit account to be considered a "custodial deposit account with transactional features," a beneficial owner must be able to authorize or direct a transfer through the account holder from the account to a party other than the account holder or beneficial owner. Therefore, the proposed requirements apply only to custodial deposit accounts that are established and used in a manner that allows beneficial owners to direct a transfer of funds from the account to another party – for example, to make purchases or pay bills.

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<sup>4</sup> "Beneficial owner" as used in the proposed rule is intended to mirror the meaning of beneficial owner as currently used for deposit insurance coverage purposes under 12 CFR 330.5. The proposed rule does not intend to incorporate the meaning of "beneficial owner" as that term may be used for purposes of other laws applicable to IDIs, such as the Bank Secrecy Act. The proposed rule's definition of "beneficial owner" should not be confused with other definitions of the same term, including that associated with the Corporate Transparency Act or the Customer Due Diligence rule, which relate to beneficial owners of legal entities, rather than accounts.

### *Exemptions*

The proposal would expressly exempt the following custodial deposit accounts from its requirements even if they have transactional features. The proposal provides a list of custodial deposit accounts that are exempt from the proposed recordkeeping requirements:

- Custodial deposit accounts that hold only trust deposits
- Custodial deposit accounts established by government depositors
- Custodial deposit accounts established by brokers or dealers under the Securities and Exchange Act of 1934, and investment advisers under the Investment Advisers Act of 1940
- Custodial deposit accounts established by attorneys or law firms on behalf of clients, commonly known as interest on lawyers trust accounts (IOLTA accounts)
- Custodial deposit accounts maintained in connection with employee benefit plans and retirement plans
- Custodial deposit accounts maintained by real estate brokers, real estate agents, title companies, and qualified intermediaries under the Internal Revenue Code.
- Custodial deposit accounts maintained by a mortgage servicer in a custodial or other fiduciary capacity.
- Custodial deposit accounts for which federal or state law prohibits disclosure of the identities of the beneficial owners of the deposits
- Custodial deposit accounts of deposit placement networks or reciprocal networks (unless the network's purpose is to enable clients to make payment transactions using funds in the custodial deposit account at the network IDIs).
- Custodial deposit accounts holding security deposits tied to property owners for a homeownership, condominium, or other similar housing association governed by state law, and accounts holding security deposits tied to residential or commercial leasehold interests

Staff believes the policy objectives of this proposal would not be advanced through additional recordkeeping requirements for these custodial deposit accounts. For many of these custodial deposit accounts, the account holders are subject to other recordkeeping requirements. In some of these instances, accounts have only limited transactional activity, meaning that they present less difficulty for the FDIC in making deposit insurance determinations.

### *Recordkeeping Requirements, Data Formatting, and Internal Controls*

The proposed rule would require IDIs that hold any custodial deposit accounts with transactional features (unless specifically exempted) to maintain certain records related to the account. These records would identify, for each custodial deposit account, the beneficial owners of the custodial deposit account, the balance attributable to each beneficial owner, and the ownership category in which the beneficial owner holds the deposited funds.

The proposed rule would provide a specific electronic file format for maintenance of records on beneficial owners and their interests in the deposited funds, as described in the proposed Appendix A. The specified data file format would be required regardless of whether the IDI maintains the necessary records itself or, as discussed below, through an arrangement with a third party. FDIC staff believes these records of beneficial ownership would be useful to

the IDI in the event of a disruption affecting the account holder, as they would enable the IDI to determine the identity of the owners of the funds it is holding on deposit. Importantly, these records also would be useful to the FDIC in the event of the IDI's failure, as they would enable a prompt payment of deposit insurance.

The proposed rule also would require IDIs to maintain appropriate internal controls that include (1) maintaining accurate deposit account balances, including the respective individual beneficial ownership interests associated with the custodial deposit account, and (2) conducting reconciliations against the beneficial ownership records no less frequently than at the close of business daily.<sup>5</sup> Reconciliations compare multiple data elements and, if differences are identified, actions are taken to bring the data elements into agreement. The reconciliation requirement is intended to address the completeness and accuracy of transaction processing.

### *Recordkeeping by Third Parties*

Many IDIs, including community banks, regularly employ third parties such as vendors and technology service providers to assist them in carrying out a variety of banking functions. While the proposed rule generally requires that IDIs maintain records of beneficial ownership for custodial deposit accounts, it also would permit those records to be maintained by the IDI through a third party, such as a vendor, software provider, or the account holder, if certain requirements are satisfied.

The IDI would be required to have direct, continuous, and unrestricted access to records maintained by the third party in the standardized file format described in the proposed Appendix A, including access in the event of a business interruption, insolvency, or bankruptcy of the third party.

The IDI also would be required to have continuity plans in place, including backup recordkeeping for the required beneficial ownership records and technical capabilities to ensure compliance with the proposal's requirements.

In addition, records of beneficial ownership maintained by a third party could only be used to satisfy the proposed rule's requirements if the IDI implements appropriate internal controls to (1) accurately determine the respective beneficial ownership interests associated with the custodial deposit account with transactional features, and (2) conduct reconciliations against the beneficial ownership reports no less frequently than as of the close of business daily.

### *Contractual Requirements*

Where records are maintained by a third party, the IDI would be required to have a direct contractual relationship with the third party that includes certain risk mitigation measures. The contract between the IDI and the third party would need to clearly define roles and responsibilities for recordkeeping, including assigning to the IDI rights of the third party that are

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<sup>5</sup> The proposed internal control requirements are also intended to be consistent with Appendix A of Part 364, which states that an IDI should have internal controls appropriate to its size and the nature, scope and risk of its activities, and that provide for, among other things, timely and accurate financial, operational and regulatory reports.

necessary to access data held by other parties. The contract would need to include an explicit provision requiring the third party to implement appropriate internal controls to be able to accurately determine the beneficial ownership interests represented in the custodial deposit account and conduct reconciliations against the beneficial ownership records no less frequently than as of the close of business daily.

In addition, the contract would need to provide for periodic validations, by a person independent of the third party, to verify that the third party is maintaining accurate and complete records and that reconciliations are being performed consistent with the proposed rule's recordkeeping requirement for beneficial ownership interests. If the validation is performed by a party other than the IDI, the results must be provided to the IDI. This is intended to proactively identify and address weaknesses, and provide for an independent, unbiased opinion assessing and verifying that the third party is maintaining accurate and complete records.

#### *Effect on Other Recordkeeping Requirements*

The proposed rule would not supersede or modify any requirements imposed by statute or regulation. For example, where IDIs are required to gather and maintain specific information about their customers under the Bank Secrecy Act and its implementing regulations, satisfying the proposed rule's recordkeeping requirements would not necessarily satisfy the IDI's obligation under the Bank Secrecy Act.

#### *Compliance Measures*

An IDI that holds custodial deposit accounts within the scope of the proposed rule would be required to establish and maintain written policies and procedures to achieve compliance with the proposed rule. This requirement should promote an appropriate level of due diligence from IDIs maintaining custodial deposit accounts with transactional features. To the extent an IDI maintains the relevant records through a third party, these policies and procedures would also need to address achieving compliance with the requirements specific to maintaining records through a third party.

The proposed rule would enhance compliance by implementing an annual certification and reporting process for IDIs holding custodial deposit accounts with transactional features that are subject to the proposal's requirements. The chief executive officer, chief operating officer, or the highest ranking official of an IDI would be required to annually certify that the IDI has implemented and tested its implementation of the recordkeeping requirements within the preceding twelve months. The certification would be submitted to both the FDIC and the IDI's primary federal regulator.

In addition to the annual certification of compliance, an IDI would be required to prepare and submit to the FDIC and its primary federal regulator an annual report containing:

- A description of any material changes to the IDI's information technology systems since the prior annual report that are relevant to the requirements of the proposed rule;

- A list of the account holders that maintain custodial deposit accounts with transactional features subject to the rule, as well as the total balance of those custodial deposit accounts, and the total number of beneficial owners;
- The results of the IDI's testing of its implementation of the recordkeeping requirements; and
- The results of any independent validation of records maintained by third parties as required by the proposed rule and discussed above.

### *Violations and Enforcement*

If an IDI does not satisfy the proposed rule's requirements, the violation could be addressed through the supervisory process, including examinations and in appropriate cases, through enforcement actions.

### **CONCLUSION**

Staff recommends that the FDIC's Board of Directors approve the attached Notice of Proposed Rulemaking for publication in the *Federal Register* for a comment period of 60 days.

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