



MERCURY

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James P. Sheesley

Assistant Executive Secretary
Attention: Comments—RIN 3064-AG07
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

January 16, 2025

VIA ELECTRONIC SUBMISSION

Re: Proposed Rule on Recordkeeping for Custodial Accounts (RIN 3064-AG07)

To Whom It May Concern:

Mercury Technologies, Inc. (“Mercury”) respectfully submits this comment in support of the proposed rule on recordkeeping for custodial accounts (“the Proposal”) published by the Federal Deposit Insurance Corporation (“FDIC”). Mercury is a financial technology company that serves growing technology companies and small businesses through integrations with various FDIC-insured bank partners. As a result, Mercury has significant experience and deep understanding of the issues described in the Proposal. The Proposal is an important step to provide regulatory clarity around the requirements for bank-fintech partnerships and will enable such partnerships to continue to provide important innovation in financial services. While Mercury supports the Proposal, we also respectfully provide some suggestions to ensure it is workable for banks and fintechs and has a successful implementation.

At Mercury, we are dedicated to empowering our customers by partnering with banks to provide a suite of financial services.¹ We strive to offer secure, innovative, and customer-centric financial products that help customers succeed in today’s competitive environment. Clear and consistent recordkeeping practices are critical to fostering customer trust and ensuring that customer funds are properly accounted for and protected. Recent industry issues, like the Synapse bankruptcy that has left some fintech end users without access to funds for months, emphasize the importance of robust and transparent recordkeeping practices and underscore the need for clearer standards to maintain trust and stability in bank-fintech partnerships. As a third-party fintech partner to four FDIC-insured banks, we maintain close, direct relationships with our bank partners and regularly share information on accounts and transactions as described in the Proposal. We believe the Proposal will give Mercury, other fintechs, and banks clarity on regulatory expectations for responsible recordkeeping.

We would like to offer the following recommendations to ensure that any final rule is workable, continues to support innovation, and has a successful implementation:

¹ Mercury previously submitted a [comment](#) in response to the interagency Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses and shared additional information on how we work with our bank partners and suggestions on how the FDIC and other banking agencies could strengthen their engagement on bank-fintech partnerships.

1. **Provide Greater Flexibility in Data Formatting and Structure:** Standardizing data to facilitate operational consistency is critically important for banks, fintechs, and examiners; standardization can improve efficiency, accuracy, and comparability. The Proposal's data formats in Appendix A, however, are overly prescriptive and may limit any final rule's utility across the range of bank-fintech product offerings.

The FDIC should consult with banks and fintechs in developing data formatting and structure requirements that will broadly serve industry and future innovation while also maintaining consistency. Specifically, a final version of the rule should include a clear process for banks to document regulatory approval to record values in lengths longer than what may be set forth in Appendix A. Alternatively, the final rule could instead provide a range for the number of characters that can be included for certain fields. For example, it's not uncommon for individuals to have multiple middle or last names—limiting this field to 50 characters would prevent the reporting of complete information. Similarly, the fields associated with a customer's address are overly restrictive. While null values are allowed under the Proposal for these address fields, no alternative address or location identifiers are listed as approved inputs.

Additionally, a final version of the rule should provide more optionality in the allowance of null values for certain data fields. For example, where an Alternate Identifier serves as the primary identification number for an account, the Tax ID field should allow for null values, so long as the bank and fintech have documented internal processes indicating when, and which type of, alternative identifiers are permitted for their customers. Similarly, when the customer is an entity rather than an individual, null values should be allowed for the data fields 'First Name 1' and 'Last Name 1'.

While standardized formats are essential, rigid requirements may inadvertently increase compliance burdens without improving data utility. By incorporating conditional allowances for certain fields and exception processes, the FDIC can strike an effective balance between uniformity and adaptability, and between clarity and usability.

2. **Clarify and Refine Certain Terminology:** Some of the Proposal's terminology is confusing, especially when considered in the context of other important legal and bank regulatory concepts. Mercury encourages the FDIC to adopt different terms to describe (i) the customers who have legal rights to the funds held in custodial deposit accounts with transactional features ("beneficial owners", as defined in the Proposal) and (ii) the person or entity that opens such accounts for those customers (the Proposal's defined term of "account holder").

The Proposal explains that the term "beneficial owner" is "intended to mirror the meaning of beneficial owner as currently used for deposit insurance coverage purposes under 12 CFR part 330.5" and "should not be confused with other definitions of the same term" under various anti-money laundering rules and regulations like the Bank Secrecy Act or Customer Due Diligence rule (collectively, "AML Requirements").² The practical reality, however, is that this term is certain to introduce confusion despite the FDIC's intentions. A key element of bank-fintech partnerships is the collection, validation, and sharing of information related to customer onboarding, including information about legal entity customers' *beneficial owners*,

² 89 FR 80135, 80140 n. 22.

as such term is defined under AML Requirements. This means that banks and their fintech partners' existing records already contain information about beneficial owners for customer due diligence purposes. Introducing additional reporting and recordkeeping requirements that apply the same term but with a different meaning to *different* data points in the customer relationship will unnecessarily muddy the waters, for banks, fintechs, and regulators alike. In drafting a final rule, the FDIC should introduce a new term—and, in parallel, make a light-touch, non-substantive amendment to its existing regulations in 12 CFR 330.5 to adopt the same term—describing those with ownership rights in funds held in custodial accounts. For example, framing this type of customer not as a “beneficial owner” but rather as the “true depositor” or “equitable owner” would achieve the same goals set out in the Proposal without introducing unnecessary confusion or compromising the spirit and intent of the one other existing regulation where this AML-centric term is currently used.³

The term “account holder” is equally likely to introduce confusion, but for different reasons. For example, many bank-fintech partnerships involve the opening of *virtual accounts* within a custodial account to ledger and maintain accurate records of the true depositor's funds. In those arrangements, the customer holds a subaccount within the custodial account and may also be labeled as an *account holder* at the fintech, whether because of this separate virtual account or as a way for the fintech to identify each customer relationship. To minimize confusion and to alleviate the risk of conflicting terminology, the FDIC should introduce a new, different label to describe the person or entity who opens or establishes the custodial account. Alternative labels like “account sponsor”, “account holder of record”, or “account custodian” would track with the spirit of the Proposal.

- 3. Publish Guidance for the Industry and Examiners:** The FDIC should develop guidance to support the implementation and enforcement of these new requirements and to reduce ambiguity for fintechs and their banking partners. This could include a financial institution letter, frequently asked questions,⁴ or other guidance that sets out more detailed descriptions for field names and for the corresponding ownership rights and capacities, along with illustrative examples of how these things should appear in reports generated for common types of deposit-taking arrangements.

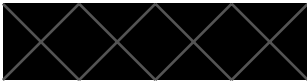
Similarly, since the Proposal contemplates potential enforcement of the rule through supervision, the FDIC should prioritize updates to examination manuals to ensure transparency and to set clear expectations for the industry. The FDIC should also coordinate with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and state banking agencies to ensure there is early—and ongoing—alignment on exam-related information sharing and other elements of supervisory coordination.

³ Specifically, in a final version of the proposal the FDIC would need to include minor updates to remove and replace the term “beneficial owner” in 12 CFR 330.5(a)(2) (“Recognition of deposit ownership in custodial accounts. In the case of custodial deposits, the interest of each beneficial owner may be determined on a fractional or percentage basis.”) and 12 CFR 330.5(b)(3) (“Multi-tiered fiduciary relationships. In deposit accounts where there are multiple levels of fiduciary relationships, there are two methods of satisfying paragraphs (b)(1) and (b)(2) of this section to obtain insurance coverage for the interests of the true beneficial owners of a deposit account.”).

⁴ The FDIC's [Questions and Answers Related to the FDIC's Part 328 Final Rule](#) on the use of the FDIC's official logo and representations of insured status are a helpful example of prior agency efforts to give banks, non-banks, and depositors greater clarity on a recent regulatory change. Mercury encourages the FDIC to engage with the industry to evaluate the topics that would be best suited for coverage in a similar publication addressing any final version of the proposed rule on recordkeeping for custodial accounts.

Mercury is committed to working with the FDIC and other stakeholders to promote a robust and secure banking ecosystem. We appreciate the FDIC's proactive efforts to address the evolving landscape of banking and financial technology, and we believe that the Proposal will play a crucial role in strengthening customer confidence in these partnerships. Thank you for considering our comments.

Sincerely,



Dan Swislow
Director of Policy & Government Affairs
Mercury

cc Immad Akhund, Founder and CEO, Mercury
 Robert Gonzalez, General Counsel, Mercury
 Kayce Seifert, Associate General Counsel, Mercury