MODERN TREASURY

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Submitted via E-mail at: comments@fdic.gov
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20249

Re: Recordkeeping for Custodial Accounts [RIN 3064-AG07]

Modern Treasury welcomes the FDIC's proposed rule. Accurate recordkeeping and reconciliation are critical to protect beneficial owners and maintain public confidence in the banking system in the event of failures of insured depository institutions (IDIs) or fintechs. Put simply, the fallout of Synapse's bankruptcy could have been significantly reduced with robust ledgering and internal controls of the type in the proposed rule. As a provider of cloud software for ledgering and reconciliation, Modern Treasury strongly supports the movement toward better recordkeeping and has shared insights on ledgering best practices.

Background on Modern Treasury

Modern Treasury helps businesses move, track and reconcile money in real time. Our customers represent a wide variety of industries and include digital wallet providers, real estate platforms, title companies, payroll companies, benefits platforms, bill payment services, working capital providers and others. Customers use Modern Treasury to transmit payment instructions to over 40 banking partners, reconcile transactions and safely maintain ledgers of custodial deposit accounts that can be transmitted to their banking partners.

Modern Treasury provides cloud software for payments infrastructure. To be clear, however, we are not in the flow of funds, we do not maintain custodial deposit accounts on behalf of others and we're not a banking-as-a-service provider, neobank or Synapse-style "middleware". Rather, many of our customers ("**account holders**" in the proposed rule) use Modern Treasury's ledgering and reconciliation products to support their own business needs, along with their own compliance requirements or the compliance requirements of their banking partners.

Our comments focus on how infrastructure providers like Modern Treasury can further the purposes of the rule. Our ***Trusted Infrastructure Approach*** addresses several of the questions in the "Recordkeeping Requirements" section of the FDIC's Request for Comment, including in particular "Should the FDIC consider any additional measures where an IDI intends to rely on a third party for keeping the records required by the proposed rule?"

The Final Rule Should Expressly Acknowledge the Benefits of Using Trusted Infrastructure Providers

The FDIC's commentary to the proposed rule rightly recognizes that there are multiple ways that IDIs and "third parties" that maintain records for IDIs may satisfy the rule. In some cases, the IDI itself may engage a service provider as a third party to provide recordkeeping for the IDI. In other cases, as the FDIC points out, the IDIs will rely on the account holder as a "third party": "***Third parties also could include the account holder, for example, if the account holder regularly maintains beneficial ownership records***".[1] As the FDIC elsewhere explains, "***it is***

[1] Preamble, Part III (The Proposed Rule), "Recordkeeping by Third Parties".

unlikely that IDIs currently have all the records necessary to meet all the proposed rule's requirements", meaning that "***IDIs would have to arrange to have the data transmitted to them from account holders...*"** This reflects the fact that the data needed for IDI compliance "***would likely already be collected and maintained by the account holder in the ordinary course of business***".[2]

We agree. Account holders often will serve as "third parties" because many of them already maintain records with the data contemplated in the proposed rule, which IDIs may not possess. Our comments add to the FDIC's observations with a practical point: the best way for account holders to ensure the integrity and availability of these records - and to ensure IDIs have direct, continuous and unrestricted access to the records - will often be to use purpose-built ledgering and reconciliation technology from infrastructure providers.

While the use of infrastructure providers is implicit in the proposal, we respectfully encourage the FDIC to make the point explicit in the final text. We suggest: "***Account holders may serve as third parties to IDIs and may engage infrastructure providers to provide technology to support the recordkeeping or other obligations under this rule***."

We call this the ***Trusted Infrastructure Approach***. Under this approach, the account holder/third party would work with the infrastructure provider and IDI as appropriate to ensure that the final rule's requirements are met.

The Trusted Infrastructure Approach is Different from Synapse-Style "Middleware"

The Trusted Infrastructure Approach stands in contrast to the complexities and risks presented by "middleware providers" like Synapse. In that instance, Synapse had direct relationships with IDIs and end customers accessed their funds at the IDI through Synapse and its partner fintech companies. When Synapse failed, it was not only difficult to find the account records, it also became clear that internal controls were severely lacking to make sure the records were complete and accurate. The issue was made even worse by the complex account and payment structures of the deposit accounts that Synapse had opened on behalf of its fintech partners.

In contrast, the Trusted Infrastructure Approach is simple. Under this approach, the fintech company (1) holds a direct contractual relationship with the IDI as the account holder/third party, with clearly defined roles and responsibilities under the proposed rule and (2) relies on robust technology from the infrastructure provider to support ledgering, risk mitigation and integrity of account records.

The Trusted Infrastructure Approach Reflects Best Practices for Recordkeeping

We believe the Trusted Infrastructure Approach will be common because it both reflects best practices in the financial ecosystem and supports the robust recordkeeping called for in the proposed rule.

1. **Account Holders Already Have These Ledgers**. As the FDIC suggests, many account holders already maintain ledgers that should generally meet the requirements of the proposed rule, so an IDI that lacks this data could naturally rely on the account holder as their "third party". These records exist for good reasons, independent of the proposed rule. Many businesses use a ledger as a ***single source of truth*** for their financial recordkeeping, business operations and compliance obligations (consider, e.g., a loan servicer tracking loans and receivables). Because the account holder is often closest to the underlying

[2] Preamble, Part IV (Expected Effects), "Costs".

transactions, it can combine transactional data from IDIs with granular operational data in order to track balances and conduct both account-level and transaction-level reconciliation. In these cases, the account holder (rather than IDI) is best-positioned to maintain the single source of truth and in turn would share their records with the IDI to support compliance with the proposed rule.

2. **The Trusted Instructure Approach Powers Reliable Ledgers**. To be sure, account holders also need to ensure the integrity and reliability of their ledgers. The best way to do that is to use purpose-built technology from an infrastructure provider. Ledgering is difficult: it requires recording the right data in the right order and accurately reflecting complex situations like transaction reversals, refunds and new currencies, all while scaling with high transaction volumes with minimal latency. Using an infrastructure provider can reduce errors and increase reliability when compared to trying to solve these problems in-house. We urge the FDIC to acknowledge in the final rule the fact that reliable ledgers are often provided by trusted infrastructure providers - and that this offers companies significant benefits, such as more robust technology, reduced operational risk and more accurate reconciliation.
3. **The Trusted Infrastructure Approach Supports IDI Compliance and Mitigates Synapse-Style Risks.** The Trusted Infrastructure Approach can also directly support IDIs in complying with the rule. Under the draft rule, IDIs would require "***direct, continuous and unrestricted access***"[3] to the account holder's ledger. Infrastructure providers like Modern Treasury offer standard configurations for data sharing, so account holders could readily provide this access to IDIs and enable "***secure, real-time exchange of data***"[4] using the Trusted Infrastructure Approach. Also, because infrastructure providers have deep experience in reconciliation, they can help ensure that available records are reconciled daily or even more often. And because the ledgers are hosted by the infrastructure provider, with the account holder's permission they would remain available to the IDI ***even if the account holder goes out of business or experiences a severe disruption***. Finally, infrastructure providers can drive technical interoperability and speed adoption of the final rule by establishing standardized configurations and recordkeeping formats for account holders and IDIs.
4. **Defining Reconciliation to Meet the Goals of the Rule**. We also wish to raise a related point about reconciliation and respectfully request that the FDIC provide further clarity about what types of reconciliation would be required under the rule. The draft rule requires IDIs to reconcile records daily and to follow "standard banking practices" for reconciling variances[5], but reconciliation can take many forms (and as noted above, in many cases the IDI itself will not possess the data needed for reconciliation). In Modern Treasury's experience, reconciliation is best conducted through an infrastructure provider that supports both ***account reconciliation*** and ***transaction reconciliation***. Account reconciliation ensures that beneficial owner balances sum to the custodial account balance maintained by the IDI, and transaction reconciliation ensures that each transfer from or to the account holder can be associated with a corresponding and equal change in beneficial owner balances. Trusted infrastructure providers like Modern Treasury offer products designed to enable both types of reconciliation. Rather than starting from scratch with in-house technology, account holders and IDIs should be free to follow the Trusted Infrastructure Approach to support compliance with the rule.
5. **Managing IDI Relationships.** Finally, the Trusted Infrastructure Approach can reduce Synapse-style risks by helping account holders simplify recordkeeping across their banking relationships. Both for business and continuity reasons, account holders frequently partner with multiple IDIs or payment

[3] Proposed rule, §375.3(c)(1).
[4] Preamble, Part III (The Proposed Rule), "Recordkeeping by Third Parties".
[5] E.g., Preamble, Part III (The Proposed Rule), "Recordkeeping by Third Parties".

processors. That means the account holder needs to track transactions across multiple payments integrations - not just those in a custodial deposit account at one IDI - and will often use an infrastructure provider for the complex ledgering and reconciliation this requires. (In fact, even if an account holder only partners with a single IDI, it may still wish to manage its own ledger, powered by an infrastructure provider, to ensure continuity in case its banking relationship ends or changes.) The Synapse failure was exacerbated by a multi-IDI middleware strategy with layered relationships and without strong ledgering. But the robust ledgering called for in the rule, when supported by the simpler Trusted Infrastructure Approach, can help account holders and IDIs avoid similar problems in the future and protect consumers who rely on the fintech ecosystem.

Role and Responsibilities

In the Trusted Infrastructure Approach, the account holder (not the infrastructure provider) would still be the "third party" under the rule. This reflects each party's practical role: the infrastructure provider furnishes technology to the account holder, and the account holder uses that technology to create, track and validate its own records based on the real-world transactions the account holder enables.

In turn, to support IDI compliance with the final rule, the infrastructure provider would provide technical capabilities and documentation sufficient to (1) allow the account holder to grant the IDI direct access to the ledger, (2) allow the account holder and IDI to track beneficial ownership of amounts reflected in the ledger, (3) enable daily (or more frequent) reconciliation of account balances and transactions, and (4) allow the IDI to understand controls, availability standards and business continuity procedures related to the infrastructure provider's ledger technology, in order to support validation steps under the rule.[6]

Conclusion

Modern Treasury believes that the Trusted Infrastructure Approach will not only be common, but will also often be a best practice. Yet we also recognize that there are multiple pathways for IDI compliance with the proposed rule, in which the technical details and participant roles and responsibilities may differ. As such, we ask that the FDIC's final rule, like the draft, continue to enable all responsible approaches that meet the purposes and requirements of the rule, rather than being prescriptive about the technology or parties involved. We believe that explicitly acknowledging the Trusted Infrastructure Approach will help the banking system strengthen recordkeeping practices while mitigating the risks identified in the rule.

Modern Treasury stands ready to provide robust ledgering as an infrastructure provider. We appreciate the opportunity to comment on the proposed rule.

Respectfully submitted,

Modern Treasury

[6] See proposed rule, §375.3(c).