



Via Overnight Mail and E-mail

January 19, 2024

Ravi S. Mikkelsen, Co-Founder and CEO  
Pete Hellwig, Co-Founder  
Atmos Financial  
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Berkeley, CA 94704  
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Re: Notification to Cease and Desist Continuing Violations of Section 18(a)(4) of the  
Federal Deposit Insurance Act

Dear Messrs. Mikkelsen and Hellwig:

This letter follows your response to the Federal Deposit Insurance Corporation's (FDIC) advisory letter dated August 16, 2023 ("August Letter"). The FDIC has reason to believe that Atmos Financial, PBC (Atmos) has made false and misleading statements directly or by implication, concerning the deposit insurance status of Atmos, in violation of section 18(a)(4) of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. § 1828(a)(4) (Section 18(a)(4)), and its implementing regulation, 12 C.F.R. Part 328, Subpart B ("Part 328"). We hereby demand that you cease and desist and take immediate corrective action to address these false and misleading statements, as more fully set forth below.

Provisions in Section 18(a)(4) and Part 328 prohibit any person from representing that an uninsured financial product is insured, or knowingly misrepresenting the extent or manner in which a deposit or obligation is insured under the FDI Act, whether by making affirmative statements or by omitting material information. Further, pursuant to Part 328, a statement regarding deposit insurance would be deemed to omit material information if the absence of such information could result in a reasonable consumer being unable to understand the extent or manner of deposit insurance provided. 12 C.F.R. § 328.102(b)(5). The FDIC has the authority to enforce these provisions against any person or entity. Enforcement tools available to the FDIC include the authority to issue cease-and-desist orders and to assess civil money penalties for violations of Section 18(a)(4) and Part 328. See 12 C.F.R. §§ 328.104-107.

Although it appears that Atmos has undertaken certain efforts to remove and/or correct some of the deposit insurance misrepresentations previously identified in the FDIC's August letter, the FDIC has reason to believe that Atmos continues to make deposit insurance misrepresentations, including misstatements through social media advertisements. For example, as of this letter, Atmos' advertisements on *The David Pakman Show* on YouTube, and potentially other media, claim "when you

Legal Division

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[www.fdic.gov](http://www.fdic.gov)

bank with Atmos, your money is...just like your current bank, fully FDIC-insured.”<sup>1</sup> This statement represents and implies that Atmos is an insured depository institution (IDI) and Atmos accounts are insured directly, without the identification of the IDI in which the consumer funds may be placed. In fact, Atmos itself is not FDIC-insured, and the material omission of the identification of the IDI in which consumer funds may be placed could result in a reasonable consumer being unable to understand the extent or manner of deposit insurance provided. See 12 C.F.R. § 328.102(b)(5).

Based on the foregoing, and your failure to fully comply with our August Letter, it appears that the statement discussed above regarding deposit insurance violates Section 18(a)(4) of the FDI Act and Part 328. Consequently, the FDIC hereby demands the following corrective actions:

1. You shall immediately remove any and all statements, representations, or references that suggest in any way, expressly or implicitly, that: (1) Atmos itself is FDIC-insured; or (2) FDIC insurance provides protection or coverage in any manner or extent other than as set forth in the FDI Act. Such statements shall be removed from the Atmos website (including any pop-ups, hyperlinks, or chatbots), and from any other social media platforms (including both corporate accounts and personal accounts of individuals associated with Atmos or any paid-advertisements by Atmos), as well as any other websites, mobile apps, online outlets such as YouTube, and any other form (electronic or hard copy) of marketing, advertising, or other consumer-facing publications or materials of any kind that you control.
2. You shall cease and desist from making any statements, representations, or references, directly or through your owners, officers, directors, or employees that suggest in any way, explicitly or implicitly, that: (1) Atmos is FDIC-insured; or (2) FDIC insurance provides protection or coverage in any manner or extent other than as set forth in the FDI Act. Such statements shall be removed from the Atmos website (including any pop-ups, hyperlinks, or chatbots), and from any other social media platforms (including both corporate accounts and personal accounts of individuals associated with Atmos, and any advertisement paid for or sponsored by Atmos), as well as any other websites, mobile apps, online outlets such as YouTube, and any other form (electronic or hard copy) of marketing, advertising or other consumer-facing publications, or materials of any kind that you control.
3. Within five (5) days from the receipt of this letter, you shall provide written confirmation to Senior Attorney Symone Walker at sawalker@fdic.gov that Atmos has fully complied with the requests set forth above and in the August Letter. Such confirmation shall detail all efforts that Atmos took to comply with this letter and the August Letter, including all steps undertaken by

<sup>1</sup> See e.g., *The David Pakman Show*, broadcast via YouTube on September 18, 2023, [https://www.youtube.com/watch?v=R\\_ljugawJe8](https://www.youtube.com/watch?v=R_ljugawJe8) (9:36 starts the advertisement). Similar deposit insurance misrepresentations were also advertised on different episodes of the show, including the episodes dated August 16, 22, 24, September 8, 13, November 21, and December 8, 2023.

Atmos to identify and locate all such misrepresentations, and the scope of Atmos's removal of the misrepresentations from ads on YouTube or other online programming and any other marketing, advertising, and consumer-facing materials and communications.

If you believe that any statement you have made related to FDIC deposit insurance is true and accurate, please provide a full listing of all such statements regarding deposit insurance on any medium or platform, together with information and documentation supporting the accuracy of all such statements, not later than fifteen (15) days from the date of this correspondence.

Failure to promptly remedy the misrepresentations may result in the FDIC taking appropriate action. Enforcement tools available to the FDIC include the authority to issue cease and desist orders and assess civil money penalties for violations of Section 18(a)(4) and Part 328. 12 U.S.C. § 1828(a)(4)(E); see 12 C.F.R. § 328.104-107.

This letter constitutes an advisory letter within the meaning of 12 C.F.R. § 328.106. Accordingly, pursuant to 12 C.F.R. § 328.102(b)(6), continuing and/or future false or misleading deposit insurance representations may be deemed to have been knowingly made.

Finally, this letter is intended to address only potential violations of Section 18(a)(4) and Part 328. Your response to this matter may or may not affect our conclusions as to those violations, and does not preclude the FDIC from taking any further action, as appropriate, with respect to the foregoing or any other violations of laws or regulations. Moreover, nothing in this matter bars or estops any other federal or state agency from investigating, or pursuing actions for, violations of other laws and regulations.

Should you have any questions about the contents of this letter, please contact [REDACTED] at [REDACTED]@fdic.gov.

Sincerely,

/s/  
Seth P. Rosebrock  
Assistant General Counsel, Enforcement Section  
Federal Deposit Insurance Corporation