

# United States Senate

WASHINGTON, DC 20510

September 11, 2024

The Honorable Martin J. Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, DC 20429

The Honorable Michael Barr  
Vice Chair for Supervision  
Board of Governors of the Federal Reserve  
System  
20th Street and Constitution Ave NW  
Washington, DC 20551

The Honorable Michael Hsu  
Acting Comptroller  
Office of the Comptroller of the Currency  
400 7th St SW  
Washington, DC 20219

Dear Chairman Gruenberg, Acting Comptroller Hsu, and Vice Chair Barr:

We write with concern about partnerships between traditional banks, Banking as a Service (BaaS) providers such as Stripe, Finastra, Synapse, and Marqueta, and financial technology (fintech) entities such as Venmo, Cash App, Yotta, and Chime. The rapid growth of these partnerships risks harming consumers while posing a broader threat to the stability of our banking system and the economy.<sup>1</sup> These partnerships package services traditionally offered by banks such as deposits, saving accounts, and debit cards into a fintech substitute that uses BaaS providers to interface with a traditional bank.<sup>2</sup> For example, Synapse Financial (Synapse) operated as an intermediary between fintech companies and regulated banks, helping to transfer consumer funds from apps such as Yotta—an app designed to gamify saving strategies—to banks.<sup>3</sup> Synapse’s failure, which hurt over 100,000 consumers with \$265 million in deposits,<sup>4</sup> is a salient example of the harms posed by lack of oversight of BasS providers and fintech companies.

Acting Comptroller Hsu has recognized that if “the ‘de-integration’ of banking services”—and the commensurate growth of bank-tech partnerships—is “left to its own devices, [it] is likely to

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<sup>1</sup> Brooklyn Journal of Corporate, Financial & Commercial Law, “Banking-as-a-Service: FinTechs Walking the Regulatory Perimeter,” Braeden Hodges, Volume 17 (Issue 2), May 15, 2023, p. 127, <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1403&context=bjcfcfcl>.

<sup>2</sup> Unit, “An introduction to banking as a service,” <https://www.unit.co/guides/the-ultimate-guide-to-banking-as-a-service>.

<sup>3</sup> Bloomberg, “Moelis-Backed App Has \$113 Million Trapped in Fintech Collapse,” Claire Ballentine and Jonathan Randles, July 17, 2024, <https://www.bloomberg.com/news/articles/2024-07-17/synapse-bankruptcy-customers-on-savings-app-yotta-have-millions-trapped>.

<sup>4</sup> CNBC, “How thousands of Americans got caught in fintech’s false promise and lost access to bank accounts,” Hugh Son, July 2, 2024, <https://www.cnbc.com/2024/07/02/synapse-fintech-fdic-false-promise.html>.

accelerate and expand until there is a severe problem or even a crisis.”<sup>5</sup> All three of your agencies have jointly acknowledged that when banks partner with BaaS and fintech entities, it “can involve elevated risks,” including “[p]resenting insufficient or misleading information to end users” in violation of federal law and limiting consumers’ “access to their deposits” leading to “potential consumer harm.”<sup>6</sup> And Acting Comptroller Hsu has recognized the crux of the problem:

Banks and tech firms, in an effort to provide a “seamless” customer experience, are teaming up in ways that make it more difficult for customers, regulators, and the industry to distinguish between where the bank stops and where the tech firm starts.<sup>7</sup>

BaaS revenue alone is expected to rise tenfold, from \$1.7 billion in 2021 to over \$17.3 billion in 2026,<sup>8</sup> and the risks to consumers will rise accordingly. The recent collapse and bankruptcy of Synapse demonstrates just how exposed consumers are to these risks. As a result of the Synapse collapse and the company’s poor recordkeeping practices, nearly \$300 million in customer deposits were inaccessible for months and more than \$95 million is still unaccounted for.<sup>9</sup> The risks are clear, and we urge your agencies to use your existing authority to protect consumers and the economy.

### **Federal Deposit Insurance Corporation (FDIC) Authority Over BaaS Providers and Other Entities Making Misleading Claims about FDIC Insurance**

The FDIC has the authority to take a more aggressive role in regulating the misleading statements made by fintech companies and BaaS providers regarding the security of consumer funds. Specifically, the *Federal Deposit Insurance Act* expressly prohibits misrepresentations regarding FDIC insurance and vests the FDIC with the authority to rein in any company “represent[ing] or imply[ing] that any deposit liability, obligation, certificate, or share is insured or guaranteed by the Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation.”<sup>10</sup>

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<sup>5</sup> Acting Comptroller of the Currency Michael Hsu, “Remarks at the TCH + BPI Annual Conference ‘Safeguarding Trust in Banking: An Update,’” September 7, 2022, <https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-106.pdf>.

<sup>6</sup> Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, “Joint Statement on Banks’ Arrangements with Third Parties to Deliver Bank Deposit Products and Services,” July 25, 2024, pp. 1-2, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20240725c1.pdf>.

<sup>7</sup> Acting Comptroller of the Currency Michael Hsu, “Remarks at the TCH + BPI Annual Conference ‘Safeguarding Trust in Banking: An Update,’” September 7, 2022, <https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-106.pdf>.

<sup>8</sup> Mastercard Services, “The opportunities of Banking as a Service,” <https://www.mastercardservices.com/en/advisors/archived-practices/open-banking/insights/opportunities-banking-service#:~:text=It%20is%20worth%20billions.,2026%2C%20according%20to%20Juniper%20Research>.

<sup>9</sup> New York Times, “\$95 Million,” Santul Nerkar, July 12, 2024, <https://www.nytimes.com/2024/07/12/business/95-million-synapse-bankruptcy-fintech-fdic.html>.

<sup>10</sup> 12 U.S.C. 1828(a)(4)(A); 12 U.S.C. 1828(a)(2), (4)(C).

For instance, Yotta, one of the savings apps with customers affected by the Synapse failure, proudly represents in large text on its website that money deposited in the app is FDIC-insured.<sup>11</sup> In smaller text, it explains that “[y]our money is held in an account eligible for pass-through FDIC insurance up to \$250,000 through Evolve Bank & Trust.”<sup>12</sup> Pass-through deposit insurance “refers to arrangements through which deposit accounts are established by a third party for the benefit of one or more other [principal] parties.”<sup>13</sup> In this instance, Yotta used Synapse to transfer consumer funds to Evolve Bank. While located in these “pass-through” accounts, consumer deposits are only protected should Evolve Bank fail. As the Synapse collapse demonstrates, these consumer deposits are not protected when in transit to the bank or if any associated fintech or BaaS provider declares bankruptcy. Yotta’s statement misleadingly implies that consumer funds deposited in the app are always protected.

Such misleading statements have caused consumers significant harm. For instance, a victim of the Synapse collapse described thinking that her money was secure because “she saw ‘FDIC insured’ labeling on [Yotta’s] website.”<sup>14</sup> Believing the federal government was backing her deposits, this victim—a 40 year old provider of homeless services in Seattle, Washington—indicated she had \$10,000 worth of savings that are now completely inaccessible because of the Synapse collapse.<sup>15</sup> Another victim—a teacher in Hawaii—described losing his home during the Maui wildfires last year and using Yotta to save approximately \$20,000 for a car and to move out of his parents’ house.<sup>16</sup> His money is now stuck in limbo, and he has no immediate recourse. A 33-year old paramedic in Louisiana shared a similar story. He “thought this was a bank that was FDIC insured” and proceeded to save \$60,000 in Yotta—savings that are now frozen and inaccessible.<sup>17</sup> This experience is not limited to Yotta but extended to other fintech entities that partnered with Synapse. Mainvest, a national crowdfunding platform, used Synapse to help launch hundreds of small businesses in Massachusetts like Comfort Kitchen and Third Cliff Bakery.<sup>18</sup> Since Synapse’s collapse, Massachusetts startups have lost access to critical sources of funding.<sup>19</sup>

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<sup>11</sup> Yotta, “Security,” <https://www.withyotta.com/security>.

<sup>12</sup> *Id.*

<sup>13</sup> Federal Deposit Insurance Corporation, “Pass-through Deposit Insurance Coverage,” <https://www.fdic.gov/financial-institution-employees-guide-deposit-insurance/pass-through-deposit-insurance-coverage>.

<sup>14</sup> Bloomberg, “Moelis-Backed App Has \$113 Million Trapped in Fintech Collapse,” Claire Ballentine and Jonathan Randles, July 17, 2024, <https://www.bloomberg.com/news/articles/2024-07-17/synapse-bankruptcy-customers-on-savings-app-yotta-have-millions-trapped>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> New York Times, “What Happens When Your Bank Isn’t Really a Bank and Your Money Disappears?,” Rob Copeland, July 9, 2024, <https://www.nytimes.com/2024/07/09/business/synapse-bankruptcy-fintech-fdic-insurance.html>.

<sup>18</sup> Lawyers for Civil Rights Boston, “Mainvest Collapse Impacts Businesses,” <https://lawyersforcivilrights.org/our-impact/bizgrow/protecting-small-businesses-affected-by-mainvest-collapse/>.

<sup>19</sup> *Id.*

FDIC’s own regulations prohibit “suggest[ing] or imply[ing] that the party making the representation is the FDIC ... if this is not in fact true”<sup>20</sup> as well as “statement[s] made by a person regarding pass-through deposit insurance coverage that fails to clearly and conspicuously disclose that certain conditions must be satisfied for pass-through deposit insurance coverage to apply.”<sup>21</sup> Despite these prohibitions, this messaging remains active on Yotta’s website and risks continuing to mislead consumers. We urge you to take immediate action to require its removal, along with the removal of any similar representation by any company that only qualifies for pass-through FDIC insurance.

Regulators today rely on partner banks to regulate their fintech and BaaS partners<sup>22</sup>—but this self-regulatory approach is not working. Despite the lack of FDIC protection for deposits if a BaaS provider collapses, many consumers describe “distinctly remember[ing] being comforted by seeing the FDIC logo.”<sup>23</sup> In passing the *Federal Deposit Insurance Act*, Congress recognized that FDIC branding is critical to protecting consumer confidence in the financial system and protecting consumers from bad actors.<sup>24</sup> FDIC has also recognized this—initiating several enforcement actions against entities that misrepresented FDIC status, based on the fact that “[c]ombatting misrepresentations about deposit insurance coverage goes to the heart of the FDIC’s mission of maintaining stability and public confidence in the nation’s banking system.”<sup>25</sup> The FDIC has also acted to further limit the use of the official FDIC sign, in particular by requiring that non-bank entities disclose that certain conditions must be satisfied before deposits are eligible for pass-through insurance.<sup>26</sup> We appreciate that the FDIC has acknowledged and has acted to address what it describes as: “an increase in misleading representations about deposit insurance on the internet, which can result in consumer confusion and harm. These types of misleading statements create uncertainty and could dilute and undermine the confidence that underpins banks and our nation’s broader financial system.”<sup>27</sup> However, we do not believe this final rule is sufficient in addressing the problem.

We urge you to act to absolutely prohibit the use of the FDIC name by any entity whose deposits are only entitled to pass-through coverage (because the entity is not itself an FDIC-insured institution), regardless of whether the entity attempts in good faith to explain the limitations of pass-through coverage. Disclaimers about FDIC coverage limitations are insufficient; the average consumer shouldn’t be expected to understand the intricacies of FDIC insurance in order

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<sup>20</sup> 12 C.F.R. 328.102 (a)(3)(vi).

<sup>21</sup> 12 C.F.R. 328.102 (b)(5)(iv).

<sup>22</sup> CNBC, “How thousands of Americans got caught in fintech’s false promise and lost access to bank accounts,” Hugh Son, July 2, 2024, <https://www.cnbc.com/2024/07/02/synapse-fintech-fdic-false-promise.html>.

<sup>23</sup> *Id.*

<sup>24</sup> Federal Deposit Insurance Corporation, “Understanding Deposit Insurance,” <https://www.fdic.gov/resources/deposit-insurance/understanding-deposit-insurance>.

<sup>25</sup> Federal Deposit Insurance Corporation, “FDIC Demands Three Companies Cease Making False or Misleading Representations about Deposit Insurance,” press release, March 19, 2024, <https://www.fdic.gov/news/press-releases/2024/pr24016.html>.

<sup>26</sup> Federal Deposit Insurance Corporation, Federal Register Notice, “FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC’s Name or Logo,” January 18, 2024, <https://www.govinfo.gov/content/pkg/FR-2024-01-18/pdf/2023-28629.pdf>.

<sup>27</sup> *Id.*

to comfortably and safely save or invest their money. Consumers must feel confident that they are dealing with a regulated and insured entity when they see the FDIC logo.

### **OCC, FDIC, and Federal Reserve Regulatory Authority over Third-Party Banking Service Providers**

The OCC, the FDIC, and the Federal Reserve have combined authority under the *Bank Service Company Act* to directly regulate, including through supervision and examination, third party providers of services such as check and deposit sorting, accounting, statistical, or “similar functions performed for a depository institution.”<sup>28</sup> This authority enables federal financial regulators to conduct oversight of these service providers directly and “to the same extent as if such services were being performed by the depository institution itself.”<sup>29</sup> Your agencies have the authority to define the scope of “similar functions” and have historically expanded relevant third party regulated activities to include activities such as data processing and certain transactional services.<sup>30</sup>

We appreciate that the Consumer Financial Protection Bureau (CFPB) has recognized that certain nonbank financial technology companies are now “handling more than 5 million transactions per year” and have taken a more active supervisory role under the *Consumer Financial Protection Act*.<sup>31</sup> The CFPB’s recent proposal is intended to ensure companies across the industry adhere to federal consumer financial laws, in response to “rising complaints from smartphone users, who say they struggle to resolve fraudulent charges, restore missing balances and address myriad other troubles with many popular digital payment services.”<sup>32</sup> Supervision by the CFPB most directly stems from authority to ensure that non-bank institutions are not engaging in unfair, deceptive, and abusive acts and practices or violating privacy rights.<sup>33</sup> We commend the CFPB’s actions to protect consumers who are operating in a space where technology companies offering financial products “are not banks, [and] may not receive the same federal scrutiny as other financial institutions even when their offerings are indistinguishable to the average consumer.”<sup>34</sup> We urge the Bureau to finalize the rule and urge the OCC, Federal Reserve, and FDIC to follow the CFPB’s lead in using their own authority to regulate these entities directly, including through supervision and examination.

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<sup>28</sup> 12 U.S.C. 1861 et seq.; 12 U.S.C. 1863; 12 U.S.C. 1867.

<sup>29</sup> 12 U.S.C. 1867(c).

<sup>30</sup> 12 U.S.C. 1861 et seq.; 12 U.S.C. 1863.; 12 CFR 225.28.

<sup>31</sup> Consumer Financial Protection Bureau, “CFPB Proposes New Federal Oversight of Big Tech Companies and Other Providers of Digital Wallets and Payment Apps,” press release, November 7, 2023, <https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-new-federal-oversight-of-big-tech-companies-and-other-providers-of-digital-wallets-and-payment-apps/>.

<sup>32</sup> Washington Post, “Apple, Google and Venmo fight new U.S. plan to monitor payment apps,” Tony Romm, May 1, 2024, <https://www.washingtonpost.com/business/2024/05/01/tech-banks-government-regulation/>.

<sup>33</sup> 12 U.S.C. 5514.

<sup>34</sup> Washington Post, “Apple, Google and Venmo fight new U.S. plan to monitor payment apps,” Tony Romm, May 1, 2024, <https://www.washingtonpost.com/business/2024/05/01/tech-banks-government-regulation/>.

We also appreciate that your agencies have used your authority to scrutinize bank oversight of their fintech and BaaS partners. For instance, the FDIC has initiated several enforcement actions in 2024 to ensure banks are properly vetting and supervising these partnerships.<sup>35</sup> The Federal Reserve, for its part, penalized Evolve Bank for failing to manage the risk posed by fintech and BaaS partnerships.<sup>36</sup> The OCC has also pushed banks under its supervision to conduct more extensive oversight of their partners—including requiring Blue Ridge Bank to expand its oversight of the “operational risk associated with third-party fintech relationships.”<sup>37</sup> However, despite your actions, banks are not appropriately overseeing these entities. The growing integration of the services offered by apps such as Venmo, CashApp, and PayPal into bank infrastructure through BaaS intermediaries such as Synapse requires additional oversight by your agencies—and the establishment of clear rules instead of the ad-hoc enforcement approach that you have used to date.

You possess clear statutory authority to regulate service providers directly. In the immediate term, given the threat posed to consumer deposits by the safety and soundness vulnerabilities of BaaS and fintech companies, we urge you to use your existing authority under the *Bank Service Company Act* and the *Federal Deposit Insurance Act* to:

- 1) Ban entities that provide products only eligible for pass-through FDIC insurance from using the FDIC name or logo in any materials, and
- 2) Establish clear and direct rules for nonbank companies that partner with banks to offer deposit-style products, such as BaaS providers and fintech companies, to ensure they are properly safeguarding consumer funds. Directly supervise and examine these entities under the *Bank Service Company Act* to ensure compliance and conduct enforcement actions against companies that violate these established rules.

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<sup>35</sup> Federal Deposit Insurance Corporation, “Consent Order FDIC-23-0110b In the Matter of Sutton Bank”; Federal Deposit Insurance Corporation, “Consent Order FDIC-23-0038b In the Matter of Piermont Bank.”

<sup>36</sup> Reuters, “Fed penalizes Evolve Bank for failing to manage fintech partnership risk,” Hannah Lang and Pete Schroeder, June 17, 2024, [https://www.reuters.com/business/finance/fed-penalizes-evolve-bank-failing-manage-fintech-partnership-risk-2024-06-14/#:~:text=Fed%20penalizes%20Evolve%20Bank%20for%20failing%20to%20manage%20fintech%20partnership%20risk,-By%20Hannah%20Lang&text=WASHINGTON%2C%20June%2014%20\(Reuters\),as%20anti%20money%20laundering%20laws.](https://www.reuters.com/business/finance/fed-penalizes-evolve-bank-failing-manage-fintech-partnership-risk-2024-06-14/#:~:text=Fed%20penalizes%20Evolve%20Bank%20for%20failing%20to%20manage%20fintech%20partnership%20risk,-By%20Hannah%20Lang&text=WASHINGTON%2C%20June%2014%20(Reuters),as%20anti%20money%20laundering%20laws.)

<sup>37</sup> U.S. Securities and Exchange Commission, “Agreement by and Between Blue Ridge Bank, National Association Martinsville, Virginia and The Office of the Comptroller of the Currency,” <https://www.sec.gov/Archives/edgar/data/842717/000119312522236606/d375124dex101.htm>.

We also ask that you provide a staff-level briefing, no later than October 18, on your understanding of your regulatory authority as it pertains to BaaS providers and fintech companies and your plans to exercise it.

Sincerely,



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Elizabeth Warren  
United States Senator



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Chris Van Hollen  
United States Senator

CC: The Honorable Rohit Chopra, Consumer Financial Protection Bureau