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Issue 4, 2021

Welcome!

Welcome to our fourth issue of *Promissory Notes* -- our e-newsletter focused on banking and finance insights. We hope you are enjoying our monthly publication.

We try to cover the big news stories and provide you our thoughts on why they are important. Is there a certain topic you would like discussed? Let us know and we will add it to the rotation.

Thank you for reading.

F. B. Webster Day, Chair, Banking and Finance Practice Group, and Co-Editor, *Promissory Notes*

and

Elizabeth A. Benedetto, Chair, Bond Counsel Practice Group, and Co-Editor, *Promissory Notes*

Fortune sides with him who dares. – Virgil

New OCC Chief Signals Greater Caution on Crypto

"'We created an Office of Innovation, updated the framework for chartering national banks and trust companies, and interpreted crypto custody services as part of the business of banking.'"

Why this is important: With cryptocurrency becoming increasingly popular and a new acting comptroller, Michael Hsu, the Office of the Comptroller of Currency ("OCC") is seeking to review crypto-related guidance issued over the past year. While testifying before the House Committee on Financial Services, Hsu stated he was concerned the guidance had not been "done in full coordination with all stakeholders" and they do not "appear to have been part of a broader strategy related to the regulatory perimeter." Further, Hsu stated he is not ruling out granting charters to fintech companies but that the OCC, in conjunction with the FDIC, Federal Reserve, and the states, must figure out how they fit within the banking system. What they decide on likely will have a lasting impact on the future of fintech and crypto-related companies. --- Kellen M. Shearin

Biden Reverses Trump Changes to Bank Antidiscrimination Law

"The civil rights era law requires banks to document the extent of their lending to the communities that surround their branches in order to ensure they are not just lending to the wealthy or to white customers."

Why this is important: On May 20, 2020, the Office of the Comptroller of the Currency, under its then leader Joseph Otting, issued a final rule rewriting the Community Reinvestment Act ("CRA") regulations for the first time in 25 years in an effort to modernize the regulations. In issuing its final rule, the OCC did so without the support or consensus of either the FDIC or the Federal Reserve, who share responsibility for CRA enforcement with the OCC, and resulted in two sets of CRA rules for different parts of the banking industry. The OCC's final rule issued under the Trump administration has drawn widespread criticism from some members of Congress, as well as banks and community development and affordable housing advocates who have warned that the new CRA regulations will result in less, not more, lending to benefit underserved low-income communities that lack access to capital. President Biden made CRA reform a notable piece of his policy platform during his campaign, and it now appears that the OCC, under new Acting Comptroller Michael Hsu, is committed to working with the FDIC and the Federal Reserve to come up with one consistent set of rules and regulations under the CRA. --- Elizabeth A. Benedetto

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The US Federal Reserve Begins Looking Into Its Own Digital Currency

"The Fed wants the US to play a 'leading role' in developing international standards."

Why this is important: The U.S. Federal Reserve is exploring the possibility of issuing a new type of digital currency. It announced plans to publish a research paper sometime during the summer of 2021 to explore how central bank digital currencies could fit into the U.S. banking system. China was the first major economy to issue digital currency--the digital yuan is currently in its launch phase. Time will tell as to whether the U.S. will be the next major economy to issue digital currency. --- Kayla I. Russell

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FDIC Chief Says Agency Wants to Know More About Digital Assets

"FDIC Chairwoman Jelena McWilliams said the federal regulator wants to hear from banks about how they are approaching the digital asset market and what role the FDIC should play."

Why this is important: On May 17, 2021, the FDIC issued a request for information seeking input regarding insured depository institutions' current and potential activities relating to digital assets. The agency acknowledged that banks are increasingly exploring several roles in the emerging digital asset ecosystem, such as being custodians, reserve holders, issuers, and exchange or redemption agents; performing node functions; and holding digital asset issuers' money deposits. Through the request for information, the FDIC looks to inform its understanding of the industry's and consumers' interests in this area. The FDIC also hopes to lay a foundation for the next chapter in banking by ensuring it has a regulatory framework that allows responsible innovation to flourish. Comments on the request for information are due on July 16, 2021. --- Brienne T. Marco

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Hundreds of PPP Loans Went to Fake Farms in Absurd Places

"In total, ProPublica found 378 small loans totaling $7 million to fake business entities, all of which were structured as single-person operations and received close to the largest loan for which such micro-businesses were eligible."

Why this is important: Creative, if not ill-advised, schemes to scam and defraud the Paycheck Protection Program continue to show up, sometimes in all the wrong places. PPP loans to the smallest operations were capped at about $21,000, and almost 400 small sole proprietorship fake "farms" have received loans, aggregating to about $7 million. Beach towns like Ocean City, New Jersey supposedly were the locations of a wheat farm, a melon farm, and a tree nut farm. Also receiving loans were a phony potato farm in Palm Beach and an orange grove in Minnesota. The common denominator for these fraudulent loans was an online lending platform called Kabbage, which processed hundreds of thousands of loans during the pandemic (and has since been bought by American Express). Allowing borrowers who could not get loans through traditional lenders (think Bank of America) to use an online lending program made such fraudulent loans easier to be completed. And the sheer volume of the loan activity on the Kabbage platform made fraud more difficult to spot at the front end. --- Rayford K. (Trip) Adams III

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8 Changes the SAFE Banking Act Actually Makes for Cannabis Banking

"Importantly, the SAFE Banking Act codifies existing regulatory realities instead of creating a new regulatory framework for banks."

Why this is important: The Secure and Fair Enforcement ("SAFE") Banking Act is proposed legislation regarding disposition of funds gained through the cannabis industry in the U.S. Several key changes that the SAFE Banking Act would make include eliminating federal liability for cannabis-friendly financial institutions, addressing lending and asset forfeiture concerns, codifying existing federal cannabis banking regulations, opening access to business banking accounts, and legitimizing credit card purchases.

The SAFE Banking Act provisions are intended to improve accessibility to banking services for state-legal cannabis businesses. It also adds great momentum to the movement for federal cannabis reform. Lenders need to examine these changes in order to take advantage of these new opportunities. --- Bryce J. Hunter

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