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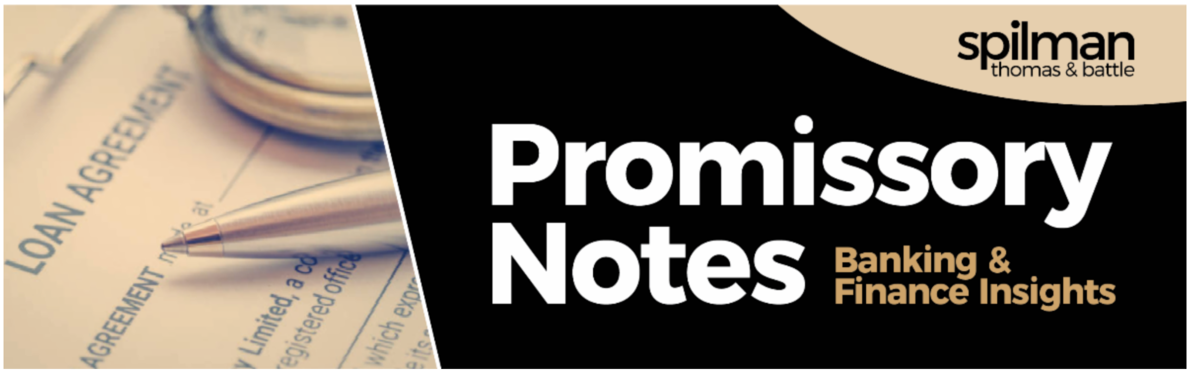

Issue 1, 2021

Welcome!

Welcome to our inaugural issue of *Promissory Notes* -- our e-newsletter focused on banking and finance insights. This monthly publication will look at the top news stories in the industry, while also explaining WHY those news stories are important. Will these issues affect the industry, your business, or your customers and how could you prepare for the resulting challenges and opportunities? Our attorneys tap into their backgrounds, knowledge and resources to help you reimagine solutions.

If you have any specific issues you would like us to cover, please let us know. And, if you have a friend or colleague that you believe could benefit from this e-newsletter, email us with "Promissory Notes" in the subject line.

We hope you enjoy our newest publication!

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*

"Worry is interest paid on trouble before it comes due." - William R. Inge, clergyman, scholar, and author (1860-1954)

OCC Encourage Banks, Fintechs to Partner with CDFIs

"The person who fills this role will have a profound impact on the entire banking industry over the course of their term."

Why this is important: In July 2020, the OCC announced its launch of Project REACh -- Roundtable for Economic Access and Change, an initiative to address structural barriers to financial inclusion. The initiative seeks to build partnerships that support minority-owned businesses and assist in providing access to financial services to the unbanked and underbanked. As the first bank regulator to recognize fintech as a player in the banking world, the OCC would support opportunities for fintechs to partner with CDFIs and MDIs in order to make new technologies available, which, in turn, can broaden access to financial services. The person nominated to Comptroller of the Currency is expected to champion the OCC's 2020 initiatives, and continue support of these high-tech partnerships. Now is the time to reassess strategies and partnerships that can support access to financial services for all Americans. --- Debra Lee Allen

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'Enormously Big Deal': Fed Creates Climate Committee

"The mission of the so-called Supervision Climate Committee will be to assess the implications of climate change for the financial system — including firms, infrastructure and markets in general."

Why this is important: It's looking more and more like climate change is not a hoax. That well-known progressive Green Team -- the Federal Reserve (!) -- has formed its Supervision Climate Committee to advise the Fed about the risks to the financial system that climate change will bring. The importance of the issue and the SCC is highlighted by the fact that the committee will be led by Kevin Stroh, a senior official at the New York Fed and staffed by senior Fed officials from the Federal Reserve Board and its 12 regional banks. The committee's mission is to assess and advise on the implications of climate change for the broad financial system, from business firms to infrastructure to markets. The formation of the SCC comes after a period of criticism that the Fed has not done enough with respect to climate change and has lagged behind European financial system regulators in leadership in the area. The Fed has now joined the Network for Greening the Financial System, an international group of regulators. The formation of the SCC is seen by one observer as an "enormously big deal," in part because it brings to bear the "serious firepower" of the 400 economists working for the Fed. Another former Fed researcher viewed the development as a sign that the central bank "actually wants to do something instead of just talking about it." --- Rayford K. (Trip) Adams III

Federal Reserve Sees Modest Pickup in Hiring This Month

"The Fed has constructed its own measurement of hiring using the ADP data, and said that gauge has closely matched the government's monthly jobs reports throughout the pandemic."

Why this is important: In its recent monetary policy report, the Fed, through construction of its own measurement of hiring using ADP data, showed that employment improved modestly through early February. Important to many small business lenders, the Fed measure shows that the troubled leisure and hospitality sectors (restaurants, bars, hotels and entertainment venues) have started adding jobs again. While the Fed's report underscored the job market has a way to go until "full employment," the distribution of vaccines and enactment of economic rescue packages with another in the works has the Fed brightening its outlook of the economy's prospects. --- Bryce J. Hunter

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SBA Prioritizes Smallest of Small Businesses in the Paycheck Protection Program

"Building on a month of strong results, the Biden-Harris Administration and the U.S. Small Business Administration are taking steps with the Paycheck Protection Program to further promote equitable relief for America's mom-and-pop businesses."

Why this is important: This is the Biden administration's attempt to provide access to SBA assistance on a more equitable basis. That is, one designed to benefit small and low- and moderate-income businesses that have not received the relief a forgivable PPP loan provides. Businesses with fewer than 20 employees have the exclusive right to file loan applications until March 9, 2021. Sole proprietors, independent contractors, and self-employed individuals will be able to receive more financial support than under previous PPP rules. Business owners with non-fraud felony convictions or delinquent student loan debt no longer are a bar for their businesses to apply for relief. These and other changes likely mean more minority and women-owned businesses will receive PPP loans. --- F. B. Webster Day

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5 Ways to Manage New Expectations in Credit Risk Management & Loan Reviews

"In these economically turbulent times, CUs engaged in commercial lending must take extra steps to stay ahead of the curve."

Why this is important: As a result of the economic stresses caused by the COVID-19 pandemic, the National Credit Union Administration and the Small Business Administration have released guidelines for wading the credit-risk-waters of these uncertain times. Consistent with these guidelines, CU Business Group provides five areas for lender focus including building credit risk management policies, tightening underwriting and credit analysis, and ensuring reviews are done annually. Even Credit Unions with air-tight credit risk management programs can benefit from reviewing their policies during these unprecedented circumstances. --- Joseph C. Unger

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How Apps Became More Trusted than Banks, and What Banks Can Do About It

"Too many folks tend to confuse younger customers' comfort with financial technology to also having high levels of knowledge with finances."

Why this is important: Generation Z, made up of individuals born between 1997 and 2010, is the largest generation in history, making up almost 30 percent of the world's population. Generation Z has grown up surrounded by technology, making them the most tech-savvy generation ever, and while they may know their way around a smart phone, they may not be as smart with their finances. A survey conducted by the American Psychological Association revealed that more than 80 percent of Gen Z young adults are worried about their finances. Gen Z is a generation, however, that aspires to financial independence and a better financial future than their parents, many of whom experienced financial hardship during the Great Recession, but without the right kind of financial guidance, these young people may find it difficult to turn their financial dreams into reality. So how can banks win over the Gen Zers, who are highly skeptical of the financial services industry, and gain their trust? A survey of more than 1,000 customers by Yes Marketing found that a bank can build trust by establishing itself as a financial mentor, coming up with digital content that educates young consumers about the basics of banking and investing, and by providing helpful and relevant tips on navigating life after college, such as tips about renting your first apartment or negotiating a job offer. Also, while members of Gen Z are digital natives that have never known the world without smartphones and are likely to rely, first, on digital banking apps, real human connection is important to Gen Zers, and they actually visit physical branches far more than their predecessors, the Millennials. But stodgy branch offices won't cut it. Gen Zers like relaxed environments and interactivity – think Apple stores -- that allow customers to explore products and services, offer face-to-face service and provide an environment that makes them feel safe discussing their financial challenges and objectives. Lastly, Gen Zers want products that are hyper-personalized. A recent survey of more than 4,800 consumers conducted by NTT Data Services revealed that young consumers want individualized financial guidance to help them achieve their financial goals, and they are willing to share personal data as a tradeoff. For example, nearly half of the respondents would like their bank to anticipate products and services they might need or have interest in, with about the same number of respondents reporting that they would like their bank to act as a conscientious advisor (voice of reason) on major spending decisions to help them stay on budget. More than 61 percent of the surveyed consumers agreed that they would willingly share personal data in exchange for personalized proactive services that would allow them to manage their individual spending budget and receive individualized advice about how to save money. Banks have a tremendous opportunity ahead of them to win over the next generation of customers, but they must understand the Gen Z mindset and tailor their products and services to build trust in order to capitalize on this opportunity. **---** Elizabeth A. Benedetto

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Citi on the Hook for $500M Blunder, Judge Rules

"Citi lost its legal battle with creditors of cosmetics firm Revlon after a federal judge ruled the asset managers do not need to return $504 million the bank sent them by mistake in August."

Why this is important: Oops! Sorry, I meant to pay the $7.8 million interest payment on the loan, not the $900 million loan balance. Could you please send back almost a billion dollars? When Revlon's loan agent, Citibank, paid off a $900 million Revlon loan by mistake (through human error and despite a "sixeyes" review policy on wire transfers), the asset managers of the loan for the creditors refused to refund about $500 million of the errant payment. (Some of the lenders had sent back about $385 million voluntarily.) Apparently, the Revlon loan was in trouble and some of its lenders were about to sue the company. When the loan was unexpectedly paid, the creditors balked at returning the money and a lawsuit ensued -- which Citi has now lost. U.S. District Judge Jesse Furman (Southern District of New York) has ruled that the lenders do not need to return the money under the principle of "discharge for value." Judge Furman found that the wire transfers that Citi made, as Revlon's agent, were final and complete and not subject to revocation. The effective defense -- that the recipients knew at the time of the transfer that the payment was a mistake -- was not available to Citi. That determination turned on facts developed in the case and during a six-day trial. In the category of the-bigger-they-are-the-harder-they-fall, Citi's size and sophistication were cited by Judge Furman in concluding that creditors would not necessarily be on notice that such a payment was a mistake. And, in the category of the-horse-is-out-of-the-barn, Citi announced that it was spending $1 billion to improve its risk management systems and controls, after being tagged with a $400 million fine by the OCC. --- Rayford K. (Trip) Adams III

Fed Sounds Alarm on Commercial Real Estate, Business Bankruptcy

"Insolvency risks at small and medium-sized firms, as well as at some large firms, remain considerable."

Why this is important: On February 19, 2021, the Federal Reserve Board of Governors released its semiannual Monetary Policy Report, in which it reports to Congress on economic developments and future prospects. While optimistic that we may return to "more normal conditions" later this year, the Fed noted that economic recovery remains uneven and uncertain. According to the report, commercial real estate could feel the effects of the pandemic both as a result of reduced demand for office space and as a result of increased online purchasing which affects stores and shopping centers. As a result, while prices have remained at "historically high" levels, the market appears to be susceptible to sharp declines. Similarly, "business leverage now stands near historical highs" as businesses have taken on more debt to weather the pandemic. Financial institutions may anticipate new bankruptcies and closures in the coming months, and for the distressed debt market, this may present something of an opportunity. --- Debra Lee Allen

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Biden's Pick for Top Bank Regulator Reignites Tensions Between Progressives, Moderates

"Yet in staffing his cabinet and other high-ranking positions in his administration, Biden has mostly relied on more moderate figures whose politics and policies more closely align with the party establishment."

Why this is important: Barr has been criticized by some progressives over his ties to former Obama administration officials (such as Treasury Secretary Tim Geithner who was viewed as too friendly to Wall Street) and his consulting work for fintech firms. If Barr is nominated and confirmed, he would be the second individual with connections to the budding fintech and cryptocurrency industries to lead the OCC. Under Brian Brooks, Comptroller under Trump, the OCC published a number of interpretative letters that fintech and cryptocurrency supporters think could bring them closer to the traditional financial system by making it easier for them to offer banking services. Likewise, some of these interpretive letters may permit traditional lenders to more actively participate in the fintech and cryptocurrency spheres. With Barr at the helm of the OCC, support of the fintech and cryptocurrency industries is likely to continue and possibly increase. --- Bryce J. Hunter

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PPP Processing Delays Continue

"Measures implemented by the U.S. Small Business Administration to screen for potential fraud in Paycheck Protection Program applications continue to cause stress and delays in the system."

Why this is important: The SBA's increased focus on preventing approval of fraudulent PPP loan applications means more delays in processing all applications. Legitimate businesses can help improve their chances for timely approval by flyspecking their applications for typos (especially in listing federal employer identification numbers) and other errors. These mistakes often lead to SBA's computers

assigning the applications with error codes, which must then be cleared before processing continues. ---
F. B. Webster Day

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