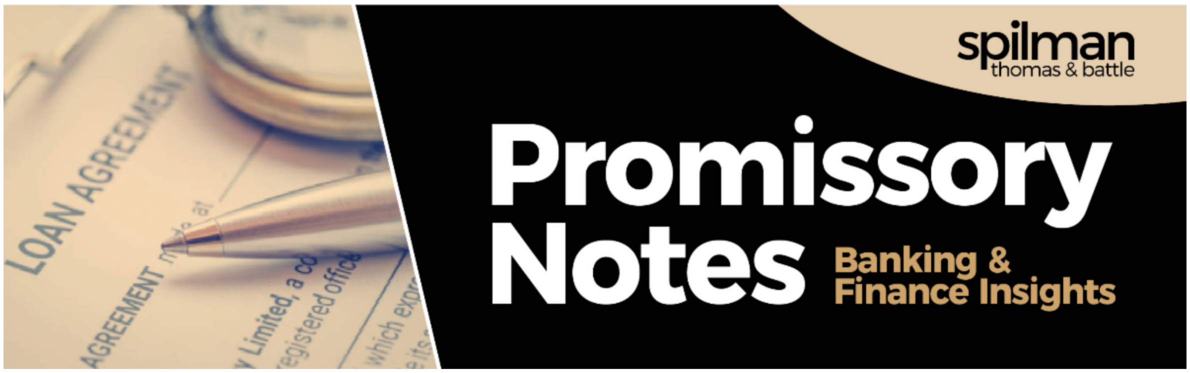
SHARE:

[Join Our Email List](#)

[View as Webpage](#)



Issue 3, 2022

Welcome!

Welcome to our third *Promissory Notes* issue of 2022.

We are very pleased to announce that our Banking & Finance Practice Group is growing as we have recently welcomed two new attorneys with experience in this area of law to the firm.

David L. Tarbet is a Counsel attorney in our Winston-Salem, North Carolina office. His primary areas of practice include tax and estate planning, tax representation, business formation, business transactions and estate administration. Most recently, he was serving as Vice President Fiduciary Regional Tax Manager and in other roles at Wells Fargo Wealth Management. David received his B.A. from Brigham Young University, his J.D. from the University of Iowa College of Law, and his LL.M. in Taxation from the University of Washington School of Law. He is fluent in conversational Japanese.

Robert J. Dobkin is an Associate in our Wheeling, West Virginia office. His primary areas of practice include corporate and business law, real estate, mineral law, and estate and trust planning and administration. He received his A.A. from West Virginia Northern Community College and his B.A. from Wheeling Jesuit University. He attended the China University of Political Science and Law in Beijing in a Study Abroad program and received his J.D. from Duquesne University School of Law. He is active in a variety of organizations including the Ohio County Bar Association, Estate Planning Council of the Upper Ohio Valley, Youth Services System Inc., Grand Vue Park Foundation, West Virginia Northern Community College Foundation, Temple Shalom, and the Rotary Club of Wheeling.

At Spilman, we are dedicated to providing the services needed to address all of your legal issues. The addition of these two attorneys helps us attain an elevated level of service. Please join us in welcoming them both to the firm!

As always, thank you for reading.

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

and

Elizabeth A. Benedetto, Chair, Public & Project Finance Practice Group, and Co-Editor, *Promissory Notes*

"Pennies do not come from heaven. They have to be earned here on earth." --- Margaret Thatcher

---

US Virginia Senate Allows State Banks to Offer Crypto Custody Services

"Delegate Christopher T. Head introduced the bill back in January 2022, seeking an amendment to allow eligible banks to offer crypto custody services."

Why this is important: I'll try to make this straightforward, but that's not easy. Cryptocurrency, obviously, is fungible, independent "currency," like BitCoin. It is not traditional "currency," and it is not backed by any government. For most of these, there is no real "currency" to hold, but rather a key code that represents your "currency," which is on-record with the issuer. In this case, the proposed bill (now approved by both the Virginia House of Delegates and Senate) allows banks to offer custody services for these instruments. Custody in this case is analogous to something between a traditional bank lock-box and a broker holding securities in street-name. The bank, or a third party vender whom the bank engages, holds that key code in a safe place, but presumably available at the direction of the bank customer.

I reviewed the final bill approved and spoke with Kendall Bailey, legislative assistant of Delegate Head. The final bill is less specific than the bill referred to in the cited article, in terms of protocols or standards. My hope is that either federal or state regulators will outline specific standards for providing these services, because there is potential risk to any bank providing these services. A major risk is that failure to safeguard this key code or failure to react promptly to transfer orders could subject the bank to substantial liability. Having said that, this has some similarity to traditional trust activities and may be well within a bank's wheelhouse, especially a bank with trust powers. (Special thanks to Ron Schuler in our Pittsburgh office for his help on this, although any errors are my own.) --- Hugh B. Wellons

---

Philadelphia Advances Toward Creating a Public Bank

"The authority's existence is permitted under a 1967 Pennsylvania state law."

Why this is important: On March 3, 2022, the City Council of Philadelphia voted to create the Philadelphia Public Financial Authority ("PPFA"), which is authorized to establish a public bank for purposes of making loans, but not accepting deposits. This was a rare step, as there are currently only three public banks in the United States – in North Dakota, Puerto Rico and American Samoa. Proponents of public banks, such as the Philadelphia City Council, are of the opinion that the creation of public banks will provide competition and lead to a new industry standard by providing access to capital to small businesses in underserved areas, charging lower interest rates on public infrastructure, and providing capital to credit unions and community banks to more affordably meet the needs of local economies. In the case of Philadelphia, the decision to form PPFA and establish a public bank was driven, in large part, by the desire to provide banking services to underserved community members who often are not able to access capital from private banks. Opponents, such as Independent Community Bankers of America, contend instead that public banks won't be sufficiently independent from government and the allocation of credit will be dictated by political rather than economic considerations. Other cities, such as Los Angeles (whose voters previously rejected a ballot measure to amend the city charter to allow for a city-owned bank), San Francisco and Seattle are exploring the creation of public banks, but none have been established yet, so it remains to be seen whether public banks will become a larger part of the banking system. --- Elizabeth A. Benedetto

---

USAA Faces $140M Penalty for AML Failings

"The bank has admitted 'willful violations' of anti-money-laundering rules."

Why this is important: AML= Anti-Money Laundering! USAA Bank is a bank solely for current and former U.S. military personnel and their families. This is a bank supposedly designed and run for the good of our military, kind of like a benefit, except not really. It is a for-profit bank, owned by the Charles

Schwab Corporation, and catering to current and former U.S. military personnel and their families is simply its business model. It was notified by the OCC of serious AML deficiencies in 2017. Then, it failed to fix those problems for five more years. The bank even admits to the serious lack of management focus on this. (Of course, this also is a failure of the regulators, who failed to follow up on this for those five years!) Now, FinCen has imposed an $80 million penalty, and the OCC is considering imposing a penalty of $60 million. No mention, of course, on any penalty on the regulators. This is, almost by definition, a failure to maintain bank management control. We will hear more about this. --- Hugh B. Wellons

---

Federal Banking Regulators Issue Computer-Security Incident Notification Implementation

"The Final Rule is an important step as potential cyberattacks reportedly increase."

Why this is important: On November 23, 2021, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Office of the Comptroller of the Currency (collectively, the agencies) issued a joint final rule to establish computer-security incident notification requirements ("Final Rule") for banking organizations and their bank service providers. Banks and their service providers must comply with the Final Rule starting May 1, 2022.

The rule requires a banking organization to notify its primary federal regulator as soon as possible and no later than 36 hours after the bank determines that a computer-security incident that rises to the level of a notification incident has occurred. For OCC-supervised banks, the bank must provide this notification to the appropriate OCC supervisory office, or OCC-designated point of contact, through email, telephone, or other similar methods that the OCC may prescribe. FDIC-supervised banks can comply with the rule by reporting an incident to their case manager, who serves as the primary FDIC contact for all supervisory-related matters, or to any member of an FDIC examination team if the event occurs during an examination. If a bank is unable to access its supervisory team contacts, the bank may notify the FDIC by email at the appropriate address. State chartered banks that are members of the Federal Reserve System must follow similar reporting requirements to the Fed.

Bank service providers must notify any affected banking organization customer as soon as possible when the bank service provider determines that it has experienced a computer-security incident that has materially disrupted or degraded, or is reasonably likely to materially disrupt or degrade, services provided to such banking organization for four or more hours. This notification will allow the banking organization to assess whether the incident has or is reasonably likely to have a material impact on the banking organization and thus trigger the banking organization’s own notification requirement. --- Bryce J. Hunter

---

Small Business Administration Extends Deferment Period for EIDL Loans

"The Small Business Administration has announced a six-month deferment on existing COVID-19 Economic Injury Disaster Loans."

Why this is important: This short article is announcing what many of you already know, that the SBA has announced an extension on the COVID-19 Economic Injury Disaster Loans. We'll have to wait and see whether six months is long enough, with the new variant making its rounds. --- Hugh B. Wellons

---

Postal Service Gets into Banking, Again

"Post offices haven't cashed checks since 1967."

Why this is important: United States Post Offices in Washington, D.C.; Falls Church, Virginia; and the Bronx, New York now allow customers to deposit payroll and business checks, in an amount of $500 or less, onto a debit card for a flat fee of $5.95. If these initial limited services fare well, the U.S. Postal Service intends to expand its financial services to other locations and could expand its financial service offerings to include paycheck cashing, ATMs in postal lobbies, bill payment and electronic money transfers -- all services a post office could offer without any change in the current law. Post offices would not be able to offer savings accounts or small-dollar loans under the current legal system. Proponents of the Post Office's new service offerings advocate that the financial services offered by the Postal Service offer the millions of unbanked and underbanked Americans a viable and less expensive alternative to the costly payday lending and cash-checking predatory process. --- Brienne T. Marco

---

Banks Helped Us Avoid a Repeat of the 2008 Financial Crisis

"As unemployment rates spiked and the stock market foundered, many believed that the pandemic would lead to a repeat of the 2008 financial crisis."

Why this is important: This article explains how banks helped to prevent a temporary market collapse caused by the Pandemic. Regulators allowed banks to postpone foreclosure on many individuals and businesses, giving those individuals and businesses time to recover and begin loan payments again. Banks did this, almost universally. The hope was that many individuals and businesses, buoyed by loan deferrals and federal incentives, would survive financially long enough for the economy to recover. So far, this appears to have occurred. Time will tell about this, as well as about the resulting, long-term effect of the huge increase in the federal deficit, which the article does not address. --- Hugh B. Wellons

---

Share Tweet Share