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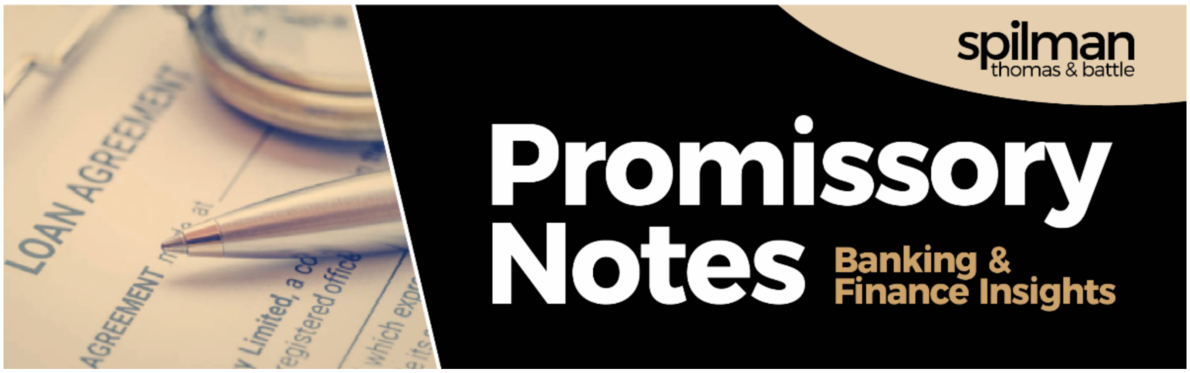

Issue 5, 2021

Welcome!

Welcome to our fifth 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 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, [Public & Project Finance Practice Group](#), and Co-Editor, *Promissory Notes*

"Bart, with $10,000, we'd be millionaires! We could buy all kinds of useful things like….love!" - Homer Simpson

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[Banks to Companies: No More Deposits, Please](#)

"Some banks, awash in deposits, are encouraging corporate clients to spend the cash on their businesses or move it elsewhere."

Why this is important: During the pandemic, near-zero interest rates and loans from the Treasury Department enabled many companies to raise funds at low costs. Corporate clients flooded U.S. banks with deposits, and they continue to do so today. Federal Reserve data indicates that between late March 2021 and late May 2021, bank deposits rose by $411 billion to $17.09 trillion, which is four times the average of the past 20 years. Additionally, corporate clients are taking a conservative approach to their investment strategy, holding on to those deposits and operating with higher cash balances, with no plans to move their cash holdings into other investments and income-generating loans. The companies' pandemic-driven investment strategy is taking a toll on banks' profit margins, loan-to-deposit ratios and capital ratios and are messing with banks' balance sheets. Growing deposits reduce a bank's ratio of equity capital to assets, making it harder for the bank to comply with minimum capital requirements set by regulators. Regulators suspended some of these requirements during the pandemic, but the suspensions have now ended. Many banks now are looking for ways to generate capital. Bank regulations restrict capital formation for banks, so alternatives to standard stock offerings are limited. The continuing consolidation of banks in the U.S. has created growth opportunity for the surviving community banks and small regional banks. Those are the entities now most threatened by growing deposits and growing loan demand. --- Brienne T. Marco

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House Passes Bill to Repeal OCC 'True Lender' Rule

"The OCC in October issued the true lender rule to govern partnerships between banks and third-party lenders that allow consumers to take loans with interest rates above the maximum rate set in that borrower's state."

Why this is important: Easy come, easy go, I guess. The OCC recently opined that a loan made jointly by a bank and a non-bank was considered to be a loan by the non-bank for purposes of applying regulation. Banks are more restricted than non-banks in terms of usury laws and the rates of interest a bank may charge. This OCC action, at least for national banks, provided a way to lend at very high rates. This article explains how Congress eliminated that loophole. --- Hugh B. Wellons

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New OCC Head Doesn't Rule Anything Out in Digital Asset Guidance Review

"The Office of the Comptroller of the Currency is reviewing all of the digital asset guidance issued under the leadership of former Acting Comptroller Brian Brooks."

Why this is important: A group at the Office of the Comptroller of Currency is engaging in "a broad review of interpretive guidance, conditional trust charters and other issues around digital assets" in an effort to clarify some of the uncertainty surrounding digital assets. The first thing the OCC group hopes to do is to create a set of common definitions to ensure that everyone overseeing digital assets, within the OCC and other agencies, are on the same page. Once the definitions are crafted, the group will then move to identifying risks in the digital asset space. The last step will be to determine what to do next in terms of regulations. Considering that the OCC may be part of an interagency group working to develop regulations around cryptocurrencies, the OCC's work will likely become a part of any regulations or policy that the interagency group creates. --- Kellen M. Shearin

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Two Emerging Trends Signal Trouble for Both Fintechs & Regional Banks

"New data reveals that the capabilities of mobile banking apps and online banking are diverging, challenging all but the biggest financial institutions to reconcile how they allocate resources."

Why this is important: Fintechs and neobanks have historically counted on the digital experience for their success, but now face increasing competition in that arena from traditional banks. In response, many of the newcomers are deploying robust apps to provide advisory and other services long offered at the branch bank. Partially as a result of the pandemic response, customers have become more sophisticated and demanding in their use of online banking platforms and mobile banking apps. This trend is driving a divergence between online banking and mobile banking apps, where the two experiences need not necessarily be identical or even similar to each other. And, all but the mega institutions struggle to allocate resources appropriately between the two modes. --- F.B. Webster Day

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The Fed Becomes the Nation's Only Bank Regulator

"A series of Federal Reserve officials have moved into key regulatory slots at other agencies."

Why this is important: This article describes how so many former Federal Reserve officials now run other financial regulatory agencies. As a result, the other regulatory agencies now seem to have similar positions on financial regulation that the Fed had and has. **---** Hugh B. Wellons

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Eliminating TDR Accounting: Finally a Carrot for Adopting CECL?

"ABA's position that troubled debt restructurings are outdated and unnecessary is gaining steam, demonstrated by the recent roundtable on current expected credit losses held by the Federal Accounting Standards Board. last month."

Why this is important: During the roundtable in May 2021, FASB introduced an alternative to eliminate TDR accounting for lenders that have adopted the Current Expected Credit Losses ("CECL") methodology. As expected, there was overwhelming support for the alternative that permits lenders to apply existing loan modification guidance instead of evaluating modifications for TDRs.

While FASB notoriously moves slowly on these changes, lenders and their interest groups should try to speed the momentum of change in order to limit disclosure requirements to efficient and meaningful disclosures that can be scaled to investor needs. CECL implementation will be a significant change to how institutions account for and calculate their loan reserves. It may be in lenders' best interests to adopt CECL before TDR accounting goes back into effect after the CARES Act suspension or, at a minimum, before the majority of lenders adopt CECL in 2023. --- Bryce J. Hunter

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OCC Working with Tech Firms on Credit Score Alternatives

"During the American Bankers Association's Regulatory Compliance Conference, Grovetta Gardineer, a senior official at the OCC, said the regulator is working to find nontraditional ways to establish a good credit history for those with no credit."

Why this is important: In July 2020, the Office of the Comptroller of the Currency announced the launch of Project REACh (which stands for Roundtable for Economic Access and Change), a program designed to bring together leaders from banking, business, technology and national civil rights organizations to develop solutions to provide greater access to credit and capital for segments of the population that are largely excluded from participating in the nation's banking system and the economy. One such segment of the population is made up of those individuals referred to as "credit invisibles", which includes about 50 million Americans, mostly poor and minorities, who have no credit score, preventing them from getting traditional bank financing such as mortgages, credit cards and other loans. Many of these same people pay rent, utilities and other recurring financing obligations each month, so the OCC and its partners in Project REACh are working to establish an alternative credit score that looks at data such as direct debit authorizations and other types of payments that are not considered in traditional credit scoring. By expanding the data to determine an individual's credit score by evaluating timely and regular payments of obligations such as rent and subscription services (such as monthly streaming television subscriptions and other similar services), the participants of Project REACh expect more people will qualify for credit and have greater opportunities to own their homes and build wealth. --- Elizabeth A. Benedetto

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