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## ASK KENNEDY

### December 11, 2024

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#### Topics Covered:

- Member Questions
  - Corporate Transparency Act
  - Cashier's Checks
  - Beet Stock Collateral
- [CFPB Finalizes Rule on Federal Oversight of Popular Digital Payment Apps to Protect Personal Data, Reduce Fraud, and Stop Illegal “Debanking”](#)
- [USDA Announces Financial Assistance for Distressed Farm Loan Borrowers](#)
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- [Upcoming Events](#)

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### Member Questions

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**Question 1:** I'm working on the new beneficial ownership requirements under the Corporate Transparency Act. Do you have any insight into whether TruPS would qualify for a subsidiary exemption based on ownership?

**Response:** My understanding is that TruPS are typically issued through a trust subsidiary created by a financial institution, so your question is whether a trust subsidiary of a bank is a reporting company under the Corporate Transparency Act (CTA).

A “reporting company” is generally defined as a corporation, limited liability company, or other entity created by the filing of a document with the secretary of state or similar. [31 C.F.R. § 1010.380\(c\)\(1\)\(i\)](#). The term does not include banks and subsidiaries of banks, which are entities whose ownership interests are controlled or wholly owned, directly or indirectly, by a bank. See [31 C.F.R. § 1010.380\(c\)\(2\)](#).

In accordance with the foregoing, the trust subsidiary would only be a reporting company if it fits into the definition of a reporting company (i.e., it was created by filing with the secretary of state or similar). Even if that is the case, it will be exempt *if* its ownership interests are controlled or wholly owned, directly or indirectly, by

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the bank. This requires 100% ownership or control by an exempt entity; if partially controlled by a non-exempt entity or individual, the subsidiary will not qualify for the subsidiary exemption. See <https://www.fincen.gov/boi-fags#L 6>.

***But see below*** [Update: Federal Court Blocks Enforcement of Beneficial Ownership Reporting Rule](#)

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**Question 2:** I was just wondering if you could possibly cover some general guidance and maybe some standard procedural things banks need to think of as we are issuing cashier's checks? Is there a dollar amount we should consider before we issue a cashier's check, is there any specific identification or fraud checks we should be doing, or anything else that may help not only protect the bank but also protect the customer?

**Response:**

- **Verify the identity of the individual requesting the cashier's check**
  - **Ensure compliance with AML/KYC. Banks may not issue or sell a cashier's check for \$3,000 or more in currency unless they maintain records of certain information. See [31 C.F.R. § 1010.415](#).**
- **Ensure funds used to purchase the cashier's check are collected**
- **Ensure cashier's checks have protective watermarks, etc.**
- **Maintain accurate and secure records of all cashier's checks issued**
- **Utilize secure banking software to track and process cashier's check, reducing the risk of unauthorized issuance**
- **File Suspicious Activity Reports (SARs) if fraudulent behavior is suspected**

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**Question 3:** Earlier this year, I had reached out to you with questions on perfecting beet stock and unit retains. Some of our staff have been asking some questions and I think other banks may have staff with similar questions so I am wondering if this is something you could cover in an "Ask Kennedy" session, and/or include in the training material for your next Loan Documentation? Please let me know your thoughts!!

**Response:** **There are three major things you should know about perfecting security interests in Sugar Beet Stock and Unit Retains.**

1. **Sugar Beet Stock may be held with a Joint Venture and therefore the Joint Venture Agreement acts like Corporate Bylaws, or a Partnership Agreement and will state who can (and can't) pledge the "stock". I often see that the farmer pledging the "stock" does not have the authority to do so under the Joint Venture Agreement. Read the Joint Venture Agreement; if it prohibits the pledge of stock, you will need another agreement from the Joint Venture or Owner of the Stock consenting to the pledge.**
2. **Sugar Beet associations like American Crystal are Co-Ops and the stock is actually a membership interest. ([This letter from American Crystal to the SEC dated June 25, 2013](#) describes the company stock.) Membership**

interests may or may not be stock or a general intangible depending on how the Co-op chooses to issue them; therefore, it is highly likely that you must file a financing statement to perfect a Security Interest in the membership interest. Unit Retains are also considered general intangibles and should be perfected by filing a financing statement naming all general intangibles as well as describing the unit retains.

3. Be sure to get any and all Control Agreements signed by the Co-op recognizing your bank's security interest in the shares and/or unit retains.

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### **CFPB Finalizes Rule on Federal Oversight of Popular Digital Payment Apps to Protect Personal Data, Reduce Fraud, and Stop Illegal "Debanking"**

The Consumer Financial Protection Bureau (CFPB) has finalized a [rule](#) to supervise large nonbank companies offering digital funds transfer and payment wallet apps that handle more than 50 million transactions per year. The rule will enable the CFPB to supervise and examine such companies to ensure they are complying with various consumer laws, including those related to:

- **Privacy and Surveillance** – Laws allowing consumers to opt-out of certain data collection and sharing practices, and prohibiting misrepresentations about data protection practices.
- **Errors and Fraud** – Laws allowing consumers to dispute fraudulent transactions and requiring investigation.
- **Debanking** – Closures or freezes (i.e., losing access to the app without notice or disruptions to consumers' ability to make or receive payments).

For more information, visit this [link](#).

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### **USDA Announces Financial Assistance for Distressed Farm Loan Borrowers**

The U.S. Department of Agriculture (USDA) has announced an additional \$250 million in automatic payments for distressed direct and guaranteed farm loan borrowers under Section 22006 of the Inflation Reduction Act.

Lenders who have FSA guaranteed loans should file an up-to-date default status report for any guaranteed loan that was in default as of September 30, 2024. Guaranteed loans that were 30 days past due as of September 30, 2024, will be eligible for a payment on the past due amount. Letters will be going out from the FSA starting October 31, 2024, so lenders should file the default status reports before that date. Questions should be directed to the local or state FSA office.

For more information, visit this [link](#).

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### **Interagency Statement on Elder Financial Exploitation**

Federal and state financial regulators have released a joint [Interagency Statement on Elder Financial Exploitation](#) to provide institutions with examples of risk management and other practices that can be adopted to identify, prevent, and respond to elder financial exploitation, including:

- **Governance and Oversight** – Institutions may create policies and procedures geared toward the protection of account holders and the institution from the impacts of elder financial exploitation, provided such policies do not result in age discrimination that is impermissible under the Equal Credit Opportunity Act (ECOA).
- **Employee Training** – Train employees so that they can better identify red flags for elder financial exploitation.
- **Using Transaction Holds and Disbursement Delays** – Institutions may establish and implement policies and procedures for temporary transaction holds or delays based on applicable laws and regulations. North Dakota banks should conform with [Chapter 6-08.5, N.D.C.C.](#)
- **Using Trusted Contacts** – Institutions can establish policies and procedures for customers to designate trusted contacts that the bank is authorized to contact when elder financial exploitation is suspected.
- **Filing SARs Involving Suspected Elder Financial Exploitation** – In addition to certain mandatory filing requirements, institutions can voluntarily file SARs for suspicious activities related to elder financial exploitation. For more information about doing so, view [FinCEN's 2022 Advisory on Elder Financial Exploitation](#).
- **Reporting to Law Enforcement, Adult Protective Services (APS), and/or Other Entities, as Appropriate** – Federal guidance from 2013 confirmed that the privacy provisions of GLBA generally do not prevent financial institutions from reporting elder financial exploitation to appropriate local, state, or federal agencies. North Dakota provides avenues for voluntary reports of suspected elder financial exploitation ([Chapter 6-08.5, N.D.C.C.](#)). In addition to filing various reports, institutions may refer potential victims to report with:
  - The U.S. Department of Justice (DOJ)'s National Elder Fraud Hotline (833-372-8311)
  - Local law enforcement
  - FTC
  - FBI's Internet Crime Complaint Center (IC3)
  - U.S. Postal Inspection Service (USPIS)
  - Social Security Administration (SSA)
- **Providing Financial Records to Appropriate Authorities** – In doing so, North Dakota banks should once again ensure compliance with [Chapter 6-08.5, N.D.C.C.](#)
- **Engaging with Elder Fraud Prevention and Response Networks** – This can facilitate professional cross-training, multidisciplinary case review and coordination, and community education efforts.
- **Consumer Outreach and Awareness** – Inform consumers about trending scams and perpetrators' tactics. Share resources provided by government agencies (an appendix with examples of these resources is attached to the interagency statement).

Note: This statement does not interpret or establish a compliance standard, and does not impose new regulatory requirements or establish new supervisory expectations.

### **FBI: Criminals Use Generative AI to Facilitate Financial Fraud**

The FBI has issued a [Public Service Announcement](#) warning the public of the ways in which criminals are using generative AI to bolster their fraud schemes, including:

- The generation of text for believable social media profiles, messages, language translations, and websites
- The creation of realistic images and documents for fictitious social media profiles, driver's licenses, etc.
- Voice cloning of loved ones or bank customers
- The creation of videos with realistic depictions of public figures (alleged company executives, law enforcement, or other authority figures)

The FBI shared the following tips to help consumers protect themselves:

- Create a secret word or phrase with your family to verify their identity.
- Look for subtle imperfections in images and videos, such as distorted hands or feet, unrealistic teeth or eyes, indistinct or irregular faces, unrealistic accessories such as glasses or jewelry, inaccurate shadows, watermarks, lag time, voice matching, and unrealistic movements.
- Listen closely to the tone and word choice to distinguish between a legitimate phone call from a loved one and an AI-generated vocal cloning.
- If possible, limit online content of your image or voice, make social media accounts private, and limit followers to people you know to minimize fraudsters' capabilities to use generative AI software to create fraudulent identities for social engineering.
- Verify the identity of the person calling you by hanging up the phone, researching the contact of the bank or organization purporting to call you, and call the phone number directly.
- Never share sensitive information with people you have met only online or over the phone.
- Do not send money, gift cards, cryptocurrency, or other assets to people you do not know or have met only online or over the phone.

Finally, the FBI recommended that fraud be reported to the FBI's Internet Crime Complaint Center at [www.ic3.gov](http://www.ic3.gov).

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### **2024 ABA Annual Convention Highlights**

The American Bankers Association (ABA) recently held its 2024 Annual Convention. If you were unable to attend in person, you can view video presentations from Janet Yellen, John Asbury, and more at <https://www.aba.com/training-events/conferences/annual-convention/look-back!>

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### **GSBC to Award Scholarship to NDBA Member Bank**

The Graduate School of Banking at Colorado (GSBC) is offering the Bolder Banking Scholarship to a North Dakota community bank displaying innovative approaches to banking. GSBC will fund the scholarship for a rising star within the recipient bank to use toward tuition at GSBC's [Annual School Session](#). NDBA member banks may nominate themselves or another bank by submitting a [nomination form](#) by February 15. The recipient bank will be decided by March 1.

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### **Update: FDIC Digital Sign Rule Compliance Date Extended from January 1, 2025, to May 1, 2025**

The Federal Deposit Insurance Corporation (FDIC) has announced that it is providing institutions with additional time to get new process and systems in place by extending the compliance date for the new FDIC signage and advertising rule (subpart A of [12 C.F.R. Part 328](#)) from January 1, 2025, to May 1, 2025.

Note: The compliance date related to misrepresentations of deposit insurance coverage (subpart B of [12 C.F.R. Part 328](#)) remains January 1, 2025.

Banks should carefully review the final rule and consult with legal counsel as to any questions arising in connection with compliance.

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### **Update: Federal Court Blocks Enforcement of Beneficial Ownership Rule**

The Corporate Transparency Act (CTA) required reporting companies created or registered to do business in the United States before January 1, 2024, to file an initial beneficial ownership information (BOI) report by January 1, 2025. However, on December 3, 2024, the U.S. District Court for the Eastern District of Texas issued an [order temporarily enjoining the U.S. Department of the Treasury and the Financial Crimes Enforcement Network \(FinCEN\) from enforcing the BOI reporting requirements of the CTA](#). This order applies to all reporting companies nationwide, meaning that, pending any further developments, reporting companies subject to the January 1, 2025, deadline are not required to file initial BOI reports. Additionally, any company that has already reported is not required to update or correct any previously reported information.

Note: Banks have a continued responsibility to collect BOI from certain customers that seek to open accounts as part of Customer Due Diligence (CDD) requirements, which are separate from the CTA BOI requirements.

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### **Upcoming Events**

NDBA has many exciting and informational events planned for 2025. Below are some special dates to mark on your calendars!

- **Loan Documentation and Enforcement** | Early 2025 | Bismarck and Fargo, ND | Date, Location and Details Regarding Registration and Group Pricing to Be Provided Soon
- **Bank Management Conference** | February 12, 2025



- **2025 Tri-State Trust Conference** | April 22-24, 2025
- **2025 Dakota School of Banking** | June 1-6, 2025 | Jamestown, ND
- **2025 Quad States Annual Convention** | June 9-11, 2025 | Rapid City, SD