
ASK KENNEDY

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Topics Covered:

- Special Guest: Lise Kruse, Commissioner of North Dakota Department of Financial Institutions
- Member Questions
- The CFPB and the Federal Reserve Announce Adjustments to Thresholds Found in Regulation CC Related to Funds Availability
- American Bankers Association Statement Regarding CFPB's Amicus Brief in Citibank Wire Transfer Lawsuit
- ABA Statement for the Record to the HFSC Subcommittee on Tokenization
- Supreme Court Decision on 1071 Final Rule
- Revocation Notice of BAM Trading Services Inc.'s (Binance) North Dakota Money Transmitter License
- Upcoming NDBA Events and Trainings

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Special Guest: Commissioner Lise Kruse

Please welcome this month's guest, Lise Kruse! Lise was appointed by Governor Doug Burgum to serve as Commissioner of the North Dakota Department of Financial Institutions. The Department of Financial Institutions oversees North Dakota's state-chartered banks and credit unions as well as other financial companies. Before being appointed to the position of Commissioner, Lise had served as the Department's Chief Examiner Of Banks since January 2011, overseeing the Department's 16 bank examiners and the examination process.

To learn more about the North Dakota Department of Financial Institutions click here: [Link](#)

Member Questions

Question #1: Once a minor has reached the age of 21, is it the bank's responsibility to reach out to the custodian to convert the account?

Response: The bank is not responsible for reaching out to the custodian of the account and it is likely not a good idea to do so. For some reason, North Dakota's UTMA statute has two different ages for UTMA accounts, 18 and 21. Whether the beneficiary is entitled to the property will depend on how and why the transfer was established and therefore, if the bank sends a notice to the custodian, then the bank is giving them legal advice and that advice could be incorrect.

Question #2: For Unclaimed Property – if the UTMA account has fallen into the 5 year dormancy period, do we still have to perform due diligence if said minor has an active traditional deposit account?

Response: It is important to note that the custodian is always responsible for the account and not the person listed as the minor on the account. I'm not sure if your UTMA account terms and conditions allow you to be able to contact the named minor and if there is no written consent given by the custodian you may violate the confidentiality duty to your customer. Your customer is the custodian and not necessarily the minor. If the account becomes dormant it is possible that the State would track down the named minor.

Please see the attached link to the entire North Dakota UTMA statute: [North Dakota Century Code t47c24.1 \(ndlegis.gov\)](https://ndlegis.gov/ncl/c47/c47c24/c47c24.1/)

Question #3: What are the regulations for providing proof of insurance for collateral on a loan? Some of the proof of insurance we have on file for loans have an effective start date and just say “until cancelled”. Example: POI Effective 02/20/2022 until cancelled. Should loan officers be getting current insurance verification at least annually to assure it is still active?

Response: There is no regulatory requirement for collateral insurance, but your credit presentations and loan documents likely require that the borrower insure the collateral for at least the amount of the loan indebtedness. Your borrower's failure to maintain insurance on the collateral, if required by your mortgage and/or security agreement, would be a term of default and your loan documents likely allow that bank to force-place insurance as well as foreclose the lien on the collateral. Please note, it is not likely that your borrower will tell you that they have failed to pay their insurance and therefore it is the loan officer's responsibility to make sure that the collateral is insured. If insurance is obtained on an annual basis, then it should be verified each year.

Question #4: What are the super priority rules in Article 12?

Response: A security interest in a Controllable Electronic Record (“CER”), a Controllable Payment Intangible, and a Controllable Account can be perfected by filing, just like any other general intangible. However, the 2022 Amendments to the UCC also allows a secured party to perfect its interest in a CER and any CER evidencing a Controllable Account or Controllable Payment Intangible via control.

Control is the preferred method of perfection because any party who obtains control of a CER, will have priority over all security interests that are perfected by filing a financing statement, even if the financing statement was filed prior to that party obtaining control of the CER.

Question #5: What are the transition rules in Article 12?

Response: The 2022 UCC Amendments were effective in North Dakota on August 1, 2023. However, the Amendments provided a standard “uniform adjustment date” which ends on August 1, 2024. Because of the above-described super priority rules, a secured party could lose their first priority position if another party obtains control of the CER, so the drafters provided this grace period to allow secured parties to retain their priority position by obtaining control prior to the end of the adjustment period August 1, 2024. Please see the following illustration of these transition rules:

- Before August 1, 2023, secured party 1 perfected its interest in a CER by filing a financing statement. After August 1, 2023, secured party 2 takes control of the same CER but does not file. During the adjustment period secured party 1 retains priority over secured party 2 temporarily.
- After August 1, 2023, and before August 1, 2024, secured party 1 retains its priority temporarily allowing it time to revise loan terms and agreements.
- If secured party 1 takes no action, on August 1, 2024, secured party 2 will have priority over secured party 1 because it has control of the CER. If secured party 1 obtains control of the CER during the adjustment period, it will once again have a first priority position in the CER.

The CFPB and the Federal Reserve Announce Adjustments to Thresholds Found in Regulation CC Related to Funds Availability

The Federal Reserve and the Consumer Financial Protection Bureau (CFPB) have announced inflation adjustments to the dollar amounts relating to the availability of customer funds under Regulation CC, effective July 1, 2025. These adjustments are mandated every five years. The updated thresholds are as follows:

1. **Minimum Amount Available Next Day:**
 - Increased to \$275 from the previous \$225.
2. **Cash Withdrawal Amount:**
 - Raised to \$550.
3. **New Account Availability:**
 - Funds deposited by certain checks in new accounts are subject to next-day availability up to \$6,725.
4. **Large-Deposit Threshold:**
 - Increased to \$6,725.
5. **Repeatedly Overdrawn Threshold:**
 - Set at \$6,725.

6. **Civil Liability for Individual Actions:**
 - Minimum liability is \$125, and the maximum is \$1,350.
7. **Civil Liability for Class Actions:**
 - Maximum liability is \$672,950.

These adjustments ensure that the thresholds keep pace with inflation, maintaining the effectiveness of Regulation CC in protecting consumers and facilitating efficient banking operations.

American Bankers Association Statement Regarding CFPB's Amicus Brief in Citibank Wire Transfer Lawsuit

The American Bankers Association (ABA), the New York Bankers Association, and two other banking associations issued a joint statement to address inaccuracies in a Consumer Financial Protection Bureau (CFPB) blog post. The blog post, dated May 29, discussed an amicus brief filed by the CFPB in a lawsuit against Citibank, initiated by the New York state attorney general's office. The lawsuit accused Citibank of failing to protect and reimburse wire fraud victims.

Earlier in the month, the ABA and other associations filed their own amicus brief, arguing that New York was misapplying the Electronic Fund Transfer Act (EFTA). They stated that the EFTA explicitly does not apply to wire transfers, which are instead regulated by Article 4A of the Uniform Commercial Code (UCC). The CFPB's blog post contradicted this by asserting that the EFTA does cover wire transfers, a position the banking groups argue is contrary to established law.

In their statement, the associations highlighted their ongoing efforts to protect consumers from fraud and scams. They pointed to their extensive consumer education campaigns and significant investments in cybersecurity safeguards. Additionally, they noted their work in investigating and reporting scammers to law enforcement and collaborating with customers to address fraud incidents.

The associations criticized the CFPB, asserting that it misinterpreted the law. They emphasized that wire transfers are excluded from the EFTA and that the CFPB cannot unilaterally reinterpret a statute through an amicus brief and suggest its position is law via a blog post. The associations called on the CFPB to fulfill its role in educating consumers accurately rather than causing confusion.

The CFPB's Amicus Brief can found at the following: [Link](#)

ABA Statement for the Record to the HFSC Subcommittee on Tokenization

The American Bankers Association (ABA) submitted a statement for a hearing on how tokenization of real-world assets can enhance market efficiency. Representing the \$24 trillion banking industry, the ABA highlights the potential of distributed ledger technology (DLT) and tokenization over cryptocurrencies for delivering near-term benefits in financial markets.

The ABA emphasizes the importance of DLT in financial services, citing benefits like enhanced efficiencies, reduced risks, and new product offerings. They reference the recent shift from T+2 to T+1 settlement cycles for US securities trades as an example of progress driven by faster technology. DLT and tokenization could potentially enable even faster settlements.

Tokenization involves recording asset ownership as digital tokens on a distributed ledger, allowing near real-time and transparent value transfers. One application mentioned is creating digital tokens for commercial bank money, or tokenized deposits, under the same regulatory framework as traditional deposits. This could improve the efficiency of payments and asset transactions. The ABA looks forward to collaborating with policymakers on this topic.

Supreme Court Decision on 1071 Final Rule

On March 30, 2023, the CFPB came out with a final rule governing small business lending data collection and reporting requirements under section 1071 of the Dodd-Frank Act amending the Equal Credit Opportunity Act and Regulation B. Originally, the final rule was set to take effect on August 29, 2023, with different compliance dates based on lender volume. On October 26, 2023, implementation of the final rule was delayed due to a preliminary injunction which enjoined the CFPB from enforcing the final rule.

The Supreme Court reversed the 5th Circuit Court's decision granting the preliminary injunction on May 16, 2024. Following this ruling, the CFPB issued informal guidance detailing extensions to the final rule's compliance deadlines:

- For Tier 1 Institutions, the compliance date is extended from October 1, 2024, to July 18, 2025, with an initial filing required by June 1, 2026.
- For Tier 2 institutions, the compliance date is extended from April 1, 2025, to January 16, 2026, with an initial filing required by June 1, 2027.
- For Tier 3 institutions, the compliance date is extended from January 1, 2026, to October 18, 2026, with an initial filing required by June 1, 2027.

Please note, the CFPB has announced plans to memorialize these compliance deadline extensions in an interim final rule.

The CFPB's informal guidance detailing the extension of the final rule's compliance dates can be found at the following: [Link](#)

Revocation Notice of BAM Trading Services Inc.'s (BinanceUS) North Dakota Money Transmitter License

BAM Trading Services Inc.'s North Dakota money transmitter license was revoked by the Department of Financial Institutions on June 4, 2024. Among other things, a properly licensed

money transmitter is allowed to receive money or cryptocurrency and send it to locations within or outside the United States, on another person's behalf. However, to lawfully engage in the business of money transmission a licensed is required under N.D.C.C. § 13-09.1.

BAM Trading Services Inc.'s money transmitter was revoked because it has failed to comply with North Dakota law, and because Changpeng Zhao, the majority beneficial owner and control person, has plead guilty to felony charges for violation of U.S. anti-money laundering laws.

A copy of the order from the Department of Financial Institutions can be found at the following:
[Link](#)

Upcoming NDBA Events in 2024

NDBA has many exciting and informational events planned for 2024. Below are some special dates to mark on your calendars!

CONFERENCES

- **2024 Regional Member Meetings**
 - Grand Forks, September 9, 2024;
 - Fargo, September 10, 2024;
 - Bismarck, September 11, 2024; and
 - Minot, September 12, 2024
- **2024 Ag Credit Conference** | October 2-3, 2024 | Hilton Garden Inn, Fargo, ND

TRAINING

- **2024 Effective Leadership** | October 15-16, 2024 | Bismarck, ND | Register [Here](#)