American Bankers Association

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ABA Regulatory Update

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Current Areas of Focus for ABA

- Congressional Developments
  - Trust and Estate Revenue Raisers
  - Retirement Account Revenue Raisers
- Federal Regulatory Guidance
  - DOL, SEC, FDIC guidance on fiduciary duties, investment options, deposit insurance
  - Digital assets and novel charters

Reconciliation Revenue Raisers of Note

- Trust/Estate Provisions
  - Accelerates the expiration of increased estate and gift tax exemption to pre-TCJA level.
  - Increase in highest marginal tax rate, also imposition of a surtax
  - Grantor trust provision: pulls grantor trusts into a decedent's taxable estate when the decedent is the deemed owner of the trusts.
- Retirement Provisions
  - Contribution Limits. Imposes contribution limits on "Individual Retirement Plans of High-Income Taxpayers with Large Account Balances"
  - Minimum Distributions. Increases required "Minimum Required Distributions for High-Income Taxpayers with Large Retirement Account Balances"
  - IRA Investments. Restricts certain "IRA Investments Conditioned on Account Holder's Status"

Labor Department Guidance

- Fiduciary Rules for Investments and Proxy Voting:
  - Final rule on hold due to Executive Order and DOL Non-Enforcement Announcement.
  - DOL proposed amendments sent to OMB on August 6.
- Fiduciary Investment Advice, PTE 2020-02
  - Compliance Dec. 20. Industry requests for delay.

Money Market Mutual Funds

- 2014 SEC MMF Reforms
  - Government Funds; Prime Funds (Institutional/Retail)
  - Fees/Gates
- PWG Report & SEC Reform RFI Reforms Raised:
  - Modifications of existing rules: no stable NAV; eliminate WLA tie to fees/gates; limits on eligible assets
  - Novel ideas: capital buffers; minimum balance at risk; swing pricing

SEC Accredited Investor Amendments

- Accredited investor" definition expanded:
  - Holds Series 7, 65 or 82
  - "Family offices" with $5M AUM and their "family clients" (e.g., family members, charities, trusts)
- "*Qualified institutional buyer*" definition (purchasers of restricted securities) amended to include "accredited institutional investors," such as trusts with more than $100 MM AUM (e.g., bank CTFs and CITs)

FDIC Proposal on Deposit Insurance Rules for Trusts

- New "trust accounts" category that would include: (1) informal revocable trust deposits (POD); (2) formal revocable trust deposits; and (3) irrevocable trust deposits.
- Does not affect deposit rules for trusts for which bank is trustee.
- Insurance for "trust accounts" would be calculated:
  - $250,000 multiplied by number of trust beneficiaries, not to exceed five, regardless of whether revocable or irrevocable, and regardless of contingencies or the allocation of funds among the beneficiaries.
  - Contingent trust beneficiaries whose interest arises upon the death of another are "ineligible beneficiaries" under the proposal and not entitled to separate insurance.
  - Total "trust account" insurance would be limited at each IDI to $1,250,000.

Digital Asset/Fintech Issues and Considerations

- Client accounts and digital assets
- Federal banking agency perspectives and inquiries: OCC, FRB, FDIC

Client Accounts and Digital Assets

- Increased interest from clients in cryptocurrencies and NFTs
- Types of accounts
- Investment considerations
  - Duties and authority in the relationship
  - Price volatility and valuation
  - Legal/regulatory treatment
  - Custody of digital assets

OCC Guidance on Custody of Cryptocurrencies

- *Interpretive Letter 1170*: national banks and federal thrifts may custody cryptocurrencies for customers
- "OCC concludes that providing cryptocurrency custody services, including holding unique cryptographic keys associated with cryptocurrency, is a modern form of traditional bank activities related to custody services. Crypto custody services may extend beyond passively holding 'keys.'"
- Banks may use subcustodian to hold assets.

OCC Guidance on National Trust Companies

- *Interpretive Letter 1176*: national trust bank limit its activities to those permissible for a state trust bank or company "even if those state authorized activities are not necessarily considered fiduciary in nature under 12 U.S.C. § 92a and 12 C.F.R. Part 9." (e.g., nonfiduciary custody of assets such as cryptocurrency)

- The Letter also discusses standards for "assessing whether an activity is conducted in a fiduciary capacity, and the implications for chartering de novo institutions and approving the conversion of state institutions, along with the permissibility of certain activities for existing national banks that do not have fiduciary powers."

Federal Reserve Release on Access to Payment System

- Principles for access: legal authority; risk to FRB/FRS/financial system; prevention of financial crimes; monetary policy
- ABA letter:
  - Establish centralized evaluation committee
  - Participants should meet prudential standards of federally insured/chartered entities
  - Ongoing review of non-federally regulated participants
  - Audited financial statements of participants

FDIC RFI on Digital Assets

- FDIC sought comments on current and potential digital asset activities in areas such as payments, lending, investments, deposits, custody
- ABA letter commented on the need for:
  - Consistent taxonomy on digital assets
  - Regulatory clarity regarding what digital asset activity is
  - permissible for a bank
  - Consistent regulation of banks and non-banks engaged in digital asset activity

Recent Interagency Guidance on Third-Party Relationships

- Proposed Interagency Guidance on Third-Party Relationships: Risk Management
- Third-Party Relationships: Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks

Questions?