

## **ASK KENNEDY**

### **June 7, 2023**

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#### Topics Covered:

- Member Questions
- Corporate Transparency Act
- SEC Files 13 Charges Against Binance
- North Dakota Legislative Update
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#### **Member Questions**

**Question #1: Is a lender required to provide the borrower the original promissory note ‘stamped or otherwise indicated as paid in full’ upon payoff of the note?**

**Response:** The Note is a contract and evidence of the indebtedness, and possibly a negotiable instrument. Satisfaction of the terms of the contract, meaning repaying the loan according to the terms of the Note, and a letter or statement indicating a zero balance should be enough, but the borrower may be concerned about the Note outstanding and later having to defend on presentment of the Note for payment. There is no evidence of a requirement that the Note be returned but there is nothing stating a lender cannot make a copy of the Note stamped ‘cancelled’ or ‘satisfied’ and return the original Note, also stamped ‘cancelled’ or ‘satisfied’, to the Borrower.

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**Question #2: I couldn't make it to the NDBA Principals of Secured Lending Seminar, did I miss anything?**

**Response:** Yes, we not only discussed the current law on Secured Lending, but the major impact that the New Article 12 will have on Secured Lending and Electronic Promissory Notes. We also discussed the new definition of money. These laws will become effective on August 1<sup>st</sup>, 2023 and we will try to discuss the new laws each month going forward to help you ensure that your bank is ready for these changes. The changes are all found in [H.B. 1082](#).

**Question #3: What is Article 12?**

**Response:** Article 12 is a new section of the Uniform Commercial Code, and will become effective in North Dakota on August 1<sup>st</sup>, 2023. It is called Controllable Electronic Records and will be found in Chapter 41-12 of the North Dakota Century Code as found in the 2022 UCC Amendments adopted by [H.B. 1082](#).

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### **Corporate Transparency Act**

As a part of the Anti-Money Laundering (AML Act), the Corporate Transparency Act (CTA) establishes uniform beneficial ownership reporting requirements for certain types of corporations, limited liability companies, and other similar entities created or registered to do business in the United States. The CTA Requires reporting companies to file with FinCEN reports that identify a company's beneficial owner, as well as to report information about the company's applicants.

A beneficial owner is an individual with 25% or more equity interest in the legal entity. Banks are generally required to identify and verify the identity of the beneficial owner of legal entity customers who own, control, and profit from companies when those companies open accounts. The Beneficial Ownership Rule, which became effective in 2016, establishes these requirements for legal entity customers.

For more information on the Corporate Transparency Act, click [here](#).

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### **SEC Files 13 Charges Against Binance**

On June 5, 2023, [the Securities and Exchange Commission \(SEC\) charged Binance Holdings Ltd](#), which operates the largest crypto asset trading platform in the world, Binance.com, Binance.US, the crypto asset trading platform operated by BAM Trading Services Inc. (BAM) and Binance, and their founder Changpeng Zhao, with a variety of securities law violations.

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The SEC alleges that Zhao and Binance “misled investors about their risk controls and corrupted trading volumes while actively concealing who was operating the platform, the manipulative trading of its affiliated market maker, and even where and with whom investor funds and crypto assets were custodied.” Included in the thirteen charges filed by SEC are operating unregistered exchanges, broker-dealers, and clearing agencies; misrepresenting trading controls and oversight on the Binance.US platform; and unregistered offer and sale of securities.

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### **North Dakota Legislative Update**

Keep a look out for the NDBA’s 2023 Legislative Summary coming out soon.

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### **ABA Now Accepting Applications for Emerging Leader Awards**

The application period is now open for ABA’s emerging leader awards, which recognize the next generation of bank leaders committed to the highest standards of achievement and service to the industry and their communities.

Applications will be accepted until June 30. Individuals can also nominate colleagues or peers for the award. Submissions will be judged by a diverse steering committee; among the qualities and characteristics the committee will be looking for are dedication to the profession, inventiveness, leadership skills, mentoring ability and personal integrity. Winners will be announced on [aba.com](http://aba.com) and honored at ABA's Annual Convention. [Apply or submit a nomination.](#)

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### **SAFE Bank Act of 2023**

The Secure and Fair Enforcement (SAFE) Banking Act of 2023 was introduced to the Senate on April 26, 2023. The bill provides protections for federally regulated financial institutions that serve state-sanctioned marijuana businesses because currently, many financial institutions do not provide services to state-sanctioned marijuana businesses due to the federal classification of marijuana as a Schedule 1 controlled substance.

Under the SAFE Banking Act of 2023, a federal banking regulator may not penalize a depository institution for providing banking services to a state-sanctioned marijuana business. The SAFE Banking Act of 2023 also prohibits a federal banking regulator from requesting or ordering a depository institution to terminate a customer. Additionally, proceeds from a transaction involving activities of state-sanctioned marijuana business would no longer be considered unlawful activity.

Click [here](#) for more information on the SAFE Banking Act of 2023.

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### **ACRE Act of 2023**

Introduced to the House on May 9, 2023, the Access to Credit for our Rural Economy (ACRE) Act of 2023 seeks to amend the Internal Revenue Code of 1986 to exclude from gross income interest received on certain loans secured by rural or agricultural real property. The ACRE Act will amend Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 by inserting after section 139I, the following section,

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“Section 139J. Interest on Loans Secured by Rural or Agricultural Real Property.”

The ACRE Act of 2023 will enable banks to exclude interest received on certain loans secured by rural or agricultural real property and, because of the ACRE Act, will allow them the opportunity to offer certain loans at a lower interest rate. For more information of the ACRE Act of 2023, visit this [website](#).

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### **Small Business Lending Collection and Reporting Requirements**

The Consumer Financial Protection Bureau (CFPB) has published resources to help banks comply with the Small Business Lending Collection and Reporting Requirements. To see if your bank is required to report and what information must be reported, click [here](#).

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### **FDIC Third-Party Risk Guidance**

The Federal Deposit Insurance Corporation (FDIC), the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) are issuing final guidance on managing risks associated with third-party relationships. The guidance provides sound principles that support a risk-based approach to third-party risk management that banks may consider when developing and implementing risk management practices for all stages of third-party relationships.

For more information on third-party risk guidance, visit this [website](#).

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### **NDBA Helpful Resources**

#### **ABA Banking Journal Podcast**

[The Anatomy of a Community Bank Ransomware Attack](#) | This episode features a look into what happens inside a financial institution during an after a ransomware attack.

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### **Upcoming NBDA Events in 2023**

NDBA has many exciting and informational events planned for 2023. Below are some special dates to mark on your calendars!

#### **SCHOOLS**

**National School for Beginning Ag Bankers** | June 26-29, 2023 | Black Hills State University, Spearfish, SD  
Hosted by South Dakota Bankers Association

[Click for more information](#)

**The Power of Prevention: How to Safeguard Yourself Against Cybercrime** | June 8, 2023 | Online Event  
Hosted by North Dakota State University Extension

[Click for more information](#)

#### **CONFERENCES**

- **2023 Group Meetings** | September 11-14, 2023
- **2023 Ag Credit Conference** | Fall 2023 | Bismarck ND