AMERICAN BANKER®

FRIDAY NOVEMBER 19, 2021 VOL. 186 No. 223 AMERICANBANKER.COM Follow us on Twitter @AmerBanker

A lot on the line

The U.S. is Amazon's largest market, raising the stakes for upcoming negotiations over payment fees with Visa and Mastercard here

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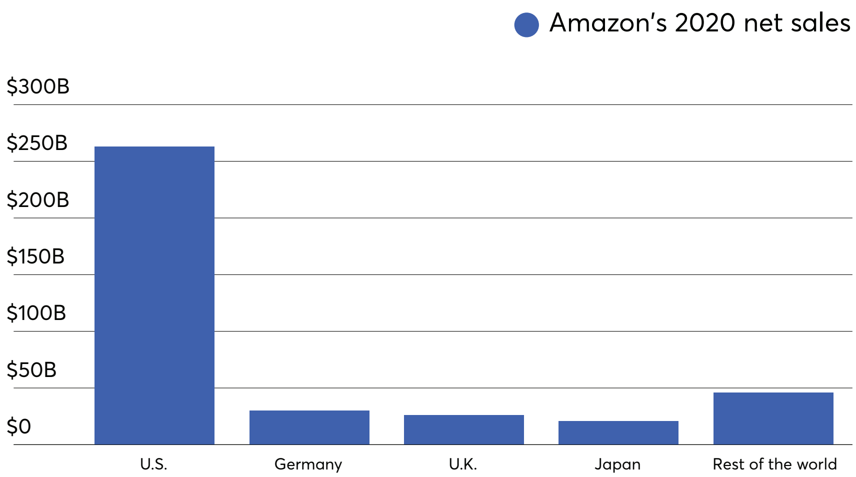

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dailybriefing

1 ICBA takes unusual step of opposing OCC nominee

The Independent Community Bankers of America made the rare move of urging senators not to confirm Saule Omarova to lead the Office of the Comptroller of the Currency. The group argued that some of her proposals could have drastic consequences for the industry. **Page 2**

2 Amazon's U.K. Visa ban could foreshadow larger fight in U.S.

The online retailer's plan to block certain credit card payments in Britain is seen as an opening move in likely negotiations with Mastercard and Visa ahead of the card networks' planned fee hikes in 2022. (See chart above.) **Page 2**

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Christopher Waller, a member of the Federal Reserve Board, warned that blocking nonbank entry into payment systems would stifle innovation. His remarks appeared to contradict a recent report in which Fed Chair Jerome Powell and others recommended that only banks be allowed to issue stablecoins. **Page 3**

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POLITICS AND POLICY

ICBA takes unusual step of opposing OCC nominee

By Brendan Pedersen
November 17, 2021

WASHINGTON — A top trade association representing community banks urged U.S. lawmakers to oppose the nomination of Saule Omarova for comptroller of the currency, an unusual rebuke coming just hours before the Senate hears the law professor's testimony.

In a letter sent by the Independent Community Bankers of America and addressed to the leadership of the Senate Banking Committee, the group called Omarova's scholarship and policy positions "alarming."

"The Independent Community Bankers of America and the undersigned state banking associations, representing thousands of community banks and the communities they serve write to express our opposition to the nomination of Professor Saule Omarova to be the Comptroller of the Currency," the group said.

The industry has specifically called out a proposal by Omarova to shift all customer deposits to accounts held at the Federal Reserve.

"The Comptroller should have a fundamental understanding of the role that community banks play in supporting local economic growth," the ICBA said in the letter. It was undersigned by 40 state-level community bank trade groups. "Professor Omarova has advocated the displacement of community banks with government credit allocation."

Public opposition to a regulatory nominee from industry advocates is highly unusual, even with the polarization between political parties. The ICBA's letter noted that the group has "not previously opposed a nominee of this President and have only rarely opposed a nominee of any previous President."

Omarova, who is scheduled to testify before the Senate Banking Committee Thursday morning, has received harsh criticism from industry and Republicans since her nomination was first announced in September to lead the Office of the Comptroller of the Currency.

Critics have taken aim at some proposals in her scholarship that would significantly restructure the financial system. Her idea to shift deposits to the Fed came in a 2020 paper in which she described a public banking construct known as "The People's Ledger."

"Professor Omarova has advocated for government allocation of capital and credit through the transfer of private retail banking functions to the Federal Reserve, 'fully replacing' private bank deposits as a funding source," the ICBA letter said, in reference to the paper.

Supporters of Omarova have rallied to her defense in recent days, charging that her critics are using personal attacks to undermine her candidacy, including allegations of Marxism tied to her experience growing up in the former Soviet Union and attending Moscow State University as an undergraduate.

Omarova's opening remarks for Thursday's hearing were published by the Senate Banking Committee Wednesday afternoon. In that prepared testimony, the Cornell University professor wrote that if she were confirmed, her "top priority will be to guarantee a fair and competitive market where small and mid-size banks that invest in their neighbors' homes and small businesses can thrive."

PAYMENTS

Amazon's U.K. Visa ban could foreshadow larger fight in U.S.

By John Adams
November 17, 2021

Amazon's plan to block Visa credit card payments in the U.K. is limited in scope but could be the start of a much larger battle between the e-commerce giant and the major card brands.

"This could be a tactical move that is about more than just the U.K. market," said Jordan McKee, principal analyst for digital payments at S&P Global Market Intelligence.

Citing the high costs of payments, Amazon on Thursday said it plans to halt acceptance of Visa credit cards in the U.K. starting Jan. 19. The move follows a Visa payment fee increase in the U.K. and comes ahead of Visa and Mastercard hikes planned for April 2022 in the U.S., a much larger market for Amazon.

Its U.K. move is a warning shot ahead of

AMERICAN BANKER.

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a U.S. showdown with Visa and Mastercard, according to payment experts.

"Amazon is posturing for negotiations in its single largest market in the U.S.," said Richard Crone, a payments consultant. "Amazon is more than a single large retailer; it is a marketplace that hosts payment services for millions of affiliate merchants." In a research note, Barclays also referred to Amazon's move as a "negotiation tactic."

Amazon's U.K. ban is limited to Visa credit cards issued in the U.K. Non-U.K.-issued Visa cards can still be used for Amazon purchases in the U.K., as can Mastercard and American Express credit cards, and Visa debit cards. That means Amazon's co-branded JPMorgan Chase credit card can still be used inside the U.K. after Jan. 18. JPMorgan said the Amazon U.K. ban would not impact the co-brand relationship with Visa.

Amazon's market in the U.K. is much smaller than its U.S. market. Amazon's 2020 U.S. sales totaled $263 billion, compared with $26 billion in the U.K. according to Statista. Amazon's share of the U.S. e-commerce market is 38%, while its share of the European e-commerce market — including the U.K. — is 10%, also according to Statista.

In October, Visa increased the fees for digital payments between European customers and British businesses, and vice versa, from 0.3% to 1.5% for credit cards and 0.2% to 1.15% for debit cards. Mastercard also raised fees, but only for online card payments between British customers and European merchants. Domestic U.K. payment fees remain capped at 0.3% and 0.2%, respectively. The European Union caps interchange fees at 0.3%.

The interchange hikes for cross-border U.K./EU payments has been attributed to Brexit, which creates a loophole not covered by EU or U.K. domestic regulations.

"With Brexit, Amazon can put a spotlight on the price increase in the U.K.," Crone said. That gives Amazon the ability to use payment fee increases as a way to communicate with its user base, who will have a payment option at least temporarily removed, he said.

The pending Visa and Mastercard U.S. interchange fee hikes, which have been delayed by the pandemic, would vary depending on the merchant. CMPSi, a research firm in Atlanta, told American Banker previously that the proposed increases would amount to $768 million for Visa and $383 million for Mastercard for the first year.

Bloomberg estimates that for a traditional Visa card, the fee on a $100 transaction would climb to $1.99 from $1.90. And for premium Visa cards, the fee would increase to $2.60 from $2.50. Bloomberg has also reported on a document Visa reportedly sent to banks that set higher rates for transactions on e-commerce sites, while retailers in certain services categories, such as real estate and education, would see fees decline.

Visa and Mastercard did not respond to requests for comment. In an email, an Amazon spokesperson said: "The cost of accepting card payments continues to be an obstacle for businesses striving to provide the best prices for consumers. The costs should be going down over time with technological advancements, but instead they continue to stay high or even rise."

Because of Amazon's scale, one of the negotiating levers it has at its disposal is to say it will stop accepting a particular payment method, McKee said. "This can be an effective tactic because of the massive volume consequences for the payment method provider. However, it's unfortunate when the customer becomes the victim in those negotiations."

Amazon's planned ban in the U.K. follows a similar move in Singapore. In September, Amazon, citing the cost of payments, added a 0.5% surcharge to Visa credit card purchases, a levy that Amazon says is still in place.

Other retailers have used similar tactics in the past. Walmart in 2016 banned Visa credit cards in Ontario and then threatened to ban Visa cards throughout Canada. Visa and Walmart later reached a deal about about six months, with neither side disclosing details.

Other large merchants will be watching the outcome of the Visa ban in the U.K. closely, McKee said. "Should Visa and Amazon reach an agreement prior to Jan. 19, it's plausible other merchants will look to replicate Amazon's brinkmanship strategy in effort to secure more favorable rates," McKee said.

REGULATION AND COMPLIANCE

Fed governor urges restraint in regulating stablecoin providers

By Hannah Lang
November 17, 2021

WASHINGTON — Despite the federal government's apparent interest in restricting stablecoin issuance, not all policymakers see eye to eye.

That was evident in a speech Wednesday by Federal Reserve Gov. Christopher Waller, who contradicted a recent report by the President's Working Group on Financial Markets by warning against excessive regulation of stablecoin providers.

"While regulations are necessary, they also limit free entry into at least some of the markets in which banks operate," Waller, a Trump administration appointee, said at a conference held by the Federal Reserve Bank of Cleveland and the Office of Financial Research. "As a result, regulatory oversight can insulate banks from some forms of direct competition."

The President's Working Group, which includes Fed Chair Jerome Powell, released a paper earlier this month recommending that Congress pass legislation to restrict stablecoin issuance to insured depository institutions.

Waller emphasized that he wasn't against banks' issuing or providing wallets for consumers to store stablecoins. But he suggested that there were better approaches than banning nonbanks from issuing them that would ensure safety and soundness and foster innovation.

"I understand the attraction of forcing a new product into an old, familiar structure," said Waller, a former research director at the Federal Reserve Bank of St. Louis. "But that approach and mindset would eliminate a key benefit of a stablecoin arrangement — that it serves as a viable competitor to banking organizations in their role as payment providers."

Limiting issuance to banks as recommended by the PWG would push the leading stablecoin providers, including firms like Tether and Circle, out of the market unless they obtained banking charters.

The report came out as the Fed is also exploring whether to issue its own digital dollar. The central bank is expected as early as this year to release a research paper discussing its potential plans as well as its views on the stablecoin sector.

Powell, who is awaiting an announcement from the White House on whether he will be renominated to another term running the central bank, has been careful to note that the Fed has no plans to ban privately issued stablecoins as part of its internal deliberations. But in July, he told lawmakers that stablecoins should be regulated to bring them more in line with standards for bank deposits and money market funds.

"It's very simple: These are economic activities that are very similar to deposits and money market funds, and they need to be regulated in comparable ways," Powell said at the time.

Waller said even though stablecoins and other new payments instruments could pose risks to the financial system, they also provide important benefits, such as speeding up transactions. The Fed itself is working on a real-time payments system that would be able to offer instant payments and settlement, but the service is not expected to be operational until at least 2023.

"With the right network design, stablecoins might help deliver faster, more efficient retail payments as well, especially in the cross-border context, where transparency can still be low and costs can still be high," Waller said. "Stablecoins could be a source of healthy competition for existing payments platforms and help the broader payments system reach a wider range of consumers."

The Fed along with lawmakers should be encouraging private sector innovation in the payments space, Waller added, instead of imposing regulatory frameworks that were never intended to apply to payments services.

Private-sector innovation "can come from outside the banking sector, and we should not be surprised when it crops up in a commercial context, particularly in Silicon Valley," he said. "When it does, we should give those innovations the chance to compete with other systems and providers — including banks — on a clear and level playing field."

Waller's concern about stifling innovation were echoed by some lawmakers at a Joint Economic Committee hearing to discuss the regulation of digital assets.

Sen. Mike Lee, R-Ut., said the federal government's urge to over-regulate decentralized finance "must be resisted."

"If we want the center of innovation to remain right here in the United States for the benefit of American workers and American families, Congress should focus on creating clarity around how existing rules apply to these new technologies," Lee said in opening remarks to Wednesday's hearing.

But Democrats remain concerned about the risks of investor harm, fraud and a lack of market transparency in the crypto sector. Joint Economic Committee Chair Don Beyer, D-Calif., called on Congress to issue a "comprehensive legal framework around these assets."

"Updating the U.S. regulatory framework for digital assets would be in line with how officials have responded to past financial innovations — although often after the fact — with stronger rules to protect consumers and market integrity," Beyer said.

Instead of limiting stablecoin issuance to banks, Waller suggested that a regulatory and supervisory framework for stablecoins should narrowly address the specific risks that the digital assets might pose to the financial system. That could include requirements to ensure that stablecoin reserves are well maintained, he said.

If a company limited its business activities to issuing stablecoins, backed its liabilities with safe assets and was subject to supervisory oversight, he said, "that might provide enough assurance for these arrangements to work."

Brendan Pedersen contributed to this article.

COMMERCIAL BANKING

Hari Moorthy brings meditation and new tech to Goldman Sachs

By David Heun
November 17, 2021

In his late teens, Hari Moorthy discovered meditation, and he found it to be an effective way to clear his thoughts and focus on difficult tasks.

More than 20 years later, the global head of Transaction Banking, or TxB, at Goldman Sachs has found weekly meditation sessions to be vital as he develops a banking-as-a-service software model for the investment bank's corporate clients.

And he's not alone — his team members have found it helpful as well. Several of them join Moorthy when he leads a weekly meditation session at Goldman's New York office.

"The point of it all is to be able to listen to others, and to do that, you have to be able to listen to yourself," said Moorthy, a finalist in American Banker's 2021 Digital Banker of the Year honors.

Moorthy's team launched the TxB digital platform in 2020. Goldman Sachs, referring to application programming interfaces, proclaimed it was the "only transaction bank with a 100% cloud-based, API-led global platform."

Under Moorthy's guidance, the Transaction Banking team grew from a dozen employees in 2018 to what is projected to be more than 600 by the end of 2021. The bank also expects revenue from Transaction Banking to reach $1 billion within five years.

Moorthy found his way to financial services through an indirect route. While pursuing a Ph.D. in mathematics at Bria Institute of Technology and Science at Pilani, India, he took a job in a commercial setting for a time to make ends meet. He ended up working for CheckFree Services for nearly 10 years before joining Goldman Sachs in 2007.

Moorthy has had two tenures at Goldman, first as global head of the development practices group and chief technology officer for global prime services, from 2007 to 2014. He went on to join JPMorgan Chase as a managing director for four years, before returning to Goldman in 2018 to begin creating the bank's first cloud-based and API-driven transaction service.

When thinking about complex and interconnected problems like TxB, Moorthy has found that grounding himself and breaking the complex problems into simpler parts makes success easier to envision.

"I have often thought about what the difference is between imagination and innovation," he said. "We all daydream and want to build things, and I began thinking about this with the project's early days, and often wondered what if we had an infinite budget and infinite people, what could we do?"

The reality was, Moorthy had about 12 people when the project started in 2018, so he had to consider what parts of his imagination could work under the manpower and budget constraints.

"That is innovation," he said.

To even start the process of imagining a new service for the bank, Moorthy had to confront what he felt might be the hardest question: How could Goldman Sachs, in essentially building "a new-concept fintech within a bank that is a mature business," entice people to join the team?

"That ended up being easier than I thought," Moorthy said. "The motivation to build something from scratch appeals to a lot of folks."

The project had a clear target market: corporations expanding globally but working with U.S. commercial and treasury banks that had legacy back-end infrastructure upward of 40 years old, resulting in many manual processes for transactions.

But TxB also opened doors to key partnerships that may have never been possible had Moorthy not paved the way for Goldman Sachs to position itself as a technology player with modern digital payments and corporate account onboarding processes in place.

Goldman was able to land a partnership with the e-commerce payments processor Stripe in which its banking-as-a-service software would be embedded into Stripe's offerings.

"We don't have a branch strategy at Goldman Sachs, so this was an effective way to capture small and medium businesses through partnerships," Moorthy said.

But with patience — and mindfulness — Moorthy made sure the $1.9 trillion-asset investment bank made up for lost time.

Goldman waited until 2019 to dive into new corporate payments technology, and "we skipped some generations of technology and went right to APIs and doing partnerships with other ecosystem players," Moorthy said. "Payments take an extraordinarily long time when using bank processes that are 30 to 40 years old. We looked at it and said, 'We could build this natively.'"

POLITICS AND POLICY

Citigroup wins first Texas muni bond deal since gun law spat

By Bloomberg News
November 17, 2021

Citigroup won a municipal-bond deal in Texas on Wednesday, marking its potential re-entry into a booming corner of the municipal-debt market after a new Republican state law sought to punish Wall Street banks for their gun policies.

The bank won an auction for a $27 million bond offering sold by the Alamo Heights Independent School District, data compiled by Bloomberg show. It stands to be the firm's first muni deal in Texas since late August. The pause in underwriting there came after the law went into effect on Sept. 1, barring governments in the state from working with companies that "discriminate" against firearm businesses or trade groups.

Before the deal becomes final, Citigroup needs the office of the state's attorney general, Republican Ken Paxton, to sign off on the transaction, a step required on public debt sales in Texas. The office didn't respond to an email and phone call requesting comment.

Citigroup bid a net interest cost of 0.68%, according to a list of bidders provided by the district. The next lowest bidder was BOK Financial Securities, which offered 0.73%. Mike Hagar, assistant superintendent of business and finance for the district, confirmed that Citigroup won the deal. A spokesperson for the bank declined to comment.

"We feel confident with Citigroup and that the AG office will approve the sale," Hagar said in an email.

After being ranked the biggest underwriter of Texas munis from 2018 to 2020, New York-based Citigroup has dropped to eighth place this year, data compiled by Bloomberg show. Bank of America, JPMorgan Chase and Goldman Sachs Group also haven't underwritten muni bonds sold by the state and its cities, schools, and transit agencies since the legislation took effect.

Citigroup has said repeatedly that it could comply with the law, known as Senate Bill 19, and that it was temporarily pulling back as it worked through the certification process now required under the legislation.

The law targeted banks like Citigroup, which in 2018 said it would forbid retailers that are its customers from offering bump stocks or selling guns to anyone who hasn't passed a background check or is younger than 21.

The state's surging population has driven debt sales for infrastructure, making it a key market for municipal underwriters. In 2020, Texas borrowers sold about $58 billion of debt, trailing only those in California.

In October, Citigroup sent a letter to the state attorney general's office that confirmed it does not have a "practice, policy, guidance, or directive" that discriminates against a firearm entity or trade association. Then, on Nov. 9, the firm said in a statement it was ready to restart underwriting in Texas.

DATA SHARING

Plaid leads effort to raise the bar on fintechs' data security

By Penny Crosman
November 16, 2021

The data aggregator Plaid is leading the charge for a new data security standard for fintechs.

The San Francisco company, which delivers bank account data to 4,500 fintech clients, has recruited other companies to this effort, including the data aggregators Flinks and MX; the employment verification provider Truework; and the security compliance companies Drata, Laika, Secureframe and Vanta.

The new Open Finance Data Security Standard was posted online Tuesday and is open for outside comment ahead of implementation next year. It is meant to hold fintechs that handle consumer data to a higher standard of data protection, the way the PCI Security Standards Council's Data Security Standard guides those in the payment card industry to protect card data.

"If you look across established industries like the payment cards industry, they have a really clear set of rules, which has been codified in the PCI DSS, a data security standard that says, if you're going to hold sensitive customer information, this is what you have to do, these are the types of systems and controls that you have to have in place," said Dan Kahn, open finance lead at Plaid, who has been leading the initiative.

"The principles that exist in the payments industry haven't yet been codified in the open finance space," Kahn said.

Members of Plaid's risk team spoke with their industry colleagues and realized security wasn't something they wanted to compete on, but that this was an opportunity to collaborate with companies that have traditionally been competitors, he said.

Fintech startups typically begin with small teams and limited resources. They tend to focus on developing products and getting them to market, not on security.

"We know that they're not going to be hiring a chief information security officer on day one," Khan said. "But that doesn't mean we can't start to give them an indication of where they should be going with data security."

The security requirements in the standard cover data encryption, access controls and other basics.

"These are fairly commonsensical standards," Khan said. "We're not setting out to reinvent the wheel." Many of the requirements exist in other security frameworks and therefore are already being followed in most larger companies.

The group behind OFDSS plans to begin implementing the standard in the second half of 2022.

COMPENSATION

Top Barclays investors flag concerns about Staley exit pay

By Bloomberg News
November 17, 2021

Several of Barclays PLC's top shareholders have raised concerns about the terms of Jes Staley's departure, as the fallout from his abrupt resignation continues to spread.

The bank said in a Nov. 1 statement that its former chief executive officer would continue to receive his salary of 2.4 million pounds ($3.3 million), a 120,000 pound pension allowance and other benefits through October next year. The executive's repatriation costs to the U.S. are also eligible to be covered.

Several shareholders have expressed their unease with those plans to the Investor Forum, a lobbying group that represents institutional investors in U.K.-listed companies, according to a person familiar with the matter. The complaints come as new CEO C.S. Venkatakrishnan prepares to meet with investors this month.

Spokespeople for Barclays and the Investor Forum, whose members include BlackRock and abrdn, declined to comment.

Staley stepped down earlier this month amid a regulatory probe into whether he mischaracterized his relationship with the financier and sex offender Jeffrey Epstein. A spokesperson for Staley has said that "he intends to contest the initial findings" of the Financial Conduct Authority and Prudential Regulatory Authority investigation.

That formal outcome of that probe is likely still months away, people familiar with the matter have said.

The Financial Times reported the news earlier.

INDUSTRY NEWS

Fed order bars former Eagle Bancorp general counsel from industry

By Jim Dobbs
November 16, 2021

Laurence Bensignor, a former general counsel of Eagle Bancorp in Bethesda, Maryland, was barred from U.S. banking as part of an agreement tied to years-old insider loan scheme allegations involving the bank's former chief executive.

In a consent prohibition order dated Nov. 8, the Federal Reserve Board said Bensignor had agreed not to work for "any insured depository institution or any holding company of an insured depository institution, or any subsidiary of such holding company." He also cannot work for a foreign bank with U.S. operations.

Bensignor, who joined the company in April 2010 after nearly 30 years in the legal and real estate industries, retired from Eagle in 2018. Not long after,allegations involving mistreatment of related-party transactions and ties to a Washington councilman accused of ethics violations mounted against former CEO Ron Paul.

Bensignor, the Fed said in its order, "engaged in unsafe and unsound banking practices by failing to ensure that he disclosed, in accordance with the bank's code of conduct and policies relevant to insider lending, certain information regarding the participation of various parties in certain transactions of the bank."

Without confirming or denying any allegations, Bensignor agreed to refrain from working in the banking sector, according to the Fed. He also agreed to "fully cooperate with and provide substantial assistance" to the Fed, "including but not limited to the provision of information, testimony, documents, records, and other tangible evidence, in connection with any investigations" of the company or other individuals who are or were part of related investigations, according to the Fed order.

Earlier this year, Eagle Bancorp agreed to settle a class action alleging that it lacked sufficient internal controls under its previous management.

The $11.6 billion-asset Eagle disclosed that it would pay $7.5 million in exchange for a release of all claims against the company and current and former executives. Eagle and the executives did not admit or deny wrongdoing as part of the settlement, which resulted from nonbinding mediation that concluded in mid-April. The settlement addressed a shareholder lawsuit filed in the U.S. District Court for the Southern District of New York.

Neither the Fed nor Eagle immediately responded to requests for comment Tuesday.

RECRUITING

Morgan Stanley wants more diverse youths working on Wall Street

By Bloomberg News
November 17, 2021

Morgan Stanley is introducing an initiative to draw more young people from diverse backgrounds to the finance industry, furthering its outreach efforts a week after appointing to the bank's board its first woman of color.

"We recognize our industry must do more to reach diverse talent," Margaret Flynn-Martin, head of relationship management at Morgan Stanley Wealth Management, said in a statement Wednesday. "We are dedicated to increasing access for young talent and proactively raising awareness about the incredible opportunities in our field."

Members of the Equity Collective, as the new program is called, include 23 wealth and asset management firms, including units of Goldman Sachs Group, Bank of New York Mellon, Pacific Investment Management Co. and Prudential Financial, which have committed to work with career-focused community organizations for at least two years.

The initiative invests early in "under-represented communities, focusing our efforts on increasing the pool of interested and qualified people that consider a career in financial services," Andy Saperstein, head of Morgan Stanley Wealth Management and co-president of the New York-based bank, said in the statement.

Equity Collective members will partner with Boys & Girls Clubs of America with the aim of reaching 4.6 million 13-to-18-year-olds, join with Team IMPACT to support college athletes and work with virtual recruiting platform HIVE Diversity, which focuses on internships and entry-level placement opportunities.

Last week, Morgan Stanley announced that Erika James, dean of the Wharton School at the University of Pennsylvania, was elected as a director, effective Jan. 1. She's the first woman of color to sit on the board, the bank said at the time.

BANKTHINK

Fireworks over OCC nominee distract from bigger policy issue

By Karen Petrou
November 17, 2021

Tomorrow, the Senate Banking Committee will hold Saule Omarova's confirmation hearing for comptroller of the currency. Many expect this to be a knock-down, drag-out between the progressive bank-reform agenda and the banking industry's antipathy thereto. This it surely will be, but to watch only these fireworks is to miss the longer-burning fire below: renewed questions about whether banks are public utilities or private companies with unique privileges fully reimbursed by virtue of unduly burdensome regulation. It is by this choice — not Ms. Omarova's most uncertain confirmation — that the future of U.S. finance will be decided.

Although Ms. Omarova has surely moved on from the Marxist views of which she is accused based on an early academic paper, she clearly sides with those who think that banking is for public purpose, not private profit. Indeed, according to at least some of her work, banking can't be trusted to banks and thus should be seconded to the federal government or outside experts presumed to be not just objective, but also disinterested in all but the public good.

This is not a new view. After the S&L crisis of the 1980s and the subsequent banking debacle in the early part of the next decade, much was made of the subsidy banks were said to enjoy from unique access to FDIC insurance and the Fed's discount window. Bankers strongly disputed any subsidy, but I said then and believe now that banks then indeed enjoyed special-purpose charters that warranted not just tough safety and soundness standards, but also Community Reinvestment Act and other public-welfare obligations.

That, though, was then. Now, whatever subsidy banks enjoyed has evaporated due to the Fed's decision to give massive nonbanks not just emergency liquidity and even solvency support, but also their very own trillion-dollar Fed window for day-to-day liquidity management without the bother of pesky regulation. The OCC and FDIC have granted special-purpose charters that give nonbanks access to selected bank charter privileges, even as some banks choose to give these away in "fintech partnerships" in order to garner fee income from federal benefits that no longer earn their keep.

Further, as global regulators anticipated as early as 2017, the retail, wholesale and payment services once strictly limited to banks because of their regulatory construct are now unbundled and disintermediated into whatever charter offers those services most profitably. Most of these aren't banks because almost none of them need to be. This trend seems so irreversible that even the Fed has contemplated how best to reckon with it in the all-critical payment system.

Ms. Omarova and her allies believe the only way to recapture this chaotic financial construct for the public good is to nationalize it by hook or by crook. U.S. bank regulators are taking confusing steps into a different regulatory future, contemplating like-kind, banklike rules for stablecoin but then disavowing them for systemic Treasury-market entities. This push-pull is due to the never-ending turf wars that define U.S. financial policy far more definitively than the demands one might think exerted by external, inexorable market reality.

Regulators will now likely do the usual and come up with a lowest-common-denominator construct that settles most of their own scores but leaves wide open spaces for continued regulatory arbitrage, unbundling, and even evasion. Each one of the last half-century's financial crashes was the direct result of this lowest-common-denominator process: The S&L crisis originated in thrifts exempt from regulatory capital standards besieged by mutual funds exempt from interest rate ceilings; the banking crisis in the 1990s was due to state rules that weren't "laboratories for change," but test tubes for high-risk finance; 2008 began with nonbank subprime mortgage lenders and unregulated nonbanks before it overwhelmed the banking sector; and the financial system was fragile in 2020 because much of it was outside post-2008 banking standards.

The Fed's most recent financial stability report makes sobering reading in its description of today's systemic vulnerabilities and thoroughly frightening reading after one realizes the complete absence of regulatory actions to address any of them. If there's another crisis — and much in the market makes clear there might be — the public will be still less forgiving and with good reason. Professor Omarova's vision of nationalized banking might then be realized even though it would have proved unnecessary had federal agencies moved far more quickly after 2008 and again after 2020, each of which should have taught them a lesson or two not just about banking, but also themselves.

Editor's note: This article originally appeared in an email to Federal Financial Analytics' clients.

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