



MUTUAL ALERT

America's Mutual Banks Held Its 11th Annual Leadership Dinner on April 7, 2025 in Washington, DC

America's Mutual Banks held its 11th Annual Leadership Dinner on April 7, 2025, in Washington, D.C. AMB Chairman, and Ridgewood Savings Bank CEO, Leonard Stekol welcomed the audience and commented on the opportunities presented by the change in administrations in Washington, D.C. The program began with a presentation on the liabilities of the use of AI by Ken Suh, counsel at Troutman Pepper Locke. He addressed the legal risks and liabilities of the use of AI. He pointed out how often a bank may be relying on AI without even realizing it. He cautioned that there is a need that a bank have a clear policy concerning the use of AI and when its use is appropriate to protect the bank against liability for injury that might ensue from careless employee use.

He was followed by our keynote speaker, Brandon Milhorn, President, and CEO of the Conference of State Bank Supervisors. Brandon has an impressive resume having held numerous positions on Capitol Hill as Chief counsel for the Senate Committee on Homeland Security and Government Affairs and general counsel for the Senate Committee on Intelligence. He also served as an attorney at the CIA before joining the FDIC to serve as its chief of staff and deputy to Republican Chairman McWilliams and deputy to acting Chair Travis Hill. He spoke about the importance of preserving the dual banking system and the impact of the Trump administration's current regulatory consolidation plans on the balance between the federal and state systems. He expressed concern that the accumulation of power by a so called super federal bank regulatory agency would undermine the vitality of the dual banking system and stifle innovation. He cited the stat that over 80% of community banks are state chartered. He addressed the STABLE Act, Bill which had passed the House Financial Services Committee the prior week, and some of the challenges that the Bill might present if it were to become law. He explained that the Bill allows only minimal capital for issuers of stable coins by a bank affiliate or a state issuer. He went further to say that it remains to be seen if the regulatory infrastructure contained in the Bill will be nimble enough to assure safety and soundness in the creation and use of blockchain stable coin technology. He also addressed the difficulties that mutual banks face in an environment with a regulatory infrastructure that is designed primarily for stock banks. He specifically mentioned that capital relief for mutuals might occur with the current administration but acknowledged that the regulatory agencies have adhered to a very strict definition of Tier 1 capital because of Basel III. There were several questions from the audience on the challenges that mutuals face in attempting to grow with their communities with the absence of regulatory flexibility to include historically appropriate alternative capital instruments. One member stated that without that flexibility, it will be difficult if not impossible to raise the capital needed to support that growth. President Milhorn mentioned that FRB Governor Mickey Bowman is the current point person on focusing on capital relief for mutuals.

She has spoken about the problem and is committed to analyzing and proposing a reasonable solution. He acknowledged the importance of the forthcoming AMB white paper and the on the deliberations by the Fed.

The final group of speakers consisted of a panel of three Troutman Pepper Locke partners who spoke on challenging legal issues that routinely arise in mutual operations. Mary Zinsner, who has represented numerous banks against attempts to hold them liable for third party exploitation of elderly customers discussed elder abuse. She shared actual cases and the legal challenges for mutual banks in protecting elderly customers who may not be capable of protecting their own financial interests. She stated that there have been many legal actions against banks for failure to detect cases of elder exploitation. In her view, banks are very limited in what they can do without incurring legal liability. She stressed that banks have no duty to assess the cognitive condition of a customer who has the right to control their own account. She discussed the concept of trusted person who a bank would be able to alert to suspicious transactions. She also acknowledged the desirability of having a trusted person able to obtain account information without having authority to transact in the account. Her theme was that there is no affirmative obligation on banks to block or otherwise frustrate transactions that appear suspicious so long as the customer has given the appropriate authorization. The depositor has the absolute right to authorize the use of their own funds.

Kim Phan, addressed current issues with respect to cyber security. She emphasized that the types of cyber fraud are multiplying with the sophistication of technology. She shared with the audience case studies as to how cyber criminals have penetrated some of the strongest cyber walls. She suggested practical steps that a bank can take to protect itself. She discussed technology insurance but acknowledged that insurance coverage for cyber fraud is in a nascent form and fairly limited.

Matt Bornfreund discussed open banking. He explained that open banking is to be phased in over several years, starting with the largest banks, applying to all banks in a short number of years. Banks, at the customer's request, would be required to allow third party vendors access to individual customer account data. He explained some of the difficulties, liabilities, and practical risks in dealing with APIs that facilitate open banking. He summarized the distinctions in dealing with data aggregators and actual third-party vendors. There was a discussion of competitive risk, insofar as smaller institutions would have less of an appetite to incur the sort of expense and administrative burdens that open banking would carry and what that reluctance would do to their customer relationship. He surmised that the major core providers such as Jack Henry and FiServe might well offer the technology to facilitate compliance. Importantly, Matt expressed the opinion of the general lack of liability of a bank for third party vendor breaches but cautioned there is little developing law at this early stage. The challenge is regardless of liability a bank may not have recourse against a third-party vendor without sufficient resources to satisfy a judgment.

The program was a useful primer for the members in attendance in shaping their thoughts in formulating discussions with Hill staff for their forthcoming meetings.

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