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Issue 2, 2022

Welcome!

Welcome to our second *Promissory Notes* issue of 2022. Have you gotten a chance to fill out our survey? It's important to see what you think of the publication. You can access it here or at the end of this e-newsletter.

As always, thank you for reading.

F. B. Webster Day, Chair, Banking & Finance Practice Group, and Co-Editor, *Promissory Notes*

and

Elizabeth A. Benedetto, Chair, Public & Project Finance Practice Group, and Co-Editor, *Promissory Notes*

"If all the economists were laid end to end, they'd never reach a conclusion." – George Bernard Shaw

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House Takes Its Sixth Hit on Cannabis Banking Provisions

"The House passed provisions for the sixth time that would allow cannabis companies to access the banking system, but the latest action, as an amendment to the China competition bill, may have little better chance than earlier ones to become law."

Why this is important: State legalized cannabis companies lack access to financial services such as checking accounts, payroll services, credit cards and working capital lines of credit due to a federal prohibition on taking deposits and providing banking services to such businesses. Recently, the House of Representatives passed legislation, as an amendment to the America COMPETES Act of 2022, a bill aimed at boosting U.S. competitiveness with China, which would provide legal cannabis businesses with access to financial services. Champions for the amendment cite to, among other things, safety concerns for cannabis businesses who typically operate their businesses in cash only, which invites criminal activity. Many believe the provisions will die in the Senate, as similar legislation has done five times previously, only to leave cannabis businesses in limbo yet again. --- Elizabeth A. Benedetto

H.R. 5911, Fair Hiring in Banking Act and New Rule Allows Banks to Hire More People with Criminal Records

"H.R. 5911 would amend statutory prohibitions and limitations that restrict the hiring of certain individuals convicted of criminal offenses by insured depository institutions and insured credit unions."

"The rule, which goes into effect Aug. 23, codifies internal standard operating procedure at the financial insurance agency."

Why this is important: H.R. 5911 is the proposed change to the statute that may loosen the limitations on banks and credit unions hiring convicted criminals. This will apply to both FDIC- and NCUA-insured institutions. It would provide exemptions and loosen approvals in many cases, making it a bit easier to hire qualified people who have prior criminal convictions. In the meantime, the FDIC already loosened these standards, effective 2019, excluding offenses that have been expunged or sealed, allowing a person with two (rather than one) minor crimes to testify, reducing the five-year waiting period to three years, increasing the simple theft threshold to $1,000, and expanding the exception for fake ID crimes to include underage alcohol consumption. This is a moving target, and we will keep our eyes on it. --- Hugh B. Wellons

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Why Banks Should Not Overlook Unclaimed Property During the M&A Process

"Adding to the challenges that community banks are facing is an uptick in regulatory activity, specifically unclaimed property audits, the scope of which can vary greatly and many smaller financial institutions are not prepared for."

Why this is important: In mergers and acquisitions involving financial institutions, unclaimed property law compliance is one component of due diligence that may be unknown or overlooked by many buyer institutions. If the seller or target company in an acquisition has not historically paid enough attention to unclaimed property laws in the states in which it operates, including attention to applicable dormancy periods and reporting deadlines, the buyer may be left with significant financial exposure. For example, financial institutions in North Carolina, Pennsylvania, Virginia or West Virginia that fail to report, pay or deliver property within the times prescribed by the applicable statutes could be charged interest on the property or value of the property from the date the property should have been reported, paid or delivered. In addition to interest, financial institutions that fail to report, pay or deliver property in these states may face daily penalties for such failure. Additional penalties may be imposed if the violation is found to be willful. Buyer diligence with respect to the target company's unclaimed property law compliance is particularly important as financial institutions have seen a recent uptick in regulatory activity with respect to unclaimed property audits, and a purchase transaction could draw the attention of the regulators to the purchasing financial institution. The article identifies a number of due diligence considerations to help a buyer better determine its risk. --- Brienne T. Marco

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Federal Reserve Board Releases Hypothetical Scenarios for Its 2022 Bank Stress Tests

"This year, 34 large banks will be tested against a severe global recession with heightened stress in commercial real estate and corporate debt markets."

Why this is important: The link is to the Federal Reserve's hypothetical scenarios for the 2022 bank stress test, and it applies to the 34 largest banks. Some of our clients are among the 34 largest banks; most are not. This will, however, set general standards for review of all banks. Interestingly, the worst test case scenario looks a lot like 2009, in terms of both drop in housing prices and unemployment. 2009 and 2010 had a lot of community banks scrambling for capital, so please prepare for this. --- Hugh B. Wellons

Legislators Introduce Bill to Reform FDIC Leadership Structure

"Members of Congress respond to power struggle between FDIC leadership with legislation to remove the Comptroller of the Currency and the Consumer Financial Protection Bureau director from the FDIC board."

Why this is important: This article explains a political tussle that could have consequences on bank regulations in the future. One party wants to remove from the FDIC board automatic membership by the Director of the Consumer Financial Protection Bureau ("CFPB") and the Comptroller of the Currency. The CFPB director often is a firebrand on consumer issues, and the new one certainly is. Biden nominated for Comptroller a person who may or may not be a socialist. She withdrew, but her nomination shocked many banks. By the same token, in prior administrations, sometimes the influence on the FDIC board flipped, with the CFPB Director and the Comptroller being conservative influences. My point is that this may be a case of, "Be careful what you wish for." The larger concern, in my opinion, is the almost unchecked power of the CFPB, as many others have addressed. --- Hugh B. Wellons

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