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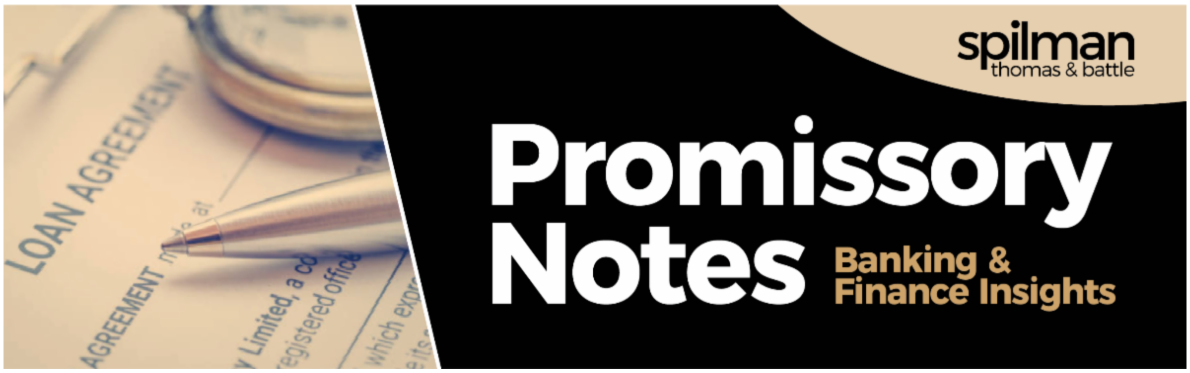

Issue 6, 2022

Welcome!

Welcome to our sixth *Promissory Notes* issue of 2022.

We would like to congratulate the firm and several of our attorneys who were recognized in the 2022 edition of *Chambers USA*, an annual directory of leading law firms and attorneys as determined by the interviews of lawyers and their clients. This is a prestigious honor and much deserved by our outstanding lawyers. You can learn more about the Chambers recognition here.

As always, thank you for reading.

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

and

Paul G. Papadopoulos, Co-Chair, State & Local Taxation Practice Group, and Co-Editor, *Promissory Notes*

"If you think nobody cares if you're alive, try missing a couple of car payments." – Earl Wilson

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SOFR Gaining Momentum as Drop Dead Date for Libor Nears

"Transition from US dollar Libor to its preferred alternative, SOFR, is going surprisingly well, though treasurers are having to grapple with some operational issues."

Why this is important: The demise of LIBOR will occur a year from now, and this article recaps the progress of lenders and borrowers in moving to the preferred replacement, the Secured Overnight Funding Rate or "SOFR." Since the start of 2022, the U.S. Fed has seen a clear shift to SOFR, in both syndicated and non-syndicated loans. The article touches on some of the hurdles to the transition, including the existence of various versions of SOFR, the fact that existing derivative products are largely based on LIBOR, and that SOFR is generally a backward-looking rate whereas LIBOR is forward-looking. These problems make borrowers slower to make the transition. --- F. B. Webster Day

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Lawsuits Over Zelle Pile Up

"Bank of America and Wells Fargo have both been sued recently by consumers who allege they were defrauded by scam artists using Zelle payments."

Why this is important: Money transfer apps have been around for many years. Zelle was relatively unique in this market, however, because many banks and financial institutions partnered with it as a means of reaching consumers looking for a safer way to transfer money to friends and individuals. After launching in 2017, Zelle quickly expanded its market share through these strategic relationships with financial institutions, and in 2021, accounted for approximately $490 billion in peer-to-peer transfers, according to a new lawsuit. Streamlined processes are a frequent target of fraud, and the lawsuit alleges that Zelle's platform has put consumers at high risk. The lawsuit is specifically pointing to reimbursement policies held by the targeted banks, which were allegedly not disclosed to consumers. Liability is difficult to establish when consumers have authorized the payments, however. Lenders and bankers will want to follow this lawsuit as they develop their own protections and policies for how to handle consumer-authorized peer-to-peer transfers going forward. --- Brian H. Richardson

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Binance Hosted Billions in Illicit Crypto, Exposé Reports

"The volume of illicit crypto processed by Binance has plummeted since it established KYC/AML protocols, but the crypto exchange has still failed to cooperate with cybercrime investigators on several occasions since then."

Why this is important: This article explains how Binance hosted possibly criminal transactions and funds from criminal enterprises. This, of course, is a long-time concern of financial regulators across the planet. Now, Binance is not cooperating with those regulators in exploring these transactions. Binance allegedly has hosted transactions for many suspected bad actors, including North Korea. Expect serious future regulatory action on any transaction associated with this exchange. --- Hugh B. Wellons

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Bankruptcies have Fallen, but Economic Pressures Could Send More Small Businesses Looking for Cover

"A new federal law increases the upper debt limit for small businesses looking to file for bankruptcy, from $2.7 million to $7.5 million, for another two years."

Why this is important: In previous issues of *Promissory Notes*, we have covered how statistical analysis of bankruptcy filings nationwide shows that individuals and small businesses have been the hardest hit by the pandemic's financial effects. In 2019, Congress passed the Small Business Reorganization Act, which provided streamlined access to chapter 11 bankruptcy protections to smaller businesses. That legislation added Subchapter V to Chapter 11 of the Bankruptcy Code. Then in the wake of the pandemic, the CARES Act expanded Subchapter V debt limits up to $7.5 million, which provided significant relief to small businesses around the nation. The expansions in the CARES Act were limited, however, and expired in March of this year. This week, the Bankruptcy Threshold Adjustment and Technical Correction Act was signed into law, extending those expanded debt limits for another two years, and making other minor corrections to the text of Subchapter V. Importantly, the new legislation also expands the debt limits for individual debtors seeking protections under Chapter 13 for two years. Small businesses and higher-income individuals that are facing financial hardships should consider all their options in addressing their needs. This new legislation should welcome discussions as to whether restructuring debts through Subchapter V or Chapter 13 could be an option on the table. Lenders and creditors should also be aware of these expansions as they consider and analyze risk on distressed loans and facilities. --- Brian H. Richardson

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U.S. Bank Tests Well-Being Guidelines with Outside Counsel

"The Minneapolis-based bank's pilot program with seven law firms encourages delaying non-urgent matters that come up during off-work hours to protect personal time and promote work-life balance."

Why this is important: The article describes one bank's efforts to improve relations with its outside law firms via guidelines to be followed by both sides. The guidelines state expectations for communication between in-house lawyers and external counsel which emphasize the importance of a healthy work-life balance. For example, the guidelines suggest non-urgent communications should be sent only during normal work hours and should include a statement of when a response is requested. They also encourage communication about vacation times and honoring the time off. If successful, the efforts should result in less burn out and better relations between bank counsel and outside firms. --- F. B. Webster Day

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Lack of Financial Literacy Costing Consumers, but Banks Can Help

"According to a new survey from the National Financial Educators Council, a lack of personal finance knowledge costs an estimated average of $1,389.06 per individual, or $352 billion total in the U.S. each year."

Why this is important: When it comes to finance, what consumers don't know can be very costly. Financial issues and debt are among the leading causes of stress, anxiety, and even divorce in the United States. In short, financial literacy is in short supply in recent years, and consumers are struggling because of it. Whether stemming from generational lack of knowledge (i.e. parents not able or willing to teach their children about finance matters) or through the steep decline in mandatory public education (such as the bygone era of middle school home economics or family and consumer science classes), the younger generations are entering adulthood without a basic understanding of the interplay of debt, credit, savings, and investment. Consumer finance experts are recommending that banks seize the opportunity to bridge the knowledge gap.

By embracing principles of targeted marketing, banks can focus their marketing dollars on targeting consumers with specific bits of timely knowledge. For example, if consumer browsing data indicates that a customer is researching for a home purchase or loan, a bank may bring targeted ads or promoted articles to that consumer, aimed to educate and invite them to use that bank. Consumers are showing signs of being open to new knowledge in this area. Banks that capitalize on the opportunity to educate their existing customers, and target market, may come out on top by gaining lifelong customers and investors, who also have a strong base of financial literacy. Just be sure to keep the information short. The current estimate of adult consumer attention span is only about eight seconds. --- Brian H. Richardson

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