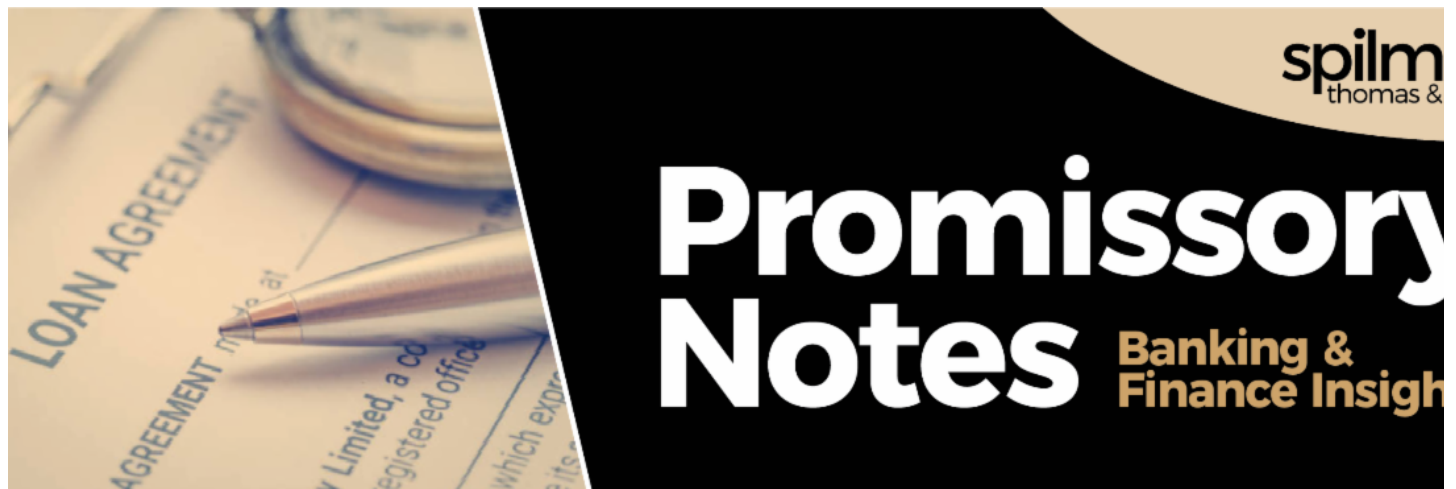


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Issue 11, 2022

Welcome!

Welcome to our 11th *Promissory Notes* issue of 2022.

We are very pleased to announce that the firm was named to the 2023 "Best Law Firms" list by U.S. News - Best Lawyers in 61 areas of law throughout the firm's footprint. And, many of those practice areas focus on the banking and finance areas of law.

The rankings are based on a rigorous assessment process that involved the collection of client and evaluations, peer review from leading attorneys, and review of additional information provided by law firms. You can learn more [here](#).

As we prepare for the Thanksgiving holiday, we wish you and yours peaceful moments filled with gratitude.

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 I*

"Price is what you pay, value is what you get." --- Warren Buffett

Schumer: Senate 'Very Close' To Passing SAFE Banking Ac

"The House of Representatives passed the bill for the sixth time earlier this year."

Why this is important: The passage of the Secure And Fair Enforcement Banking Act will improve public safety within the communities where cannabis-related legitimate businesses operate by reducing the amount of cash on hand at such businesses. Following the midterm elections, recreational adult cannabis use is legal in nearly half of the country. However, cannabis-related legitimate businesses cultivate, produce, manufacture, sell, transport, dispense, distribute, purchase, or otherwise market cannabis do not have access to financial services. Without access to financial services, these businesses are forced to operate in a cash-only environment, which is an invitation for criminal activity. "Current conditions, which require all-cash transactions in every aspect of the business encourage tax fraud, expensive monitoring and bookkeeping expenses, and—most importantly—leave legitimate businesses vulnerable to theft, robbery, and the violence that accompany those crimes. The SAFE Banking Act presents us with an opportunity to greatly assist in stabilizing the industry and enhancing public safety." --- Major Neill Franklin, Ret., Executive Director, Law Enforcement Action Partnership --- Robert J. Dob

The Failure of FTX may Inspire Even Tighter Regulation of Crypto-Currency.

"This encourages stronger regulation, which may discourage future developments in this industry."

Why this is important: FTX was a high-flying cryptocurrency, successful and popular in the industry. Values soared. Until it all fell apart. This certainly will point out the risks of a "currency" with no intrinsic material behind it but belief. [As an aside, that describes many national currencies, as well, but we don't know where that goes.] Expect more investigations, more sensitivity to "fraud," and much more regulation restricting or limiting this industry. This is an industry that has flourished, in part, because it was so fast-moving, so experimental, so creative. That may not be the case in the future. --- Hugh B. Wellon:

Virginia Joins Multistate Investigation into Major Banks' N

Zero Commitments

"Virginia Attorney General Jason Miyares is joining 18 other states in an investigation of six major American banks over their environmental, social and governance, or ESG, investing, citing harms to Virginia farmers and companies."

Why this is important: ESG is an umbrella term used to describe companies' consideration of environmental, social and governance factors such as climate change and diversity, equity and inclusion efforts in their business dealings. ESG supporters claim the concept focuses on ethical business practices and sustainability. ESG opponents, however, consider ESG a framework to sneak "woke" views into corporations so that they make decisions based on political considerations instead of what is best for consumers, employees or stockholders.

Citing concern for Virginia farmers and Virginia companies that deal with fossil fuel-related activities, Miyares' actions with the other states led to service of six major American banks (Bank of America, Citigroup, Goldman Sachs, JP Morgan Chase, Morgan Stanley and Wells Fargo) with a civil investigation demand, which acts as a subpoena, for the institutions to produce documents related to their involvement with the United Nations Net-Zero Banking Alliance. The alliance is a collection of banks representing about 40 percent of global banking assets that have committed to structure their lending investment portfolios to reach net-zero emissions by 2050. Earlier this year, Miyares announced the Virginia would join a Missouri-led investigation into ESG investing ratings companies, including Morningstar, Inc. and Sustainalytics, for alleged violations of state consumer protection laws.

ESG will continue to be an unfolding controversy as industry officials and experts take sides. --- [Br Hunter](#)

College Athletes Starring in Bank Marketing: NIL Rule Changes Mean New Opportunities

"While bank marketing may not be the first thing that occurs to most when considering NIL, we recognize that most of the banks we work with have successfully utilized sports marketing to reach potential clients and increase community recognition."

Why this is important: The article is an interesting and informative take on marketing opportunities for banks and student-athletes. Recent states' legislation and the National Collegiate Athletic Association's 2021 policy, allowing student athletes to trade their names, images and likenesses for compensation, have added a new dimension to marketing via college athletics. The article notes traditional bank marketing in this area—in arena signage, naming rights, and athlete ambassadors, for example. It points out that NIL deals now offer new chances to develop regional marketing using student athletes as promoters. Those activities may also establish a lasting relationship between a bank and some athlete with large earning potential. Of special note are the article's points to consider in structuring an NIL arrangement for compliance with requirements of the NCAA, states, and colleges. --- [F. B. Webster](#)

Small Business Owners Want More Advice from Banks, Study Finds

"Small business owners navigating rising inflation, supply chain issues, and labor market tightness keen to receive advice from their bank partners, according to the J.D. Power 2022 U.S. Small Business Banking Satisfaction Study."

Why this is important: Business is more complicated now. Less certainty often requires greater flexibility in cash access. Small businesses, many of which are new business operators, are discovering that experienced bankers often have extensive experience with many of the issues that small business owners face. That is the conclusion of a recent study. It adds to other good news for community banking.
[Hugh B. Wellons](#)

Assessments, Amendments to Incorporate Troubled Debt Restructuring Accounting Standards Update

"The Federal Deposit Insurance Corporation is adopting a final rule that incorporates updated accounting standards in the risk-based deposit insurance assessment system applicable to all large insured depository institutions (IDIs), including highly complex IDIs."

Why this is important: On October 18, the FDIC published a final rule in the Federal Register to incorporate updated accounting standards in the risk-based deposit insurance assessment system applicable to all large and highly complex insured depository institutions (not including FDIC insured and/or FDIC supervised institutions with less than \$10 billion in total consolidated assets). According to the FDIC, the final rule adds the new term, "modification to borrowers experiencing financial difficulty," to two financial measures – the underperforming assets ratio and the higher-risk assets ratio – that are used to determine deposit insurance assessments for large and highly complex depository institutions. The final rule is in response to the Financial Accounting Standards Board's elimination of accounting guidance for troubled debt restructurings ("TDR") for adopters of the current expected credit loss standards, known as CECL. --- [Bryce J. Hunter](#)

FDIC Survey Says Number of Americans Who are Banked Reaches All-Time High

"A new Federal Deposit Insurance Corporation survey found that nearly 96 percent of U.S. households were banked in 2021."

Why this is important: This FDIC study reeks of opportunity for community banks. This trend began when the COVID relief check began to arrive. People began using banks and found out how useful

could be and more small businesses began to use banks. Despite some increased bank fees, this n
indicate that some barriers are dropping for people to use bank services. --- [Hugh B. Wellons](#)



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