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## Foreword

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## FOREWORD

The *North Carolina Banking Institute (NCBI)* celebrates the publication of Volume 21 and the twenty-first annual North Carolina Banking Institute continuing legal education (CLE) program at which the journal is distributed each year.

This year's journal features important articles offering insight and guidance by attorneys engaged with the issues currently facing the financial services industry. The journal includes an article on cyber liability insurance by Thomas H. Bentz, Jr., Holland & Knight, LLP. Tom's article follows up on his contribution as a panelist during last year's Banking Institute, providing a practical guide for banks to evaluate their cyber liability insurance.

Tackling the moving target of fintech, the journal includes articles on virtual currency and smart contracts. As a returning journal author, V. Gerald Comizio of Fried, Frank, Harris, Shriver & Jacobson LLP, examines the global and growing regulatory framework of virtual currencies and fintech. Reggie O'Shields, Federal Home Loan Bank of Atlanta, explores the potential uses and limitations of smart contracts and highlights legal changes that would allow us to benefit from smart contract technology while mitigating against potential risks.

Juxtaposing the nascent field of fintech, Charles M. Horn and Melissa R. H. Hall wrote on the continuing survival of the valid-when-made doctrine, despite the "curious case of *Madden v. Midland Funding*."<sup>1</sup> Respectively, as partner and of counsel at Morgan, Lewis & Bockius LLP, the authors give us a closer look at why, they believe, the case was wrongly decided, the short-term and long-term legal and commercial implications of the decision, and how counsel can prevent courts from making a similar mistake in the future.

The journal also includes two articles on the Consumer Financial Protection Bureau and its fifth anniversary. Providing a regulator's perspective, Kelly Thompson Cochran, the Assistant

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1. *Madden v. Midland Funding, LLC*, 786 F.3d 246 (2d Cir. 2015), *reh'g en banc denied*, Case No. 14-2131-cv (2d Cir. Aug. 12, 2015) ECF No. 140, *cert. denied*, 136 S. Ct. 2505 (2016).

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Director of Regulations at the Consumer Financial Protection Bureau, summarizes the Bureau's evolution and pursuit of its mission to improve the functioning of the consumer financial markets. Kelly is a University of North Carolina School of Law alumna and gave the Donald C. Clifford, Jr. Distinguished Lecture on Consumer Law at the 2016 Banking Institute. Giving an outside perspective, with an emphasis on publicly available data, Donald C. Lampe and Ryan J. Richardson, partner and associate at Morrison & Foerster LLP, survey the Bureau's activities in its three primary areas—rulemaking, supervision, and enforcement—over the last five years. While Kelly concludes with a focus on the challenges and achievements of the Bureau's mission, Don and Ryan discuss the potential Bureau reforms we may see in 2017.

Finally, Joseph A. Smith, Jr., President of the Office of Mortgage Settlement Oversight, Inc., and partner at Poyner Spruill LLP, offers his insight from his role as National Mortgage Settlement Monitor. Noting the continued debate regarding the Settlement, Joe shares his reasons as to why the Settlement was an effective and valuable resolution of the claims involved. Joe's perspective comes not only from his close vantage point as Settlement Monitor but also his years of experience as the North Carolina Commissioner of Banks.

We are also very proud of the twelve notes published by our 2L staff members, which include commentary on some of the cutting edge issues facing the financial services industry, such as Joshua C. Showalter's note which addresses the enforceability of general bondholder debt after the Detroit bankruptcy and the Puerto Rican debt crisis; Graham T. Dean's note which explores the Consumer Financial Protection Bureau's role in policing data security; Eugene S. Kisluk's note which examines the Bureau's use of Civil Investigative Demand; and Monica Marie Burks's note which studies how the legal entity rationalization required in living wills addresses "too big to fail."

The journal is distributed at the annual University of North Carolina School of Law Banking Institute, held March 23–24, 2017. The Banking Institute is one of the nation's premier programs for banking attorneys and industry professionals. Hosted in the spring of each year in Charlotte, North Carolina, it is sponsored by the Center for Banking and Finance at the University of North Carolina School of Law (the Center). Featured speakers at this year's Institute include David G.

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Leitch, Global General Counsel, Bank of America Corporation; John C. Dugan, Covington & Burling LLP and Comptroller of the Currency from 2005–10; and Mark Pearce, Director of the Deposit and Consumer Protection Division of the FDIC. Panels will address fintech, capital raising, ethical issues related to internal investigations, AML and OFAC sanctions updates, developments in fair lending/redlining enforcement, and syndicated credit agreements.

The annual Banking Institute is preceded by a one-day program, “The ABCs of Banking Law,” for those interested in a short course overview of banking law fundamentals. Many thanks to Alston & Bird LLP for hosting the 2017 program and to our continuing cast of program faculty with Scott Cammarn (Cadwalader, Wickersham & Taft LLP), Gene Katz (Wells Fargo & Company), Karol Sparks (Barack Ferrazzano Kirschbaum & Nagelberg LLP), and Cliff Stanford (Alston & Bird LLP) joining Lissa Broome.

The *NCBI* participated in several programs throughout the academic year to assist students’ professional networking efforts. The *NCBI* editors and staff members would like to thank the attorneys who participated in *NCBI*’s eighth annual Career Trek. In an effort to learn more about legal careers in the financial services industry, members of the *NCBI* traveled to Charlotte to meet with attorneys at Wells Fargo & Company and at Womble Carlyle Sandridge & Rice, LLP. The editors and staff members especially thank Gene Katz from Wells Fargo and Chris Leon from Womble Carlyle for helping to plan the event and for their gracious hospitality.

To further stress the importance of building a strong professional network, attorneys from the Triangle area were invited to join members of the *NCBI* at the August *NCBI* orientation for lunch, discuss their career paths, and provide feedback on students’ resumes. Many thanks to Tom Markle, King & Spalding and journal alums Amanda Mann, Troutman Sanders LLP; Charles Kabugo-Musoke, Smith, Anderson, Blount, Doresett, Mitchell & Jernigan, LLP; and McRae Robinson, Credit Suisse.

The Center was established in July 2000 to play a leadership role in the continual evolution of the financial industry. While the annual Banking Institute is the Center’s signature program, the Center is also involved as a sponsor or co-sponsor with a wide variety of other programs designed to provide high quality education to the banking and

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finance industry. In August 2016, the Center hosted its first Financial Services Compliance Boot Camp held in Charlotte. The event was sold out and provided an opportunity to those beginning their careers in financial services compliance to gain valuable background from a host of experienced compliance professionals. The Center was also a co-sponsor of an invitation-only conference on Law, Policy, and the Future of Solar Financing with the Center for Climate, Energy, Environment, and Economics (CE3) and the UNC School of Government Environmental Finance Center.

A distinguished Board of Advisors, consisting of attorneys and industry professionals, guides the activities of the *NCBI* and the Center. We were saddened to learn this past year of the death of a former member of the Board, H. Gary Pannell, and this volume of the North Carolina Banking Institute journal is dedicated to his memory.

The financial support provided by the Center's Board of Advisors has been crucial in permitting the Center to undertake its many activities. That financial support is manifested in annual sponsorships of the Banking Institute CLE program and a recently completed major gift campaign establishing an endowment to support the Center's activities spearheaded by a transformative gift from George and Susan Beischer. In honor of the Beischers' generosity, the annual address at the Banking Institute dinner is named in their memory.

Funds collected from sponsors have endowed a scholarship for a journal student and a research fund that supports the Center. In addition, since 2013–14, the board has provided a second scholarship for a journal student, in an equivalent amount to the endowed scholarship, out of current sponsorship funds. The board began making an additional commitment to scholarships in honor of the twentieth anniversary of the *NCBI*, with the remaining *NCBI* editors each receiving a \$3,000 scholarship for their third year of law school. That board will continue to provide supplemental scholarships from sponsor funds to the rising 3L editors of the *NCBI*.

In 2015, the Center offered its first study abroad scholarship in the amount of \$5,000 to assist a rising 2L UNC School of Law student to study abroad in the summer between the 1L and 2L year and focus on issues related to banking and finance. Kinsey Johnson received the 2016 Center for Banking and Finance Study Abroad Scholarship to study law and business in Vienna.

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At the 2017 Banking Institute, the Center will honor its long-time board member Eugene M. Katz of Wells Fargo & Company with the Center's Leadership Award. Gene joins a select group of prior award winners that includes only Marion Cowell, Jerone Herring, and Paul Polking who respectively served as general counsel for First Union Corporation, BB&T Corporation, and Bank of America Corporation; Paul Stock, the long-time executive vice president and counsel to the North Carolina Bankers Association; and Tony Gaeta, a retired partner from Wyrick Robbins Yates & Ponton LLP.

The Center and its Board welcome your suggestions as to how the Center may better serve the needs of the industry. Please feel free to contact Lissa Broome (lbroome@email.unc.edu) to share your ideas or to become involved in the Center's activities. To learn more about the Center's programs and activities, please visit the Center's website at <http://www.law.unc.edu/centers/banking>. To view the PDF versions of the Notes and Articles provided herein or past volumes published by the *NCBI*, please visit the Center's website at <http://www.law.unc.edu/journals/ncbank/volumes/>. If you have any suggestions about topics that the students of the *NCBI* should write about in the future or you have an interest in having an article published in Volume 22, please email your topic ideas or article to [ncbank@unc.edu](mailto:ncbank@unc.edu).

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*Volume 21*

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