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Foreword

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Foreword:

The North Carolina Banking Institute (“NCBI”) celebrates the publication of Volume 26 and the 2022 North Carolina Banking Institute continuing legal education (“CLE”) program at which the journal is distributed each year. After two years of confronting the challenges of a devastating pandemic, the articles and notes in this year’s journal underscore the welcome proposition that we, as a nation, are continuing to move forward.

This year’s journal features an article co-authored by Reggie O’Shields, Executive Vice-President and General Counsel of the Federal Home Loan Bank of Atlanta, and William Handorf, Professor of Finance and Banking at the George Washington University School of Business. In their article, O’Shields and Handorf provide a useful framework for analyzing the successes and shortcomings of the mortgage forbearance programs offered in response to the COVID-19 pandemic.

The journal also includes an article by Danielle Williams and Kerrie Edmonson that explores how mobile banking, blockchain, quantum computing, and application programming interfaces are encouraging banks to innovate and respond to new intellectual property risks. Williams and Edmonson are in the Charlotte, North Carolina office of Winston & Strawn LLP.

Technological innovation has also raised new questions in the structured finance space. Michael Urschel and Kathryn Weiss co-authored an article which provides insight and practical guidance on perfecting a security interest in digital infrastructure assets. Urschel and Weiss are partners in the structured finance group of King & Spalding LLP.

We are very proud to publish ten notes written by our staff members as part of Volume 26. In keeping with the journal’s tradition, these notes include insight and analysis on a number of issues that are at the forefront of the financial services industry. Morgan Mumford’s note considers the long-term costs of the eviction moratorium implemented in response to the COVID-19 pandemic and proposes lasting solutions to housing insecurity. In his note, Samuel Rier examines legislative and regulatory actions taken since passage of the Bank Secrecy Act and

reflects on how financial institutions can play an even greater role in combatting money laundering.

Additionally, student notes offer unique perspectives on current social and political issues that affect the financial services industry, such as Benjamin Marsico's note which identifies measures that the Federal Reserve should take to properly account for the risk posed by climate change. In her note, Avery Aulds examines the reasons why a significant number of Americans are unbanked or underbanked before proposing solutions to bring more people into the banking fold. Adam Gillette's note is the culmination of his deep dive into Supreme Court jurisprudence on independent agencies. Ultimately, Adam's note reflects upon the imperiled independence of multimember agencies in the wake the Court's decision in *Collins v. Yellen*.

Several of our student notes include analysis of developments in banking and financial institution regulation, and one note discusses the relatively novel concept of a regulatory sandbox. In his note, John Harris centers his analysis on the North Carolina Sandbox Act, proposing ways to improve and strengthen North Carolina's approach to implementing its regulatory sandbox. Tucker Sutlive's note considers the likelihood that non-fungible tokens will be cast as investment contracts subject to securities regulation; and Elizabeth Nelson's note argues against certain regulatory reforms proposed to rein in the blockbuster activity of special purpose acquisition companies. The Biden Administration's plan to increase regulatory oversight of digital currencies is the focus of Asha McCorvey's note, as she articulates the consequences of greater regulation of crypto assets. Finally, Sara Markov demystifies the concept of "open banking" in her note and explains how the imposition of uniform regulation could make data sharing safer and ultimately lead to safer, more affordable financial products.

The journal is distributed at the annual University of North Carolina School of Law Banking Institute, held March 31-April 1, 2022. This is the second year the Banking Institute will be virtual. We hope to return to Charlotte for an in-person Banking Institute in 2023. In whatever format the program is held, the Banking Institute is one of the nation's premier programs for banking attorneys and industry professionals. The Banking Institute is sponsored by the Center for

Banking and Finance at the University of North Carolina School of Law (“Center”). Featured speakers at this year’s Institute include James Chosy, Senior Executive Vice President and General Counsel of U.S. Bancorp, the parent company of U.S. Bank, and Mehrsa Baradaran, professor at the University of California, Irvine School of Law and author of *The Color of Money*. Panels will address cybersecurity and ransomware, emerging ESG in banking and finance, the general counsel’s and law group’s role in a bank or other regulated financial institution, and privacy and data protection.

We are saddened that public health conditions again have prevented us from gathering for this event in person. Our journal students miss out on a valuable networking opportunity. To showcase our students, they will be introducing speakers and panels and will conduct a session where each editor-staff member pair will talk about each staff member’s journal note.

In 2021 and again this year, the annual Banking Institute was preceded by two short programs we called a Prelude to the Banking Institute. The first program was on federal and state regulation of digital currencies and coordinated by David Freeman of Arnold & Porter. The second program, coordinated by Scott Schaaf of Womble Bond Dickinson, focused on LIBOR and what’s next in the new year. These programs attracted sizable audiences and were delivered for free as part of the build-up to the Banking Institute.

The ABCs of Banking Law, for those interested in a short course overview of banking law fundamentals, was held on March 1, 2022. Many thanks to our program faculty joining Lissa Broome in this program. They include Gene Katz, Wells Fargo & Company (retired); Daniel Meade, Cadwalader, Wickersham & Taft LLP; Cliff Stanford, Alston & Bird LLP; Karol Sparks, Barack Ferrazzano Kirschbaum & Nagelberg LLP; John Stoker, Moore & Van Allen PLLC; and Phillip Wertz, Bank of America Corp.

The NCBI participated in several programs throughout the academic year to assist students’ professional networking efforts. The NCBI editors and staff would like to thank the attorneys who participated in the NCBI’s thirteenth Career Trek. This year’s Career Trek was hosted virtually by Mayer Brown and USAA and orchestrated by Megan

Webster and Amy Cook. The virtual format allowed us to open the program to more students who benefited from learning about different practice areas from both the private practice and in-house perspective.

The Center was established in July 2000 to play a leadership role in the continual evolution of the financial services industry. While the annual Banking Institute is the Center's signature program, the Center is also involved with a number of other programs designed to provide high quality education to the banking and finance industry, including the Dan K. Moore Program in Ethics (held virtually on November 12, 2021), and a segment of the Festival of Legal Learning, February 1, 2022. Both of these programs were in conjunction with the UNC School of Law Office of Continuing Legal Education.

A distinguished Board of Advisors, consisting of attorneys and industry professionals, guides the activities of the NCBI and the Center. The financial support provided by the Center's Board of Advisors has been crucial in permitting the Center to undertake its many activities. The financial support is manifested in annual sponsorships of the Banking Institute CLE program and a campaign establishing an endowment to support the Center's activities spearheaded by a transformative gift from George and Susan Beischer. In honor of the Beischer's generosity, the annual major address at the Banking Institute 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 2013-2014, 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 made an additional commitment to scholarships in honor of the twentieth anniversary of the NCBI, with the remaining NCBI editors each receiving a scholarship of at least \$3,000 for their third year of law school, with that amount increasing this year as the result of a generous gift from UNC Law alum, Michael Mascia. Sponsor funds have also been used to provide support for students working in the public interest and summer study abroad in areas related to banking and finance.

The Center and its board welcome your suggestions as to how the Center may better serve the needs of the industry. Please contact Lissa Broome (lbroome@email.unc.edu) to share your ideas of 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 <https://law.unc.edu/academics/centers-and-programs/center-for-banking-and-finance/>. To view the PDF versions of the Notes and Articles provided herein or past volume published by the NCBI, please visit, <https://scholarship.law.unc.edu/ncbi/>. 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 27, please email your topic ideas or article to ncbank@unc.edu.

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Editor-in-Chief
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