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## Foreword

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## FOREWORD

*The North Carolina Banking Institute* (“NCBI”) celebrates the publication of Volume 28 of the 2024 North Carolina Banking Institute continuing legal education (“CLE”) program at which the journal is distributed. The 2023 Banking Institute was the first event held in person since COVID disrupted the preceding three Institutes, and we look forward to meeting in person yet again in 2024.

This year’s Journal begins by reflecting on the bank failures of March 2023, a shocking period in the world of banking and finance distinguished by the largest bank run in history. In this piece, Professor Eric Spitler examines how social media shaped the 2023 bank runs and how financial regulators may address the issue moving forward. Spitler served as Director of Legislative Affairs for the Federal Deposit Insurance Corporation and the U.S. Securities and Exchange Commission, positioning him well to speak on the importance of consumer confidence in the age of technology.

Reggie O’Shields, Executive Vice-President and General Counsel of the Federal Home Loan Bank of Atlanta, partnered with William Handorf, Professor of Finance and Banking at the George Washington University School of Business, and law student Tyler Holt to craft a piece on the history of the Federal Home Loan Bank System. As the System approaches its 100th anniversary, assessing how the System developed is critical to ensuring future success.

The Journal is also excited to publish the piece that won UNC School of Law’s Bane Writing Award, written by recent UNC Law graduate Steven Constantin. The article highlights the effects of Dodd-Frank’s Durbin Amendment on the debit card industry and the possible effects of the Amendment if expanded to credit cards.

We are proud to publish thirteen notes written by the staff and editors of Volume 28. These notes analyze cutting-edge issues facing the banking and financial services industries today, spanning healthcare, technology, privacy, and consumer financial products.

Two staff members analyzed new laws proposed and implemented affecting the greater banking industry. Matthew Singleton’s note on open banking discusses the Supreme Court’s major questions doctrine in the context of “open banking,” a CFPB proposal that would allow for the portable transfer of consumer financial data for product innovation and consumer convenience. Noah Lipshie explores the

limitations facing banks that seek to support marijuana-related businesses, suggesting targeted amendments to the SAFER Banking Act to promote equitable access to financial services for the cannabis industry.

Four staff members considered the regulation of various consumer-facing financial products. Seth Berger discusses the “reasonable and proportional” standard governing credit card late fees in the context of a new proposal issued by the CFPB. Sunny Frothingham wrote on the prison banking industry and how a recent CFPB enforcement action fits into the American carceral system and the protection of captive consumers. Dhanya Madugalle’s note analyzes a new FTC negative option marketing rule created to protect consumers from deceptive negative options left unregulated under the current rule. Aparna Konde explores the use and regulation of medical credit cards, proposing reform with a specific focus on medical providers and lenders.

Harseerat Dhillon examines the role that American financial institutions played in the oppression of Black people and how a recent federal bill created to study potential reparations interacts with the financial services industry.

One staff member analyzes deposit insurance reform in the wake of the March 2023 financial crisis, while another reviews the potential of another crisis on the horizon. Macy Cope discusses the FDIC’s role in the March 2023 banking crisis and dissects specific changes to deposit insurance that may prevent similar crises in the future. Maria Colombo discusses how the shift to remote work puts banks with high exposure to commercial real estate at risk and what responses are available to the Federal Reserve in case of a commercial real estate crisis.

As technology permeates the financial industry, more students are interested in financial technology, or “FinTech.” In Jacob Stanley’s note, the Southern District of New York’s opinion *SEC v. Ripple Labs* and its companion case, *SEC v. Terraform Labs*, are given a thorough analysis in the wake of several crypto-currency-related schemes. Spencer Arrowood wrote about the prevalence of financial advice appearing on social media platforms and the lack of regulation that can cover the aptly named “finfluencers.”

The Journal rounds off its student notes with two staff members writing on the law of our home state of North Carolina. In her note, Mady Clahane analyzes the greater bounds of the fiduciary duty of the State Treasurer and North Carolina’s new anti-ESG law. Will Crawford

addresses the current state of the “corporate practice of medicine” doctrine in North Carolina and its potential implications for private equity investment in the Tar Heel state.

The journal is distributed at the annual University of North Carolina School of Law Banking Institute, held March 27–28, 2024. The Banking Institute, sponsored by the Center for Banking and Finance at the University of North Carolina School of Law (“Center”), is one of the nation’s premier programs for banking attorneys and industry professionals. Featured speakers at this year’s Institute include Greg Baer, President and CEO of the Bank Policy Institute; Matt Martin, Chief Counsel & Corporate Secretary at First Citizens Bank; and Mitria Spotser, Vice President & Federal Policy Director at the Center for Responsible Lending. Panels will address reputational and strategic risk management post-Silicon Valley Bank; new capital, liquidity and examination issues in the wake of SVB and Signature; the evolution of bank payments; technological transformation in financial services, including AI; and regulatory developments in capital markets and investment banking.

During our two virtual Banking Institutes during the pandemic, we involved our journal students more in the production of the event. Those additions were so successful that we will continue to have members of the journal’s Executive Editorial Board engage in “fireside chats” with the principal speakers. We will also intersperse our sessions on exploring the Banking Institute journal, where our student note editors will introduce staff members to discuss their note topics, throughout the first day of the Banking Institute so all attendees will benefit from being introduced to this scholarship.

Beginning in 2021, the annual Banking Institute was preceded by one or two short programs we called a Prelude to the Banking Institute. This year’s virtual Prelude discussed Community Reinvestment Act (CRA) regulatory modernization and how to move forward under the new rules. This program was 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 26, 2024, in the Charlotte office of Moore & Van Allen. Many thanks to our program faculty joining Lissa Broome in this program. They include Betsy Bodien, Bank of America Corp.; Eric Spitler, FDIC (retired); Karol

Sparks, Barack Ferrazzano Kirschbaum & Nagelberg LLP; John Stoker, Moore & Van Allen PLLC; and Phillip Wertz, Bank of America Corp.

Several programs throughout the academic year were offered to assist students' professional networking efforts. The fifteenth Career Trek was hosted in person by Wyrick Robbins Yates & Ponton in Raleigh and orchestrated by Todd Eveson. In February, the Center hosted its second Dinner and Discussion Forum at The Rizzo Conference Center. This program was designed to introduce law students to different types of business, transactional, and regulatory practice and included six attorneys and twenty-one law students.

The Center was established in July 2020 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 10, 2023).

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 Beischers' 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. In 2022, thanks to sponsor support and a generous gift from UNC Law alum, Michael Mascia, all ten editors on the NCBI received a \$10,000 scholarship for their third year of law school.

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. In 2023, six students attended a one-week

program at the University of Tübingen, providing support to classes presented by Professors Melissa Jacoby, Bill Marshall, Donna Nixon, and Mark Weidemaier to fifty German law students. The six UNC Law students stayed in Germany and participated in unpaid internships either at White & Case in Frankfurt or Gleiss Lutz in Stuttgart. The UNC Law students received financial support for their travel to Germany from sponsorship funds and a gift from Board of Advisors member Camden Webb.

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 how 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 volumes 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 29, please email your topic ideas or article to [ncbank@unc.edu](mailto:ncbank@unc.edu).

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*Volume 28*

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