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Foreword

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Foreword:

The North Carolina Banking Institute (“NCBI”) celebrates the publication of Volume 27 and the 2023 North Carolina Banking Institute continuing legal education (“CLE”) program at which the Journal is distributed. The 2020 Banking Institute was cancelled because of COVID, and the 2021 and 2022 Banking Institutes were held virtually. It will be good to be back together in person in 2023.

This year’s Journal opens with Eric Spitler’s forceful critique of the Supreme Court’s 2022 decision in *West Virginia v. EPA*, which elevated the major questions doctrine and announced new rules for how courts should review the actions of administrative agencies. Eric served as Director of Legislative Affairs for the Federal Deposit Insurance Corporation and the U.S. Securities and Exchange Commission, and his article draws on that expertise while explaining how the major questions doctrine bears on financial regulation.

Jon Schlotterback has authored an article suggesting small but potent changes to North Carolina’s document of rescission statute; his proposed amendments will help protect secured lenders from the consequences of fraudulent releases or satisfactions. Jon is an associate at Mayer Brown in Charlotte and recently served as a law clerk on the U.S. Bankruptcy Court for the Western District of Virginia.

Remote work is becoming the new normal, but so long as the practice of law remains a state-regulated profession, attorneys must avoid the unauthorized practice of law while working across state lines. David Burge, partner at Smith, Gambrell & Russell in Atlanta, has written a timely and practical article that discusses these issues with special emphasis on the work of banking lawyers.

We are proud to publish thirteen Notes written by the staff members of Volume 27. In line with the Journal’s tradition, these Notes offer insight and analysis on a wide range of issues at the forefront of the banking and financial services industries.

Three articles analyze issues at the intersection of politics, policy, and the economy. Hannah Dunaway has written about rapid consolidation within the banking industry, a trend that has shrunk the number of community banks and may restrict access to capital for small businesses and people of color. Christopher Hoffler discusses municipal policies governing Accessory Dwelling Units—“tiny homes,” to some—and offers suggestions to increase small home production and relieve strain on the housing market. Lauren Pless explores the FDIC’s recent increased interest in cryptocurrency fintechs, including a new rule

proposed by the FDIC to tamp down on misrepresentations often made by those fintechs when attracting new customers.

Joshua Almond's Note is a deep dive into the capital call facilities popular with private equity firms. Joshua reveals common deficiencies in the due diligence conducted by lenders before opening these lines of credit, and he offers suggestions for how lenders may avoid being defrauded.

Three student Notes examine relationships between banking and the work of social and humanitarian movements. Meghan Rankins's Note is the product of their substantial primary research into the practices of mutual aid groups and community organizers nationwide. Meghan shows how banking regulations, mobile app policies, and tax legislation hinder the efforts of community organizations to distribute funds for housing, healthcare, transportation, and bail. Kacie England explains that human traffickers in the United States continue to use financial services to conduct and obscure their heinous crimes. She argues that financial institutions and law enforcement must collaboratively develop a comprehensive information-sharing platform to combat trafficking. Kendall Bargeman's Note proposes amendments to the way heirs' property owners prove ownership or occupancy to demonstrate eligibility for disaster relief. Kendall explains how FEMA's current processes are inadequate, and she argues for a better way forward, including methods to resolve these documentation issues *before* disaster strikes.

Five more Notes consider recent developments in banking and financial institution regulation. Michael Griffith assesses the risks of illegal discrimination posed by use of AI in lending decisions and identifies opportunities for regulators and lenders to improve how this technology is used. Caleb Boldt discusses the "gamification" of retail trading by broker-dealers like Robinhood, suggesting that these broker-dealers' digital engagement practices must offer customers more education on stock trading if broker-dealers wish to avoid more stringent regulation. Gunjan Devnani considers the volatile digital asset trading market and proposes that these assets should be classified as commodities, bringing them within the ambit of the CFTC to improve regulatory oversight. Meghan Fernandez examines the new human capital resources disclosures required by the SEC on Form 10-K. She shows that the SEC must amend the relevant regulation to avoid the current practice through which companies provide investors with low-value, boilerplate information about their human capital. Morgan Johnson surveys the emergence of "buy now, pay later" loans in consumer lending—a trend unaccompanied by tailored regulation either domestically or internationally. Morgan then offers some measures to

improve consumer protection. Matthew Stersic's Note provides an in-depth analysis of recently proposed amendments to the "cooling-off" period under Rule 10b5-1, which is meant to guard against insider trading. He balances the interests of industry players and regulatory advocates to evaluate the adequacy of the SEC's current approach.

The Journal is distributed at the annual University of North Carolina School of Law Banking Institute, held March 30–31, 2023. 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 Michael Barr, Federal Reserve Board of Governors; Lauren Mogenson, Global General Counsel for Bank of America; and Samantha Berg, Co-CEO of Next Street. Panels will address sustainable finance, crypto and stablecoins, banks and near-banks, UDAAP as an enforcement tool, and antitrust in bank mergers.

During our two virtual Banking Institutes, we involved our Journal students more in the production of the event. So successful were those additions 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 continue our session on exploring the Journal where our student Note editors will introduce staff members to discuss their Note topics.

Beginning in 2021, the annual Banking Institute was preceded by two short programs we called Preludes to the Banking Institute. This year's virtual Prelude offerings are on banking in an inflationary world and cyber risk in the supply chain and the importance of contract. 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 29, 2023, in the Charlotte office of Moore & Van Allen. Many thanks to our program faculty joining Lissa Broome in this program. They include Daniel Meade, Cadwalader, Wickersham & Taft LLP; Eric Spitler, FDIC (retired); Karol Sparks, Barack Ferrazzano Kirschbaum & Nagelberg LLP; John Stoker, Moore & Van Allen PLLC; and Phillip Wertz, Bank of America Corp.

The Center sponsored, with the North Carolina Office of the Commissioner of Banks, a program on emerging issues for bank directors, held in Asheville in October 2022. Federal Reserve Board of Governors member Michelle Bowman and North Carolina State Treasurer Dale Folwell were featured speakers.

Several programs throughout the academic year were offered to assist students' professional networking efforts. The fourteenth Career Trek was hosted in person by the Greensboro office of Brooks, Pierce, McLendon, Humphrey, & Leonard LLP, orchestrated by Bob Singer. In February, the Center hosted its first Dinner and Discussion Forum at The Rizzo Conference Center. This program was designed to introduce law students to different types of business and transactional practice and included six attorneys and twenty-one law students.

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 11, 2022.

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 alumnus 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 2022, six students attended a one-week program at the University of Tübingen, providing support to classes presented by Dean Martin Brinkley and Professor Broome to approximately fifty German law students. Three UNC Law students stayed in Germany and participated in unpaid internships at White & Case. 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 '95.

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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