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The Bankers' Statement: Winter 2019

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Is Your Bank's Cybersecurity Program Adequate? If Not, Your Bank May be Subject to Negligence Claims

Due to the evolving sophistication of criminals, security breaches continue to occur on a regular basis. When such breaches occur, the victims of breaches often look to the law to make them whole. Yet, because any economic losses are rarely able to be recovered from the criminal(s) who caused the breach, the victim whose personal information was compromised will typically seek to recover any losses from the business where such personal information was held. These two "innocent" parties are then left to dispute who bears the burden of the economic loss.

Proposed Federal Reserve Banker Ban: A Chilling Effect on Banker Mobility?

Bankers, and lenders in particular, have enjoyed relatively broad opportunities for mobility between institutions for decades. General common law fiduciary principles and generally applicable statutory provisions, such as statutory customer privacy protections and protection of trade secrets, have always imposed some limits, but were usually relatively simple to navigate. In some situations, bankers and lenders may have had the added complexity of contractual limitations on their ability to compete with a prior employer or to solicit business from a prior employer's customers. Violations historically entailed civil actions for damages and/or restraints on use of the protected information of the prior employer. And employers who might have sued former employees and/or their new employer on some or all of these theories sometimes declined to do so under the "throwing stones in glass houses" risk analysis.

Financial Service Representatives Added to the List of Mandatory Reporters under Ohio's Elder Abuse Law

Doctors, nurses, social workers, and first responders are the types of professionals thought of when it comes to reporting elder abuse. Yet in 2018 the Ohio General Assembly amended Ohio's Elder Abuse Law to include various financial services professionals to the list of mandatory reporters. Effective September 2018, accountants, bank employees, financial planners, investment advisers, and bank notaries all became mandatory reporters. Under Ohio law, a mandatory reporter must immediately report any instance in which the reporter has "reasonable cause to believe" that an adult (over 60) is subject to abuse, neglect, or exploitation. Reports are made to the county department of job and family services. The penalty for not reporting is a fine of no more than \$500.

To Err Is Human: New Opportunities for Forgiveness in Ohio

Being an Ohio-chartered bank or trust company, or institution-affiliated party of same (IAP), becomes a bit more comfortable with the addition of the new "bona fide error" protections of Ohio Sub. H.B. 489, effective March 20, 2019.

Stock Buybacks for Banks and Bank Holding Companies

Recent changes in stock prices, capital levels and loan demand for some institutions have created an increased interest in stock buybacks. Using excess capital or borrowings to repurchase outstanding shares can provide an outlet for shares under pressure and help address shareholder concerns in appropriate instances.

About the Vorys Banking Group

With nearly 20 lawyers dedicated to our banking practice, we have hundreds of years of combined practical, hands-on experience in the banking industry. We have been named a "Top Lead Legal Advisor" by American Banker magazine and a Go-To Law Firm® in banking and finance, securities and corporate transactions by Fortune 500 general counsel.

Our group has extensive experience with all aspects of bank corporate and regulatory legal matters, and our attorneys are in constant contact with senior representatives of state and federal banking agencies concerning a diverse variety of significant client matters. We have been intimately involved in the comprehensive rewrite of Ohio banking laws, currently underway with the Ohio Division of Financial Institutions. In fact, since the inception of this project, one of our lawyers, along with representatives from the Ohio Division of Financial Institutions and the Ohio Bankers League, has been a member of the four-person team tasked with handling the rewrite.

We represent public and non-public institutions, from community banks and thrifts to large, multinational financial institutions throughout the United States including clients in Ohio, Washington, D.C., Pennsylvania, Maryland, Virginia, Arizona, Florida, Indiana, Michigan, Kentucky, Missouri, New York, North Carolina, South Carolina and West Virginia.

We assist our clients with bank, thrift, holding company and non-bank affiliate formations; securities law matters; board governance and education; regulatory enforcement actions involving state and federal agencies; mergers, acquisitions and divestitures; branch acquisitions and divestitures; regulatory compliance; capitalization, recapitalization and private equity as well as debt transactions; litigation; employment law matters; executive compensation and benefit plans; tax matters; and the negotiation of all types of contracts. We also represent financial institutions and other institutional lenders, as well as borrowers, in all types of complex commercial and real estate financings, bankruptcies and restructurings.

If you have an idea for an article you would like us to pursue, please contact your Vorys attorney. We hope you enjoy the read.