

Publications

The Bankers' Statement: Winter 2020

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Implications of Warren Bank M&A Proposal

In December of 2019, Senator Elizabeth Warren and Representative Jesús García announced the introduction of the Bank Merger Review Modernization Act (the act), which would "...restrict harmful consolidation in the banking industry and protect consumers and the financial system from 'Too Big To Fail' institutions." It blames much of the 2008 financial crisis on institutions that would ostensibly be categorized as "too big to fail," and specifically references the SunTrust/BB&T merger, alleging that it would create the "...first new Too Big To Fail bank since the financial crisis."

Bank/Credit Union Combinations Redux

Just when it appeared as though acquisitions of banks by credit unions were poised to become the "new normal," a recent decision by the Colorado State Banking Board has slowed if not stopped that train when it denied a Colorado state bank's application to consummate a proposed asset sale to a credit union.

Cache Bank & Trust, a Colorado-chartered bank headquartered in Greeley, Colorado, applied to the State of Colorado to sell its assets to Boulder-based Elevations CU, utilizing an asset purchase structure that has been the primary legal vehicle for these types of transactions nationally.

Ohio Enacts New Limitation on Tax Base for Financial Institutions Tax

On July 26, 2019, Am. H.B. 166 was enacted into law. That law enacted changes to Ohio Revised Code 5726.04. More specifically, the tax base of the Ohio Financial Institutions Tax (FIT) for tax years beginning on or after January 1, 2020 has been changed. The first estimated tax payment affected by the change is due January 31, 2020. Taxpayers

subject to the FIT should be mindful of the change as they calculate their estimated tax payments for tax year 2020 and forward.

Businesses Now Being Sued in Latest Class Action Wave for ADA Claimed Violations for Gift Card and Expanded Web/App Accessibility

Beginning in October 2019, more than a dozen individuals through at least four law firms have filed hundreds of new lawsuits against businesses alleging violations of the Americans with Disabilities Act of 1990's Title III (starting at 42 USC §12101), as well as local New York state (N.Y. Exec. Law Article 15) and New York City Human Rights Laws (starting at N.Y.C. Admin. Code §8-101). New lawsuits continue to be filed weekly like these.

Ohio Criminal Supreme Court Decision Permits Banks to Recover Restitution for Forged Checks

By 6-1 vote, the Ohio Supreme Court recently ruled that under Ohio criminal law, a bank that cashes a forged check and then recredits a depositor's account is a "victim" such that the person who forged the check may be required to pay restitution to the bank. See *State of Ohio v. Allen*, 2019-Ohio-4757.

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.