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The Bankers' Statement: Summer 2019

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AUTHORED ARTICLE | Summer 2019

Despite Challenges, Cognovits Continue to Drive Ohio's Favorable Banking Climate

Lenders in Ohio frequently incorporate cognovits, or confession of judgment provisions, into promissory notes, guaranties and other loan instruments. These provisions offer lenders an efficient, expedited and cost-effective process to commence collection efforts against borrowers in the event of a default on a commercial loan. While their validity is deeply rooted in both statutory and case law in Ohio and elsewhere (and has been for decades), critics occasionally denounce cognovits as unfair and violative of due process, and efforts have been made to modify, eliminate or even criminalize the use of cognovits. From a policy perspective, while the benefits of cognovits to lenders are readily apparent, borrowers and third-party stakeholders realize certain benefits as well.

Why Have a Holding Company?

One of the "issues du jure" for the bank and thrift industry involves the benefit, or possibly lack thereof, of having a holding company. Industry publications have cited certain instances where banking organizations, including some larger institutions, have eliminated or are considering eliminating their holding company parent for a variety of reasons, including the additional regulatory burden resulting from the holding company structure.

Branch Purchase and Sale Transactions: A Primer for Bankers

Branch purchase and sale transactions, involving sales and acquisitions of defined assets and assumption of defined liabilities (P&A transactions) can be more complex and document-intensive than whole-bank mergers. And sometimes more challenging to implement. They are akin to stripping out and selling an operating division in the non-bank world, with the added attraction of significant bank regulatory and customer issues.

Depository Institution Charter Conversions

The financial services industry in this country is fortunate to have choices when it comes to the nature and oversight of bank and thrift charters. While Alexander Hamilton founded the first federally-chartered "Bank of the United States" in the late 1700s, and the "Second Bank of the United States" was formed in the early 1800s (primarily to finance the federal debts of the War of 1812), historically banks were primarily creatures of state law and chartered at the state level. In the "dual charter" system that has been in place since the time of the Civil War, banks and thrifts can choose between federal and state charters, and have the ability to convert from one charter to the other subject to certain legal and regulatory requirements and procedures. That dual charter system provides important options to depository institutions.

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.