

ALABAMA

Lawyer

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In this Issue

FEATURES

- 8 Alabama Leadership Bankers
A Message from the ALB President.
- 10 Fixed Income Strategies
Over the previous six weeks, there has been a flurry of activity from the key regulatory bodies [the Federal Reserve (Fed), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC)] as well as the Financial Accounting Standards Board (FASB).
- 12 Margin Strategies
Managing Net Interest Margins amid Challenging Times
- 14 Evolving Accounting Standards Impacting Financial Institutions
After much criticism following the recent financial crisis regarding the adequacy of the allowance for loan losses and the timing of loss recognition, the Financial Accounting Standards Board (FASB) and International Accounting Standards Board (IASB) have proposed changes to the Credit Impairment Model. These changes propose a "good book- bad book" approach and a move from an "incurred loss" to an "expected loss" model.
- 16 Mobile Banking
Potential Benefits May Outweigh the Risks
- 18 Avoiding Lender Liability Claims: Current Trends in Alabama Litigations
Just as the economic downturn of the past several years has led to increased defaults in both consumer and business loans, our Alabama banks are currently experiencing an increase in lawsuits filed by borrowers in direct response to the lender's efforts to exercise its default remedies under mortgages, promissory notes, loan agreements, guaranty agreements, or other loan documents.
- 20 Moving from UPAD to UDAAP
In the past several years, UDAP has become a front-burner compliance concern. Products, marketing plans and customer experiences are measured under the standards of "unfairness" or "deception". And now, the standard of "abusive" has been added to this list.
- 25 Risky Banking Business
Information security, Internet banking, disaster recovery, ACH, vendor management...the list of Risk Assessments your bank is expected to have goes on and on. Word on the street is that several Alabama banks have recently been asked by their Examiner in Charge to complete a Public Restroom Risk Assessment!
- 29 Something Good From Basel?
All bankers are aware of the Basel Committee on Bank Supervision's (Basel Committee) Basel III supervisory capital guidance and related pending US Banking supervisory capital proposals. Most are probably wondering if anything good comes out of Basel.

ABA DEPARTMENTS

- 6 CEO Commentary
36 Legal Landscape
38 ABA Buzz
40 Bankers on the Move

Mobile Banking:

Potential Benefits May Outweigh the Risks

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Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.



As more and more financial institutions offer mobile banking services, and as those services gain popularity with consumers, mobile banking is quickly becoming a mainstream of modern banking. According to a recent American Banker survey, 42% of banks offer some form of mobile banking or mobile payment services. Of the banks that do not offer mobile banking, 40% have firm plans to offer mobile services within the next 12 months. Why? Consumers are demanding these services. A March 2012 report released by the Federal Reserve stated that 87% of the U.S. population has a mobile phone, 44% of which are smartphones. It is estimated that one out of every three mobile phone users will use some form of mobile banking by the end of 2013. And because mobile banking services can expand access to banking products over a greater geographic area, these services may create a new set of potential customers for a bank. Moreover, many believe that mobile services have the potential to significantly expand access to financial services to people who currently do not have a bank account (commonly referred to as, the “unbanked”) or those who have a basic checking account, but typically use alternative financial services, such as prepaid card, money orders or payday loans (the “underbanked”).

What is mobile banking? Mobile banking generally describes the use of a mobile device to conduct banking services, which may include: account balance inquiries, alerts, branch and ATM locators, account to account transfers, bill payment, person-to-person payments, and remote mobile deposits. Mobile banking is generally offered through one or more of the following delivery methods: (1) mobile applications or “apps”; (2) text messaging; or (3) as an extension of a bank’s online banking services but tailored to a mobile browser.

Given the increased functionality and convenience that mobile devices provide, the benefits for bank customers are clear. While, the benefits to banks are not yet fully understood, banks are quickly developing mobile banking functionality to answer the

demands of the market. However, with this increased ease of conducting banking services also comes increased risk. Questions about the security of mobile devices remains the largest perceived risk. Mobile devices easily can be lost or stolen, and because mobile devices typically do not have the security protection software that personal computers often have, they are susceptible to malware, hijacking and virus attacks. Furthermore, consumers tend to be less careful with their mobile devices and are more willing to open suspicious text messages, emails or links than they are on a personal computer.

Many of the risks of mobile banking can be mitigated through detailed security and monitoring controls, implementation of robust security procedures, consumer education, and account limitations for activities that are more susceptible to fraud. The Federal Financial Institutions Examinations Council (FFIEC) has provided some guidance to examiners and banks with regard to identifying and mitigating information-security risks for mobile banking. While the FFIEC does not specifically address mobile banking risks, the guidance does expressly include mobile banking within the scope of electronic banking services covered by the guidance. All banks offering mobile banking services should analyze their services in the context of the FFIEC guidance.

What laws or regulations govern mobile banking? Other than the FFIEC guidance noted above, no clear regulatory scheme exists for mobile banking. To the extent that mobile banking is subject to consumer federal laws, the Consumer Financial Protection Bureau (CFPB) will hold rulemaking and interpretive authority; however, the CFPB has not yet indicated when or to what extent it will regulate the mobile banking world.

To date, mobile products and services have been designed to fit into existing operating models and payment transfer methods. To the extent any laws, regulations or guidance apply to a particular banking service, banks must comply with those requirements when offering the service through a mobile device. Additionally, because the use of mobile devices for financial services can increase risk from a BSA/AML perspective, compliance programs aimed at detecting, preventing and mitigating money laundering and other suspicious activities must be updated as mobile banking services are implemented. For certain higher risk mobile transactions, such as person-to-person payments or remote mobile deposit, the lack of a clear regulatory structure for mobile devices may create

uncertainty related to regulatory compliance and legal liability. Such risks must be carefully analyzed prior to launching the mobile service, and, if appropriate, shifting liabilities to a service or product vendor.

While Mobile banking presents new opportunities for banks and increased convenience for bank customers, it also adds varying degrees of complexity and risk. It is important to coordinate among all areas of a financial institution to develop a program that ensures regulatory compliance and properly manages and mitigates risk. A bank must be mindful of the risks and create comprehensive review, design, testing and implementation procedures to monitor and adjust its mobile banking program in

response to changes in legal requirements, consumer demand, security threats and technological advancements. But with all that mobile banking currently offers, and as developments in mobile technology continue, the potential benefits of mobile banking cannot be ignored and may outweigh its risks.



¹ See Penny Crosman, *Banks Seek Sticky Relationships from Mobile Apps*, AMERICAN BANKER, Feb. 6, 2012, available at: http://www.americanbanker.com/issues/177_25/bankers-share-customer-retention-motive-mobile-banking-survey-1046383-1.html.

² CONSUMERS AND MOBILE FINANCIAL SERVICES, Board of Governors of the Federal Reserve System, March 2012, available at: <http://www.federalreserve.gov/econresdata/mobile-device-report-201203.pdf>.

³ See FFIEC Guidance on Authentication in an Internet Banking Environment (October 12, 2005); FFIEC Supplement to Authentication in an Internet Banking Environment (June 29, 2011).

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