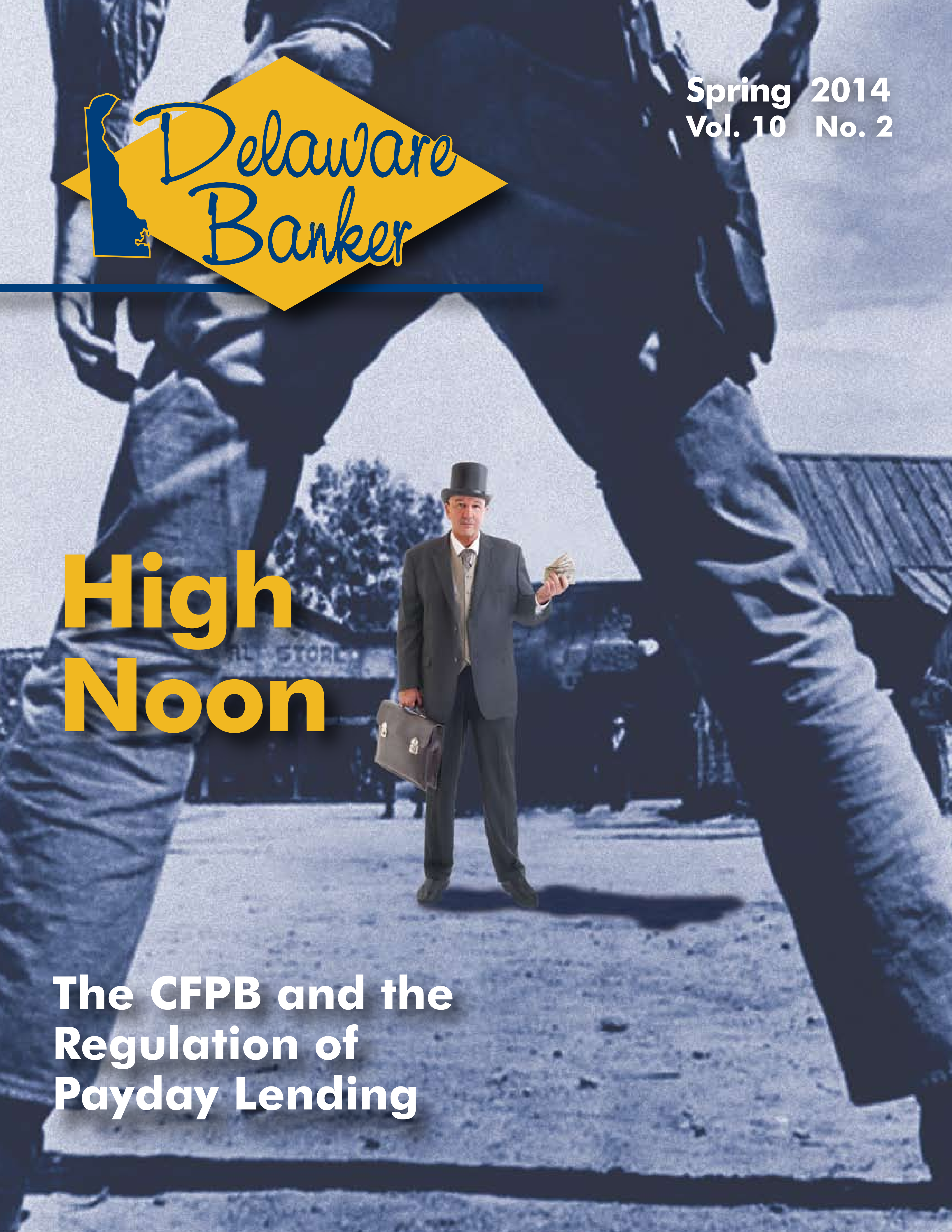

Delaware Banker

Spring 2014
Vol. 10 No. 2

High Noon

The CFPB and the Regulation of Payday Lending

Delaware Bankers Association

The Delaware Bankers Association
P.O. Box 781
Dover, DE 19903-0781
Phone: (302) 678-8600 Fax: (302) 678-5511
www.debankers.com

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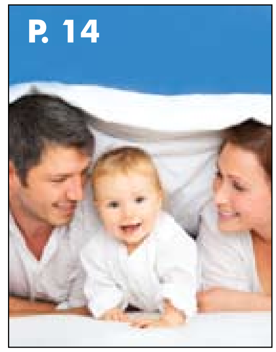
Spring 2014
Vol. 10, No. 2

The Quarterly Publication of the Delaware Bankers Association



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Delaware Banker welcomes news items from members of the Delaware Bankers Association. The Editors reserve the right to refuse any advertising or editorial copy deemed unsuitable for publication. The Editors reserve the right to set the publication date in accordance with the Association's needs. Direct submissions to Greg Koseluk at greg.koseluk@debankers.com

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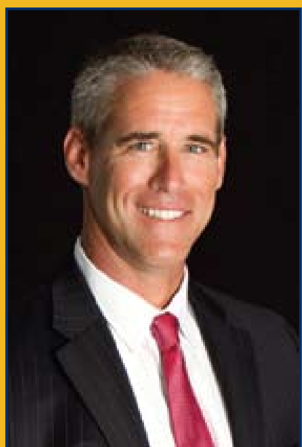
View from the Chair



by
David E. Gillan
Chairman of the Board and CEO
County Bank

Chairman
Delaware Bankers Association

"Delaware's banks continue to be a vital force for good throughout the First State."

It is hard to believe, but my tenure as Chairman of the Delaware Bankers Association is quickly coming to a close. Many of my predecessors have said a year is too short of a time period to fully take in the scope of the DBA programs including the social, educational and political agendas. Candidly, about six months into this role, a year seemed like a very long time! Now that it is winding down, it seems to be picking up speed. Although you only spend a year as Chairman, most of the Board has an average tenure of six years, which actually gives you an ample amount of time to absorb the finer points of what an Association actually does. Quite simply, it gives your industry a chance to speak with one voice!

For more than a century we have been gathering as a cooperative association of competitors. As business competitors each of us is naturally working in the best interests of our individual organization. But beyond that, in the larger picture, we're working for our community. Delaware's banks continue to be a vital force for good throughout the First State. We do this through offering quality financial services to businesses, families, and individuals. While this is our primary reason for being in business, it's not all that we do.

Delaware's banks also give back to the community through development loans, grants, and volunteering to build a stronger Delaware. Whether you are a large multi-state institution or a community bank; whether you operate in Sussex, Kent or New Castle County, or all three, the DBA helps us coordinate these efforts. The DBA gives us one voice, and it is a voice of equals!

Each year the Delaware Bankers Association produces a brochure that helps to illustrate all that our members do. We refer to this publication as our "good news brochure." Our 2014 edition: *Delaware & Banking - A Perfect Combination* is designed to be a valuable tool that highlights our industry's contributions to the First State. Delaware's banks make a significant impact on the State's economy in such areas as employment, revenue, business development, and volunteerism. You should receive copies of this publication shortly, and I encourage you to share this attractive brochure with your customers and community groups.

As impressive as the accomplishments of Delaware's banks are, they are merely a reflection of all that each of you do for your individual institutions, your industry, and the community at large. Your efforts help to make Delaware a good place to live, work, and do business. I wish Rodger Levinson of WSFS all the best as he takes on his new role. I want to personally thank you for the opportunity to serve as your Chairman this past year. It has been an honor and a pleasure.

Sincerely,

David

President's Report

by
David G. Bakerian
President, CEO & Treasurer
Delaware Bankers Association

"2014 has been busy with social, educational and political events coordinated by the DBA"

As I write this, 2014 is in full swing for the Association. January, as it always has, began with the return of Delaware's General Assembly. Except this year, for the first time in 20 years, I stayed in the office. Tom Collins was there to meet and greet the legislators as they streamed into Legislative Hall in Dover. Not unlike previous years, Tom's plate was full almost immediately as he dealt with filed bills and draft legislation affecting trust, environmental law, elder financial protection, charitable entities, and an omnibus bill impacting a myriad of banking issues including debt collection and the lending process. Tom will be in the Legislature on a daily basis through the wee hours of July 1st monitoring legislation affecting our industry. Please feel free to contact him at our office throughout the session with any questions.

Our Washington Visit, the first week in March, broke all attendance records. Our troop of Senior bankers met with the American Bankers Association, the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Consumer Financial Protection Bureau, and our Congressional Delegation over a three day period. Topics included regulatory relief, curbing credit union tax exemptions and expansion of business lines, patent trolls, and even the role of the United States Post Office in micro-lending. The bankers walked away with the sense that our issues were being listened to and that Senators Carper and Coons and Congressman Carney appreciate the importance of the banking industry to Delaware.

Later in March we conducted our 4th Annual Legislative Reception in Dover. Over 70 bankers and legislators attended this important event. This was our chance to discuss issues pertinent to our industry and exhibit a level of interest in the legislative process and the economic development of our State. The legislators voiced their pleasure at the size of the turnout and enjoyed the interaction. Thanks to all our members who attended and sponsored the event!

The week of April 14th the DBA kicked off its 16th Annnual Teach Children to Save Week, with approximately three hundred bankers teaching a savings lesson in over 100 elementary schools throughout the State. The week was highlighted by Governor Markell signing a proclamation declaring Teach Children to Save Week in the State of Delaware and Senator Coons teaching a lesson. You can see more about this year's event on page 21.

Wrapping up the spring season is our 119th Annual Meeting and Dinner at the Hotel duPont. As always the dinner features an array of State and National figures in attendance. Once more we're delighted to welcome an entertaining speaker in the person of Alison Levine, polar explorer and mountaineer. She not only served as team captain of the first American Women's Everest Expedition, but she also climbed the highest peak on each continent and skied to both the North and South Poles.

As you can see, although we are just five months into the year, 2014 has been busy with social, educational and political events coordinated by the DBA. We hope you have been able to participate and look forward to the upcoming months!

David

What's New at the DBA

New Members
Associate Member

R.I.S.C./Compliance Education Institute
Mick Kless, CRVPM
President & Managing Partner
R.I.S.C. Associates/Compliance Education Institute
Regulatory Information Security Compliance
917.837.6970 (direct dial)
800.310-5580 (office)
732.922.0113 (fax)
http://www.Risc-Corp.com
http://www.Compliance-Edu.com
http://www.VendorComplianceManager.com

R.I.S.C. Associates is a regulatory compliance consultancy, compliance automation tools developer and compliance training company focused on GLBA 501(b) issues. R.I.S.C. conducts audits, assessments and tests to identify risk and vulnerabilities and then develops policies, programs and plans to mitigate risks and remediate vulnerabilities. Compliance Education Institute is dedicated to bringing clients specialized expertise in regulatory compliance. They provide a variety of webinars and courseware targeted at augmenting regulatory knowledge, expanding professional horizons, and helping clients become better prepared for exams and audits.

2014 DBA Washington Visit

The Delaware Bankers Association conducted their annual DBA Senior Washington Visit, March 5th through March 7th. The 2014 Washington Visit provided members the opportunity to meet with key regulators at the FDIC, the OCC, and the CFPB. The group also met with Senator Tom Carper, Senator Chris Coons, and Representative John Carney. The DBA thanks all their generous sponsors including: Platinum Sponsor - The Federal Home Loan Bank of Pittsburgh; Gold Sponsor - SunTrust Delaware Trust Company; Reception Sponsors - Parkowski, Guerke & Swayze, P.A., and Richards, Layton & Finger; Reception Music Sponsor - Brooks Courier Service, Inc.; and, Bus Sponsor - Pepper Hamilton LLP.

Legislative Reception

David G. Bakerian, DBA President; Representative Peter C. Schwartzkopf, Speaker of the House; and David E. Gillan, DBA Chairman, Chairman of the Board and CEO, County Bank.

The Delaware Bankers Association hosted its fourth annual Legislative Reception for members of the Delaware General Assembly last night, March 27th, at Dover Downs. DBA Chairman, David E. Gillan, Chairman of the Board & CEO, County Bank, joined other prominent bankers from across the State in welcoming the law makers. "The DBA Legislative Reception is a great opportunity for our members to meet one-on-one with our elected state representatives," said DBA President David G. Bakerian. "The event helps demonstrate the importance of the financial services industry to Delaware, and our commitment to the First State." The reception was made possible by the generous sponsorship of the following members: Bank of America, The Bryn Mawr Trust Company, Comenity Bank, Commonwealth Trust Company, Community Bank Delaware,County Bank, CNB, Discover Bank, Fulton Bank, Glenmede, M&T Bank, U.S. Trust Company, and, WSFS Bank.

Cover Story

High Noon

CFPB Regulation of the Payday Lending Industry is Approaching

by Glen P. Trudel, Esq.
Ballard Spahr LLP

It is not a question of "if," but rather "when," and, perhaps more important for the payday lending industry and its customers, "what," as payday lenders brace for the Consumer Financial Protection Bureau (CFPB) to "make its move" in regulating more specifically the practices and products of the payday lending industry. While the payday loan industry will likely survive this encounter, the conditions, requirements, or constraints in store for the industry going forward will remain to be seen until the smoke clears on the CFPB's proposed and final rulemaking in this area.

In March of this year the CFPB's Office of Research presented its latest installment of payday industry analytic data, intended to further explore the inner workings of the market and of the habits and usage behaviors of its customer base (the CFPB Data Point)[1]. It is based and builds upon data previously acquired for purposes of compiling a white paper of initial data findings that was published on April 24, 2013 (the White Paper)[2]. The CFPB Data Point is principally focused on analyzing the incidence and operations of "loan sequences," which the CFPB defines in the study to include the series of loans taken out by a borrower within 14 days following his/her repayment of a prior loan. This term, as defined, includes not only rollovers of an existing payday loan for a fee, but also any re-borrowing by the customer within the above-referenced 14-day period.

Selected Findings of the CFPB Data Point

The authors of the CFPB Data Point highlighted certain findings in their examination of variables, including the length of payday loan sequences, payday loan amount size, amortization of the initial principal amount of such loans over the course of the loan sequences, and the number of loan sequences obtained by customers over the course of 11 months. More specifically, such highlighted findings include the following[3]:

- Over 80 percent of payday loans are rolled over or followed by another loan within 14 days of repayment. Further, loan renewal rates at seven days and 14 days are nearly the same among the states, regardless of whether the states involved have instituted "cooling-off period" requirements or not.

- Most new payday loan sequences do not go beyond a single renewal; however, 22 percent of new loans are followed by a loan sequence at least seven loans long, and 15 percent of new loans extend for 10 or more loans. The loans in such sequences make up half of all payday loans.

- Relatively few borrowers actually reduce their loan principal (i.e., amortize) between the first and last loan of their loan sequence—for over 80 percent of loan sequences of more than one loan in length, the last loan amount was at least the same amount (or higher) as the first loan in the sequence. Loan principal amounts were more likely to rise over the course of longer loan sequences, and principal increases are associated with higher default rates.

- Monthly borrowers (most of whom, the CFPB Data Point emphasizes, are government benefit recipients) are disproportionately likely to stay in debt for 11 months or longer.

- Most borrowing consists of multiple renewals following an initial loan, versus distinct borrowings more than 14 days apart.

- About half of new borrowers have one loan sequence. Of those borrowers who neither renewed nor defaulted during the year under study, 60 percent took only a single loan.

According to the comments of CFPB regulators, the CFPB Data Point and earlier White Paper illustrate areas of concern for the CFPB, which will likely be the focus of their thinking on how to go about regulating the industry, its products, and its practices. In his Nashville field hearing remarks delivered on March 25, 2014, the same day the CFPB Data Point was released, Director Cordray stated that the CFPB's "central concern" was that payday loans often lead to a "perpetuating sequence"—essentially that the loans over time become a continuing series of repeated refinancing of the same initial debt for a fee, most often without any decrease (or even an increase) in principal owed over time. It was this sort of ongoing status quo indebtedness that the Director seemed to consider "debt traps" and "spider webs of debt."[4]

More recently, at the Practicing Law Institute's 19th Annual Consumer Financial Services Institute held in April (the Conference), Charles Honig, a Managing Counsel of the Office of Regulations in the Research, Markets, and Regulations Division of the CFPB and a panelist at the event (Honig), discussed various research findings from the CFPB Data Point that the agency found troubling. Honig expressly mentioned some of the sequencing statistics noted above, the lack of amortization by borrowers throughout loan sequences, and that large numbers of monthly loan renewal activity were being generated by borrowers receiving governmental benefits, as areas of concern, and echoed that the consumer "cycle of debt" remained a key policy concern of the CFPB. He further advised that the findings of the CFPB research were indicative of where the CFPB would likely be going with its rulemaking.

The White Paper raised another concern, namely, that it was "unclear whether consumers understand the costs, benefits and risks of using such products,"[5] and that consumers may not grasp the substantial likelihood that despite being touted as short-term products, the debt could wind up continuing for an extended period of time, and what the costs and risks to the consumer are or would be, should that occur.

Possible Rulemaking Options?

It does not appear that the CFPB will "shoot to kill" the payday lending industry, by imposing an effective ban on such products or otherwise effectively regulating all payday lenders out of business. The White Paper[6], CFPB

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representatives such as the Conference attendees, and Director Cordray have recognized that consumers have shown a continued demand and need for this sort of product and that they "can be helpful for the consumers who use them on an occasional basis and can manage to repay them without becoming mired in a long and costly struggle."[7] This, and the apparent absence so far of any examination by the CFPB of what alternatives would be available for consumers in the event payday lending were to be eliminated or materially curtailed as a lending option for such consumers, or of what the other impacts might be on consumers who could no longer utilize the product to fulfill their credit needs, would tend to support the view that elimination of the payday product is not the CFPB's ultimate aim.

Further, it is unlikely the CFPB will look to impose a cap on interest rates that can be charged on payday loans, given the statutory prohibition on the CFPB's imposition of usury limits on credit extensions offered or made by a covered person to a consumer, absent explicit authorization by law.[8]

Given the clear concerns expressed by the CFPB over longer-term loan sequencing and consumers simply paying fees to keep the loan in place for additional time without any pay-down of the original loan principal, it is comparatively more likely that the standards the CFPB will promulgate in any Notice of Proposed Rulemaking it publishes will include rules and requirements designed to limit if not prevent the ability of consumers to easily engage in lengthy loan sequences with no or negative amortization of principal, and/or to acquire debt they cannot realistically afford to repay without re-borrowing sequentially. Such regulations might include requiring amortization of at least a minimum percentage of loan principal from sources other than a loan before a payday loan could be renewed by the same lender (though this may not address the practical ability of a consumer to potentially use one lender's loan proceeds to pay off another lender's loan). In addition, the CFPB might seek to impose specific underwriting requirements on payday lenders, such as requiring them to affirmatively consider the consumer's ability to pay the loan beyond simple reliance on the lender's ability to recover payment from the consumer's next paycheck/deposit, or to impose additional credit criteria or requirements on payday lenders that would need to be satisfied by the consumer in order for the lender to grant consumer a renewal (perhaps after a maximum number of prior renewals have already been granted). Requiring lenders to provide options for consumers to roll their debt into a longer stream of closed-end payments to avoid the need for short-term renewal may be another approach. Finally, minimum cooling-off periods might be imposed, which could be of increasing duration based on the number of prior renewals that have already been granted.

Given the concerns raised in the White Paper questioning the level of customers' understanding of the costs and risks associated with taking out and continually renewing payday loans, we think it is quite possible that new standard disclosure requirements, specific to these products and addressing these sorts of stated risks of customer misunderstanding, could be imposed by the CFPB and required to be provided to consumers while seeking such loans or otherwise prior to entering into such a loan.

So When, Exactly, Is High Noon?

Director Cordray, in his Nashville field hearing remarks, "frankly" stated that the CFPB is "now in the late stages of our considerations about how we can formulate new rules to bring needed reforms to this market."[9]

More recently, at the PLI Conference Meredith Fuchs, Associate Director & General Counsel for the CFPB, delivered the opening keynote address, touching on a number of topics and areas of CFPB interest and providing updates on where several of such initiatives are heading. When asked about when the industry could expect to see a Notice of Proposed Rulemaking for payday and other types of small-dollar, short-term loans, Associate Director Fuchs responded that she could not speak to the timing of or provide any exact time for publication of any such proposed rule. Honig similarly declined to give a specific publication date but noted some interesting points. For example, he alluded to the regulatory flexibility analysis process, which in the case of CFPB as a "covered agency" may include a requirement to obtain advice and recommendations from selected small business entities relative to costs of credit issues/effects of the proposed rules. We are not aware of whether or not this analytical process has begun for the payday loan rulemaking; the last published regulatory agenda from fall 2013 listed this requirement as "undetermined," and as of this writing a new regulatory agenda has not yet been published in the Federal Register.

If the regulatory flexibility analysis process has not been started or substantially completed as of yet, then given our understanding that such a process is typically initiated several months before a Notice of Proposed Rulemaking is published for comment in the Federal Register, this suggests at least that publication of a full Notice of Proposed Rulemaking for general public comment may also be months away.

Glen P. Trudel, a partner in Ballard Spahr's Wilmington office, focuses on consumer financial services and banking law, counseling clients on both regulatory and transactional matters. Mr. Trudel has significant experience in the acquisition and divestiture of credit card and other financial portfolios. He advises state and federal banking entities on formation and licensing issues in Delaware and on operational and outsourcing matters. In addition, he handles affinity/co-brand/joint marketing agreements, assists clients in the structure and documentation of new credit products, and handles traditional corporate and contractual matters, including Delaware law opinions. He previously was Senior Vice President and Counsel with MBNA America Bank, N.A. (now part of Bank of America).

Notes

1 See CFPB Data Point: Payday Lending, March 25, 2014, http://www.consumerfinance.gov/reports/cfpb-data-points-payday-lending/.

2 See Payday Loan and Deposit Advance Products—A White Paper of Initial Data Findings, April 24, 2013, http://www.consumerfinance.gov/reports/white-paper-on-payday-loans-and-deposit-advance-products/.

3 See CFPB Data Point, at 4-5 and 11.

4 Director Richard Cordray Remarks at the Payday Field Hearing, March 25, 2014, http://www.consumerfinance.gov/newsroom/director-richard-cordray-remarks-at-the-payday-field-hearing/.

5 White Paper at 44.

6 Id., at 4 ("The CFPB recognizes that demand exists for small dollar credit products. These types of credit products can be helpful for consumers if they are structured to facilitate successful repayment without the need to repeatedly borrow at a high cost").

7 Id.

8 12 USC §5517(o) (2014).

9 Id.

Estate Planning for Young Families

by
David R. Mietty
Wealth Management Consultant, UBS

There are as many follies of youth as there are youth to carry them out. In estate planning, these follies often take the form of excuses for the failure to understand the importance of estate planning:

"I am too young to plan now."
(Translation: "I have a long life ahead of me. I'll do it later when I am older.")

"I'll get to it, but right now I'm too busy."
(Translation: "Get off my back. It's just not a priority for me now.")

"I'm healthy. Nothing's going to happen to me."
(Translation: "I am invincible.")

Add minor children to the mix and these excuses remain, albeit with a pang of guilt arising from the haunting knowledge that it probably is something a responsible parent should do.

Failing to Plan is Planning to Fail

The adage is true: the risk can be tragic yet the unintended results may be entirely avoidable. The foundation of a solid estate plan is a solid financial plan. For young families, the two are intricately intertwined because they both address the same core issue: uncertainty for the future. Combined, they represent a solid wealth management plan.

Knowing What You Have

Before any estate plan can be prepared, an accurate understanding of your income, expenses, assets and liabilities is essential. Its expression is in the form of a simple budget with balance sheet. A comprehensive financial plan takes that further by presenting the budget and balance sheet in a financial context with your goals, risk tolerance, savings plan and investment strategy. An effective estate plan nestles the financial plan in a life context. When executed properly, it all works together in harmony.

Determining Your Responsibilities

Whom you need to protect may seem simple at first: spouse and children. A careful reflection might give rise to the inclusion of others to the nuclear family mix, such as parents, siblings, in-laws, business partners, employees and charities. Furthermore, a look to the legal nature of members of the modern family may reveal different legal relationships that may require different planning strategies. Consider these questions:

- Is your "life partner" your spouse, your domestic partner or your "happy attachment?"
- Are the children yours (natural born/adopted/present marriage/previous marriage/no marriage) or your spouse's children (previous marriage/no marriage) whom you have not adopted?

Although love and affection may be blind to legal status, estate planning may not be.

Protecting Your Surviving Spouse

Spouses may see each other as equal partners to the marriage, yet the elements that make up that "equality" may be very different from one spouse to the other. Reflect on the following questions:

- What assets and/or liabilities did each spouse bring to the marriage? Did one spouse previously inherit property? Did the other spouse carry large student loans?

• Are both spouses employed outside the home? Are their incomes similar or significantly different? Is one spouse employed inside the home as a homemaker/caretaker of children or others? Does one spouse earn income from employment? Does the other spouse earn appreciation from volunteer work?

- What unpaid work does each spouse do to maintain the family and the home? Could one spouse do the other spouse's domestic work or would the domestic work be required to be hired out?

An understanding of these answers will aid in determining the degree of support needed for the surviving spouse.

Minor Children

If there is one strong motivating concern, it must surely be the care of minor children in the event of the death of both parents. The Last Will and Testament appoints the guardian(s) of minor children. Failing to effectively determine the guardian for minor children leaves the decision in the hands of the probate court. It doesn't stretch the imagination to think that the court appointed guardian may not be the guardian that the parent would have chosen.

These questions may be useful in helping parents decide upon the best guardians for their minor children:

Is this the right person to raise your children? Does this person have the right personality, temperament and patience to parent your children in the manner you would? Will your family values (religious, moral, ethical) be given to your children by this guardian?

- How will your children fit in with the guardian's family?
- Will the guardian foster your children's relationships with your extended family, such as grandparents, aunts and uncles, cousins?

As you think about the potential guardian's parenting and social skills think also about the guardian's ability to manage the finances and assets you leave for your children.

- Can the guardian be trusted to manage the assets of your children prudently?
- Does the guardian have the financial management and investment skills necessary to make proper decisions in managing the assets?

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Wealth Planning

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An honest appraisal of the guardian's business acumen may indicate the need for a professional investment manager and/or a corporate fiduciary trustee.

Another important factor involves the expense of raising your children. Direct expenses, such as food, clothing and education, are relatively easy to estimate. Indirect expenses, such as vacations, hobbies and other "quality of life" expenses are not. Capital expenditures and personal time are even more difficult to estimate:

- Will the guardian need to adapt his or her home to accommodate your children? Are there enough bathrooms and bedrooms? Is there enough communal living space? Would an entirely new home need to be bought or built?
- Would a guardian need to reduce or eliminate employment outside the home to create the time needed to raise your children?

It is likely that additional resources may be required to accommodate the raising of your children beyond customary daily expenses. Finally, ask yourself this "bottom line" question:
• Can the guardian balance the interests of his or her family and mine so as to provide all with a feeling of belonging in the new combined family?

You see? It's not always about the money.

Adult Children and Other Special Considerations

Children are not necessarily clustered within a narrow age band, especially in second marriage situations. For those with young and adult children, there may be circumstances where a parent may wish to make special provisions for the adult children almost as though they were still minors.

The first category involves "troubled" adult children, examples of which include alcoholism and substance abuse, spendthrift issues, behavior challenges, and incarceration. These and other similar situations require sensitive understanding and technical planning so that the beneficiary's life is enriched and their troubles not enabled.

The second category involves "special needs" children who have challenges or disabilities that inhibit their independence and ability to care for themselves. In this situation, careful consideration should be given to planning techniques which will preserve benefits available under government or other programs. Special needs planning may provide additional "quality of life" resources for the beneficiary, such as for the purchase of specialized equipment and specialized training. Capital expenses such as adapting the home may also be appropriate.
The third category may be labeled "the trust fund brat." Estate planning here may be seen more as avoiding the creation of a future problem rather than addressing a present problem. For examples, peruse the tabloids in any supermarket checkout line.

Life and Disability Insurance Planning for Young Families

For many people, life insurance is an integral component of any well organized and executed estate plan. Although there are many reasons for life insurance, the three common reasons for including it in a comprehensive estate plan are:

- Estate solvency—where liabilities are greater than assets, or where liabilities are significant in an illiquid estate, life insurance may be used to pay off debt.
- Income replacement—where premature death results in the loss of the income of an employed spouse, life insurance may be used to provide a replacement of the accumulated lost income.
- Wealth preservation—where an estate is subject to unavoidable income or estate taxes, life insurance may be used to reduce estate shrinkage due to taxes.

In determining the amount of insurance needed to supplement existing assets available to the surviving spouse, consideration should be given to the following questions:

- What was the earned income of the deceased spouse? What does the surviving spouse need for support pre-retirement?
- Post-retirement? What support is needed for dependent children? For other dependents?
- Will hired help be needed to replace the domestic services of a deceased employed spouse and/or a stay-at-home parent?

The support needs of dependent children may vary considerably depending on whether a guardian is necessary. Ask yourself:

- How much will it cost to provide my children with the basics (food, clothing, shelter)? What additional expenses will contribute to my children's quality of life?
- How much will it cost to educate my children? Primary school? Secondary school? College or trade school?
- Will I need to provide additional support to the guardian of my children?

Insurance planning should also consider the timing of the needs in determining the type of insurance to maintain.

- What is needed if one spouse dies prematurely? (Single life insurance) If both die prematurely? (Survivorship insurance)
- When are certain expenses likely to occur? Lapse? For example, term insurance may be appropriate for education expenses until the youngest child attains age 26, whereas permanent insurance may be appropriate for the lifetime support of the surviving spouse.

A comprehensive financial plan will help determine the appropriate amount and corresponding cost of insurance within your resources—insurance that is neither too much, too little nor too expensive.

An individual is also more likely to become disabled by accident or illness than die prematurely. Disability may affect the disabled spouse's ability to earn a living and may add incremental expenses to the family budget. Disability insurance to replace a portion of lost income should be considered. It is often available through an employer's benefit package. If not, private disability insurance may be available.

Basic Estate Planning Documents

Regardless of your income or the size of your estate, the following documents comprise a basic estate plan:

1. Last Will and Testament
2. Revocable Living Trust*
3. Medical Power of Attorney
4. Financial Power of Attorney
5. HIPPA Authorization
6. Advanced Directive/Living Will

*The Revocable Living Trust may be deemed optional for individuals with small estates, but it is a basic document for those with large estate assets or those with smaller estate assets and large life insurance.

Basic Estate Planning Decisions

The adage "you get what you pay for" is as true in estate planning as it is in many other areas. Avoid the temptation to either do it on the cheap or do it on your own. Instead, engage an attorney who specializes in estate planning. The ever evolving nature of estate planning indicates that it should be a prominent focus of your attorney's practice, not something that is just occasionally dabbled with.

Next, assemble your estate team. This will consist of:

- Executor/Administrator/Personal Representative
- Trustee and Successor Trustee
- Holder of Financial Power of Attorney
- Holder of Medical Directives
- Guardian of Minor Children

If you are considering naming family or friends for one or more of these roles ask them if they would take on the responsibility, determine who would best fit which role, and inform them that you have appointed them to a specific role in your estate plan. No one likes surprises.

Finally, decide on the distribution of your estate among your surviving spouse, children, others and charities. Often, the best decisions are made when you discuss options, opportunities and obstacles with your estate planning attorney and financial advisor.

The Tax Wrapper

The best estate plans are often those which accomplish an individual's wishes in a tax-efficient manner. Certainly, an understanding of the taxes involved and their application to your situation are important to helping you decide on what you want to accomplish, but tax minimization considerations alone rarely result in an estate plan that does what you want it to do for your beneficiaries. A competent estate planner will help you decide what is most important for you to accomplish in your estate plan and provide you with an estate planning recommendation in an efficient tax wrapper.

Implementing The Plan

The estate planning process is not complete once your documents are signed and the ink has dried. The final step involves implementing the plan. That includes retitling assets, changing beneficiary designations on retirement accounts and existing life

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Wealth Planning

(continued from p. 17)

insurance policies, and purchasing any insurance recommended in your estate. Most estate planning attorneys will provide their clients with instructions on implementing your estate plan, including retitling and consolidating your accounts. Your Financial Advisor can provide access to the necessary disability and life insurance coverage you need.

One More Thing

Your documents are signed. Your assets are retitled. Your beneficiary designations have been changed. Your insurance is in place. Your estate plan is complete.

Now what? Are you through forever and a day?
No.

What always remains is the ongoing review of your estate plan. At minimum, you should review your estate plan every five years or sooner, especially if any one or more of the following circumstances occur:

- Any significant change to your personal family situation, including births, adoptions, deaths, divorces, remarriages, illnesses and disabilities.
- Any significant change to your financial situation, including increases or decreases in employment, income, expenses, cash flow, inheritances, assets and liabilities.
- Any significant change to the timing of an anticipated financial or personal event.
- Any change of domicile to another state or country, especially if it involves a move that involves a new state with or without community property laws.

If you are unsure whether a change is significant enough to merit a modification to your estate plan, make sure you mention it to your financial advisor, either during a formal review of your financial plan or during any conversation on a routine matter.

David R. Mietty is a Wealth Management Consultant and is responsible for providing comprehensive wealth management, investment, estate planning, philanthropic planning, business planning, personal trust, and life insurance strategies to UBS Financial Advisors in its Midwest Region. In addition to his consulting services, Mr. Mietty is responsible for coordinating the Comerica Bank trust specialists, the Life Insurance General Agent Network and the UBS Attorney Network for his region. He brings to UBS 30 years of professional corporate fiduciary experience, including managerial positions in personal trust administration, estate settlement, estate tax, fiduciary legal counsel and wealth management. He also has extensive professional experience with fiduciary litigation, closely-held businesses, charitable trusts and irrevocable life insurance trusts. Mr. Mietty received his Bachelor of Arts cum laude (1980) in Psychology and English, his Master of Business Administration (1985) in Finance and his Juris Doctor (1984) in Corporate Law and Taxation, all from Case Western Reserve University in Cleveland, Ohio. He has earned his Chartered Private Wealth Advisor® (CPWA®) designation from the Investment Management Consultants Association (IMCA) (2008). He has also graduated from the ABA National Trust School (1985) at Northwestern University in Chicago, Illinois.

Secret Savers and Saving Secrets!

2014 Teach Children to Save Day Was Magical!

What happens when you rub a magical piggy bank? The Great Investo and Penny find out in this illustration from *The Great Investo and the Secret Saver.*

The 2014 edition of Teach Children to Save Day was a truly magical success! Approximately 300 banker volunteers taught an estimated 11,000 students in 110 public, private, and parochial schools throughout Delaware.

Governor Jack Markell proclaimed the week of April 7th "Teach Children to Save Week" in the First State. The Governor signed the proclamation in a ceremony on Thursday, April 10th, at Fairview Elementary School in Dover.

The following day, United States Senator Christopher Coons gave a lively reading of this year's book, *The Great Investo and the Secret Saver*, at Evan G. Shortlidge Academy in Wilmington.

Several bank presidents and special guests also volunteered as teachers for the event, these include: Robert A. Glen, State Bank Commissioner; Jim Kelly, Chief Operating Officer, Capital One 360; Chip Rossi, Small Business Products Executive and Delaware Market President, Bank of America; and, Randy Taylor, President, Fulton Bank, N.A., Delaware Division.

The Great Investo and the Secret Saver teaches the importance of saving regularly and in a safe place. The book was written and illustrated by Greg Koseluk of the Delaware Bankers Association. The book was created specifically for the 2014 Teach Children to Save Day event and was made possible by a grant from Capital One. The book is available from Amazon and Barnes and Noble.

Teach Children to Save Day is a part of a national program developed by the American Bankers Association's Education Foundation to teach children about the importance of saving. The Delaware Bankers Association coordinates the program in partnership with the University of Delaware's Center for Economic Education and Entrepreneurship (CEEE). The CEEE develops the lessons which meet Delaware's state economic education standards. In addition to lesson development, CEEE also plays a vital role in preparing the lesson packets for each volunteer and classroom teacher, as well as matching the bankers to the schools.

Bruce Elliott, morning host on WILM and WDOV enjoys
The Great Investo and the Secret Saver during an on-air interview

Governor Markell proclaims "Teach Children to Save Week" as
Fairview Elementary Principal Melissa White looks on

Senator Chris Coons at Shortlidge Academy

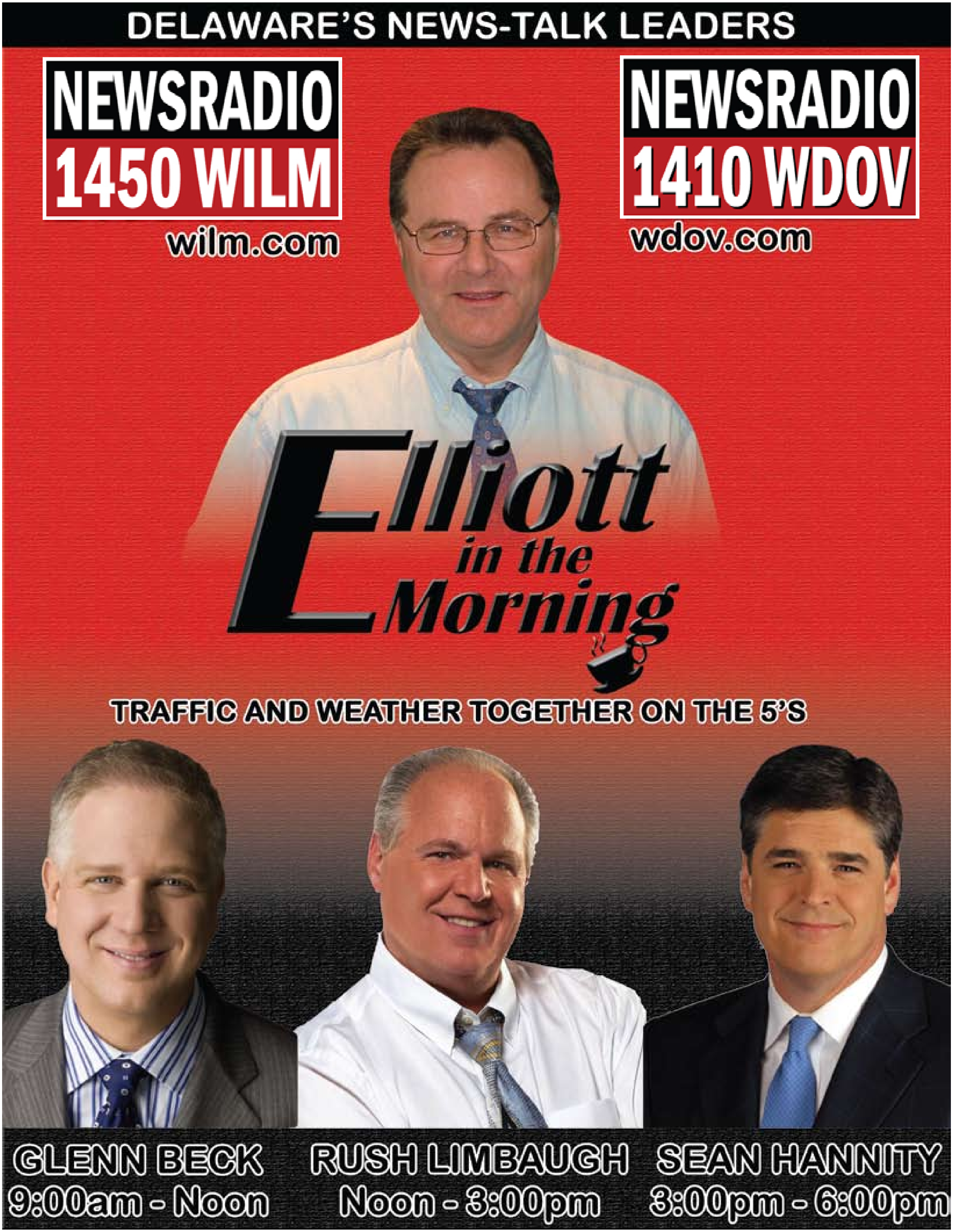
Jim Kelly, COO, Capital One 360 teaching at
Marbrook Elementary in Wilmington

Financial Literacy

(continued from p. 21)

Chip Rossi, Small Business Products Executive and Delaware Market President, Bank of America teaches at Bancroft Elementary in Wilmington

Greg Koseluk, DBA VP of Marketing & Public Relations and the book's author and illustrator poses with Miss Noffsinger's class at Holy Cross Elementary in Dover


DELAWARE'S NEWS-TALK LEADERS
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Elliott in the Morning
TRAFFIC AND WEATHER TOGETHER ON THE 5'S
GLENN BECK
9:00am - Noon
RUSH LIMBAUGH
Noon - 3:00pm
SEAN HANNITY
3:00pm - 6:00pm

How Capital Structure Affects Business Valuation

by
Heath N. Kahrs, CPA
Managing Director, Santora CPA Group

A company's capital structure — essentially, its blend of equity and debt financing — is a significant factor in valuing the business. The relative levels of equity and debt affect risk and cash flow and, therefore, the amount an investor would be willing to pay for the company or for an interest in it.

A question that often arises is whether the valuator should use the company's actual capital structure or its anticipated future capital structure. A valuator might also use a prospective buyer's capital structure or the company's optimal capital structure. Which method is best depends on several factors, including the type of interest being valued and the valuation's purpose.

What's the Cost of Capital?

Capital structure matters because it influences the cost of capital. Generally, when valuators use income-based valuation methods — such as discounted cash flow — they convert projected cash flows or other economic benefits to present value by applying a present value discount rate.
That rate, also known as the cost of capital, generally reflects the return that a hypothetical investor would require. When valuing invested capital — that is, the sum of debt and equity in an enterprise — the weighted average cost of capital (WACC) is used as the cost of capital. WACC is a company's average cost of equity and debt, weighted according to the relative proportion of each in the company's capital structure.

What's the Optimal Capital Structure?

Many business owners strive to be debt-free, but a reasonable amount of debt can provide some financial benefits. Debt is often cheaper than equity, and interest payments are tax-deductible. So, as the level of debt increases, returns to equity owners also increase — enhancing the company's value.

If risk weren't a factor, then the more debt a business has, the greater its value would be. But at a certain level of debt, the risks associated with higher leverage begin to outweigh the financial advantages.

When debt reaches this point, investors may demand higher returns as compensation for taking on greater risk, which has a negative impact on business value. So, the optimal capital structure comprises a sufficient level of debt to maximize investor returns without incurring excessive risk.

Identifying the optimal structure is a combination of art and science. Valuators may:

- Use industry averages,
- Examine capital structures of guideline companies,
- Refer to financial institutions' debt-to-equity lending criteria, or
- Apply financial models to estimate a subject company's optimal structure.

Whichever method is used, valuators exercise professional judgment to arrive at a capital structure that makes sense for the subject company, with a level of debt that the company's cash flow can support.

Which Structure Should Be Used?

The right capital structure for valuation purposes depends on several factors, including:

Type of Interest

If the interest being valued is a controlling interest, it's often appropriate to use the company's optimal capital structure. Why? Because a controlling owner generally has the ability to change the company's capital structure and gravitates toward a structure that will yield the most profitable results. If the interest being valued is a minority or noncontrolling interest, however, it's customary to use the company's actual capital structure, because the interest owner lacks that ability.

Purpose of Valuation

To estimate fair market value, valuators often use the subject company's actual or optimal capital structure. But if the standard of value is investment value, it may be appropriate to use the buyer's capital structure because the buyer's financial attributes are considered in using this standard of value.

Management Plans

A company's capital structure fluctuates over time as the value of its equity securities changes and the company services its debts. It may be appropriate to use management's target capital structure if the actual structure has veered off course temporarily or if management plans to alter the company's capital structure.

Finding the Right Structure

The blend of debt and equity can have a big impact on a value estimate. So you should expect to work closely with your valuation expert to identify the appropriate capital structure to be used in the valuation.

Heath N. Kahrs is Managing Director of Santora CPA Group with over 17 years of public accounting experience. He is a 1996 graduate of the University of Delaware with a Bachelor of Science Degree in Accounting. Heath joined Santora CPA Group in June 1996. He became a Principal in June 2006 and was made a Director in January 2007. He manages audit and attest services and provides a wide range of consulting services to his clients, which includes the medical community, nonprofit organizations, governmental entities, as well as contractors, manufacturers, and service organizations. Heath also plays a vital role in the firm's recruiting efforts. He is a member of the American Institute and the Delaware Society of Certified Public Accountants. He is currently serving as Treasurer on the Board of Directors for the Delaware Community Development Corporation and as Vice President on the Board of Directors for the Wilmington Economic Development Corporation.

A Matter of Trust

by
Richard F. Klumpp, CPA, JD
President and CEO
WT SP Services

"Delaware offers tax benefits to companies wishing to license intellectual property, finance inter-company activities, hold investments, or factor receivables."

The Delaware Advantage

European companies wishing to do businesses in the vast U.S. market will find Delaware an ideal jurisdiction for basing operations. Similarly, Delaware can be a welcome home for executives of such companies who want to hold personal assets in the U.S.

Delaware's business-friendly environment and favorable tax structure are attracting well-known companies. For European CEOs who would like to relocate their corporation's headquarters, or who simply wish to have operations in the U.S., Delaware can offer a hospitable business climate and access to financial partners that are familiar with fulfilling the needs of international clients.

Accessing the U.S. Capital Markets

Working with an entity based in Delaware is a particularly attractive way for European companies to access the U.S. capital market, which has become a primary purpose for doing business in the U.S. The U.S. capital market is large, liquid, and flexible. Many American investors are eager to diversify their portfolios by holding European securities, and this demand can provide European companies with funds at a reasonable cost. In addition, raising capital in the U.S. offers European companies a way to diversify currency.

European companies often turn to the U.S. capital markets in order to raise funds for their American operations. In recent years, issuance of commercial paper has been increasing, as European companies discover the appeal of unsecured, short-term debt for financing accounts receivable and inventories.

When European companies come to the U.S. for business opportunities and access to capital, tax considerations may dictate the choice of jurisdiction. Delaware offers tax benefits to companies wishing to license intellectual property, finance inter-company activities, hold investments, or factor receivables. In all of these, state income taxes and capital gains taxes can be minimized by setting up business in Delaware. Moreover, European taxes may be reduced on the eventual disposal of U.S. assets.

It is true that a few other U.S. states have favorable tax laws. However, European companies that use Delaware as a base of operations will find that this state provides other unique benefits to corporations. Delaware law, for example, includes Section 1902(b)(8) of Delaware's corporation tax code, which provides that a Delaware corporation that limits its activities to the maintenance and management of intangible assets is state tax-exempt. This exemption covers dividends, interest on notes receivable, capital gains, trademark payments, rents, and royalties. Moreover, Delaware permits a corporation to establish a wholly owned Delaware subsidiary to own and manage the parent company's intangible assets.

European companies considering operating in the U.S. must be sure to choose the most appropriate corporate structure for their needs. While many use the basic "C" corporation structure—the standard corporate form in the U.S.—this structure will not be right for every U.S. activity of a European company. Special purpose entities such as "S" corporations, limited partnerships, limited liability companies, trusts, or general partnerships may be more appropriate.
European companies should pick a service provider with expertise in establishing and overseeing all types of special-purposes entities to be sure that they are establishing the one that will best meet their needs. Ideally, this provider should also be able to offer accounting and regulatory filing support, recommend local legal counsel specialized to their needs, provide local independent officers and directors, and serve in a range of roles—including escrow agent, trustee, and custodian.

When choosing a service provider in the U.S., European corporations should also demand a provider with a stellar track record and a reputation for integrity. European executives should be leery of any U.S. provider that does not demand full compliance with the USA Patriot and Sarbanes-Oxley Acts.

Managing Wealth in the U.S.

While their companies are discovering the advantages of doing business in Delaware, European CEOs who wish to hold personal assets in the U.S. are discovering that Delaware is an ideal jurisdiction for this as well.

Among the European CEOs who wish to hold assets in the U.S. are those married to U.S. citizens, and those with children or grandchildren living in the U.S. For these or other reasons, European executives may plan to eventually move to the U.S., and, therefore, might wish to migrate personal assets as a form of "pre-immigration planning." Of course, a European executive might have other grounds for wishing to hold some assets in the U.S. In tumultuous times, it may be desirable to hold assets in multiple jurisdictions, including the U.S.

When transferring assets to the U.S., European executives might choose to have those assets held in trust. In many cases, such transfers will not trigger any U.S. gift tax consequences. Once assets are in a properly drafted U.S. trust, they may avoid U.S. estate tax at the grantor's death. Despite laws easing the impact of estate taxes in the U.S., they remain a prime concern for wealthy individuals. Effective planning can reduce a family's tax liability.

Generally, U.S. trust laws provide more flexibility than those trust laws in Europe. A Delaware trust can often last longer than trusts established in many European countries. Not only can transfer taxes be minimized, holding assets in trust can be an effective means of shielding those assets from future creditors' claims. A well-planned Delaware trust can provide access to trust assets for present and future generations.

Some of the entities that may interest European executives are detailed on wilmingtontrust.com:

- Dynasty Trusts
- Asset Protection Trusts
- Total Return Trusts
- Blind Trusts
- Limited Partnerships and Limited Liability Companies

High-net-worth individuals can find the vehicles that will best suit their purposes and use them to help accomplish their goals. What's more, they can proceed with reasonable confidence that their efforts won't be overturned in the future: Delaware has a long history of respecting property rights, so European executives are justified in believing that the rules won't be changed retroactively.

Whether European executives are coming to America for business or for personal financial reasons, teaming up with a Delaware expert can enable them to take advantage of Delaware's unique opportunities.

Wilmington Trust is a registered service mark. Wilmington Trust Corporation is a wholly owned subsidiary of M&T Bank Corporation. Investment management and fiduciary services are provided by Wilmington Trust Company, operated in Delaware only, and Wilmington Trust, N.A., a national bank. Loans, retail and business deposits, and other personal and business banking services and products are offered by M&T Bank, member FDIC. Affiliates in, Arizona, California, Connecticut, Delaware, Florida, Georgia, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New York, Pennsylvania, South Carolina, Texas, Vermont, Virginia, Washington DC, Amsterdam, Cayman Islands, Channel Islands, Dublin, Frankfurt, London, Luxembourg, Madrid, and Milan.

DBA Calendar of Events

For more information on these and other programs visit ***www.debankers.com***, or phone the DBA at 302-678-8600, or email: debankers@debankers.com

September - October 2014

September 30th - October 1st –
2014 Delaware Trust Conference. Hotel du Pont, Wilmington.
The 2014 Delaware Trust Conference presents a novel approach to wealth planning. This, the ninth annual edition of this premiere trust event will feature detailed case studies to tell the story of the Delaware Trust advantage. Join dozens of expert panelists from the trust, legal, and accounting fields to learn the latest Delaware Exclusive information. Learn how to meet your clients' great expectations in both the best of times and the worst of times with unique Delaware trust strategies. Sponsorship opportunities are available.

Brooks Courier Service Rides Again for Community Organizations!

Brooks Courier Service recently partnered with another community service organization, donating marketing space on their vehicles. The Nemours Foundation is the latest organization enjoying the free ads joining Blood Bank of Delmarva in the initiative. Brooks Courier Service was founded by William F. Brooks Sr. in 1951 and provides delivery of banking materials, interoffice mail, pharmaceuticals, legal documents & magnetic data tapes. With over 60 years experience, Brooks Courier Service also provides warehousing, mailroom management, data storage and medical deliveries to locations in New York, New Jersey, Pennsylvania, Delaware, Virginia and Maryland.

Delaware Bankers Association/Financial Education Alliance

Web and CD Seminars

For more information, or to register, please visit the Web Seminar link at www.debankers.com. The DBA has introduced an improved web seminar catalog featuring an easy to view, searchable listing. There is no log-in required to view the catalog. The checkout function has also been improved and includes itemized receipts.

May - June 2014

May 5 - Cash Flow Part 1: CRE Cash Flow Analysis

May 6 - Basics of Real Estate Loan Documentation

May 8 - Introduction To ACH Part 2

May 9 - Opening & Maintaining Accounts for Non-US Citizens

May 13 - Revised Escrow Rules

May 14 - Flood Insurance Review & Update

May 15 - Cash Flow Part 2: Basics of Global Cash Flow Analysis

May 19 - Commercial Loan Documentation

May 21 - Mastering the Role of the Personal Banker, Part 2: Master-Level Personal Banker Expertise

May 22 - Robbery for Managers, Part 1

May 23 - New Affirmative Requirements for Financial Institutions

May 28 - Basic Consumer Lending Part 1

June 2 - Basic Consumer Lending Part 2

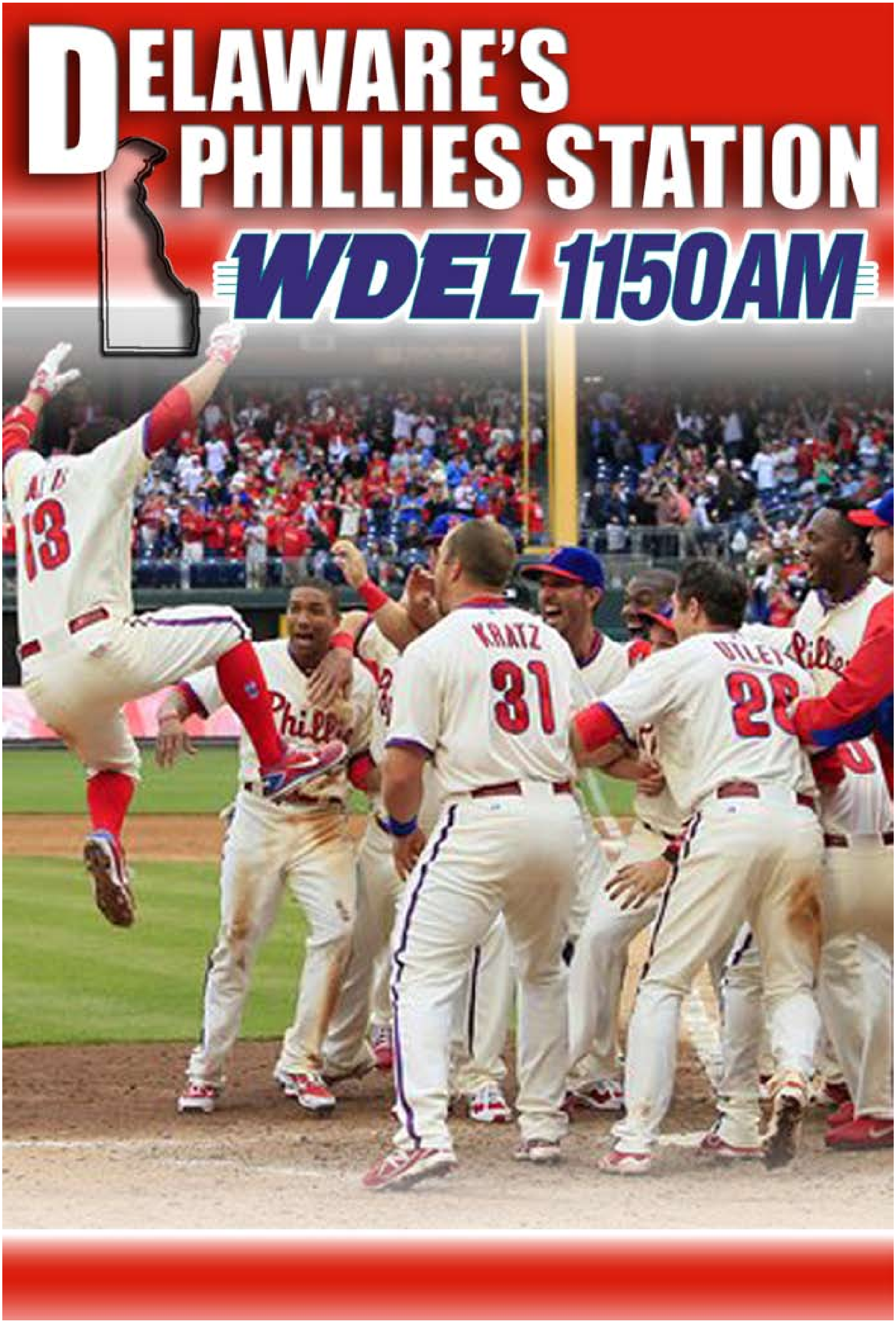
June 4 - Robbery for All Staff, Part 2

June 5 - ACH Origination: Deciphering the SEC Codes

June 10 - The Top 10 Mistakes in Analyzing Business Financial Statements

June 17 - The Top 10 Mistakes in Appraisal Compliance

June 18 - Loan Originator Qualifications: Training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Law Update

by
Vincent C. Thomas, Esq.
Young Conaway Stargatt & Taylor, LLP

"Can the Non-Judicial Settlement Agreement Statute be used to modify a trust?"

A Trustee's Modification Toolbox: Does it Really Include Non-Judicial Settlement Agreements?

Effective August of 2013, the Delaware legislature adopted another non-judicial tool for trusts, the Delaware non-judicial settlement agreement statute (the "NJSA Statute"). See 12 Del C. § 3338. The NJSA Statute generally permits all interested persons (i.e., beneficiaries and the trustees) to enter into a settlement agreement with respect to any matter involving a trust so long as it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the Delaware Court of Chancery. Since the adoption of the NJSA Statute, the so called million dollar question has been: Can the NJSA Statute be used to modify a trust? While at first blush the NJSA Statute would seem to permit the modification of a trust, a closer look at the NJSA Statute may suggest otherwise.

In adopting trust legislation, the Delaware legislature has traditionally considered input from the Estates and Trusts Section of the Delaware State Bar Association ("DSBA"). In early 2013, the Estates and Trusts Section of the DSBA and the executive committee of the DSBA approved a draft non-judicial settlement statute (the "Original Statute") that by its terms specifically permitted modification of a trust. The Delaware legislature rejected the Original Statute in favor of the NJSA Statute which is modeled off of the Uniform Trust Code Section 111 ("UTC 111"). Reasonable minds could differ about why the Delaware legislature rejected the Original Statute and what UTC 111 (which is identical to the NJSA Statute) truly permits. The reality is that the Delaware legislature would have rejected the NJSA Statute if it specifically permitted modification of a trust within subpart (d) which demonstrates the clear intent behind the NJSA Statute. Moreover, the Delaware Chancery Court may share the view that the NJSA Statute does not permit trust modification and there is no case where the Delaware Chancery Court approved a non-judicial settlement agreement that modified a trust.

Even assuming the NJSA Statute allows for modification of a trust, use of the NJSA Statute carries far more risk than modification of a trust via merger or decanting accompanied by releases signed by the beneficiaries. Unless the Delaware trustee intends to seek approval of the non-judicial settlement agreement from the Delaware Court of Chancery in accordance with subpart (e) of the NJSA Statute, how can the Delaware trustee or beneficiaries ever be certain that the modifications set forth in the non-judicial settlement agreement do not violate a material purpose of the trust and do not include terms and conditions that the Delaware Chancery Court would not approve both as required by the NJSA Statute? Fortunately, neither the Delaware merger statute nor decanting statute contain such uncertain requirements. In fact, the Delaware merger statute has one requirement (i.e., no material change in the beneficial interests) and the Delaware decanting statute has a few concrete requirements with the primary one being the trustee's authority to invade the principal of the trust.

Some will argue that the NJSA Statute is preferable because it doesn't involve an act of trustee discretion like merger or decanting. First, the act of trustee discretion in mergers and decanting can be mitigated with releases from the beneficiaries. Second, should there be an issue with an NJSA, a disgruntled beneficiary (e.g., perhaps a minor who was virtually represented with the NJSA) certainly would bring suit against the trustee with deep pockets and allege that the NJSA would not have been enforceable but for the trustee's agreement to the same. Put simply, the requirement of the trustee to agree to the non-judicial settlement agreement is for practical purposes somewhat akin to an act of trustee discretion.

In sum, in all cases, given the uncertainty surrounding both the authority to use the NJSA Statute for trust modification and the requirements within the NJSA Statute, merger or decanting accompanied by beneficiary releases will be a better non-judicial option to accomplish a trust modification. Delaware trustees should accordingly refuse to use the NJSA Statute to modify trusts, and if insisted upon, require that non-judicial settlement agreement be approved by the Delaware Court of Chancery in accordance with subpart (e) of the NJSA Statute.

The content of this column is based largely upon a more comprehensive article and presentation. For further information on this topic, please contact the author.