Garland W. Binns, Jr.
Dover Dixon Horne PLLC
Attorneys at Law
425 West Capitol, 37th Floor
Little Rock, Arkansas 72201
Telephone: (501) 375-9151
Facsimile: (501) 372-7142
Email: gbinns@ddh-ar.com
Web Site: www.GWBinns.com

APRIL 2004

U P D A T E

News of Developments in the Financial Sector and Related Areas

* *IN THIS ISSUE* *

Save Money on Franchise Taxes

Act 94 of 2004 ("Act 94") amended the *Arkansas Franchise Tax Act of 1979* to increase the annual franchise taxes effective for calendar years beginning January 1, 2004. Corporations, bank holding companies and banks (both state and national) organized under the laws of the State of Arkansas will want to consider amending their articles to provide for a par value of $.01 for each share of authorized stock. Bank holding companies and banks in Arkansas generally have a par value of $10.00 per share. Assuming that a corporation or bank had 500,000 shares of stock outstanding at a par value of $10.00 per share and all of its assets were in Arkansas, a corporation or bank would pay an annual franchise tax of $15,000.00 under Act 94. By amending the articles to provide for a par value of $.01 per share, the corporation or bank would only pay the new minimum annual franchise tax of $150.00, formerly $50.00 prior to Act 94. A corporation or bank would not want to amend its articles to provide for no par value since shares without par value are assessed at a rate of $25.00 per share, which if 500,000 shares were outstanding, would result in an annual franchise tax of $37,500.00 under Act 94. In Letter No. 963, the Office of the Comptroller of the Currency concluded, in response to a request by our law firm, that a national bank had the authority to decrease the par value of its shares to $.01 per share in order to pay the minimum franchise tax under Arkansas law.

FASB Study on Loan Participations

The Financial Accounting Standards Board ("FASB") has begun a study as to whether a loan participation qualifies as a true sale. In other words if the sale of an interest in a loan did not qualify, the asset would continue to remain on the balance sheet of the seller of the loan participation. Generally, a loan participation involves the sale of a portion of a loan with the seller continuing to service the loan. The borrower may not be aware of the sale of the participation in the loan. Generally, the sale of a loan participation has been treated in the past as removing the portion of the loan sold from the balance sheet of the seller. As part of its study, the FASB is reviewing the right of a borrower to setoff the outstanding balance of the loan against uninsured deposits in those cases where a bank goes bankrupt. The FASB is also considering the use of a qualifying special-purpose entity in connection with the sale of participations which would substantially escalate the cost for participation in loans. The study will address if the right of setoff precludes sale treatment for loan participations under generally accepted accounting principles. In the past, loan participations have been effective in areas as follows:

- Lending limit relief for a seller.
- Increased liquidity for a seller.
- Reduced concentration risk for both a buyer and seller with a greater portfolio diversification.

- Increased fee income opportunities.

- Access to external credit expertise and new and diverse markets.

- Improved capital adequacy management for both a buyer and the seller.

- Better use of a buyer's excess funds.

The study by the FASB is in its early stages and the ultimate outcome is unknown at this time.

Cases, Releases and Rulings

Effective July 1, 2004, Act 107 of 2004 (Arkansas) requires banks and other entities to begin paying sales tax on security and alarm monitoring services.

The Federal Deposit Insurance Corporation has issued new rules which become effective April 1, 2004, that will provide insurance coverage of up to $100,000 for each qualifying beneficiary entitled to a living trust account's assets upon the death of the account owner. A qualifying beneficiary is defined as the account owner's spouse, children, grandchildren, parents and siblings. The new rules eliminate the existing requirement that the beneficiaries of the living trust account be named in the records of the depository institution. Information relating to the new rules is available on the web site of the FDIC at *www.fdic.gov.*

In Interpretive Letter No. 980, the Office of the Comptroller of the Currency ("OCC") concluded that the installation of United Parcel Service ("UPS") drop boxes at various nonbranch offices of a national bank into which deposit account applicants could place their applications along with their initial deposits for pick up and delivery to the bank's main office did not cause those offices to be considered branches under federal law. Bank employees at nonbranch offices would assist customers with completion of account opening documentation and provide the customers a Bank inner envelope and a preaddressed UPS Next Day Air Envelope and instruct the customer to place the UPS envelope inside the UPS drop box. The bank also paid the cost in transporting the UPS envelope to the bank's main office. The UPS drop box was also available for use by the general public. UPS then delivered the envelope to the bank's main office, at which time the bank processed the account application of the customer.

In *Mainstream Mktg. Servs. v. FTC*, 2004 U.S. App. Lexis 2564, the United States Court of Appeals for the Tenth Circuit held that the Federal Trade Commission's ("FTC") do-not-call registry was a valid commercial speech regulation because it directly advanced the government's important interests in safeguarding personal privacy and reducing the danger of telemarketing abuse without burdening an excessive amount of speech. In other words, there is a reasonable fit between the do-not-call regulations of the FTC and the FTC's reasons for enacting them. It is interesting to note that as of March 3, 2004, consumers had registered 57.8 million phone numbers on the registry of the FTC. This case will be appealed to the United States Supreme Court to determine, among other things, if the FTC has the statutory authority to enact the do-not-call regulations.

In Interpretive Letter No. 977, the Office of the Comptroller of the Currency concluded that the operation by National Bank of Commerce of certain of its branches located in Wal-Mart stores under a trade name was permissible.

Mr. Binns is available to meet with your organization or group relating to shareholder issues, increasing capital, regulatory and compliance, areas of profitability, marketing and management responsibilities. He is a frequent speaker on matters regarding mergers, acquisitions, commercial law, securities and banking law. Prior to entering the private practice of law, Mr. Binns was an accountant practicing with an emphasis on securities regulation and regulatory compliance.
