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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Accounting for Purchased Goodwill

At the December meeting of the Financial Accounting Standards Board ("FASB"), the FASB reached a tentative decision to modify certain provisions of its September 1999 proposed Statement, *Business Combinations and Intangible Assets*, to require use of a nonamortization approach to account for purchased goodwill. Under that approach, goodwill would not be amortized to earnings, in other words, expensed against earnings annually over a period of up to 20 years, as originally proposed. Instead it would be reviewed for impairment, that is, written down and expensed against earnings only in the periods in which the recorded value of goodwill is more than its fair value. The controversial 1999 proposal would bar the pooling method of accounting for mergers in favor of purchased accounting. In pooling of interests, the assets of the two merging companies are combined and the financial results are reported as if the two companies had previously been one company. The values of the assets of each company are not repriced. In purchase accounting, the price paid above the acquired company's net worth is accounted for as goodwill, which must be amortized or subtracted from the combined company's earnings over a period of 20 years or less. Most companies involved in mergers prefer the pooling of interests method of accounting. The tentative decision by the FASB will mitigate the purchased method's impact income statements of companies in a merger, and the combined company will be allowed to carry goodwill on its books unless the recorded value is more than its fair value. FASB will not make any final decision and has no deadline on issuing a final standard until it has addressed all of the substantive issues. The news release issued by the FASB is available on its web site at *http://www.rutgers.edu/Accounting/raw/fasb/news/nr12600.html.*

Override of Arkansas Usury Law

In a test case of the Arkansas usury law, *Johnson v. Bank of Bentonville,* 2000 WL 1769668, United States District Court, W.D. Arkansas, Harrison Division (2000), the question the court was called on to decide was whether the United States Congress exceeded the legislative authority given it by the Commerce Clause when it enacted §731 of the Gramm-Leach-Bliley Financial Modernization Act (the "Act") which permits in-state banks, i.e. banks chartered in Arkansas, to charge the same rate of interest as the home state of any out-of-state bank that has a branch in Arkansas. Johnson obtained a personal loan from the bank providing for an interest rate of 16.5% per annum and when other fees were added on to the loan, the true annual percentage rate charged by the bank was 17.915%. At the time the loan was made, the maximum legal rate of interest, if calculated pursuant to Article 19, Section 13 of the Arkansas Constitution was 10.5% per annum. The Arkansas Constitution generally provides that the maximum rate of interest on any contract shall not exceed 5% per annum above the Federal Reserve Discount Rate at the time of the contract. In upholding the authority of Congress to override Arkansas' usury law under the Commerce Clause, the court cited *Sears Roebuck and Co. v. O'Brien*, 178 F. 3d 962 (8th Cir. 1999): "Under the Supremacy Clause of the Constitution, whether a federal law preempts a State law generally turns on the answer to four questions. Is the State law explicitly preempted by the federal law? Is the State law implicitly preempted by the federal law because Congress has regulated the entire field? Is the State law implicitly preempted because compliance by a private party with federal and State law is impossible? Is the State law implicitly preempted because it creates an obstacle to accomplishment and execution of the full purpose of federal law?" The court held that the express language of § 731 of the Act shows Congress explicit intent to preempt State law. The question therefore becomes whether Congress acted within its legislative power under the Commerce Clause in doing so. The Court held that Congress had the legislative power under the Interstate Commerce Clause to regulate commerce among the several states citing *United States v. Lopez*, 514 U.S. 555, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995), which provides that the proper test requires an analysis of whether the regulated activity "substantially affects" interstate commerce. The court concluded that Congress acted within its Commerce Clause authority when it preempted Arkansas usury law in connection with the activity of banks making loans because Arkansas in-state banks would be at a competitive disadvantage.

Fair Debt Collection Practices Act

In *Wilson v. Quadramed Corp.*, No. 99-5758 (August 28, 2000), the United States Court of Appeals for the Third Circuit, held that language contained in a debt collection letter, which notified the debtor that his account had been placed with the debt collector for "immediate collection," and that it "shall afford [the debtor] the opportunity to pay this bill immediately and avoid further action against you" did not contradict the required validation notice under the Fair Debt Collection Practices Act ("FDCPA") to validate and dispute the debt. According to the Court, although the debt collection letter presented a "close question," the notice did not confuse or mislead the "leased sophisticated debtor" as to his rights under the FDCPA to validate and dispute the debt. The letter to the debtor contained the information required by the FDCPA. Under the FDCPA, a debt collector is required to include the following information in a debt collection letter to a consumer:

- the amount of the debt;
- the name of the creditor to whom the debt is owed;
- a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

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