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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Real Estate Activities of Financial Holding Companies

In connection with the proposed rule permitting real estate brokerage and management activities for financial holding companies, their subsidiaries and subsidiaries of national banks, the Federal Reserve Board and the Treasury Department have delayed action on the proposed rule until 2003. The proposed rule would have permitted financial holding companies and financial subsidiaries to provide real estate brokerage and servicing including, among other things, acting as agent for a buyer, seller, lessor or lessee of real estate; listing and advertising real estate; providing advice in connection with real estate transactions; and providing real estate management services, including procuring tenants, negotiating leases, and generally overseeing the inspection, maintenance and upkeep of real estate. The National Association of Realtors opposes the proposed rule and takes the position that real estate brokerage is a commercial and not a financial activity, and the proposed rule would allow financial holding companies and financial subsidiaries to buy up large brokerage firms and force the closure of smaller brokers who are unable to compete with the financial resources of banking entities. Proposed legislation has been introduced in both the United States Senate and the House of Representatives which would bar banks from such activities and which would prevent federal regulators from finalizing a rule allowing banking companies into the real estate business. Recently the Financial Services Roundtable has opposed the legislation backed by the National of Association of Realtors arguing, among other things, that allowing financial institutions to offer real estate brokerage would create competition in the industry and benefit consumers.

Save Money on Franchise Taxes

Corporations, bank holding companies and banks organized under the laws of the State of Arkansas may 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 $13,500.00. By amending the articles to provide for a par value of $.01 per share, the corporation or bank would only pay the minimum annual franchise tax of $50.00. 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 $33,750.00. The *Arkansas Corporate Franchise Tax Act of 1979* is available in the Arkansas Code at § 26-54-101 et. seq. (Repl. 1997).

Mutual Fund Advertisements

The Securities and Exchange Commission ("SEC") has issued proposed rule amendments to encourage mutual fund advertisements to convey more balanced information to prospective investors and to raise standards for mutual fund performance advertising so that investors are informed and not misled. The amendments proposed by the SEC would:

- Require fund advertisements that contain performance information to include disclosure that past performance does not guarantee future results and that current performance may be lower or higher that the performance quoted.

- Require fund advertisements to include disclosure that would direct investors' attention to a fund's charges and expenses.

- Require more prominent disclosure in fund advertisements of important information, such as the dates during which quoted performances occurred.

- Reemphasize that fund advertisements are subject to the antifraud provisions of the federal securities laws.

The SEC release 2002-66 regarding the proposed amendments is available on the web site of the SEC at *www.sec.gov*.

Disclosure Requirements for Guarantees

The Financial Accounting Standards Board ("FASB") has issued a draft interpretation to improve disclosures about loan guarantees entitled *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others*. The proposed interpretation would clarify and expand existing requirements for guarantees, including loan guarantees. The interpretation would also require that at the time a company issues a guarantee, the company must recognize a liability for the fair value, or market value, of its obligations under the guarantee. The draft interpretation is available on the web site of the FASB at *www.fasb.org.*

Cases, Releases and Rulings

The Nasdaq Stock Market, Inc. ("Nasdaq") has recently approved rules which include requiring shareholder approval for stock option plans that include executive officers or directors. Previously, companies could get around the requirement for shareholder approval by granting stock options to lower level employees in which at least a majority of the participants are not officers or directors. The rules will also prohibit independent directors from receiving more that $60,000 in compensation, including political contributions and payments to a family member of the director. Information about the rule changes is available on the web site of Nasdaq at *www.nasdaq.com.*

In *Brannam v. Huntington Mortgage Co., No. 00-2225,* the United States Court of Appeals for the Sixth Circuit held that a document preparation fee of $250 which Huntington Mortgage routinely charges for documents on mortgage loans did not violate the Truth in Lending Act or Regulation Z by omitting it when calculating the finance charges on a home mortgage loan since the fee was reasonable and was for services actually performed by the lender. The lender was not limited to charging only the amount of its actual cost and could charge more than less expensive third parties. Since the fee was for a service actually performed and the amount was reasonable, it was not a finance charge under Regulation Z.