

UPDATE

News of Developments in the Financial Sector and Related Areas

* *IN THIS ISSUE* *

Unitary Thrifts

Arkansas Usury Law - Update

Free Stock Offerings on the Internet

Bank Loan-Loss Reserves

Electronic Board Meetings

Write-Off of Goodwill

NASDAQ Extended Trading Hours

Unitary Thrifts

As banks and bank holding companies are lobbying Congress and banking agencies to permit more insurance activities, insurance companies are continuing to expand their banking activities through the acquisition of a unitary thrift charter. The Office of Thrift Supervision has recently approved a number of applications from insurance companies such as New York Life. Under current law, any company, not just an insurance company, can apply for a thrift charter. For non-banks, a unitary thrift charter is a logical route into financial services. The unitary thrift can branch anyplace in the United States, and in some cases has better preemption rights with respect to state laws than even national banks. The strategies of unitary thrifts vary. Some plan to sell deposit products to

customers through branches while others plan to concentrate on the internet. The unitary thrift charter's trust powers have been very popular with brokerage and insurance firms in connection with the sale of investment products. Most financial firms appear to be approaching the charter as a means of adding to their product offerings. Banks and bank holding companies are attempting to persuade Congress to eliminate the ability of non-bank companies to enter the thrift business. However, as it presently stands, a company that files its application before any change in existing legislation will be allowed to continue to operate as a unitary thrift holding company.

Arkansas Usury Law - Update

In re Cathy G. Jones, 231 B.R. 66 (Bkrtcy.E.D.Ark. 1999), involved the purchase and delivery of a vehicle in Arkansas and whether the Arkansas usury or Texas usury law applied. In the purchase of the vehicle, the purchaser signed a contract which provided for assignment of the contract to First Fidelity Acceptance Corporation and which provided that the law of Texas would govern the contract. The purchaser assumed that the dealership was the financier and completed all the documents required for the financing application in Arkansas. The heading on the application for financing states in large, bold letters, "First Fidelity Acceptance Corporation." The plaintiff paid no attention to the names of the entities on the documents, and when the purchaser attempted to obtain insurance, the insurance company had to call the dealership to find out to whom the insurance was required to be payable. Financing for the purchase of the

vehicle was provided by an entity whose principal place of business was in Texas. Review and approval of the financing application occurred in Texas, and all payments on the contract were made by the purchaser by mailing checks from Arkansas to a servicer outside Arkansas. The issue before the Court was whether Arkansas or Texas law governed the contract. In deciding the case, the Court upheld the Arkansas policy toward applying the law of the state that would make the contract valid rather than void. The Court held that there was a reasonable relationship between the State of Texas and the contract, and that the choice of law provision in the contract as to Texas was valid and enforceable.

Free Stock Offerings on the Internet

In two letters issued by the Staff of the Securities and Exchange Commission this year [*Vanderkam & Sanders*, SEC No-Action Letter (avail. Jan. 27, 1999) and *Simplysocks.com*, SEC No-Action Letter (avail. Feb. 4, 1999)], the Staff concluded that proposed internet free stock give-aways would violate Section 5 of the Securities Act of 1933 unless the issuance was made subject to a registration statement or a valid exemption from registration.

Bank Loan-Loss Reserves

The Securities and Exchange Commission ("SEC"), working with the Financial Accounting Standards Board, wants to prevent banks from building excessive reserves. The SEC has clashed with bank regulatory organizations over loan-loss reserves in recent months. If finalized, FAS 133 will take effect on June 15, 2000. Bank regulatory agencies argue that it is appropriate for banks to maintain significant reserves. Bank regulatory agencies want financial institutions to set aside healthy reserves while the SEC claims that banks have over-reserved in order to manipulate their earnings. Although opposed by other bank regulatory agencies, the Federal

Reserve Board has mailed guidelines on reserves to the state member banks that it regulates.

Electronic Board Meetings

The Office of the Comptroller of the Currency ("OCC") recently gave permission to national banks that want to conduct their regular board of directors meetings by video conference rather than in person. The banks that requested permission argued that such an arrangement would significantly reduce time, money and logistics involved in such meetings. The OCC agreed, requiring only that the banks make appropriate changes in their bylaws to allow for such meetings. OCC Interpretive Letter Numbers 859 and 860.

Write-Off of Goodwill

The Financial Accounting Standards Board has backed off an earlier decision to reduce to as little as 10 years the maximum 40-year write-off for goodwill, the premium that acquiring companies pay over the value of acquired assets. The Board has decided on a maximum 20-year write-off period for goodwill.

NASDAQ Extended Trading Hours

On May 27, 1999, the National Association of Securities Dealers ("NASD") said its Board had approved a proposal to offer after-hours trading that would run from 5:30 p.m. Eastern time to 9:00 or 10:00 p.m. Eastern time. The NASD is proposing to extend the trading hours beginning in September. However, the U. S. Securities and Exchange Commission would have to approve the proposal, a process which could bring weeks of public comment and regulatory review before a final decision. The New York Stock Exchange is considering extended trading hours which may begin prior to September.