

# UPDATE

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## News of Developments in the Financial Sector and Related Areas

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#### ***Pooling-of-Interests Accounting***

The Financial Accounting Standards Board ("FASB") in a recent news release has decided to eliminate the pooling-of-interests method of accounting for business combinations. In pooling-of-interests, the assets of the two merging companies are combined and the financial results reported as if the two companies had previously been one company, and the value of the assets of each company are not repriced. Once the pooling-of-interests method is eliminated, all business combinations will be required to be accounted for under the purchase accounting method. Under the purchase accounting method, 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 reported earnings over a period of time. As part of the proposal to eliminate pooling-of-interests accounting, the FASB made a tentative decision in December of last year relating to accounting for purchased goodwill that would require a nonamortization approach. Under that approach, goodwill would not be amortized against earnings. 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 the goodwill is more than its fair value. The FASB plans to issue a final decision on business combinations and intangible assets in late June of this year. The purchase method of accounting would be required for all business combinations initiated after the issuance of a final decision by the FASB. The news release issued by the FASB is available on its website: <http://www.rutgers.edu/Accounting/raw/fasb/news/nr012401.html>.

#### ***Financial Holding Companies***

The Federal Reserve Board has issued a final rule that allows financial holding companies to act as a "finder" by bringing together buyers and sellers of financial and nonfinancial products for transactions that the buyers and sellers themselves negotiate and consummate. The financial holding company, among other things, may host an electronic marketplace on its Internet web site by providing links to the web sites of third party buyers or sellers; operating a telephone call center that provides permissible finder services; identifying potential parties, making inquiries as to interest, introducing and referring potential parties to each other, and arranging contacts between and meetings of interested parties; conveying between interested parties expressions of interests, bids, offers, orders and confirmations relating to a transaction; and transmitting information concerning products and services to potential parties. The final rule only permits the financial holding company to act as an intermediary between a buyer and a seller. In addition, the financial holding company must distinguish the products and services offered by it from those offered by a third

party through the finder service. The final rule is reprinted in Fed. Banking L. Rep. (CCH) ¶ No. 92574.

### ***Hart-Scott-Rodino Premerger Notification Requirements***

Recent changes have occurred regarding the filing requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 ("HSR") which requires certain companies and others to notify the Federal Trade Commission ("FTC") and the U.S. Department of Justice ("DOJ") before completing transactions such as mergers and acquisitions. The most significant change relates to an increase from \$15 million to \$50 million in the transaction value threshold over which companies must file premerger notification forms which replaces the current over \$15 million threshold. A new tiered fee structure has been implemented based on the value of the transaction. Under the HSR Act, certain acquired and acquiring persons must file a notification and report form with the FTC and the DOJ to provide advance notification of mergers and acquisitions. These agencies use this information to determine if the proposed transaction may be anticompetitive and to take an action, if appropriate, to prevent the consummation of the transaction. A summary of the changes is available on the FTC's web site at <http://www.ftc.gov>.

### ***Final Rules on Insurance Activities of Banks***

The federal banking agencies have finalized the consumer protection rules in connection with the sale of insurance products by depository institutions. The rules apply to any depository institution or any person selling, soliciting or advertising or offering insurance products or annuities at an office of the institution or on behalf of the institution. The rules require disclosures as follows:

- The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the depository

institution or an affiliate.

- The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation or any agency of the United States, the depository institution or an affiliate.
- In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.
- The depository institution may not condition an extension of credit on the consumer's purchase of an insurance product or annuity from the depository institution or from any of its affiliates, or on the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.
- The rules require that these disclosures be made orally and in writing before the completion of the sale of an insurance product or annuity or at the time the consumer applies for an extension of credit. The rules require a depository institution to keep insurance and annuity sales activities physically segregated from the area where retail deposits are accepted from the general public. Referral fees paid to bank employees who refer consumers seeking to purchase an insurance product or annuity may only be paid no more than one-time and be a nominal fee of a fixed dollar amount that does not depend on whether the referral results in a transaction. The rules are effective April 1, 2001, and are reprinted in Fed. Banking L. Rep. (CCH) ¶ No. 92-540.