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MAY 1999

U P D A T E

News of Developments in the Financial Sector and Related Areas

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FASB Votes to End Pooling of Interest

The Financial Accounting Standards Board voted on April 21, 1999 to eliminate pooling of interests, an accounting method that has fueled the merger boom in the financial sector. The Board plans to issue a final standard for merger accounting in the year 2000. 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. 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 reported earnings over a period of time. Some analysts have predicted a flurry of transactions as companies attempt to beat the deadline for the final accounting standard.

SEC Posts Searchable Y2K Database

The Securities and Exchange Commission has posted a searchable Year 2000 database on its website that provides instant access to Year 2000 reports that broker-dealers, transfer agents, investment advisers and mutual funds are required to file with it. The database includes reports that describe the state of Year 2000 readiness, Year 2000 risks and contingency plans of reporting entities. The website can be accessed at http://www.sec.gov/news/y2k/picky2kr.htm.

Reorganization of a State Chartered Bank Using a Plan of Exchange

On February 17, 1999, Governor Mike Huckabee signed into law Act 117 of 1999. The Act provides technical amendments which permits a state chartered bank to adopt a plan of exchange for shares of its outstanding stock held by its stockholders for the consideration to be provided by a bank holding company as the acquiring person, which consideration may include shares issued by the bank holding company, cash, or a combination of cash and stock. The Act clarifies issues that were raised in a lower court decision dealing with the acquisition by a bank holding company of shares held by minority shareholders for cash.

Know Your Customer Regulation Proposal Withdrawn

On March 23, 1999, federal bank and thrift regulators formally withdrew the "Know Your Customer" regulation proposal. The regulation was intended to facilitate law enforcement efforts to catch money launderers; however, the federal regulatory agencies were surprised by the overwhelming public opposition to the perceived invasion of privacy. One federal agency received over 250,000 comments of which only 105 supported the proposal. It is doubtful that a similar proposal will be made in the future.

ATM Fee Disclosures

In the latest version of the financial modernization legislation, H.R. 10, adopted by the House Banking Committee, there is an amendment to require fee disclosures at ATMs. The amendment, which was adopted as an alternative to a ban on ATM surcharges, would require fee disclosures on ATM machines and during transactions with non-customers. Banks are generally already providing the disclosures which would be required by the proposed legislation.

Arkansas Usury Law

In Evans v. Harry Robinson Pontiac-Buick, Inc., et al, 336 Ark. 155 (1999), the Arkansas Supreme Court was called upon to interpret the Arkansas usury law in what some may term a "landmark decision". In this case a customer signed a retail installment contract with an Arkansas car dealer and the car dealer assigned the contract to a Texas company who provided the funds for the purchase. The Court held that even though the interest rate exceeded the legal amount in Arkansas, the contract was not usurious. Some of the factors the Court considered:

- The credit application was with the assignee.
- The credit decision was made by the assignee in the state of Texas.
- The retail installment contract stated that it was being assigned and that the laws of Texas would govern the transaction.
- Payments would be made to the assignee's office in Texas.

The Court was also persuaded by a Uniform Commercial Code provision that allows parties to choose which law will apply so long as the jurisdiction chosen (in this case, Texas) bears a "reasonable relationship to the transaction."

Finder's Fee

In Interpretive Letter No. 850, the Office of the Comptroller of the Currency held a national bank may make arrangements to recommend the services of a registered investment adviser to customers. In its Interpretive Ruling, the OCC allowed the request of a national bank to set up a referral arrangement with an investment adviser in exchange for a Finder's Fee. The adviser would not do business on the bank's premises and marketing materials would disclose that the investments were not deposits, or obligations of, or guaranteed by the referring bank. The disclosure by the investment adviser would also provide that the investments were not insured by the FDIC and may involve investment risks. The investment adviser would offer two general arrangements. In one, the bank merely would refer customers. In another, the bank would provide ongoing administrative, record keeping or other non-advisory services.

Statute of Limitations Revised

Act 1225 of 1999 enacted by the Arkansas Legislature decreases the period of limitations from five years to three years in which a person may bring a civil action under the Arkansas Securities Act.