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NOVEMBER 2002

U P D A T E

News of Developments in the Financial Sector and Related Areas

* *IN THIS ISSUE* *

Debt Cancellation Contracts

FASB Release on Accounting for Acquisitions of Certain Financial Institutions

Cases, Releases and Rulings

Accounting for Stock Options

Debt Cancellation Contracts

The Office of the Comptroller of the Currency ("OCC") has adopted a new regulation adding consumer protections and establishing safety and soundness standards for debt cancellation contracts ("DCCs") and debt suspension agreements ("DSAs"). Under a debt cancellation contract a bank agrees to cancel all or part of a customer's loan upon the occurrence of a specified event, such as death or disability of the customer. Debt suspension agreements call for the suspension of some or all of the customer's obligation to repay an extension of credit upon the occurrence of a specified event, such as death or disability of the customer. The rule confirms the OCC's longstanding position that the DCCs and DSAs are permissible banking products and are not subject to regulation as an insurance product. The rule prohibits national banks from requiring a single lump-sum payment for a DCC or a DSA purchased in connection with a mortgage loan. The rule also prohibits national banks from the following:

- Engaging in misleading practices or using misleading advertising.
- Conditioning the availability of credit upon a customer's purchase of a DCC or DSA.
- Retaining a unilateral right to modify a DCC or DSA, unless the modification is favorable to the customer and is made without additional charge, or the customer is notified of the modification and had a reasonable opportunity to cancel the contract before it takes effect.

The preamble to the rule notes the authority of national banks to offer DCCs and DSAs as banking products and not subject to regulation as insurance noting *First National Bank of Eastern Arkansas v. Taylor*, 907 F.2d 775 (8th Cir.), *cert. denied.*, 498 U. S. 972 (1990). The rule became effective on June 16, 2003 and is available on the web site of the OCC at *www.occ.treas.gov.*

FASB Release on Accounting for Acquisitions of Certain Financial Institutions

The Financial Accounting Standards Board ("FASB") has recently issued FASB Statement No. 147 entitled *Acquisitions of Certain Financial Institutions.* The Statement provides guidance on the accounting for the acquisition of a financial institution. The Statement requires the excess of the fair value of liabilities assumed over the fair value of tangible and identifiable intangible assets acquired in a business combination to be reflected as goodwill and be accounted for under FASB Statement No. 142, *Goodwill and Other Intangible Assets*. If certain criteria in Statement No. 147 are met, the amount of the unidentifiable intangible assets will be reclassified to goodwill. Financial institutions meeting the conditions outlined in Statement

No. 147 will be required to restate previously issued financial statements. A copy of Statement No. 147 may be obtained by placing an order on the web site of the FASB at *www.fasb.org* or contacting the FASB at (800) 748-0659.

Cases, Releases and Rulings

Twelve states have passed laws which require lenders to give borrowers their motor vehicle or boat title at the time of the financing rather than when loan is paid off. These states include Arizona, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, New York, Oklahoma, South Dakota, Wisconsin and Wyoming.

In an opinion letter regarding the application of the Fair Debt Collection Practices Act ("FDCPA"), the Staff of the Federal Trade Commission ("FTC") altered its position regarding a prior opinion letter issued in May 2000 relating to when an account goes into default and when a collection agency's employees become the creditor's de facto employees. Collection agency employees that are collecting debts which are not "in default" are not "debt collectors" under FDCPA. In the absence of a contractual definition or conclusive state or federal law, a creditor's reasonable, written guidelines may be used to determine when an account is "in default." The FDCPA exempts from the definition of "debt collector" any officer or employee of a creditor collecting debts of the creditor in the name of the creditor. The more that collection agency's employees are treated like creditor employees, the more likely it is that the FTC would deem them de facto employees of the creditor. Whether agency employees working on the creditor's premises or on the agency's premises are treated enough like creditor employees to become de facto employees of the creditor will depend on the degree of control and supervision exercised by the creditor over the agency employees' collection activity, and how similar that control and supervision is to that exercised by the creditor over its own employees. The Staff's opinion letter is available on the web site of the FTC at *www.ftc.gov/os/statutes/fdcpa/letters/demayo.htm.*

Accounting for Stock Options

The Financial Accounting Standards Board ("FASB") has issued a draft release entitled *Accounting for Stock-Based Compensation - Transition and Disclosure*. The purpose of the proposal by the FASB is to enable companies that choose to adopt the preferable fair value based method to report the full effect of employee stock options in their financial statements immediately upon adoption and to make available to investors better and more frequent disclosure about the cost of employee stock options. The proposal would provide three methods of transition for companies that voluntarily adopt the fair value method of recording expenses relating to stock options as follows: (i) apply the recognition provisions to all employee awards granted, modified, or settled after the beginning of the fiscal year in which the recognition provisions are first applied; (ii) recognize stock-based employee compensation cost from the beginning of the fiscal year in which the recognition provisions are first applied as if the fair value based accounting method had been used to account for all employee awards granted, modified, or settled in fiscal years beginning after December 15, 1994; or (iii) restate all periods presented to reflect stock-based employee compensation cost under the fair value based accounting method for all employee awards granted, modified, or settled in fiscal years beginning after December 15, 1994. The FASB also proposes clear and more prominent disclosures about the cost of stock-based employee compensation in quarterly financial statements. The proposal by the FASB is available on its web site at *www.fasb.org.*

Mr. Binns is available to meet with your organization or group relating to shareholder issues, increasing capital, regulatory and compliance, areas of profitability, marketing and management responsibilities. He is a frequent speaker on matters regarding mergers, acquisitions, commercial law, securities and banking law. Prior to entering the private practice of law, Mr. Binns was an accountant practicing with an emphasis on securities regulation and regulatory compliance.

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