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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Change in Bank Control Act

The Change in Bank Control Act (the "CIBC Act") was enacted in 1978 in order to provide regulatory oversight of investors in a bank or a bank holding company ("banking organization") resulting from a change in ownership. The CIBC Act requires 60 days prior notice to the primary federal bank regulatory agency by any party seeking to control a banking organization through the purchase, assignment, transfer or other disposition of the banking organization's voting stock.

The term *control* means the power, directly or indirectly, to direct the management or policies or to vote 25 percent or more of any class of voting stock of a banking organization. The federal bank regulatory agencies have also by regulation established a prior notice requirement for acquisition of 10 percent or more of the voting power if the banking organization in question has registered securities under the Securities Exchange Act of 1934 or if no other person will own a greater percentage of the same class of voting securities immediately after the transaction.

A notice filed under the CIBC Act must include information describing the identity, personal history, business background, experience, financial resources, source of funds for the acquisition and plans for any major changes in the business, corporate structure or management of the banking organization. The Federal Reserve Board is responsible for changes in the control of bank holding companies and state member banks, the Office of the Comptroller of the Currency is responsible for changes in the control of national banks and the Federal Deposit Insurance Corporation is responsible for changes in the control of insured state nonmember banks. The CIBC Act requires the federal bank regulatory agency to conduct an investigation of the competency, experience, integrity, financial ability and background of each person seeking to obtain control of a banking organization.

Certain transactions do not require prior approval including but not limited to: (i) the acquisition of additional shares if the acquirer is deemed to already have control of a banking organization, (ii) an acquisition subject to approval under the Bank Holding Company Act or Bank Merger Act, or (iii) receipt of voting securities as the result of a stock split (if the proportional interest of the recipient remains substantially the same).

Certain transactions require after-the-fact notice including but not limited to: (i) the acquisition of voting securities through inheritance, (ii) a bona fide gift, or (iii) satisfaction of a debt previously contracted in good faith. In these situations the primary federal bank regulatory agency must be notified within 90 days after the acquisition, and the acquirer must provide any relevant information requested by the federal bank regulatory agency.

In some instances a person may acquire control of a banking organization without submitting the prior or after-the-fact notice. These unauthorized or undisclosed changes in bank control may not be known to the acquirer or the banking organization but rather are discovered by bank examiners during an inspection or examination of the affected institution. In most cases, such a violation of CIBC Act is addressed by the person immediately filing a notice with the primary federal bank regulatory agency requesting authority to retain the acquired shares.

This filing should include an explanation of the circumstances that resulted in the violation and a description of the actions that have been or will be taken to insure no other violation of the CIBC Act. Such a violation may also be addressed through two other means. The acquirer may either: (i) submit a specific plan for prompt termination of the control relationship, or (ii) contest the preliminary determination of the control relationship by filing a response that sets forth the facts and circumstances in support of the acquirer's position that no change in control exists under the applicable provisions of the CIBC Act.

Violations of the CIBC Act may result in the primary federal bank regulatory agency taking enforcement action against the acquirer, particularly in those circumstances involving willful or negligent misconduct. Violations may result in the acquirer being subject to a variety of sanctions, including the assessment of a civil monetary penalty.

In connection with notices required under the CIBC Act, it is important to work with legal counsel experienced in dealing with bank regulatory agencies. Our firm has extensive experience in representing financial institutions before federal and state agencies regulating banking organizations, and we are available to assist and answer questions involving the CIBC Act.

Acquisition of Minority Shares in an Arkansas Bank

The Arkansas Banking Code allows for the acquisition of minority shares in Arkansas chartered banks. This acquisition of minority shares is accomplished through a state bank adopting a plan whereby an acquirer, such as an existing bank holding company that may already own a majority of the outstanding shares (or a newly formed bank holding company), enters into a plan of exchange with the bank whereby the remaining shares not owned by the holding company may be exchanged for cash, stock, other securities or a combination of cash, stock or other securities of the acquiring bank holding company.

To effect the exchange with minority shareholders, a plan of exchange must be entered into between the state bank and the acquirer, setting forth the terms and conditions of the proposed exchange. Once the plan of exchange has been approved by a majority of the board of directors of the state bank and the acquiring entity, it is submitted to the shareholders of the state bank. Only a majority of the shareholders of the state bank are required to approve the plan of exchange. Although the provisions of the Arkansas Banking Code

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permitting the plan of exchange are technical in nature, including requiring the approval by the Arkansas Bank Commissioner, these provisions may be an effective tool in eliminating costs associated with minority shareholders and for other purposes.

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