



COLORADO Banker

May/June 2012

OVER A CENTURY: BUILDING BETTER BANKS - HELPING COLORADANS REALIZE DREAMS

New Accounting Standards

for First Quarter 2012





The Face Grab

The Nail Bite

The Tie Pull

The Head Bang

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Amanda Rogowski, CBA Director of Marketing,
amanda@coloradobankers.org
 140 East 19th Avenue, Suite 400
 Denver, Colorado 80203
 voice: 303.825.1575 – fax: 303.825.1585

Websites:
www.coloradobankers.org
www.smallbizlending.org
www.financialinfo.org

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It Has Been One Quick Year

It has been an honor for me to work with this fine group and all of the fine people on the board and other committees.

Dear CBA Members,

I continue to be amazed with the skill and experience that Don and Jenifer display in dealing with legislative issues at the state level. They have earned the trust and respect of virtually every elected official and staff member in state government. I continue to ask senators and representatives their opinions of lobbyists in general and the consistent response is that with term limits, good lobbyists are very valuable resources. Don, Jenifer and our outside lobbyists continually make the list of good and trusted resources. This reputation is extremely important for banking and the Colorado Bankers Association.

Take a look at smallbizlending.org if you have not done so already. This web site was kicked off on February 29, 2012 and its reception and usage has been outstanding. This started during a board strategic planning session in October of 2011 as we identified a need to improve the tarnished image of the banking industry over the last four years. With a very limited budget, staff worked with the Galloway Group to put together a site devoted to helping small businesses not only to prepare to approach a bank but how to approach the process and alternative funding sources should their initial request not be bankable. This is also a very valuable resource for your lending staff.

I had the opportunity to attend the 2012 ABA Government Relations Summit in Washington during March along with Don and six other bankers from Colorado. We had an opportunity to meet with five of the members of our delegation. The thing about these meetings that impresses me is the interest the Senators and Representatives have in our observations as to what is going on in our communities and what we can do together to help make it better. These people care about the State of Colorado. They want our input and support. I encourage you to make one of these trips in the future as it does make a difference.

Our Tri-State Summit is going to be held at the Grand Hyatt in downtown Denver from June 10th through the 12th. It is a joint convention with Montana and Wyoming. The convention starts with the traditional golf event on Sunday and the opening reception on Sunday evening. The business portion of the meeting is all day Monday, ending with the exhibitor's event that evening and continues through noon on Tuesday. There are a number of great speakers on the agenda. It's not that often that the convention is so convenient so make your plans now to attend.

I think this is my last Chairman's letter. It has been one quick year. The CBA staff is amazing. Rachel keeps everyone organized. Amanda does a great job on the marketing, meeting organization and the convention. Caroline has done an outstanding job of ramping up the quality, content and timeliness of communications. Jenifer is always on top of legislative issues generally putting out fires before we know they are burning. Don, as the head traffic cop, is on top of all of the day-to-day activities in Colorado plus, as someone in Washington referred to him, is the "Senior State Executive for the banking industry." It has been an honor for me to work with this fine group and all of the fine people on the board and other committees. Thank you for the opportunity. ■

Keith Dickelman
CBA Chairman
Senior Vice President, Home State Bank

A Word From CBA...

The Scorecard

We bankers live in a strange world. The only way CBA knows to deal with the myriad issues is simply to outwork the other side. There are so many issues that you need a scorecard to keep track. Here's a tally of major issues now.

Federal

A huge fight we have in the U.S. Congress is about Senator Udall's ill-advised advocacy of an increase in credit unions' business lending. We strongly oppose this and are nearing a showdown with the credit unions over this additional step toward them effectively being tax exempt banks.

The exam bill in Congress would identify certain rights and benefits to banks in the examination process and establish an external appeal of exam results. Most of our delegation cosponsors this bill.

Our own U.S. Representatives Coffman and Perlmutter have taken the lead in promoting other legislation designed to help community banks in this tough environment.

On the regulatory side we continue to fight the ever bigger avalanche of regulatory proposals coming from Dodd-Frank. At the same time we're learning and reacting to the actions of the CFPB as it gears up.

State

At the state level CBA is lobbying about 150 bills this session. The most controversial topic is foreclosure reform – for the eighth year in a row of constant reform. Among some of the more colorful topics among the other bills was a proposal to create a state owned bank. With the session near an end, CBA has terrific results.

CBA has presented very good and effective testimony on a dozen bills so far this session, and each time we were the only banking advocate involved. We've also been the one

writing the amendments and promoting banking's interests with individual legislators in advance of committee or floor action. The result has been success on every issue.

Outside of the legislature we now face the prospect of three bad amendments to the Colorado constitution that greatly concern us: reforming foreclosures (again and again), creating a state owned bank and allowing banks to be created and owned by local governments. We've hired additional legal and PR counsel to help keep them off of this fall's ballot.

PR

Those issues and others have demanded a larger PR role for CBA. Governor Hickenlooper recently helped us launch smallbizlending.org to rave reviews locally and nationwide. The heavy media attention has generated high traffic on the website which was designed to help small businesses obtain credit and help banks assist those customers. Many states are copying this work.

We are planning a large PR role in dealing with the perennial foreclosure issue as well.

These efforts are on top of CBA's work in creating the Regulatory Feedback Initiative (allbankers.org) that was based on the regulatory issues survey CBA has done for years. But a critical message to Colorado bankers is that to deal with many of the above topics we need to be more politically active. That includes political contributions to good candidates either directly or through CBA's PAC (preferably both), and your volunteer participation in candidates' campaigns. We have a lot at stake. You have a lot at stake. ■

Don Childears
CBA President/CEO



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FEATURE
ARTICLE

JENNIFER GEORGE
CPA, BKD, LLP



New Accounting Standards

for First Quarter 2012

“Several Accounting Standards Updates (ASU) issued in 2011 by the Financial Accounting Standards Board (FASB) took effect during the first quarter of 2012 for calendar-year companies.”

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If you’re a calendar-year company, you’ve likely just filed or are about to file your U.S. Securities and Exchange Commission (SEC) Form 10-K. It’s almost the end of your

first quarter; are you on top of all the new accounting pronouncements effective this period?

Several Accounting Standards Updates (ASU) issued in 2011 by the Financial Accounting Standards Board (FASB) took effect during the first quarter of 2012 for calendar-year companies. Below is a list of some newly effective pronouncements that could affect you. This is not a comprehensive list, but it highlights some of the standards expected to be most significant to issuers.

ASU 2010-26, *Financial Services—Insurance (Topic 944): Accounting for Costs Associated with Acquiring or Renewing Insurance Contracts* (October 2010)

- Effective for fiscal years, and interim periods within those years, beginning after December 15, 2011. These amendments

should be applied prospectively upon adoption. Retrospective application to all prior periods presented upon the date of adoption also is permitted, but not required.

- Specifies that certain costs incurred in the successful acquisition of new and renewal contracts should be capitalized. Those costs include incremental direct costs of contract acquisition that result directly from and are essential to the contract transaction(s) and would not have been incurred by the insurance entity had the contract transaction(s) not occurred.
- All other acquisition-related costs should be charged to expense as incurred. Advertising costs only are to be capitalized as deferred acquisition costs if the capitalization criteria for direct-response advertising in Subtopic 340-20 are met.

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ASU 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income* (June 2011)

- Effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with early adoption permitted. In addition, full retrospective application is required. See ASU 2011-12 below for subsequent deferral of certain amendments.
- Amendments require all nonowner changes in stockholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but consecutive statements.
- ASU eliminates the third alternative—presenting components of other comprehensive income within the statement of changes in stockholders' equity—altogether.

ASU 2011-12, *Comprehensive Income (Topic 220): Deferral of the Effective Date for Amendments to the Presentation of Reclassifications of Items Out of Accumulated Other Comprehensive Income in Accounting Standards Update No. 2011-05* (December 2011)

- Effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with early adoption permitted.
- This update defers the requirement for entities to present reclassification adjustments and the effect of those reclassification adjustments on the face of the financial

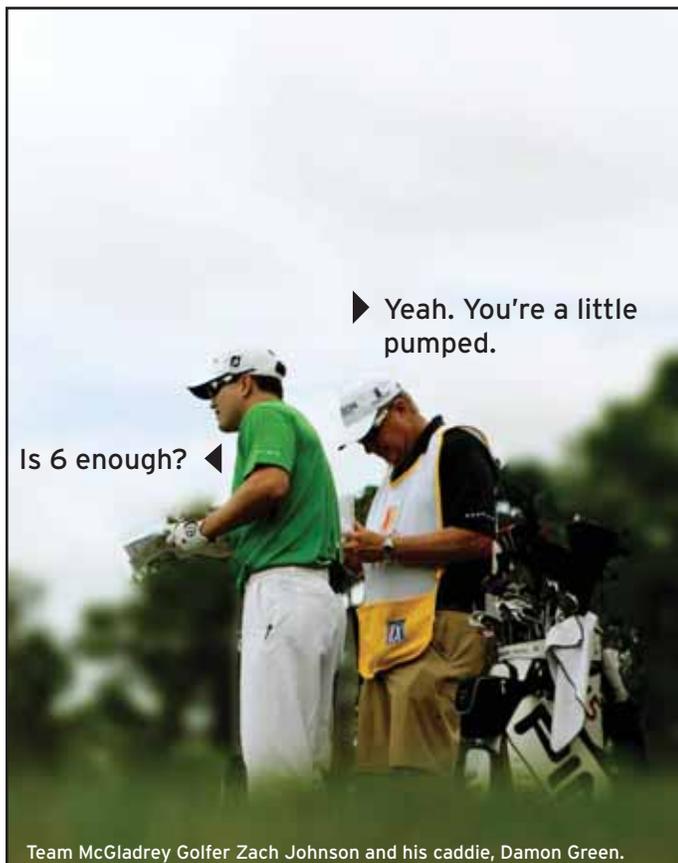
statements where net income is presented, by component of net income, and on the face of the financial statements where other comprehensive income (OCI) is presented, by component of OCI.

- During the deferral period, entities will need to comply with the existing requirements (pre-ASU 2011-05) in Accounting Standards Codification 220, Comprehensive Income, which gives entities the option of presenting reclassification adjustments out of accumulated OCI on the face of the statement in which OCI is presented or disclosing reclassification adjustments in the footnotes to the financial statements.

ASU 2011-03, *Transfers and Servicing (Topic 860): Reconsideration of Effective Control for Repurchase Agreements* (April 2011)

- Effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, this update should have been applied prospectively to transactions or modifications of existing transactions that occur on or after the effective date, with early adoption not permitted.
- The ASU removes two aspects from the assessment of effective control:

■ Accounting Standards | continued on page 12



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New SBA 504 Refinancing Program Benefits Small Businesses and Banks

BARBARA A. VOHRYZEK, Regulatory Affairs Advisor, National Association of Development Companies

Commercial real estate lenders have been watching their loan-to-value ratios increase as appraisals on collateral have declined during the recent recession. Recent revisions to the Small Business Administration's (SBA) 504 refinancing program create a unique and time-driven opportunity to bring a lender's owner-occupied commercial real-estate portfolio back into regulatory compliance, reduce overall commercial real-estate portfolio concentrations, and provides an additional tool for lenders to offer their small-business clients.

This program allows small businesses to take advantage of long-term, fixed-rate loans to refinance their high-interest or maturing real-estate debt or existing debt on capital assets. Loans under the 504 Program are funded by the sale of 10-year and 20-year bonds guaranteed by the SBA. Thus, a borrower is able to obtain attractive 20-year fixed

interest rates, as low as 5.04% based on the January pricing.

A strong supporter, John DiMichele, president and CEO of Community Business Bank in West Sacramento, CA recently stated, "With an SBA 504 refinance loan, the bank has another tool to help maintain its relationship with a current client, as well as be able to offer financing solutions for potential new clients. This refinancing program is important to community banks because it provides us the opportunity to improve our ability to service our customers, while at the same time reducing the risk of the overall relationship." Retaining your clients and making their financial position - and that of your bank - stronger is a win-win situation. This is a particularly valuable benefit in these difficult economic times.

SBA's regulations for the 504 refinancing program allow the loans to be struc-

tured like traditional 504 loans. With a traditional 504 loan, a bank provides up to 50% of the project cost and holds the first lien position. A Certified Development Company (CDC) provides up to 40% of the project cost and takes a secondary position to the bank loan. The small-business borrower must either have at least 10% existing equity in the property or must inject equity of at least 10%. The amount of the bank loan must be at least as much as the 504 loan.

There are virtually no restrictions on the bank's loan with respect to structure or pricing. The bank's first lien position, at a lowered loan-to-value ratio, makes partnering with a CDC on a 504 refinance loan a wise choice. The bank's rates can be fixed or floating. The only stipulation is that the first lienholder loan must be for at least 10 years for a commercial real-estate loan and at least seven years for a 10-year equipment or machinery loan. The bank

EXAMPLE OF REFINANCING AN EXISTING \$1,080,000 NOTE			
Current Appraised Value of Property		\$1,200,000	
New Maximum Outstanding Balance of Debt		\$1,080,000 90% Loan to Value (LTV)	
LOAN STRUCTURE			
ENTITY	LOAN AMOUNT	% OF LOAN	SECURITY
■ New Bank First Trust Loan	\$ 600,000	50%	1st Lien
■ New CDC/SBA 504 Loan	\$ 480,000	40%	2nd Lien
■ Borrower Contribution (equity in property)	\$ 120,000	10%	
Appraised Value of Property:		\$1,200,000	

utilizes its own underwriting standards and sets its own terms, interest rates, and fees.

While there is no maximum project size for a 504 loan, the 504 loan is limited to \$5 million in most refinance projects just as with the traditional 504 loan. The upper 504 loan limit increases to \$5.5 million for eligible manufacturing projects and projects that incorporate energy-saving technologies.

The following are some of the primary requirements of the SBA 504 Refinance Loan Program:

- The small business must be for-profit and have a tangible net worth of less than \$15 million and an after-tax profit of less than \$5 million for the previous two years.
- The small business must occupy at least 51% of the property at the time of the refinance application.
- The property must have been acquired at least two years ago with commercial debt.
- The project structure must be based on the current appraised value of the collateral.
- Up to 90% of the current appraised property value may be refinanced.
- Existing government-guaranteed loans are not eligible to be refinanced.
- Expansion projects are not eligible to be refinanced (there is an option for refinancing under a modified version of 504).

Like the traditional 504 Loan Program, the borrower may use its existing equity in the property for its 10% equity injection. The borrower is thus able to retain working capital in the business.

Should there be excess equity in the property, the small business can refinance existing qualified debtor may use the excess equity (meaning, equity beyond the 10% minimum contribution) to obtain working capital for payment of recent or projected eligible business expenses. These expenses can include items such as rent, utilities, inventory, and other business obligations. This significantly improves cash flow for the borrower and could

provide a new source of working capital.

Multiple refinancing of the original note will not disqualify the project. Borrowers must demonstrate that their loan is current and that they have successfully made all required payments under original or modified bank terms for the past twelve months. Such modifications of terms must have been entered into prior to October 12, 2011.

As with the regular 504 Loan Program, 504 refinance loans are processed through CDCs, (Certified Development Companies) who manage the SBA portion of the transaction for the bank and their client. The National Association of Development Companies (NADCO), the trade association representing the nation's CDCs, is actively working with SBA to promote the 504 refinance program.

NADCO President, Chris Crawford, noted, "We've seen first-hand the impact of the recession on the small-business community. This new program offers a powerful tool to both the banker and the small-business owner. Bankers can capitalize on the opportunity to service their trusted clients while reducing risk and small businesses can improve their cash flow and extend existing debt, while fueling growth in their local communities."

Do you have borrowers who could benefit from the new 504 Refinance Loan Program or instances where this program would benefit the bank? If yes, you can contact your local CDC for more information. To find a member CDC (they serve every state), visit the NADCO website at www.nadco.org and navigate to the "Find a Member" button on the top of the navigation bar.

It's important to remember to act fast; the program expires September 27, 2012, unless Congress acts to extend it. ■

ACCOUNTING STANDARDS – continued

- » The criterion requiring the transferor to have the ability to repurchase or redeem the financial assets on substantially the agreed terms, even in the event of default by the transferee
- » The collateral maintenance implementation guidance related to that criterion
- Other criteria applicable to the assessment of effective control are not changed by this ASU.

ASU 2011-04, *Fair Value Measure-*

ment (Topic 820): Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs (May 2011)

- Effective for fiscal years, and interim periods within those years, beginning after December 15, 2011, with early adoption by public entities not permitted.
- Results in common fair value measurement and disclosure requirements in U.S. generally accepted accounting principles (GAAP) and international financial reporting standards (IFRS). Consequently, some wording used

has been changed and clarification has been added, but for many of the requirements, FASB does not intend a change in the application of requirements in Topic 820.

- Other amendments change a particular principle or requirement for measuring fair value or for disclosing information about fair value measurements.
- ASU 2011-08, *Intangibles—Goodwill and Other (Topic 350): Testing Goodwill for Impairment (September 2011)*
- Effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011, with early adoption permitted.
 - Allows an entity to first assess qualitative factors to determine whether it's necessary to perform the first step of the two-step goodwill impairment test. The entity would not be required to calculate the fair value of a reporting unit unless the entity determines it is more likely than not that its fair value is less than its carrying amount.
 - In addition, the entity would no longer be permitted to carry forward its detailed calculation of its fair value from a prior year, as permitted under previous guidance.

Again, this is not a complete listing of newly issued or effective standards. For a complete listing, go to the FASB website.

If you have questions related to these or other standards that may affect your organization, contact your advisor. ■

Jennifer George is a partner with BKD. Contact the author at jgeorge@bkd.com.



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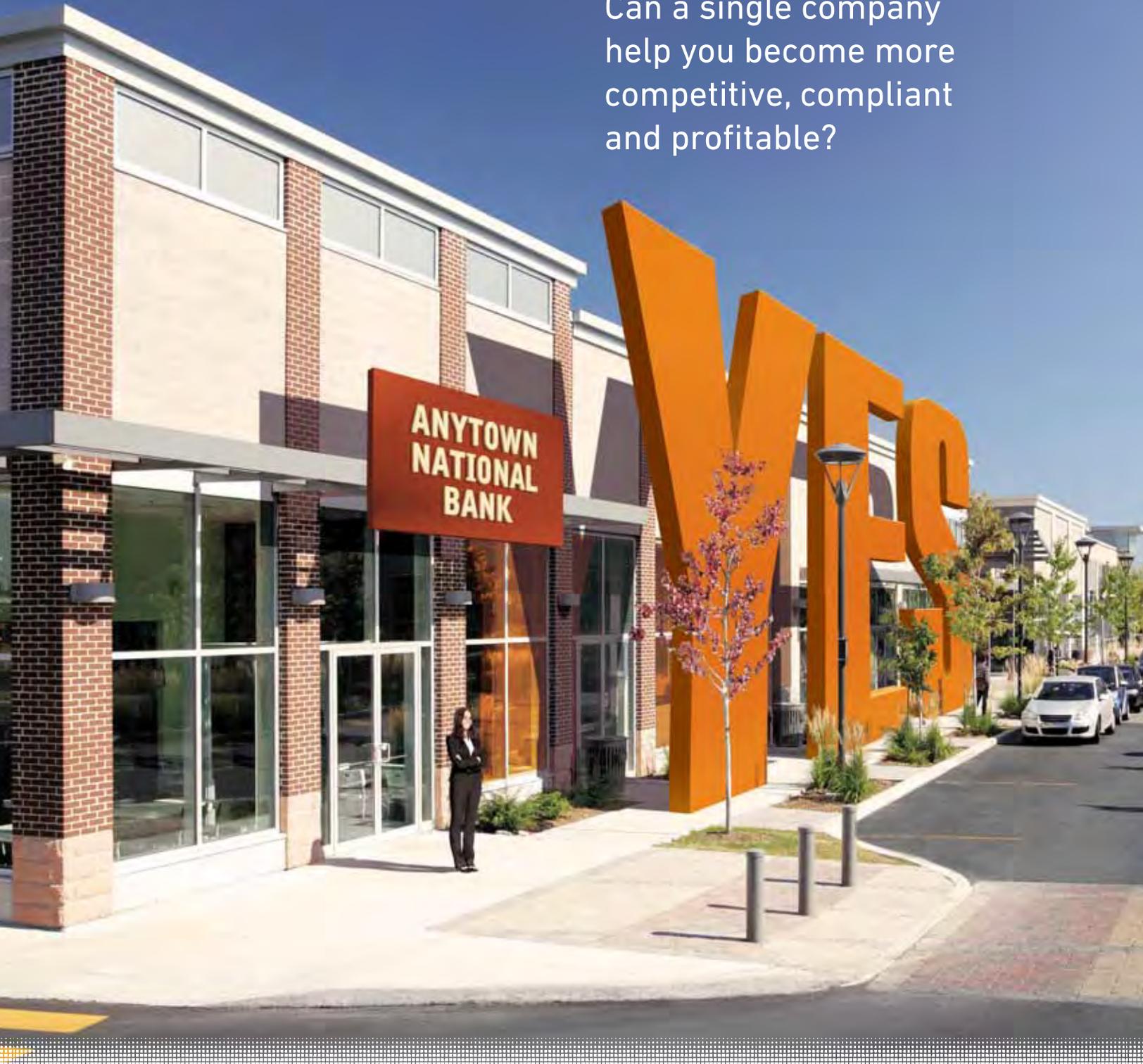
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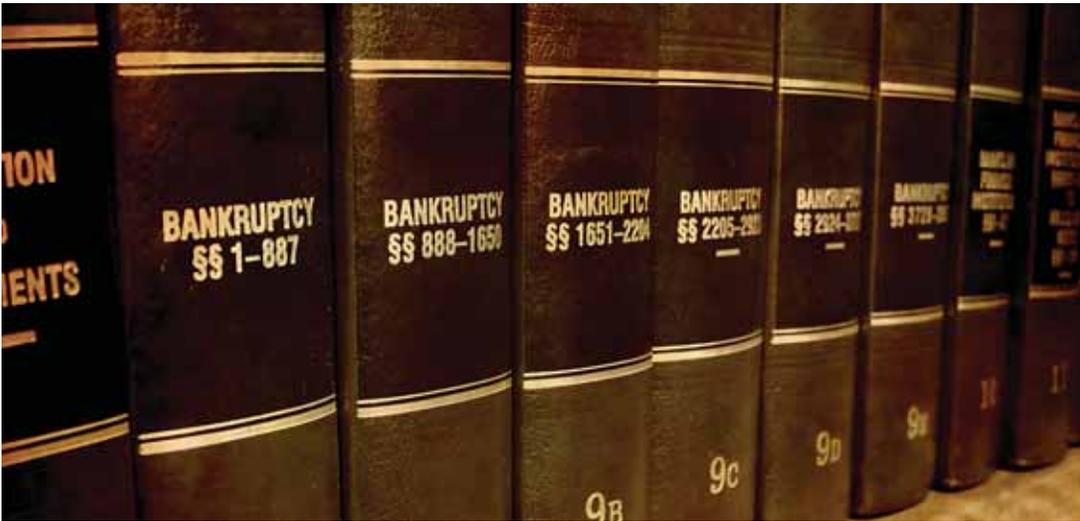


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FEATURE
ARTICLE

JOHN M. (JACK) TANNER, Esq.
Fairfield and Woods, P.C.

PART II

Equitable Receivership as an Alternative to Bankruptcy

How a receivership operates, how claims are paid, and how the receivership is resolved.

This is the second in a two-part series. In the first part, the author discussed situations where a creditor might find it advantageous to get a receiver appointed over a debtor and how to obtain the appointment of a receiver.

Immediate Effect of Appointment

When a company is put into receivership, the receiver immediately supplants company management. For this reason alone, creditors may prefer a receivership over bankruptcy when a debtor company has a sound business plan and its money problems are just a symptom of bad management. A bankruptcy, on the other hand, tends to entrench that bad management.

The appointment of a receiver puts all property subject to the suit into the custody of the court, which acts through its receiver. Although the receiver taking physical possession of property is helpful, it is not required. Any interfer-

ence with the receiver's functions is punishable by contempt of court.

Early Actions

- **Nationwide notice (federal receiverships).** A federal receiver has jurisdiction only over property in judicial districts where it was appointed or where it files certain paperwork. Filing the papers is often a federal receiver's first task.
- **Equitable stay.** The appointing court should enter an order prohibiting any other court from entering orders that purport to order the receiver to do (or not do) anything. This includes execution on a money judgment or orders compelling discovery.
- **Order to present and file claims/bar date.** An Order to Present and File Claims

■ Receivership | continued on page 16

"Receiverships offer greater flexibility for creditors than do bankruptcies.

A receivership immediately eliminates bad management and puts the company under the supervision of the court."



RECEIVERSHIP – continued

with a quick bar date that requires a claimant to dismiss any other claims (such as pending litigation) before filing a claim is helpful in consolidating all actions into the receivership. Such an order should be sent to all potential claimants.

- **Order protecting agents.** Receivers have about the same judicial immunity as a judge. The receiver should obtain an order stating that all its agents have that same immunity.
- **Discovery.** The court should enter an order that allows discovery against the receiver but interferes as little as possible with the receiver's primary duties.

General Operation

Receiver's Reports

The receiver should file regular reports. The reports inform the court and the estate what has happened, may protect the actions of the receiver from later attack, and can suggest the direction a receiver is considering (this can flush out objections early in the proceedings and thereby save time and money).

As a general rule, receiver's reports should be ministerial and non-adversarial. They must be signed under oath by the receiver and be sent to all parties, and should be sent to all claimants. A receiver may distribute via posting on the Internet.

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Gathering and Protecting Assets

The receiver's charge is to gather and protect assets. If the assets are tangible, it may require leg work and the help of law enforcement. If the assets are intangible, protecting them becomes more complicated. In the *Indian Motorcycle* receivership, protecting the primary asset—the Indian Motorcycle trademark—involved buying companies, filing litigation, hiring a licensing agent, entering into licenses, and otherwise expanding the business beyond its original parameters.

Raising Money

If cash flow does not allow the receiver to pay itself, its counsel, and other post-appointment creditors, the receiver may sell receiver's certificates to raise funds. These certificates are secured by a lien on the assets of the estate.

Paying Expenses

A contract should be approved before the receiver acts pursuant to it. This can be done in the appointing order, monthly receiver's reports, or by separate motion. Once approved, the receiver need not get approval for each subsequent act further to the contract. Unlike a bankruptcy trustee, receivers seldom have to put the full detailed bills of themselves and their counsel on the public record, which can be another advantage.

Winding Up a Receivership

- **Determination of claims.** Receivers should set up the

most expedited process reasonable to determine claims. Due process is satisfied as long as the claimant has notice and an opportunity to be heard. Generally, a receiver should not spend efforts litigating with the estate if it can be reasonably avoided.

- **Payment of claims.** Once the sale is completed, the receiver distributes the assets pursuant to a formula, which is usually proposed by the receiver and approved by the court after considering any objections. Typically, the receiver and its counsel are paid first (to the extent they have not already been paid), receivership certificate holders second, the receiver's other administrative creditors third, and pre-appointment creditors after that. As in bankruptcy, pre-appointment creditors tend to fall into classes, but the classes are neither rigid nor statutorily imposed. Typically, distribution is based on the "absolute priority" rule: secured, unsecured (priority), unsecured (general), and then equity.

Reorganization

In some instances, receiver will be able to successfully reorganize the company. As a receivership cannot discharge debt, which means all bills are either paid in full or new arrangements are reached with enough creditors that the company can succeed. At that time, the receiver is discharged.

Sale

If the company cannot be reorganized, it must be liquidated or distributed in kind. The sale can be on any terms and conditions the court sets, and is reviewable only for the grossest abuse of discretion. A receiver generally does not give representations and warranties, but provides a court order saying that the sale is free and clear from all claims, liens, and encumbrances of parties with notice of the receivership.

Discharge of the Receiver

Once the company is reorganized or the claimants are paid, the receiver is discharged. This ends the estate and creditors with actual or constructive knowledge of the receivership generally cannot pursue the receiver, the estate, or the buyer for debts that existed before the closure of the estate.

Conclusion

Receiverships offer greater flexibility for creditors than do bankruptcies. A receivership immediately eliminates bad management and puts the company under the supervision of the court. The receiver can be chosen for his or her knowledge of the industry of the troubled company. In the proper case, a receivership can be an effective process for creditors or investors of a troubled company. ■

Jack Tanner is a commercial litigator with Fairfield and Woods, P.C., with considerable experience in the area of receiverships and other litigation relating to troubled companies. He can be reached at 303.894.4495 and jtanner@fwlaw.com.



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FEATURE
ARTICLE

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“You should only enter into a contract cost reduction service that offers guaranteed satisfaction on a risk-free basis. By doing so, if the program recommendations do not result in lower costs, you are not charged a fee.”



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Whatever the size of your institution, negotiating through the maze of contracts can seem like an endless cycle; especially when you are already strapped with added responsibilities. A professional negotiator will handle the time-consuming process with the goal of finding savings, as well as improving the level of service you receive throughout the life of your existing contracts.

When there are issues related to poor service or slow response to requests for support, getting the vendor's attention during negotiations can lead to solutions for unsatisfactory treatment that can mend conflicts in the relationship with your institution.

If your bank is receiving good service and you are happy doing business with your vendors, a contract review simply serves to negotiate, in many cases, substantial savings. When done correctly, re-negotiating a contract can be a win-win for you and your vendors: you get better service at a better price and your vendors keep a satisfied customer.

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- and much more

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Depending on the type of service involved, most contract terms run between three and seven years. The best time to review contract renewals and extensions is 10 to 18 months prior to the expiration dates. It is during this time frame that the most substantial savings can be negotiated. However, that does not necessarily mean that you cannot re-negotiate at any time.

You should only enter into a contract cost reduction service that offers guaranteed satisfaction on a risk-free basis. By doing so, if the program recommendations do not result in lower costs, you are not charged a fee. The only way your bank can lose is by neglecting to take advantage of this cost-saving program. ■

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■ PRESS RELEASE – continued

- It makes the job of media people easy by giving them a great starting point for their research. They probably won't use your exact wording, but you can guide them.
- It can give your bank (positive) attention. As you consider the impact of the press release, you'll also need to think about how you will measure success.

Select Keywords

Search engines mimic the searches your audience will make. Keywords are exactly that: keys that direct readers to your press release. Do some research (Google AdWords, Keyword Discovery, and Wordtracker are all helpful sites) and pick keywords before you write anything else. Then use those words in your release. Aim for a light sprinkling — you don't want to overdo it; after all, too many keywords in a press release are like too much salt on your food.

Remember Location, Location, and Location

Real estate is famous for its focus on location, but the Internet is equally focused on how fast a search engine finds your key words. What does that mean? In order to be most effective, you need to plan where you place keywords. Each head or subhead should have at least one or two keywords. Since search engine spiders are designed to go from left to right, get the words as far to the left as you can. And be brief: your summary and subhead should each be no more than 200 characters.

Keywords Go First

Search engine spiders start at the top and work their way down. Put some keywords at the beginning, in the first two paragraphs, and keep the sentences short. A short sentence length of 140 characters works well. By putting keywords at the beginning and using short sentences, you will get a much better result from search engines.

Minimize Distractions

Readers find anchor text confusing because it distracts them from what they're reading. One of the most important modern mantras is the idea that less is more; people will remember one idea better than they'll remember three. In that spirit, you don't want to overdo your links. If you have a press release that is 400 words long, don't put in more than two or three links to something else.

Add Sound and Motion

People do like color and sound, if only because we are attracted to beautiful things. (Think how you feel about a book with gorgeous color photos.) If you want an 80% increase in search traffic, one way to get it is to add photos, video clips, and sound. And these days, it isn't that hard to create them yourself. ■

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