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# UPDATE

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

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#### ***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 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.

#### ***BINNS BECOMES 46<sup>TH</sup> PERSON TO BE CERTIFIED BY THE 50 STATES MARATHON CLUB***

The 50 States Marathon Club is a nonprofit organization dedicated to the promotion of health and fitness whose members share a common goal of running a marathon (26.2 miles) in each of the 50 states in the United States. Binns became the 46<sup>th</sup> person in the world to be certified by the Verification Committee of the 50 States Marathon Club. In addition to being a finisher in all 50 states, Binns has completed the Marine Corps Marathon in Washington, D.C. He expects to make his fourth appearance in the New York City Marathon later this year.

#### ***State Banks Chartered as LLCs***

The Federal Deposit Insurance Corporation (FDIC) adopted a final rule in 2003 permitting a state bank to be chartered as a limited liability company (LLC) for purposes of granting deposit insurance coverage even though the Internal Revenue Service does not permit banks to become an LLC. Since the adoption of the final rule by the FDIC,

two banks are pursuing LLC status. Providence Bank in South Holland, Illinois, opened as an LLC in 2004. In addition, American West Bank in Layton, Utah, is in the process of converting from a Subchapter S corporation to an LLC. It is unknown at this time what position the Internal Revenue Service will take on the applications by these two banks. An LLC does not pay corporate taxes because its owners are taxed on the income of the bank. By becoming an LLC, the number of owners are not limited as in the case of a Subchapter S corporation, which are limited to 100 shareholders.

### *Cases, Releases and Rulings*

Recent published reports reveal that banking merger and acquisition activity during 2004 had a medium price/earnings ratio of 21.5 times the previous twelve months' earnings with a price/book multiple of 2.07 and with a price/book multiple of 2.16 times tangible capital. 2004 reflected the largest activity in banking merger and acquisition activity since 1998 with 258 transactions.

Recent statistical information released by the Federal Deposit Insurance Corporation (FDIC) reflects that Arkansas had an employment growth rate of 1.27 percent during the first quarter of 2005. Total loans secured by real estate rose 16 percent over the past year. Per capita income levels in Arkansas have remained in line with the rise in home prices. During 2004, 24 percent of loans originated in Arkansas were adjustable rate mortgages compared with the national average of 35 percent. The FDIC indicated that Texarkana could suffer a serious economic blow as a result of the proposed Department of Defense's base closure of the city's largest employer, the Red River Army Depot, as well as the Lone Star Army Ammunition Plant, both of which are scheduled to close within the next six years. These two facilities account for 6.5 percent of the city's total employment base,

with approximately 4,400 direct and indirect jobs being eliminated.

The Securities and Exchange Commission (SEC) has issued an Investor Alert entitled *All About Auto-Trading* which lists the steps investors should take to thoroughly check out any auto-trading program before they hand over access to their brokerage accounts and hard-earned dollars. The alert explains auto-trading, and questions investors should ask before avoiding costly mistakes. According to the SEC, auto-trading is a relatively new, but rapidly spreading, investment vehicle in which subscribers to online investment newsletters open designated auto-trading accounts at brokerage firms selected by the newsletters. The auto-trading clients sign agreements with the brokerage firm giving the online adviser authority to automatically direct trades in the client's personal brokerage account. Auto-trading services are typically offered as an additional service provided by publishers of online financial newsletters. The financial newsletters usually require subscribers to pay a fee to auto-trade in addition to the subscription fee paid to receive the general newsletter. Once the brokerage account is established, the online adviser sends specific trading instructions directly by email or facsimile to the broker-dealer. These instructions are timed to take advantage of market events, and the client learns of the trades only after they have been executed by the broker. In the Investor Alert, the SEC notes that auto-trading, like any other arrangement that allows someone else to trade an account of a client, without first asking permission, can be highly risky because the broker will make trades without consulting the client about the price, the type of security, the amount and when to buy or sell. The Investor Alert and the steps suggested by the SEC that an investor should take in checking out an auto-trading program and before handing over any money are available on the website of the SEC at [www.sec.gov](http://www.sec.gov).