Garland W. Binns, Jr.
Dover Dixon Horne PLLC
Attorneys at Law
425 West Capitol, 37th Floor
Little Rock, Arkansas 72201
Telephone: (501) 375-9151
Facsimile: (501) 372-7142
Web Site: www.GWBinns.com

DECEMBER 2002

U P D A T E

News of Developments in the Financial Sector and Related Areas

* *IN THIS ISSUE* *

New Update Web Site

Update has a new web site at *www.GWBinns.com*. The web site contains all of the publications of past newsletters, information that is both informative and helpful to your organization and links to other web sites. Please pass along your comments and suggestions on the new web site.

What Are Blue Sky Laws?

Every state has its own securities laws which are commonly known as "Blue Sky Laws." They are designed to protect investors from fraudulent sales practices and activities. While these laws can and do vary from state to state, most states' laws typically require companies making small offerings to register their offerings before they can be sold in a particular state. These laws also provide for the registration of broker-dealers and their agents, and investment adviser firms and their agents. The first Blue Sky Law was enacted in the state of Kansas in 1911. By the year 1919, thirty-two states had some form of Blue Sky Law enacted. These laws were premised on the need for protection from dishonest and unscrupulous promoters and in part from the sale of worthless stocks by these promoters. Even today, these promoters utilizing dishonest schemes have found a ready market with those who desire an opportunity to get rich quick. These state statutes are generally and popularly referred to as "Blue Sky Laws," because of their purpose of preventing "speculative schemes which have no more basis than so many feet of blue sky." In 1956, the National Conference of Commissioners on Uniform State Laws and the American Bar Association, drafted a more modern version of the Uniform Securities Act. Many of the states today have enacted variations of the Uniform Securities Act. The Uniform Securities Act is in four parts. The first three reflect the traditional blue sky approaches, i.e., (i) the antifraud provisions, (ii) regulation of brokers and dealers, including investment advisers, and (iii) registration of securities. Part four of the Uniform Securities Act contains the definitions, exemptions and other provisions of general applicability. In order for a security to be sold in a state, the security must either be registered in the state or exempted from the registration requirements of the state. The entity or person selling the security may also have to be registered as a broker-dealer in order to sell the security. In recent years, federal law has preempted the regulation of certain types of securities such as those listed on the New York Stock Exchange. Currently, the National Conference of Commissioners on Uniform State Laws and the American Bar Association are drafting a new Uniform Securities Act which will be available for consideration by the legislatures of each of the 50 states.

Know Your Customer Rules Delayed

Financial institutions will not be required to comply with proposed rules issued by the Treasury Department which required financial institutions to establish minimum procedures for the identification and verification of customers who open new accounts. Once final rules are adopted, financial institutions will be given a reasonable period of time in which to come into compliance. Comments to the proposed rules are available on the web site of the Federal Deposit Insurance Corporation at *www.fdic.com.*

Cases, Releases and Rulings

In Interpretive Letter No. 941, the Office of the Comptroller of the Currency ("OCC") held that a national bank had the authority to acquire and hold preferred stock under 12 U.S.C. §24 (Seventh) which permits a national bank to discount and negotiate evidences of debt since the preferred stock is, in substance, a debt obligation of the issuer. The OCC considers several factors to determine whether securities with characteristics of both debt and equity have sufficient indicia of debt to qualify as debt obligations. These factors include whether the returns on the investment are fixed or based on the success of the enterprise, the voting rights of the stockholder, the obligation to pay dividends, rights of a stockholder in the event of the failure of the issuer, whether the security has a limited life and whether it is rated. Relying on these factors, debt securities offer investors periodic interest payments, often in the form of fixed dividend payments, and a principal payment at maturity. A bank is required to conduct an independent analysis to determine that preferred stock meets its own internal underwriting standards.

A new brochure entitled *A Guide to Understanding 529 Plans* explains income tax considerations for saving for a higher education through state-sponsored 529 plans and provides answers to common questions about 529 plans. The brochure offers a checklist of questions investors should ask before investing in a plan and explains how education costs outpace inflation and stresses the importance of getting an early start on saving for a higher education. 529 plans were developed by federal and state lawmakers to encourage savings for education expenses and to make education more financially accessible. The brochure is on the web site of the College Savings Plans Network at *www.collegesavings .org*.

Bank of America v. Musselman, No. 02-253-A (E.D. Va. 2002) is a recent decision by the Virginia federal district court which holds that creditors of an insolvent company may not sue the insolvent company's officers or directors for breach of fiduciary duty in order to recover on defaulted loans unless there was self-dealing by the officers or directors.

The National Association of Security Dealers, Inc. and the National Futures Association have released the *Security Futures Risk Disclosure Statement* which requires registered member firms to deliver the disclosure statement to customers at or prior to the time a customer's account is approved for trading security futures. The disclosure statement discusses the characteristics and risks of security futures contracts. The disclosure statement is available on the web site of the National Association of Securities Dealers, Inc. at *www.nasd.com.*

Recently, I was involved in a program with some physicians dealing with the issues relating to aging parents. My portion of the program was to cover general legal information that would be helpful not only to aging parents but also those that were caring for aging parents. At the beginning of my portion of the program, I mentioned to the audience that I needed my glasses in order to see my notes, but at the same time, I was not able to see those in the audience when my glasses were on. Later in my portion of the program, I mentioned to the audience that when I looked into the mirror every morning, I still saw the same person as in my youth. All of a sudden, an elderly woman in the back of the audience yelled out, "That's why you need those glasses."