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U P D A T E

News of Developments in the Financial Sector and Related Areas

* *IN THIS ISSUE* *

ATM Surcharge Ban

Federal Preemption of Arkansas Usury Law

Federal Preemption of State Law - National Banks Solicitation of Trust Business

Investment Company Act

ATM Surcharge Ban

On November 2, 1999, voters in San Francisco, California approved an ordinance that imposed a ban on automated teller machine ("ATM") surcharging. The California Bankers Association and certain national banks have sued the City of San Francisco alleging that it lacks authority over national bank fees. The Office of the Comptroller of the Currency has stated that it will file a brief arguing that the National Bank Act, i.e. federal law, gives banks the right to charge non-interest fees including ATM surcharges, and such fees may not be declared illegal by a state or subdivision thereof.

Federal Preemption of Arkansas Usury Law

On November 12, 1999, President Clinton signed into law the Gramm-Leach-Bliley Act of 1999, which eliminated the provisions of the Glass-Steagall Act of 1933, which separated commercial and investment banking. The new law permits bank holding companies and its subsidiaries to offer banking, securities and insurance services. Also contained in the Act is a provision which permits banks in Arkansas to charge the maximum rate of interest of the home state of a bank located outside of Arkansas but having branches in the state of Arkansas. There are a number of banks that are located outside of Arkansas that have branches in Arkansas, such as Regions Bank (Alabama), Bank of America (North Carolina), Union Planters (Tennessee) and others.

Federal Preemption of State Law - National Banks Solicitation of Trust Business

In Interpretive Letter No. 866, the Office of the Comptroller of the Currency ("OCC") held that federal law preempts state laws that purport to preclude national banks from soliciting trust business from customers located in states other than where the bank's main office is located, and allows national banks to have trust representative offices in its home state as well as other states to market its fiduciary services. Comerica Bank & Trust, National Association, Ann Arbor, Michigan (the "Bank"), after receiving OCC permission to exercise fiduciary powers through its offices located in Michigan, requested the opinion of the OCC concerning the extent to which federal law preempts state restrictions on the ability of the Bank to engage in fiduciary services and the solicitation of customers that are located in other states and maintaining trust representative offices in those states. Certain of the states which the Bank intended to do business with prohibited or restricted the Bank from engaging in trust activities. The Bank had entered into a contractual

relationship with a brokerage firm whereby the Bank would solicit trust business through existing offices of the broker throughout the United States, and then act as trustee for trusts involving customers in various states. The broker offers a general retail brokerage account that holds cash, securities and similar financial products and which provides a variety of trust services to assist in meeting a customer's estate, investment and tax planning goals. Under the program, representatives of broker will advise customers of the ability of the Bank's trust services and refer customers to the Bank. The Bank decides whether to accept the appointment as a trustee and executes the trust agreement only at its Michigan offices. Decisions about the investment or distribution of trust assets and the conduct of daily administration of trust accounts occurs only at the Bank's Michigan offices. The activities by Bank representatives in other states was primarily the solicitation of new fiduciary accounts. The OCC held that subject to the law of the state where the Bank is located, i.e. in this case, the state of Michigan, under 12 U.S.C. § 92a, a national bank is authorized to act in fiduciary capacities, with the extent of permissible capacities only being limited and determined by the laws of the state where the Bank is located and where the fiduciary activities are being conducted. The determination of where a bank acts in a fiduciary capacity should not look to every location where customers reside or where trust assets are located, or be based on places which the bank engages in other non-fiduciary activities, primarily for the purpose of establishing or maintaining customer relationships. Thus, the OCC stated that the core fiduciary functions do not include advertising, marketing or soliciting fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to customer accounts; acting as a liaison between the trust office and the customer (e.g. forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); or simply inspecting or maintaining custody of fiduciary assets. Once a national bank is authorized under Section 92a to act in a fiduciary capacity, Section 92a imposes no limitations on where the Bank may market its services or where the Bank's fiduciary customers may be located. In summary, the OCC held that the fiduciary capacities in which a national bank may act, and certain other provisions in Section 92a governing its operations, are determined by reference to the laws of the state which the bank acts in a fiduciary capacity. The Bank may operate trust representative offices nationwide, in which it does not perform fiduciary duties, to facilitate performance of its fiduciary business. State laws other than where the Bank is located (in this case Michigan) that prohibit or restrict the Bank from exercising its federal powers to act as trustee, to solicit trust business, and to maintain trust representative offices, or that require state approval or licensed to do so, or that impose securities pledging requirements in addition to those imposed by Section 92a conflict with federal law and are preempted by Section 92a.

Investment Company Act

The Securities and Exchange Commission has adopted rule amendments under the Investment Company Act that addresses conflicts of interest that arise from personal trading activities of investment company personnel. The rule amendments are designed to increase the responsibility of the investment company's board of directors with respect to oversight of policies including, but not limited to, personal investment activities of employees of investment companies. (SEC Release Nos. 33-7728, IC-23958, IA-1815, dated August 20, 1999, effective October 29, 1999.)

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