

UPDATE

News of Developments in the Financial Sector and Related Areas

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Prohibition on Unitary Thrifts

As reported in the August 1999, issue of *UPDATE*, Wal-Mart Stores, Inc. had filed an application with the Office of Thrift Supervision ("OTS") seeking approval to purchase Federal BankCentre, Broken Arrow, Oklahoma for the purpose of entry into the banking business and the opening of branches at certain of its supercenters. Prior to the Wal-Mart application, a number of companies had sought a unitary thrift charter as a logical route into financial services. The unitary thrift charter was particularly appealing to insurance companies who planned on selling deposit products to customers through branches throughout the United States. However, a provision in the Gramm-Leach-Bliley Act closes the unitary thrift loophole that previously allowed financial institutions to control a thrift charter. As a result, no new unitary thrifts will be chartered, and companies such as Wal-Mart

will be prohibited from acquiring a thrift charter. It has recently been reported that Wal-Mart has begun leasing space in its stores to financial institutions as an alternative to obtaining a thrift charter. The Act forbids commercial companies from chartering new thrifts. Specifically, a unitary thrift application received by the OTS after May 4, 1999, will not be processed or approved. Applications already on file prior to May 4, 1999, with the OTS may be acted upon. Unitary thrift charters in existence before May 4, 1999, or applications filed before that date and subsequently approved, are grandfathered. Unitary thrifts that are in existence cannot be sold to commercial companies. American International Group, Inc. which is ranked as the largest public insurance company in the United States, received approval in December for a thrift charter.

ATM Fee Disclosures

Another provision of the Gramm-Leach-Bliley Act from 1999 is the requirement that operators of automated teller machines disclose fees to cardholders who are not customers of the ATM operator. The ATM operator must post notice on the automated teller machine at which the electronic fund transfer is to be initiated by the customer that a fee will be charged and also do either of the following: (i) post a notice on the ATM display screen, or (ii) a paper slip is required to be issued from the machine after the transaction is initiated and before the consumer is committed to completing the transaction. ATM's that lack the technical ability to display such information on their screens or on a printed slip have until December 31, 2004 to come into compliance.

FASB Preliminary Views on Fair Value

The Financial Accounting Standards Board ("FASB") on December 14, 1999 published its preliminary views on measuring financial instruments at fair value. The preliminary views cover three core issues:

- ① What would be reported at fair value?
- ② What is fair value?
- ③ What changes in fair value be reported?

Financial instruments are defined as:

- cash
- ownership interest in an entity
- contractual obligations to deliver instruments to another entity and that entity's contractual rights to receive them
- contractual obligations for one entity to exchange financial instruments with another and the second entity's contractual rights to require the exchange

Financial instruments would be measured and recorded at fair value, i.e. its estimated market exit price. Under fair value accounting the instrument is valued based on an estimate of what an investor would pay for it in the open market. Under a cost-base value system, by contrast, a financial instrument is recorded at its original cost. Copies of the preliminary views are available on the FASB website at www.fasb.org.

On Line Buying of Municipal Bonds

Recently MuniDirect.Com, Inc. received approval for the National Association of Securities Dealers, Inc. for an online trading service for the purchase and sale of tax-free municipal bonds. MuniDirect advertises that it is the first firm in the history of the municipal bond market to disclose its commissions/mark-ups. The firm also advertises that a customer will never pay a

commission or mark-up of more than \$5.00 per bond (\$1,000 Face Value) on round lot trades. The online service can be accessed at Munidirect.com.

SEC Accounting Bulletin

The staff of the Securities and Exchange Commission ("SEC") has issued Staff Accounting Bulletin No. 100 to provide guidance on accounting and disclosure certain expenses and liabilities in connection with restructuring activities in business combinations. The Bulletin reflects the position of the SEC on inappropriate earnings and management activities by public companies and provides guidance on how the SEC interprets and applies its criteria. The Bulletin is available on the SEC website at www.sec.gov.

Margin Requirements for Day Traders

In December, the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange ("NYSE") proposed regulations requiring higher margin requirements for day traders in order to protect investors and to curb abuses in the market. If approved by the Securities and Exchange Commission, NYSE Rule 431 and NASD Rule 2520 would require customers who engage in a pattern of day trading to maintain margin requirements of at least \$25,000, compared to the normal requirement of \$2,000 for other customers.

Payment of Referral Fees

The payment by a mortgage company to an affiliated institution's employees for referring residential mortgage loan customers to the affiliated mortgage company is prohibited under the Real Estate Settlement Procedures Act, specifically 24 CFR 3500. 14(b).