

# UPDATE

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

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### *\* IN THIS ISSUE \**

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#### ***Internet Filing System for Investment Advisers***

#### ***Accounting for Stock Issued to Employees***

#### ***Internet Thrift Charters***

#### ***Sale of Motor Vehicle Records***

#### ***Guidelines on Internet Advertising***

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#### ***Internet Filing System for Investment Advisers***

The Securities and Exchange Commission ("SEC") and the state securities authorities are creating an Internet-based system of electronic filing for investment advisers. The system will be known as the Investment Adviser Registration Depository ("IARD") and will permit investment advisers to satisfy filing requirements under state and federal laws by making a single electronic filing. The IARD will be an Internet-based system that investment advisers will access through computers in their offices without the need for specialized hardware or software. An investment adviser will be able to use the IARD system to apply for registration, amend its registration, and withdraw from registration. An SEC-registered adviser will also be able to electronically send filings to the states which it is required to file and pay the applicable state fees through the IARD. All current information submitted to the IARD by investment advisers will be available to

members of the public through the SEC web site without charge. The IARD system also will prevent an investment adviser from submitting an incomplete form or from entering inconsistent information at different places on the form, which should help prevent the most common errors in applications and speed the registration process. It is estimated that approximately 8,000 investment advisers are registered with the SEC and another 12,000 are registered with state securities authorities. The IARD will be built and operated by the National Association of Securities Dealers Regulation, Inc. and will be modeled on the system currently utilized for registered broker-dealers. The comment period on the proposed Internet-based system of electronic filing ends June 13, 2000. Comments on the proposal are available on the SEC web site at <http://www.sec.gov>. (SEC Release Nos. IA-1862, 34-42620 dated May 2, 2000.)

#### ***Accounting for Stock Issued to Employees***

The Financial Accounting Standards Board (the "Board") recently issued interpretive guidance (the "Interpretation") related to APB Opinion 25 on accounting for stock issued to employees. The Interpretation clarifies the definition of the term *employee* for purposes of applying the opinion and the accounting for options that have been repriced. For purposes of applying APB Opinion 25, an individual would be considered an employee if the company granting the options has sufficient control over the individual as to establish an employer-employee relationship. The relationship is based on case law and Internal Revenue Service regulations. The Board granted an exception to the definition of *employee* for elected outside members of the

company's Board of Directors. Under APB Opinion 25, fixed option plans for employees, i.e. those plans whose terms, including price and number of shares granted, remain the same throughout the duration of the plan, have no compensation expense associated with the options when the exercised price is equal to the fair value of the stock at the grant date. This is an exception to the general requirement that all awards to employees in which the number of shares are the exercised price may change do have an element of compensation expense under APB Opinion 25. The Board concluded that when a company directly or indirectly reprices options, it has changed the terms of the plan, which would make it a variable plan under APB Opinion 25. The Interpretation is effective beginning July 1, 2000. The Interpretation applies prospectively at that date for repricings that occurred after December 15, 1998. It also applies prospectively on July 1, 2000, to new awards granted after December 15, 1998, for purposes applying to definition of *employee*. Copies of the Interpretation *Accounting for Certain Transactions Involving Stock Compensation* may be obtained by contacting the Board's Order Department at (800) 748-0659.

### *Internet Thrift Charters*

On April 26, 2000, the Office of Thrift Supervision ("OTS") gave approval for the opening of an Internet bank by the name of Bank of Internet USA. The Bank will operate from a single office located in San Diego, California and has no plans to open any branches. The web site of the Bank is [www.BofI.com](http://www.BofI.com). Through May 8, 2000, the OTS had granted eight Internet charters. The last charter being @Bank located in Framingham, Massachusetts, and owned by Marsh & McLennan.

### *Sale of Motor Vehicle Records*

In *Reno v. Condon*, 120 S. Ct. 666 (2000),

the United States Supreme Court held that the 1994 Driver's Privacy Protection Act (the "Act") which prohibits the sale or release of personal information from motor vehicle records without drivers' consent does not violate states' rights. A number of states had joined in a lawsuit claiming that the Act is an unconstitutional encroachment on a state's business, however, the United States Supreme Court in a unanimous decision disagreed.

### *Guidelines on Internet Advertising*

On May 3, 2000, the Federal Trade Commission ("FTC") issued a staff working paper on how existing consumer protection laws apply to advertising and sales on the Internet. The guidelines, *Dot Com Disclosures: Information about Online Advertising*, provides guidance to businesses about how FTC law applies to online activities with particular focus on the clarity and conspicuousness of disclosures in Internet advertisements. In its guidelines, the FTC advises advertisers that the same consumer protection laws that apply to commercial activities in other media apply online and that any disclosures required to prevent an advertisement from being misleading must be clear and conspicuous. The guidelines focus on how required disclosures may be presented clearly and conspicuously in online advertisements and provides key considerations for evaluating their effectiveness. The guidelines discuss the circumstances in which businesses may use email to comply with a rule or guide requirement to provide or send required notices or documents to consumers. The guidelines are available on the FTC's web site at <http://www.ftc.gov> and by contacting the FTC's Consumer Response Center at (877) 382-4357.