

UPDATE

News of Developments in the Financial Sector and Related Areas

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Background of Securities Professionals

The National Association of Securities Dealers, Inc. ("NASD") maintains a web site at <http://www.nasd.com> which permits, among other things, the public to check into the background of investment professionals such as broker-dealers and investment advisors. The information provided by the NASD on its web site is intended to help investors determine whether they wish to do business with an individual broker, securities firm or investment advisor. The type of information on individual brokers includes (i) current employing firm, (ii) criminal charges and convictions, (iii) regulatory actions by regulatory agencies, (iv) pending investigations and regulatory proceedings, (v) consumer complaints, (vi) outstanding judgments and liens, and (vii) bankruptcy proceedings. For securities firms the information contained on the web site is generally similar to that of an individual broker. The web site for investment advisors allows the investor to review the registration filed by the investment advisor which would include (i) disciplinary information, (ii) information about its business, (iii) participation or interest in client transactions, and (iv) its direct owners and executive officers.

Durable Power of Attorney

Many people fail to plan for a disability which may occur from injury, accident, illness and in some cases old age. In the event of a disability, you may be unable to continue your affairs. A *general power of attorney* allows you to name another person or entity as your agent in handling your affairs or may allow the agent to do only a specific thing such as the sale of property. You need to be aware that a general power of attorney will be revoked and terminate on your incapacity or incompetency. However, a *durable power of attorney* will not terminate in the event of your disability and may be drafted to be effective only upon your disability. In selecting an agent, you should designate someone in whom you have confidence and trust. Although most people are aware of the importance of having a will or an estate plan, they fail to plan for their disability. You should consider having a durable power of attorney.

Accounting for Derivative Instruments

The Financial Accounting Standards Board ("FASB") has issued a proposed draft entitled *Amendment of Statement 133 on Derivative Instruments and Hedging Activities* which will amend FASB Statement No. 133 to clarify the definition of a derivative. The purpose of the draft amendment is to improve financial accounting by requiring that financial contracts with similar characteristics be accounted for in the same way and would clarify under what circumstances a financial contract with an initial net investment would meet the characteristic of a derivative. The proposed amendment would be effective for calendar year end companies beginning January 1, 2003. The draft amendment is

available on the web site of the FASB at <http://www.fasb.org>.

Cases, Releases and Rulings

In Interpretive Letter No. 926, the Office of the Comptroller of the Currency ("OCC") held that national banks may purchase variable life insurance for the purpose of funding or recovering the cost of employee compensation or benefit plans, and it does not matter whether it is structured as a single premium or annual premium product. If such insurance is to contain investments in equity securities, there is an additional requirement that the securities must be related to the bank's compensation or benefit liability in such a way that their values rise and fall together, so that the insurance can be characterized as a hedging transaction. An example of this would be a defined contribution plan linked to a equity benchmark. However, if variable life is to be used with a defined benefit plan, the separate account associated with the variable life insurance must be limited to bank-permissible (fixed income) investments. This Interpretive Letter provides an excellent summary regarding the purchase of variable life insurance in connection with employee compensation or benefit plans. Copies of the Interpretive Letter is available from our law firm, or alternatively, may be accessed on the web site of the OCC at www.occ.treas.gov. The Officer of Thrift Supervision ("OTS") is proposing regulations which would require nonbank lenders and state-chartered thrifts to comply with the laws, such as late charges and prepayment penalties, of the states in which they operate. If adopted, the proposed regulations would close the loophole under the Alternative Mortgage Transaction Parity Act Regulations of practices exempt from state consumer protection laws. The proposed regulations are available on the web site of the OTS at www.ots.treas.gov. Comments on the proposed regulations must be received by the OTS on or before June 24, 2002.

Pfennig v. Household Credit Services, Inc. is a decision by the United States Court of Appeals for the Sixth Circuit, No. 00-4213, holding that fees charged to a consumer for exceeding the credit limit were finance charges which had to be included in the finance charge calculation reported on the consumer's monthly statement. Although Regulation Z excludes from the definition of finance charge "charges for actual unanticipated late charge, for exceeding a credit limit, or for delinquency, default, of a similar occurrence" the Court held that the fee assessed against the consumer was imposed in connection with an extension of credit and had to be disclosed as a finance charge.

In a recent advisory opinion to the American Bar Association, the Federal Trade Commission ("FTC") advised the American Bar Association that the FTC did not have the authority to exempt attorneys from the disclosure requirements of the Gramm-Leach-Bliley Act (the "Act") and the FTC's rule requiring annual privacy protection notices to customers. The New York State Bar Association has subsequently filed a lawsuit against the FTC arguing, among other things, that state professional conduct codes govern client confidentiality and are more stringent than the privacy provision requirements of the Act (*New York State Bar Association v. The Federal Trade Commission*, No. 1:02CV00810 District of Columbia U.S. Circuit Court of Appeals).

The Securities and Exchange Commission ("SEC") recently approved proposed changes to the rules of the National Association of Securities Dealers and the New York Stock Exchange to address conflicts of interest that are raised when research analysts recommend securities in public communications. The SEC release 2002-63 approving the rule changes is available on the web site of the SEC at <http://www.sec.gov>.

