

UPDATE

News of Developments in the Financial Sector and Related Areas

* *IN THIS ISSUE* *

Wal-Mart's Application for an Industrial Loan Company

Arkansas Banking Acquisitions

Health Savings Accounts

State Banks Chartered as LLCs

Cases, Releases & Rulings

Wal-Mart's Application for an Industrial Loan Company

The Federal Deposit Insurance Corporation ("FDIC") has announced that it will hold a public hearing on the application of Wal-Mart Stores, Inc. to charter an industrial loan company in Utah. The FDIC has received approximately 1,500 comment letters, most of which opposed the application. Industrial loan companies remain one of the few types of FDIC depository institutions that are not subject to the Bank Holding Company Act and regulation by the Federal Reserve Board. As a result, they are attractive vehicles for non-financial companies, such as Wal-Mart, seeking to own a bank. It is likely that the public hearing will be delayed until a person has filled the vacant position of Chairman of the FDIC. In a recent letter, former Federal Reserve Chairman Alan Greenspan urged Congress to close the regulatory loop hole

that allows companies, such as General Motors and General Electric, to own banks based in part that when the exemption was adopted in 1987, industrial loan companies were mostly small, locally owned institutions that had only limited deposit-taking and lending powers and have grown by more than 3,500 percent between 1987 and 2004 from \$3.8 billion to \$140 billion in assets. Recently, Westcom Credit Union of Pasadena, California, announced that it has agreed to purchase Silvergate Bank, an industrial loan company in LaJolla, California, for the purpose of purchasing credit card portfolios of credit unions. The proposed acquisition by Westcom Credit Union raises additional concerns with banking groups because of the limitations on the field of membership by credit unions and their tax exempt status.

UPDATE is now available for you to receive by email. To sign up, simply go to www.gwbinns.com and enter your email address in the sign up box on the main page. You will be prompted in a new browser window to confirm your sign up. A welcome email will be sent to your email address once you have been added to our mailing list.

Arkansas Banking Acquisitions

There was only one banking acquisition announced in Arkansas in the fourth quarter of 2005, that being an agreement by DeWitt Bank & Trust Company to acquire Planters & Merchants Bank of Gillette.

Health Savings Accounts

Congress authorized Health Savings Accounts ("HSAs") in 2003. HSAs work like and resemble individual retirement accounts except that money in HSAs is used to pay health care costs. Every year the money not spent remains in the account and the interest earned is not taxed. Individuals who are covered by a high-deductible health plan may establish tax deductible HSAs. Contributions can be made in three ways: (i) by an individual and family members, (ii) by an individual's employer and (iii) cafeteria plans maintained by employers. Money distributed from HSAs is not taxed so long as it is used to pay qualifying medical expenses. If the monies in HSAs are used by the owner for purposes other than payment of medical expenses, there is a 10% penalty imposed in addition to the income taxes. President Bush has recently announced that he will push to make the insurance that comes from HSAs portable, so that people may change jobs or retire and keep their insurance. Although HSAs have been around for over two years, there is a limited number of banks offering them partly because there has not been a demand by customers for the account. Because *UPDATE* has received inquiries about HSAs, a survey regarding HSAs is enclosed. The survey may be completed and returned with the results being published in a later issue of *UPDATE*. All responses will be kept confidential.

State Banks Chartered as LLCs

In a recent letter to the Treasury Department, four senators requested prompt action regarding banks being taxed as limited liability companies ("LLCs"). Although the Federal Deposit Insurance Corporation adopted a regulation in 2003 permitting state banks to be chartered as LLCs, the Internal Revenue Service has yet to act on permitting banks to be taxed as LLCs. A number of states have passed laws

permitting banks to be organized as LLCs. Recently, American West Bank in Layton, Utah, converted from a Subchapter S corporation to an LLC. An LLC does not pay corporate taxes because its owners are taxed on the income of the bank. By becoming an LLC, the number of owners are not limited, as in the case of a Subchapter S corporation which are limited to 100 shareholders.

Cases, Releases & Rulings

Information released by the Federal Deposit Insurance Corporation ("FDIC") reflects that Arkansas ranks ninth in the nation with the fastest rate of consolidation of insured depository institutions in the United States. Over the past decade, only Hawaii has experienced a faster rate of consolidation than Arkansas. Other statistical information reflects that the total number of banking offices in Arkansas grew 2.2 percent in the second quarter of 2005 from the same period one year ago, exceeding the national average of 1.9 percent. During the past ten years, Arkansas has consistently ranked among the top ten states in the nation for growth in the number of banking offices. Insured institutions in the Fayetteville-Springdale-Rogers market accounted for 55 percent of the total dollar volume of home equity loans made in Arkansas in the year ending September 30, 2005, with home equity loans increasing at these institutions by approximately 70 percent.

The Federal Deposit Insurance Corporation ("FDIC") has approved final rules raising the asset-size threshold from \$500 million to \$1 billion for external control assessments by management and external auditors. For institutions between \$500 million and \$1 billion in assets, the final rules require the majority, rather than all, of the members of the audit committee, who must be outside directors, to be independent of management and create a hardship exemption for institutions in certain situations.

UPDATE

SURVEY ON HEALTH SAVINGS ACCOUNTS

1. Does your organization offer Health Savings Accounts?
 YES NO

2. If NO, does your organization expect to offer Health Savings Accounts?
 YES NO UNDECIDED

3. Does your organization view Health Savings Accounts as being profitable to the organization?
 YES NO UNDECIDED

4. Does your organization view Health Savings Accounts as being merely a convenience to customers in both attracting and retaining them?
 YES NO UNDECIDED

NAME OF ORGANIZATION (Optional):

NAME AND TITLE (Optional):

[ALL RESPONSES WILL BE KEPT CONFIDENTIAL]