

UPDATE

News of Developments in the Financial Sector and Related Areas

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NASD Notice to Members

The National Association of Securities Dealers, Inc. ("NASD") has issued a notice to its members clarifying the types of contact an unregistered person may have with prospective customers on behalf of an NASD member firm. The notice was issued in connection with the Gramm-Leach-Bliley Act ("Act") which repealed the general bank exclusion from the definition of broker under the Securities Exchange Act 1934 and in its place leaves a number of permissible activities, including networking or third-party brokerage arrangements. A networking or third-party brokerage arrangement is one in which a bank enters into a contract or other written agreement with a registered broker-dealer for the provision of brokerage services. Under the Act, a bank that enters into a third-party arrangement will be exempt from registration as a broker-dealer if it meets certain conditions. These conditions include that bank employees, other than those persons who are duly registered with a member, perform only clerical or ministerial

functions in connection with brokerage transactions. In its notice the NASD stated that an unregistered person may contact a prospective customer only to (i) extend an invitation to sponsored events at which any substantive presentations and account or order solicitation will be conducted by registered personnel, (ii) inquire whether the prospective customer wishes to discuss investments with a registered person and (iii) determine whether the prospective customer wishes to receive investment literature. In its notice the NASD also stated that unregistered persons should not be compensated on any basis other than a salary or hourly wage, and the payment of performance bonuses or other forms of incentive compensation is permitted so long as such bonuses or incentives are not tied to securities transactions, commission activity or referrals generated by the unregistered person. A copy of the notice may be obtained by contacting the NASD through its web site at <http://www.nasd.com/>.

Pooling-of-Interests Accounting

In a recent news release by the Financial Accounting Standards Board ("FASB"), the Chairman of the FASB vigorously opposed potential legislation in the United States House of Representatives that would postpone for one year the FASB's plan to ban pooling-of-interests merger accounting. In the press release, the FASB Chairman stated, "The potential legislation must be seen for what it is--legislative interference with the FASB's ability to do its job. The proposed bill would directly hamper the FASB's independence by legislating the timing of the FASB's proposed improvements to the transparency of the accounting and reporting for business combinations. The bill, if passed, would have a serious and negative impact upon consumers

of financial information." The news release is available on the FASB's web site at <http://www.rutgers.edu/Accounting/raw/fasb/public/news/nr10400.html>.

Insurance Activities of Banks

The federal banking agencies have jointly proposed a consumer protection rule in connection with the sale of insurance products by depository institutions to implement provisions of the Gramm-Leach-Bliley Act, which permits banks to sell insurance. The proposed rule applies to any depository institution or any person selling, soliciting or advertising or offering insurance products or annuities at an office of the institution or on behalf of the institution. Disclosures would be required as follows:

- The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the depository institution or an affiliate.
- The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation or any agency of the United States, the depository institution or an affiliate.
- In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.
- The depository institution may not condition an extension of credit on the consumer's purchase of an insurance product or annuity from the depository institution or from any of its affiliates, or on the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

The proposal would require that these disclosures be made orally and in writing before the completion of the sale of an

insurance product or annuity. The proposed rule is reprinted in Fed. Banking L. Rep. (CCH) ¶ No. 92-445.

Investment Adviser Web Site

The Securities Exchange Commission has established a new web site, <http://www.sec.gov/IARD> which will permit investment advisers to satisfy filing requirements under state and federal laws by making a single electronic filing. The system is expected to become operational during the early part of 2001. (Refer to related article on "Internet Filing System for Investment Advisers" in the June 2000 issue of Update.)

FASB Publication

The Financial Accounting Standards Board ("FASB") staff has prepared a new publication titled, *Accounting for Derivative Instruments and Hedging Activities*. The purpose of the publication is to bring together in one document current guidance on accounting for derivatives. Information for ordering the publication is available on the FASB's web site at <http://www.rutgers.edu/Accounting/raw/fasb/public/derivcod.html>.

FDIC Insurance Options Paper

The Federal Deposit Insurance Corporation ("FDIC") has released an options paper as part of a comprehensive review of the deposit insurance system. The three fundamental areas for review are: the processes for pricing risks; funding insurance losses; and setting coverage limits. The paper proposes several different ways to reform the current system. The purpose of the paper is to solicit comments on the FDIC's proposals which may be registered on the FDIC's web site. The option paper is available on the FDIC's web site at <http://www.fdic.gov>.