Garland W. Binns, Jr.
Dover Dixon Horne PLLC
Attorneys at Law
425 West Capitol, 37th Floor
Little Rock, Arkansas 72201
Telephone: (501) 375-9151
Facsimile: (501) 372-7142
Email: gbinns@ddh-ar.com

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U P D A T E

News of Developments in the Financial Sector and Related Areas

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Corporate Financial Reporting Reform

The recently enacted Sarbanes-Oxley Act of 2002 (the "Act") is designed to prevent abuses by corporate management and address the issues arising in connection with recent corporate accounting scandals. Title I establishes the Public Company Accounting Oversight Board to oversee the audit of public companies and to protect the interest of investors through the preparation of informative, accurate and independent audit reports of companies. Title II of the Act prohibits an accounting firm from providing any non-audit services contemporaneously with the audit of a public company. Title III of the Act sets forth the corporate responsibility of public companies including the requirement that each member of the audit committee be independent and requiring each principal executive officer and each principal financial officer of the company to certify to the accurateness of financial statements of the company. Audit committee members of a public company will likely become defendants in securities fraud litigation because of the requirements placed upon them by the Act. Title IV of the Act relates to disclosures in periodic reports filed by public companies and prohibits personal loans by the company to any director or executive officer of the company. Title V of the Act is designed to prevent conflicts of interest by securities analysts. Title VI of the Act increases the funding for the Securities Exchange Commission ("SEC") and requires the SEC to conduct a study of those who have violated federal securities laws. Title VIII is known as the *Corporate and Criminal Accountability Act of 2002* and provides for criminal penalties in connection with violation of federal securities laws. Title VIII also extends the statue of limitations for securities fraud actions to the earlier of two years following discovery of the facts constituting the violation or five years after the violation. The new extended statute of limitations applies to all lawsuits filed on or after July 30, 2002, and will probably result in litigation being filed which was otherwise barred. One of the main purposes of the Act is to help restore investor confidence. The Act amends section 16(a) of the Securities Exchange Act 1934 to accelerate the reports of security transactions for officers, directors and principal security holders. The amendment to section 16(a) which became effective August 29, 2002, will require insiders to file reports before the end of the second day following the day on which a transaction is executed.

Seminar Information

Mr. Binns will speak on the topic *Rights of Minority Shareholders* at the Fall Legal Institute of the Arkansas Bar Association on October 25, 2002, in Fayetteville, Arkansas. The presentation will address the rights of minority shareholders and the prevention of potential problems for failure to comply with state and federal securities laws.

Accounting for Employee Stock Options

The Financial Accounting Standards Board ("FASB") has issued a news releases regarding the accounting for employee stock options. In its first news release, the FASB supports recognizing as an expense the fair value of stock options granted in arriving at the reported earnings by public companies. The

International Accounting Standards Board ("IASB") has issued a proposal which would require companies using its standards to recognize, starting in 2004, the fair value of employee stock options granted as an expense in arriving at reported earnings. At the present time, public companies are permitted to continue to use existing methods with disclosure in the footnotes to financial statements of the pro forma effect on net income. Many argue that treating stock options as an expense is difficult or impossible due to the changes in the market in connection with establishing a fair value of unexercised employee stock options. Technology companies are generally opposed to the treatment of stock options as an expense. However, a number of major public companies are now treating stock options as an expense on their financial statements. In a second updated news release, the FASB tentatively decided to permit companies that voluntarily adopt the fair value recognition provisions of FASB Statement 123, *Accounting for Stock-Based Compensation,* to choose one of the following three transition methods:

- Recognize stock compensation cost pursuant to Statement 123 for the year of change only for awards granted after the beginning of that fiscal year (prospective application only to new awards).

- Recognize stock compensation cost for the year of change equal to that which would have been recognized had Statement 123 been adopted as of its effective date (prospective application to new awards and unvested portions of awards granted since the effective date of Statement 123).

- Recognize stock compensation cost for the year of change and restate prior years' financial statements presented as though Statement 123 had been adopted as of its effective date. Under this approach, the cumulative effect of retroactively applying Statement 123 for financial statements not presented would not be reflected as of the beginning of the earliest year presented. Restatement of years prior to the earliest period presented would not be required, but would be permitted.

The news releases by the FASB are available on its web site at *www.fasb.org*.

Cases, Releases and Rulings

The Office of the Comptroller of the Currency ("OCC") has issued a new handbook on personal fiduciary services entitled *"Personal Fiduciary Services"* which provides an overview of what is sometimes referred to as private wealth management, private client services and private banking. The booklet describes the risk of offering personal fiduciary services and the fundamentals of managing those risks. If a bank uses a third party vendor to conduct all or part of its personal fiduciary services, the bank's board and senior management must provide proper oversight to ensure that the activity is conducted in a safe and sound manner and in compliance with applicable law. The *Personal Fiduciary Services* handbook is available on the web site of the OCC at *www.occ.treas.gov.*

The board of directors of the New York Stock Exchange has approved significant changes to its listing standards to help restore investor confidence that include: requiring corporate boards to have a majority of independent directors; requiring non-management directors to meet at regularly scheduled executive sessions without management; requiring listed companies to have audit, compensation and nominating committees composed entirely of independent directors; and requiring shareholder approval of all equity-compensation plans. A comparison of the new listing standards to the current rules is available on the web site of the New York Stock Exchange at *www.nyse.com*.

Comments, ideas, opinions and questions - email gbinns@ddh-ar.com – telephone (501) 375-9151 – facsimile (501) 372-7142.