

UPDATE

News of Developments in the Financial Sector and Related Areas

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Comptroller of the Currency

In Conditional Approval No. 314 issued in July 1999, the Office of the Comptroller of the Currency ("OCC") issued preliminary approval for a charter of an uninsured national trust bank under the title "Generations Trust Bank, National Association" to be located in Long Beach, California, to engage solely in fiduciary activities requiring a minimum of \$2 million in Tier 1 capital.

In Conditional Approval No. 316 in July 1999, the OCC issued its conditional approval to Mellon Bank, N.A., Pittsburgh, Pennsylvania through a wholly-owned subsidiary, Mellon Leasing Corporation, for acquiring and holding a non-controlling interest in a limited liability company engaged in personal property leasing activities subject to conditions as follows:

- The limited liability company will engage only in activities that are part of, or incidental to, the business of banking.
- The bank will have veto power over any activities and major decisions of the limited liability company that are not incidental to the business of banking, or will withdraw from the limited liability company in the event that it engages in activities that are not incidental to the business of banking.
- The bank will account for its investment in the limited liability company under the equity or cost method of accounting.
- The limited liability company will be subject to OCC supervision, regulation and examination.

Covenant Not to Compete - Lack of Geographic Restriction

In Bendinger v. Marshalltown Trowel Company, 338 Ark. 410 (1999), the Arkansas Supreme Court was called upon to enforce a covenant not to compete which did not contain a geographic restriction. The facts in the case involved, among other things, a violation of a covenant not to compete arising from an employment contract by Fred S. Bendinger with Marshalltown Trowel Company. Bendinger was employed as an industrial engineer for Marshalltown beginning in 1970, when he graduated from college. When his employment began, no written employment document was executed. However, in 1978, at Marshalltown's request,

Bendinger signed an agreement which provided that for two years following termination of his employment with Marshalltown, he would not directly or indirectly render service to a business competitor of Marshalltown. In 1984, after Marshalltown expanded its business and opened a new plant in Fayetteville, Arkansas, Bendinger was asked to execute a second employment agreement which contained provisions identical to the 1978 agreement. Subsequently, Bendinger left the employment of Marshalltown and went to work for a competitor in Kansas. Marshalltown brought suit in Arkansas to enforce the restrictive covenant. Although Marshalltown argued that the term "competitor" should include any trowel industry that is in competition with Marshalltown in the United States, regardless of where that company is located, the Arkansas Supreme Court held that the failure of the covenant to contain a geographic restriction rendered it overbroad and unenforceable.

Sharing of Fees by Lawyers

The American Bar Association, at its Annual Meeting in Atlanta, Georgia last month, postponed a vote on a proposal to allow lawyers to share fees with accountants and other professionals even though consulting firms and large accounting firms have already purchased law firms outside the United States.

Unitary Thrift Charters

The Office of Thrift Supervision has approved applications for unitary thrift charters from approximately 20 insurance companies and 10 non-bank companies. There are approximately 29 applications pending from insurance companies and non-bank companies, including the recent application filed by Wal-Mart Stores, Inc.

Bank Branch Closings

Federal banking and thrift agencies have issued a joint statement formalizing the

reporting requirements associated with bank branch closings. Banks are required to send notices of such closings to their supervisory agencies and customers at least 90 days prior to the closing. An interstate bank that wants to close a branch in a low- or moderate-income neighborhood must provide those customers the mailing address of the appropriate federal banking agency should the customer desire to comment on the closing. The definition of "branch" excludes automated teller machines, remote service facilities and loan production offices.

Y2K Act Legislation

Recently, the Y2K Readiness and Responsibility Act was signed into law to provide protection to entities against lawsuits that may arise as a result of Y2K failures. The legislation includes prelitigation notice requirements, proportionate liability limitations and caps on punitive damages. The law includes a provision which grants federal question jurisdiction over most Y2K class actions.

Broker-Dealer Compliance Website

The Securities and Exchange Commission's ("SEC") Division of Market Regulation recently posted its *Compliance Guide to the Registration and Regulation of Brokers and Dealers* ("Compliance Guide") on the SEC's Website. The *Compliance Guide* provides an overview of the Securities Exchange Act of 1934, and summarizes who is required to register as a broker-dealer, how and with whom broker-dealers should register, standards of conduct and financial responsibility rules for broker-dealers. The *Compliance Guide* may be accessed at <http://www.sec.gov/offices/market/bdguide.htm>.