Financial Services Modernization: The Gramm-Leach-Bliley Act

A White Paper on its Significance
for
Commercial Banks
and
Bank Holding Companies

November 1999

STRADLEY RONON
ATTORNEYS AT LAW

STRADLEY RONON STEVENS & YOUNG, LLP

2600 One Commerce Square
Philadelphia, PA 19103-7098
215-564-8000
Facsimile: 215-564-8120
External Voice Mail: 215-564-8500

Great Valley Corporate Center 30 Valley Stream Parkway
Malvern, PA 19355-1481
610-640-5800
Facsimile: 610-640-1965
External Voice Mail: 610-651-2260

Woodland Falls Corporate Park
210 Lake Drive East, Suite 102
Cherry Hill, NJ 08002
856-321-2400
Facsimile: 856-321-2415
External Voice Mail: 856-321-2419

Suite 600
919 North Market Street
P.O. Box 2170
Wilmington, DE 19801
302-576-5850
Facsimile: 302-576-5858
External Voice Mail: 302-576-5880

2121 K Street, N.W.
Suite 800
Washington, DC 20037
202-261-3580
Facsimile: 202-261-3581
External Voice Mail: 202-261-3571

The Gramm-Leach-Bliley Act, enacted into law on November 12, 1999, and colloquially referred to as the "Financial Services Reform Act of 1999," tears down barriers between the banking, insurance and securities businesses. The legislation also establishes a framework for functional regulation of these financial industries and redefines the relative roles of federal and state governments and of federal agencies in regulating financial services.

This White Paper focuses on the selected provisions of the new law that affect commercial banks and bank holding companies. This White Paper does not examine all aspects of the new law, but only those that we believe may have strategic significance to management. If you have additional questions, please feel free to contact David F. Scranton at (610) 640-5806, or your Stradley Ronon attorney.

The following discussion summarizes the new law's impact, according to topic. While it generally follows the organization of the legislation itself, discussion of some provisions of the law has been reorganized in order to assist readers in understanding the legislation's total impact in each area of financial services. This discussion includes references to sections of the law for readers who want to refer to the law itself. The text of the legislation is currently available on the Conference Committee web site at http://www.house.gov/banking/s900conf.htm, in .pdf format, and also will be available elsewhere shortly.

Where the new law designates delayed effective dates, the reference to the delayed effective date is <u>underlined</u> in the text below. In addition, management tips are set forth in *italics*, in order to better focus on questions, issues and ideas presented by the new law.

I. AFFILIATIONS AND FINANCIAL ACTIVITIES

Title I of the legislation deals primarily with affiliations and financial activities affecting banking institutions and their holding companies. With the exception of the provisions dealing with state insurance laws in Section 104, the provisions permitting broader affiliation will <u>become effective 120 days after enactment, or on March 12, 2000</u>.

***Management Tip: Consummation** of acquisitions, not permitted under prior law, may have to be delayed until the new law becomes effective. However, this should not prevent parties from entering into agreements for mergers or acquisitions, subject to the effectiveness of the new law and any necessary regulatory approvals.*

Section 101 repeals the restrictions contained in sections 20 and 32 of the Glass-Steagall Act on banks affiliating with securities firms. The Glass-Steagall Act, Section 20, prohibited affiliations between securities firms and Federal Reserve System banks (including national banks). The Glass-Steagall Act, Section 32, prohibited officer, director and employee interlocks between member banks and securities firms.

The new law does <u>not</u> repeal Sections 16 or 21 of the Glass-Steagall Act. Section 16 prohibits national banks from underwriting securities (with specific exceptions) or dealing in securities, except with recourse for the account of customers. Section 21 prohibits securities firms from accepting deposits and, as supplemented by other banking laws, imposes on banks and insured depository institutions essentially the same prohibitions that Section 16 imposes on national banks. In addition, except where the new law affirmatively grants banking institutions or their holding companies securities powers, other existing laws and regulations may still prohibit or limit banks' securities activities or affiliations with securities firms.

Management Tip: *The Federal Reserve and other banking regulators have established certain "firewalls," and other safeguards, such as cross-marketing restrictions, that are imposed on bank holding companies owning securities affiliates. The purpose of these firewalls is to limit an affiliate bank's liability for securities activity risks. It is not clear from the legislation how firewall and cross-marketing restriction rules might apply.*

Section 103 enacts new Sections 4(k) and 4(l), under the Bank Holding Company Act, to permit a bank holding company to elect to become a "financial holding company" under certain circumstances. By electing financial holding company status, a bank holding company can then engage in activities that are "financial" in nature, including certain activities to be prescribed by Federal Reserve regulation, and a statutory list including: (A) lending, transferring, exchanging, investing for others, or safeguarding money or securities; (B) providing insurance as principal, agent or broker; (C) providing financial, investment or economic advisory services; (D) issuing or selling interests in pools of bank-eligible assets; (E) underwriting, dealing or making a market in securities; (F) participating in activities heretofore approved by the Federal Reserve as "closely related" to banking; (G) merchant banking and investment banking activities through a nondepository securities or insurance affiliate; and (H) underwriting and merchant banking activities on certain statutory conditions.

The new law also permits financial holding companies and their subsidiaries to engage in activities that are "complementary" to financial activities, if the Federal Reserve Board determines that the activity does not pose a substantial risk to the safety or soundness of depository institutions or to the financial system in general. This category is potentially much broader and might, for example, include such diverse activities as becoming an internet service provider or providing travel agency services.

The new law also permits financial holding companies to own the stock of nonfinancial companies in two new instances: as part of the merchant banking activities of a securities subsidiary, or as a portfolio investment of an insurance company subsidiary. Each of these activities is likely to be subject to substantial regulation and limitation by the Federal Reserve. In general, the merchant banking authority only extends to temporary investments for the purpose of performing functions of an underwriter, investment banker or the like, but would authorize the securities subsidiary to make the investment as principal or agent. Insurance company portfolio investments: (i) must not be acquired or held by a depository institution or a subsidiary of a depository institution; (ii) must be acquired and held by an insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty (other than credit-related) insurance, or in providing and issuing annuities; and (iii) must represent an investment made in the ordinary course of business of such insurance company, in accordance with relevant state law governing such investments. Neither the financial holding company, nor its subsidiary, may routinely manage or operate the portfolio company, except as may be necessary or required to obtain a reasonable return on the investment.

To become eligible to engage in the new types of financial activities, a bank holding company must file an election with the Federal Reserve to become a financial holding company, and must certify that all of its insured depository institution subsidiaries are well capitalized and well-managed, and have at least a satisfactory CRA rating. Section 102 limits non-electing bank holding companies to only those activities that the Federal Reserve had approved for bank holding companies prior to enactment of the legislation.

Management Tip*: In Senate debate on November 3, Senator Gramm (R. Tex.), the Chairman of the Senate Banking Committee, pointed out, "Once a company becomes a financial services holding company, they can invest any amount of their money and grow any activity already engaged in within the financial services holding company, without regard to CRA. If they want to commence a new activity, on the date they make that undertaking they have to have been in compliance with CRA as certified on their last CRA report. This does not trigger a new audit. This does not entertain any new protest. It simply is a verification by the regulator that on that day of commencing their new activity, their most recent evaluation will have shown that they had at least a satisfactory CRA rating." Senator Bryan (D. Nev.) further pointed out in the November 4 debate that if a financial holding company embarks on the new activities without meeting the applicable criteria, its regulator could now use the enforcement authority under Section 8 of the Federal Deposit Insurance Act to impose civil money penalties on bank directors and officers. Thus, while the statute is liberal in permitting new activities without prior approval, the potential penalties for failing to meet the statute's requirements are severe.*

Once financial holding company status has been properly elected, prior approval of the Federal Reserve is not required for the conduct of the permitted activities. The financial holding company need only provide notice to the regulatory agency within 30 days after commencement or acquisition of activities.

Section 105 provides for parity regulation of mutual bank holding companies.

II. BANK SUBSIDIARIES

The legislation permits national banks to engage in "financial activities" through "financial subsidiaries" with the same conditions as established for financial holding companies. However, the legislation requires that a national bank obtain the approval of the OCC before commencing new financial activities. Section 121 specifically prohibits banks from engaging in four types of financial activities through bank subsidiaries: insurance or annuity underwriting, insurance company portfolio investments, real estate investment and development, and merchant banking (subject to section 122). These types of financial activities may only be undertaken by subsidiaries of financial holding companies. In addition, under Section 122, if the activity is one in which the national bank could not engage directly, the subsidiary is only allowed to engage in the activity as an agent, and not as a principal.

The new legislation applies in the same way to subsidiaries of insured state banks, except that state banks are permitted to continue existing activities in existing subsidiaries.

Management Tip: *Under the new law, there may still be some advantages to operating as a federal savings bank, rather than as a national bank. For example, while the advantages of unitary savings and loan holding companies have been taken away for new applicants, federal savings bank operating subsidiaries still have broader activities powers than the new financial subsidiaries. In addition, federal savings banks still offer some benefits in pre-emptive protection from state laws and interstate branching. Nevertheless, publicly held savings organizations still appear to trade at generally lower multiples of book value and earnings.*

Under Section 121, the aggregate assets of all financial subsidiaries may not exceed 45% of the parent bank's consolidated assets, or $50 billion, whichever is less. The national bank must be well-capitalized and well-managed. National banks with over $1 billion in assets are required to have an issue of outstanding subordinated debt that is rated in one of the two highest rating categories by an independent rating agency. Investments in financial subsidiaries must be deducted from the bank's capital and the assets and liabilities of financial subsidiaries are not to be consolidated with those of the bank.

Management Tip: *There appears to be some uncertainty under the new law regarding the exact limitations on bank investment in financial subsidiaries. While the language of the bill states that a bank may invest not more than the lesser of 45% of bank consolidated assets or $50 million, other legislative materials describe other limitations. The Conference Report states that equity investments by a national bank must not exceed the amount the bank could pay as a dividend without obtaining prior regulatory approval. Furthermore, in proposing the Conference Committee's amendments on November 3, Senator Gramm stated, that "We limit all subsidiaries that banks can engage in, and the investments they can make within the bank itself, to no more than 20 percent of the capital of the bank." It appears that Senator Gramm's statement is a reference to the limitations of Section 23A of the Federal Reserve Act (see immediately below), that limit the total of investments and loans of a bank with its affiliates to an aggregate of 20% of the bank's capital for all affiliates.*

Section 121 provides that transactions between a national bank or state chartered bank and its financial subsidiary are generally subject to Sections 23A and 23B of the Federal Reserve Act. However, the limitation in Section 23A on investments and loans to any affiliate, 10% of the bank's capital will not apply to financial subsidiaries.

Management Tip: *The Managers of the legislation stated that the new provisions on finance subsidiaries are intended to supersede and replace the OCC's regulations on operating subsidiaries. It is not clear how the new law applies to* <u>*existing*</u> *operating subsidiaries. For example, must national banks now deduct investments in their existing operating subsidiaries from bank capital? If so, banks might need to consider merging some or all of their operating subsidiaries in order to maintain acceptable regulatory capital levels.*

III. ANTITRUST AND TRADE PRACTICES REGULATION

Section 123 modifies the pre-merger notification provisions of the Bank Holding Company Act to require the Federal Reserve to notify the FTC, as well as the Justice Department, of any approval granted by the Federal Reserve under Section 4 of the Bank Holding Company Act (non-banking activities).

Section 124 requires banking agencies to provide information requested by the Justice Department or the FTC in conducting an antitrust review of banking merger or acquisition transactions. The legislation requires the antitrust agency to notify the relevant banking agencies before disclosing any information received. The legislation does not expressly provide for notice to the applicant bank holding company, or for the ability of a bank holding company applicant to oppose the disclosure.

Section 133 clarifies the FTC's antitrust and trade regulation jurisdiction over holding companies and other non-depository affiliates. This clarification can impact enforcement of FTC trade practice rules and can expose bank holding companies and their non-bank subsidiaries to FTC enforcement with respect to unfair methods of competition under Section 5 of the Federal Trade Commission Act. A recent example of FTC enforcement activity has been enforcement of privacy policies against enterprises operating on the internet.

Management Tip: *The anti-tying provisions of the Bank Holding Company Act, and the corresponding regulations, impose very specific and limited restrictions on the tying of non-traditional banking products and services. At the same time, these provisions make clear that traditional banking products and services may be tied or bundled <u>by banks</u>, without risk of antitrust liability. Bank holding companies involved in any extensive non-banking activities should do a comprehensive antitrust review of their activities under federal and state antitrust laws and regulations.*

Section 133 also subjects certain transactions to Hart-Scott-Rodino ("HSR") approval by the FTC, although the same transactions might not be subject to HSR approval under current banking laws. Thus, certain mergers and acquisitions involving nonbanking entities will be subject to FTC review in accordance with HSR, as well as to banking, insurance or securities regulatory agency approvals.

Management Tip: *Section 114 cuts across all of the affiliation provisions by giving the federal banking regulators authority to place restrictions or requirements on relationships or transactions between a bank and an affiliated company or a subsidiary. It is likely that a variety of "firewall" and other restrictions will be proposed and adopted by the regulatory agencies during the 120 days prior to the effective date of Title I's affiliation provisions.*

IV. SECURITIES ACTIVITIES OF BANKING ORGANIZATIONS

The provisions governing securities-related activities of banking institutions are contained primarily in Title II of the legislation, which generally provides for functional regulation of bank securities activities. These provisions will become effective 18 months after enactment, on May 12, 2001.

Section 151 (part of Title I and subject to its effective date) authorizes well-capitalized national banks to underwrite municipal revenue bonds. This authority expands upon the present power to underwrite general obligation bonds.

Under Sections 201 and 202, amending Section 3(a)(4) and (5) of the Securities Exchange Act of 1934 (the "1934 Act"), the broad exemptions banks have from broker-dealer regulation would be replaced by more limited exemptions designed to permit banks to continue their current activities and to develop new products. The limited exemptions would cover transactions in connection with the following bank activities: trust activities, provided the bank does not publicly solicit brokerage business in such connection; transactions in commercial paper, municipal securities, exempt securities and the like; employee stock purchase and other benefit plans and dividend reinvestment plans; sweep accounts for investment into registered funds; transactions with affiliates; private placements of securities, except that (subject to a transition provision) banks with broker-dealer affiliates may not do so; safekeeping and custody activities; self-directed IRAs; third party networking arrangements with a registered broker or dealer, subject to conditions similar to those which have been applied historically by the SEC; and handling certain existing banking products referred to in Section 206. The legislation also gives banks a *de minimis* exemption for not more than 500 securities transactions a year, relating to securities not covered by one of the exemptions. However, bank transactions in publicly traded securities must, in certain circumstances, be directed to a registered broker or dealer for execution.

Section 203 provides for an automatic, limited broker-dealer qualification, without need of testing, for individuals who are "associated persons" (under applicable securities laws) with a bank, to the extent that their activities are limited to effecting private placements of securities.

Under Sections 201 and 206, banks would be able to continue to be active participants in the derivatives business for credit and equity swaps, other than equity swaps to retail customers.

Section 205 provides for a "jump ball" rulemaking and resolution process between the SEC and the Federal Reserve, with advance notice to the banking industry regarding future "hybrid products" that banks may develop and that the SEC heretofore has not regulated as securities. Under the legislation, the SEC must consult with the Federal Reserve and obtain its concurrence on the proposed regulation. The SEC must propose the rulemaking formally and must also find that the product is a security, before seeking to regulate bank sales of any such new products.

To resolve a recent dispute between the banking industry and the SEC, Section 241 now requires the SEC to consult with federal banking agencies before taking any action or rendering any opinion regarding the amount of an institution's loan loss reserve or the institution's treatment of those reserves.

V. BANK-AFFILIATED FUNDS AND COLLECTIVE INVESTMENT VEHICLES

The provisions affecting bank-affiliated mutual funds and other collective investment vehicles will be effective 18 months after enactment of the legislation, or on May 12, 2001.

Section 211 authorizes the SEC to adopt regulations governing when a bank or its affiliate (an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a mutual fund or unit investment trust) may serve as custodian or trustee for the fund or trust.

Section 212 prohibits persons affiliated with or under common control with certain registered investment companies from loaning funds to the investment company, except in accordance with such regulations as the SEC may adopt after consultation with the banking regulators.

For purposes of determining the independence of fund directors, Section 213 expands the definition of an "interested person" to include anyone who within the 6 months preceding the date of determination, either (i) executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for the investment company in question or any related investment company, or (ii) loaned money or other property to the investment company, any related investment company, or any account for which the same investment adviser has borrowing authority. It also includes their affiliated persons.

Further, Section 213 states that persons who are officers, directors of employees of any one bank (or bank holding company), its affiliates, or its subsidiaries may not constitute a majority of fund directors.

Section 214 requires disclosures regarding absence of FDIC insurance for funds that are advised by or related to banks. The SEC is given rulemaking authority regarding such disclosures, subject to consultation with banking regulators.

Section 217 amends the Investment Advisers Act to require a bank or its separate department (such as a trust department or a segregated investment advisory unit) to register as an investment adviser, to the extent that it advises any registered investment company.

Management Tip: *After this new legislation, to the extent that a bank, trust company, savings institution, bank holding company or financial holding company wants to provide investment advisory services on a stand-alone basis (i.e., not incidental to trust or brokerage services), its choice of entity may continue to determine whether or not registration as an investment adviser is required. Both federal and state laws must be considered.*

Section 221 amends federal securities laws to exclude certain bank collective investment vehicles from treatment as investment companies, and hence to exempt them from registration, only if: (A) the fund is employed by the bank solely as an aid to the administration of fiduciary accounts; (B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in the fund are not advertised or offered for sale to the general public; and (C) fees and expenses charged by the fund are not in contravention of fiduciary principles established under applicable federal or state law.

VI. INSURANCE ACTIVITIES OF BANKING ORGANIZATIONS

Sections 104 and 301 promote functional regulation of insurance activities by reaffirming state regulation of insurance and state licensing requirements (including the states' powers to regulate national bank insurance activities). However, the legislation restricts states from prohibiting sales of insurance by banks and their affiliates, or from discriminating against banking institutions with regard to insurance activities. Section 306 preempts most state laws that would restrict affiliations between banks and insurance organizations.

Section 302 prohibits national banks and their subsidiaries from providing insurance as a principal, except for "approved products." Approved product are those that the law defines as approved for issuance by a national bank prior to January 1, 1999, and not overturned by a court on appeal. The law specifically provides, however, that title insurance and many annuity contracts are not "approved products." The new law provides rules for resolving differences between state and federal regulators regarding which new products are considered to be "insurance."

Section 303 prohibits national banks from engaging in "any activity related to the underwriting or sale" of title insurance.

Management Tip: *Can the new law be interpreted to prohibit national banks or their employees from referring customers to title insurance agencies? Can it be interpreted to prohibit national banks from offering their facilities to support settlements hosted by title agencies? The new statute's language may be ambiguous.*

While Section 302 prohibits national bank subsidiaries from offering insurance as a principal, it permits national bank subsidiaries to act as title insurance agents. Section 303 also permits national banks to sell title insurance as agents in a state to the same extent state banks are permitted to do so.

Section 305 directs the Federal banking agencies to establish consumer protections governing bank insurance sales, including, segregation of insurance sales activities from other bank activities such as deposit taking, and a consumer grievance process. These rules must be finally adopted within 1 year of the law going into effect, or by November 12, 2000.

Management Tip: *In debate on November 3, Senator Sarbanes suggested that these rules will deal with issues such as sales practices, including anti-tying and anti-coercion rules; advertising; location, limiting sales to an area physically segregated from the one where deposits are taken; and qualification and licensing of sales personnel. Banking trade groups will need to work intensively with the banking regulators to ensure that the final restrictions do not unfairly disadvantage banking organizations in their insurance activities, when compared with the restrictions imposed on non-banking insurance organizations.*

VII. PRIVACY

In general, the new privacy standards are likely to become effective 6 months after final regulations are adopted by the applicable agencies. All applicable federal regulatory agencies must adopt final rules within 6 months after the law's enactment, or by May 12, 2000. Hence, <u>the new privacy rules will become effective in November 2000</u>, unless the regulators defer the compliance date.

Management Tip: *The regulations will be critical in defining institutions' privacy and disclosure responsibilities. Institutions should remain informed on the status of proposed regulations.*

The new privacy rules apply to an "institution" engaged in any "financial activity," as described in the new financial holding company law. For "financial institutions" that are not supervised by a federal banking agency or other designated agencies, the Federal Trade Commission has jurisdiction and responsibility for rulemaking and enforcement.

Management Tip: *The new privacy rules have potentially much broader application than has generally been publicized. For example, because lending is a financial activity, all lending organizations are potentially subject to the rules. Likewise, it is possible that financial planners and other financial advisers will need to wrestle with the implications of the new privacy rules. Could the rules extend as far as accountants who provide tax advice and tax planning services?*

Section 501 states the sense of Congress that financial institutions have an affirmative obligation to protect their customers' privacy and the security and confidentiality of their customers' nonpublic personal information. It requires the applicable agencies to adopt regulations implementing this policy.

Management Tip: *State courts have reached various conclusions regarding whether a bank customer has a right to privacy and, if so, what its scope might be. This provision raises additional questions regarding potential liability risks. You should revisit your privacy obligations with your legal counsel, in light of the new federal law.*

Section 502 prohibits the disclosure of nonpublic personal information to nonaffiliated third parties unless (i) the institution provides its customer with required notices; and (ii) the customer is advised of his or her right to "opt out" of such disclosures before the disclosure is made.

Management Tip: *In debate on November 4, Senator Bryan pointed out that the new law would not give a customer the right to opt out of disclosures between affiliated companies, as long as the policy on disclosures to affiliates is adequately disclosed to the customer.*

Section 502 provides that the opt-out requirement does not apply to third party services or joint marketing arrangements between a financial institution and third parties, if the parties comply with applicable regulations and statutory requirements. In any event, financial institutions are not authorized to disclose account numbers or access codes to third parties for marketing purposes.

Management Tip: *The text of Section 502(b) is not clear on whether a single opt-out can be offered to cover all third-party disclosures, or whether each customer must opt-out of each third party disclosure separately. In colloquy on the Senate floor, Senator Gramm clarified that as long as consumers receive a notice that gives them a clear choice about whether or not the information can be transferred to non-affiliated third parties, the opt-out choice need not be provided separately for each disclosure of such information.*

Section 502 provides that the foregoing restrictions do not apply to disclosures made: (1) to service an account or customer or the securitization of a customer's loan; (2) with the customer's consent; (3) to protect information, confidentiality, or security; (4) to others with an interest in the account, or acting as fiduciary for the customer; (5) to rating agencies or the institution's auditors, attorneys, or examiners; (6) to law enforcement authorities, in conformity with the Right to Financial Privacy Act; (7) in compliance with the Fair Credit Reporting Act; (8) in connection with a merger, acquisition, or sale of business; or (9) to comply with applicable laws or legal process. Section 504 authorizes regulators to prescribe exceptions to the notice and disclosure requirements of section 502.

Management Tip: *The new law might be interpreted to impose the federal Right to Financial Privacy Act's procedural requirements and substantive restrictions to inquiries by* <u>*state and local government agencies and law enforcement authorities*</u>*. Likewise, if a state or local agency complies with the prerequisites of the Right to Financial Privacy Act, an argument might be made that disclosures to state or local agencies might be permitted or even required. You should consult with counsel regarding the possible interpretation of the new law in this regard.*

Section 503 requires financial institutions to disclose their privacy and disclosure policies at the time of establishing a relationship with a consumer, and not less than annually during the continuation of the relationship.

Management Tip: *Institutions should begin to routinely include customer consents to information disclosure in all deposit, loan and other customer agreements and applications. These consents should cover any information disclosures which might be needed or desirable in connection with administering the relationship or cross-marketing.*

Management Tip: *House debate on November 4 among Representatives Leach (R. Iowa), the Chairman of the House Banking Committee, Roukema (R. New Jersey) and Oxley (R. Ohio), suggests that subsequent annual disclosures would not be required for one-time* *transactions or terminated customer relationships.*

The privacy policy disclosures must comply with specific standards set forth in Section 503 and with additional regulations to be promulgated by the applicable federal regulators under Section 504.

Management Tip: *A recent FTC enforcement action against GeoCities for misstating its privacy and data-gathering practices to web-site visitors, along with subsequent rulemaking by the FTC, make it clear that a failure fully and truthfully to disclose to a customer all relevant information gathering and sharing practices, can be an "unfair or deceptive act or practice" under Section 5(a) of the Federal Trade Commission Act. These standards will probably apply to banking organizations under the new law.*

Section 505 grants authority to applicable regulators to enforce the privacy rules of Title V of the legislation, and clarifies that the remedies described in Section 505 are the exclusive remedies for violations of the subtitle. Previous versions of the legislation had proposed giving consumers a private right of action to enforce the privacy and disclosure requirements. Section 505 also clarifies that nothing in the privacy provisions is intended to modify, limit, or supersede the operation of the Fair Credit Reporting Act.

Section 507 permits states to adopt more stringent privacy standards.

Management Tip: *A recent Pennsylvania appellate case established a broad right of customer privacy. It is not clear whether that court decision will limit rights of financial institutions to share customer data. Some other states' courts have reached similar decisions, and most states' attorneys general have been reviewing issues relating to the use of customer information. You should seek counsel regarding use of customer information, both under the new federal law and under applicable state law.*

VIII. ATM FEES

Section 702 mandates the adoption of regulations to require ATM operators who impose a fee for noncustomer use of an ATM to post a notice on the machine and on the screen that a fee of a specific amount will be charged. This notice must be posted before the consumer is irrevocably committed to completing the transaction. A paper notice issued from the machine may be used in lieu of a posting on the screen. No surcharge may be imposed unless the notices are made and the consumer elects to proceed with the transaction. Provision is made for those older machines that are unable to provide the notices required. Section 705 exempts ATM operators from liability if properly placed notices on the machines are subsequently removed, damaged, or altered by anyone other than the ATM operator.

Section 703 requires standard EFT disclosures to include what other parties may charge for transactions at ATMs not operated by the card issuer.

IX. CRA

Section 711 requires each party to an agreement to disclose to applicable banking agencies and the public, certain agreements between a federally insured depository institution and an unaffiliated non-governmental entity made pursuant to, or in connection with, the Community Reinvestment Act of 1977 (the "CRA"). This rule applies if the agreement involves "funds or other resources" of the institution. The institution must report annually to the applicable federal banking regulator, regarding payments, loans and other matters relating to the agreements. The other party must provide an annual, detailed, itemized accounting of the use of any funds received pursuant to such agreements. Agreements entered into during the 6 months after enactment of the legislation (that is, until May 12, 2000) are not subject to annual reporting, but are subject to the disclosure requirement. Agreements with any one entity which are "substantively related" and which provide, in the aggregate, more than $10,000 in cash or other consideration, or more than $50,000 in loans in any 12 month period, must be disclosed and are subject to annual reporting. For these purposes, "agreements" do not include (i) individual mortgage loans; (ii) agreements for loans not on market terms and not for purposes of re-lending; and (iii) agreements with anyone who has not commented on, testified about, or contacted the institution, concerning the CRA.

Section 712 amends the CRA to provide some regulatory relief for small banks (aggregate assets of $250 million or less) by permitting CRA examinations at 5-year intervals for those with an "outstanding" CRA rating, 4-year intervals for those with at least a "satisfactory" CRA rating, and as deemed necessary by federal banking regulators for those achieving less than a satisfactory rating. Institutions are nevertheless subject to CRA examination in connection with an application for any "deposit facility," which, according to the Conference Report, includes any merger or establishment of a newly chartered institution, new branch or relocation of a home branch office.

X. MOST FAVORED LENDER PARITY WITH INTERSTATE BANKS

Section 731 amends Section 44 of the Federal Deposit Insurance Act to provide "most favored lender" interest rate between and among in-state and out-of-state banks in any host state. It provides that, if the host state's maximum interest rate ceiling is not more than 5% over the Federal Reserve 90-day commercial paper rate, institutions for whom the host state is their home state are entitled to charge interest for any transaction at a rate equal to the higher of (i) the rate which may be charged locally on a similar transaction by any out-of-state institution, or (ii) the rate which may be charged by any institution chartered in the home state or by any national bank or federal savings association whose main office is located in the host state.

XI. PUBLIC UTILITY DIRECTOR INTERLOCKS

Section 737 amends the Federal Power Act to allow directors to serve on the boards of both public utility companies and banks.