Banking Legislation & Policy

October - December 2004 Volume 23, Number 4

HIGHLIGHTS

Recent Developments
Ban on Visa's and MasterCard's Exclusionary Rules Still Stands 1
Ernst & Young Reach Agreement with FDIC about Thrift Audits 2

Summary of Federal Legislation
National Security Intelligence Reform Act 2
Preservation of Federalism in Banking Act 3

Summary of Federal Regulations
Retail Credit Risk 3
Property Flipping 4
Revised Bank Holding Company Rating System 5
Preemption of State Licensing and Registration Requirements 5
Community Reinvestment Act 6
Identity Theft 6

Summary of Judicial Developments
Supreme Court Caps TILA Damages on Personal Property Loans 6

Recent Developments

Visa and MasterCard Case

On October 4, the U.S. Supreme Court declined to hear an appeal of a lower court ruling that prohibits Visa and MasterCard from enforcing rules that require member banks to issue only their credit cards and not American Express and Discover cards (*Visa U.S.A. Inc. v. U.S.*, No. 03-1521, and *MasterCard International Inc. v. U.S.*, No. 03-1532). Visa and MasterCard are each owned by their member banks. As part of their rules, Visa's and MasterCard's member banks are permitted to issue each other's credit cards, but they are prevented from issuing American Express and Discover cards. Lower courts concluded that these exclusionary rules are anticompetitive and prevent American Express and Discover from fairly competing for business. In addition, the rules offered no positive gain to offset the negative. Therefore, the courts required Visa and MasterCard to discontinue enforcing these rules (see "Court Rules against Visa and MasterCard in Antitrust Case," *Banking Legislation and Policy*, October-December 2001). Visa and MasterCard petitioned the U.S. Supreme Court to hear the case, but the court declined, letting stand the previous ruling. Upon the Supreme Court's refusal

to hear the case, Discover Financial Services filed a suit against the two credit card companies in a New York federal court. Discover is seeking damages for Visa's and MasterCard's alleged anticompetitive practices.

Ernst & Young Reach Agreement with FDIC about Thrift Audits

On December 24, Ernst & Young reached an agreement with the Federal Deposit Insurance Corporation (FDIC) about Ernst & Young's audits of Superior Bank FSB, Hinsdale, Ill., which was closed by the Office of Thrift Supervision (OTS) on July 27, 2001. As part of the settlement, Ernst & Young must pay $85 million in restitution and, for the next five years, must comply with stricter exam procedures for savings association audits. Some of the stipulations include requiring Ernst & Young to establish a "review group" in its national office to supervise the audits of all savings associations. The review group's other responsibilities include assigning the auditors responsible for savings association audits (including the lead auditor and independent review partner) and monitoring the training of employees who perform savings association audits.

The lead auditor, the person in charge of the audit, must be responsible for every aspect of the audit, including planning the audit, ensuring that it complies with generally accepted accounting standards, and signing off on all review documents. The independent review partner must work separately from the audit team to verify all of the audit findings. A lead auditor and independent review partner may work with any particular savings association only for five consecutive years and then must take a five-year break from working with that association. Other members of the audit team may work on audits of a particular thrift for seven consecutive years and then must take a two-year break.

SUMMARY OF FEDERAL LEGISLATION

Enacted Legislation

1. Consolidated Appropriations Act (H.R. 4818). Introduced by Rep. Kolbe (R-AZ) on July 13, 2004.

Status: Signed by President George W. Bush on December 8, 2004, and became Public Law No. 108-447.

The 2005 government spending bill includes a one-year extension of a ban that prohibits the Treasury Department from using funds to implement or enforce a rule that allows banks to engage in real estate brokerage activities. The new ban will exist until September 30, 2005. The bill also includes a provision that reauthorizes the Small Business Administration (SBA) and its 7(a) loan program for an additional two years. The 7(a) loan program will now operate as a "zero subsidy," meaning it will not receive financial support from the government and instead will rely on fees paid by lenders and borrowers.

2. National Security Intelligence Reform Act of 2004 (S. 2845). Introduced by Sen. Collins (R-Maine) on September 23, 2004.

Status: Signed by President George W. Bush on December 17, 2004, and became Public Law No. 108-458.

This bill includes a ban that prohibits bank examiners, for a time, from accepting certain positions at banks they examined during the final months of being employed by a federal banking regulator. If, during the last year of an examiner's employment, he or she spent two or more months serving as the senior examiner of a depository institution, he or she is prohibited from serving as an officer, employee, director, or consultant for that depository institution for at least one year after leaving the regulatory agency. Examiners are also prohibited from accepting similar positions with any company that controls the depository institution. Federal banking agencies may grant a waiver from this provision on a case-by-case basis.

New Legislation

1. Consumer Checking Account Fairness Act (H.R. 5410). Introduced by Rep. Maloney (D-NY) on November 19, 2004.

Status: Referred to the House Committee on Financial Services.

This bill would require banks to credit deposits to consumer checking accounts faster. Suppose that a consumer makes a deposit into his or her account and the bank receives settlement on the deposit, but the bank has not yet made the funds available to the account holder. If the account holder then overdraws the account before the funds are made available, the bank could not assess an over-the-limit charge if the overdraft would have been prevented had the funds been made available sooner.

Further, the bill would require banks to credit all deposits to an account before debiting any checks written on the account. If a bank treats Saturday as a business day when debiting items from accounts, the bank would also be required to treat Saturday as a business day when crediting deposits to accounts. Finally, if a bank chooses to honor a check written on an overdrawn account and pay the

check, the bank may not assess a fee for paying the check unless the consumer has requested the overdraft protection service.

2. Preservation of Federalism in Banking Act (H.R. 5251). Introduced by Rep. Frank (D-MA) on October 7, 2004.

Status: Referred to the House Subcommittee on Financial Institutions and Consumer Credit.

This bill would make some state laws applicable to national banks, even if the Office of the Comptroller of the Currency (OCC) had previously ruled they were preempted by federal laws and regulations. First, the bill would require national banks to comply with state consumer fraud laws or laws that relate to unfair or deceptive acts or practices, as long as they don't conflict with any other federal law. Next, if a state bank must comply with certain state laws, this bill would require national banks to also adhere to the laws, as long they do not conflict with federal laws. Further, if federal laws, such as the Gramm-Leach-Bliley Act and the Consumer Credit Protection Act, permit states to expand existing federal laws, national banks would be required to comply with those state laws. These provisions would not apply if the state law discriminates against national banks.

The bill would also allow state attorneys general to bring judicial action against national banks, when appropriate, to enforce federal and state laws. State attorneys general could also seek relief and recover damages on behalf of the state's residents if a national bank violates any federal or state law.

Under this bill, the OCC would be required to monitor each complaint registered by a consumer against a national bank or its subsidiary. The OCC would be required to record the date and nature of the complaint, when and how the complaint was resolved, and whether the complaint involves any alleged violation of a state law. The OCC would then be required to report these records to Congress semi-annually.

SUMMARY OF FEDERAL REGULATIONS

The Office of the Comptroller of the Currency

Retail Credit Risk (10/27)

The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (together, the agencies) issued a notice of proposed supervisory guidance for depository institutions that would use the internal-ratings-based (IRB) approach to determine their regulatory capital requirements for retail credit risk under the new Basel II framework (for more information about Basel II, see *Banking Legislation and Policy*, July-September 2004). This notice describes the agencies' current views on how banks will implement their IRB systems and requests comment before the corresponding notice of proposed rulemaking is issued.

The guidelines set forth definitions for various categories of retail exposures (residential mortgages, qualifying revolving exposures, and other retail loans, including some small-business loans). Each is linked with a separate risk weight function used to calculate unexpected losses and associated regulatory capital on the basis of estimates of probability of default (PD), loss given default (LGD), and exposure at default (EAD).

The bank is responsible for identifying pools of exposures (called *risk segments*) that exhibit similar risk characteristics. Risk parameters—PD, LGD, and EAD—are then estimated for each of these risk segments.

The guidelines outline in detail how banks should segment their portfolios and validate their segmentation methodologies. They also describe the kinds of information banks should retain, the importance of refreshing this information, and the tracking of the migration of their exposures across segments over time. For example, banks are expected to have at least five years' data on borrower and loan characteristics used to underwrite their exposures and, subsequently, to evaluate their credit risk. These data must include a period of economic stress. The guidelines also describe standards for the independent review of the bank's IRB systems and oversight by senior management and the board of directors.

The agencies also specifically requested comments in four areas: the definition of qualifying revolving exposures; the definition of default; the method of estimating loss given default; and the criteria used to assign exposures to different retail categories.

Under the advanced approach, banks will be able to hold less regulatory capital for their qualifying revolving exposures (QRE) as compared to other retail exposures with similar risk parameters (PD, LGD, and EAD). QREs consist of unsecured lines of credit of $100,000 or less that are unconditionally cancelable by the bank. In addition, the bank must demonstrate that these exposures exhibit a low volatility of loss rates as measured by the ratio of the standard deviation of historical loss rates divided by the average loss rate for these exposures. The proposed guidance does not specify how low the measured volatility must be in order to qualify as a QRE. The agencies request comment on how such a threshold should be determined.

Next, the proposed guidance suggests that a retail exposure will be considered in default when any of the following conditions are met: the exposure is 180 days past

due (for residential mortgages and revolving credits) or 120 days past due (all other retail loans); a partial or full chargeoff is taken against the exposure; or the exposure is put on nonaccrual status. While banks are not required to place exposures on nonaccrual status, many banks do. The agencies request comment on whether nonaccrual status should be included in the definition of default.

For each retail segment, banks must determine the loss given default (LGD), in percent. For segments where loss severity varies with the strength of the economy, banks must ensure that their LGD estimates take into account higher expected losses likely to occur during times when credit losses are unusually high. Among other things, the agencies seek comment on how to define "periods of high credit losses." The agencies also request comment on whether this adjustment should be made at the portfolio level of a particular bank or across banks at institutions consisting of more than one bank.

The agencies also request comment on the criteria used to allocate different kinds of exposures to the various retail categories with their associated regulatory capital requirements. For example, is it appropriate to limit the definition of a residential mortgage to properties with four or fewer housing units? Is it appropriate to assign small-business loans secured by residential real estate to the mortgage category or another retail category?

Comments on this proposed guidance were due January 25. For more information, see 69 *Federal Register*, pp. 62748-76.

Financial Warranty (10/29)

On October 29, the Office of the Comptroller of the Currency (OCC) issued an interpretive letter giving permission to a national bank and its subsidiary to make financial warranties on a mutual fund. The financial warranties guarantee that the bank's investment advice and monitoring services for the fund will generate a specified return, as long as the investor holds shares for seven years and reinvests all dividends and distributions in the fund. If the mutual fund does not produce the required return, the warranty ensures that the investor still receives the guaranteed return, because the bank's subsidiary will make up the difference between what was promised to the investor and what was earned by the fund. The bank then made an additional warranty to its subsidiary that the bank would pay for any amount the subsidiary owes the fund because of the fund's shortfall.

The OCC notes that an earlier interpretive ruling and several court cases set a precedent that a bank may issue a warranty on another entity's financial transaction if the bank has "sufficient interest" in the transaction, or, in other words, if it is for the bank's own benefit or in furtherance of its interests. The OCC ruled that this condition is satisfied by the bank for two reasons. First, by issuing the warranty, the bank is helping to ensure the financial performance of its subsidiary, which the OCC considers sufficient interest. Also, the OCC notes that the warranty is meaningful only if the fund does not perform as designed. Therefore, if the banking services provided by the bank work as planned, the warranty will never be redeemed. In that case, the bank is only advancing its own interests by providing a warranty on the services it provides. Therefore, the OCC ruled that as long as the bank meets certain safety and soundness requirements, it may offer a warranty to its subsidiary on the subsidiary's warranty to the mutual fund.

For more information, see OCC Interpretive Letter #1010.

Operating Subsidiaries (11/9)

The Office of the Comptroller of the Currency (OCC) issued a final rule to require national banks to file annual reports listing their operating subsidiaries that offer products and services to consumers in the U.S. but are not functionally regulated. The list, which is due to the OCC on January 31 of each year, must include information about subsidiaries for the previous year. The report must include the following information: 1) the national bank's name and charter number; 2) the subsidiary's name (including any additional names under which it does business), address, and telephone number; 3) the principal place the subsidiary does business (if it is different from the mailing address); and 4) the type of business the subsidiary does. Reports may be submitted electronically.

This final rule became effective December 6. For more information, see 69 *Federal Register*, pp. 64478-82.

Department of Housing and Urban Development

Low-Income Housing (11/26)

The Department of Housing and Urban Development (HUD) issued a final rule to allow public housing agencies (PHAs) to evict from low-income housing those families whose incomes are over the limit. Low-income housing is intended for families that earn less than 80 percent of the average median income. Once a family's income exceeds this threshold, PHAs will have the discretion to evict a higher income family to allow a low-income family on the waiting list to live in assisted housing. PHAs must determine the time frame in which a family may be over the limit before being evicted, and PHAs may take into consideration any other factors that may signal a family should remain in public housing rather than seeking unassisted housing. This rule gives PHAs the option only to evict over-income families and does not require them to incorporate this rule into their policies.

This final rule became effective December 27. For more information, see 69 *Federal Register*, pp. 68786-91.

Property Flipping (12/23)

The Department of Housing and Urban Development (HUD) issued an interim final rule to provide two excep-

tions to its rule that prohibits "flipped" properties from being eligible for mortgages insured by the Federal Housing Administration (see *Banking Legislation and Policy*, April-June 2003). The purpose of the property flipping rule is to curb the practice of buying and quickly reselling properties at an inflated price for a considerable profit, where the concern is that fraud may lead to mortgage defaults. Under the rule, houses are not eligible for FHA-insured mortgages if they are sold within three months of being bought. In addition, if a house is sold between three and six months after purchase, documentation is required to support any realized increase in value. The interim final rule makes exceptions for inherited properties and properties acquired by federal agencies that must be resold quickly.

This interim final rule became effective January 24. Comments on this interim final rule were due February 22. For more information, see 69 *Federal Register*, pp. 77114-6.

Board of Governors of the Federal Reserve System

Noncash Collection Service (10/19)

The Board of Governors of the Federal Reserve System (the Board) has issued a proposal to withdraw from noncash collection services at the end of 2005. Currently, the Federal Reserve Banks provide noncash collection services for depository institutions. As part of the service, the Banks accept from depository institutions deposits of registered or bearer bonds that have been issued with interest coupons by local governments and states. The Banks then identify the bonds' issuer and present them to that party for collection. The Board proposes to withdraw from providing the services because the number of these transactions has decreased and many other providers perform these services.

Comments on this proposal were due December 20. For more information, see 69 *Federal Register*, pp. 61496-9.

Bank Holding Companies (12/6)

The Board of Governors of the Federal Reserve System (the Board) revised its bank holding company (BHC) rating system to provide a better framework in which to assess financial risk and risk management and to evaluate the effect a BHC's nondepository institutions have on depository institutions. The rating system is an internal tool used by the Board to systematically evaluate every BHC. The old system, BOPEC, is being replaced by the new R F I / C (D) rating system, where the letters respectively stand for the following test components: the BHC's risk management; the financial condition of the BHC; the potential impact that the BHC's nondepository institutions may have on the BHC's depository institutions; the overall composite judgment of the safety and soundness of the BHC's operations; and the depository institutions' overall condition. (For more information about the rating system, see *Banking Legislation and Policy*, July-September 2004.)

The new rating system will be used in all BHC inspections beginning January 1, 2005. In addition, the new system will be used in any inspection that began in 2004 but will end in 2005. For more information, see 69 *Federal Register*, pp. 70444-56.

Truth in Lending (12/8)

The Board of Governors of the Federal Reserve System (the Board) issued an advance notice of proposed rulemaking to announce its intent to review Regulation Z, which implements the Truth in Lending Act, over the next few years. The Board will conduct its review in stages, starting with Regulation Z's rules for open-end (revolving) credit accounts, such as credit cards. The Board is requesting comment on all aspects of the rule that relate to open-end credit accounts. In particular, the Board is seeking comment on the adequacy of the disclosures required under the rule and the consumer protections provided by the rule. In future stages of the review, the Board plans to evaluate Regulation Z's rules relating to predatory mortgage lending, closed-end mortgage credit, and home-equity lines of credit and adjustable-rate mortgage loans.

Comments on this advance notice of proposed rulemaking are due March 28. For more information, see 69 *Federal Register*, pp. 70925-36.

Office of Thrift Supervision

Preemption (10/25)

The Office of Thrift Supervision (OTS) issued a legal opinion that permits a federal savings association's contracted agents to perform certain duties on behalf of the savings association without complying with state licensing and registration requirements. The agents in question perform marketing, solicitation, and customer service activities that relate to the thrift's deposit and loan products and services. For instance, the agents mail marketing materials to the thrift's customers to make them aware of the products and services the thrift offers, and in some cases, the agents assist customers with completing application forms and documents.

The OTS determined that applying state licensing and registration requirements to agents providing these services would interfere with the thrift's deposit and lending operations. The Home Owners' Loan Act (HOLA) gives authority to the OTS to regulate entities, including agents, with which a savings association contracts to perform these services. The OTS said that duplicative state regulation would conflict with the HOLA and OTS regulations, and therefore, the savings association's agents do not need to comply with state licensing and registration requirements in this instance.

Other thrifts that want to use agents to market their deposit-taking and lending services must first consult with the OTS. The thrift must also submit a detailed proposal about the arrangement with the agents. The thrift must meet several conditions, such as training the agents about

applicable laws and the thrift's products and services, and affirming that the agent, for purposes of the contractual relationship, is subject to the OTS's authority.

For more information about this legal opinion, visit www.ots.treas.gov/docs/5/560404.pdf.

Community Reinvestment Act (12/24)

The Office of Thrift Supervision (OTS) issued a proposed rule to change portions of its Community Reinvestment Act (CRA) regulations. The OTS proposes to expand the definition of "community development," for purposes of the rule, to include community services targeted to individuals in rural areas, whether or not the individuals or areas served are considered to be low or moderate income, as required under the current rule.

Next, the OTS proposes to change the formula for assigning CRA ratings. Under the current rule, savings associations are subjected to a three-part test in which they receive ratings under a lending test, service test, and investment test. Currently, the lending test is weighted most heavily (50 percent), and the service and investment tests each have a 25 percent weight. The OTS is proposing to allow savings associations to choose the weights each of the tests carries, so long as the lending test still carries at least a 50 percent weight. The remaining 50 percent of the weight can be allocated across the three categories in whichever way the thrift prefers. Therefore, a savings association may choose to have the lending test carry as much as 100 percent of the weight and not be evaluated by the service and investment tests at all. Savings associations could choose new weight distributions at the start of each CRA examination.

Comments on this proposed rule were due January 24. For more information, see 69 *Federal Register*, pp. 68257-65.

Federal Trade Commission

Identity Theft (11/3)

The Federal Trade Commission (FTC) issued a final rule to implement sections of the Fair and Accurate Credit Transactions Act (FACTA) (for more information about FACTA, see *Banking Legislation and Policy*, October-December 2003). The rule defines identity theft as "a fraud committed or attempted using the identifying information of another person without authority." Under the rule, identifying information can include a person's name, Social Security number, driver's license number, passport number, and electronic personal identification number (PIN).

The rule also defines an identity theft report. The report must be filed with a law enforcement agency and must include as much specific information as possible about the alleged identity theft. A consumer reporting agency (CRA) or information furnisher may then request additional information to help determine the validity of the allegation, as long as the request is made within 15 days of receiving the identity theft report. The CRA or information furnisher then has another 15 days to either make a request for more information or to make a decision about the validity of the report. If additional information is requested, the CRA or information furnisher must make a final determination within five days of receiving the additional information.

The final rule also stipulates that a person in the military may request that a CRA place an active duty alert in his or her file when he or she is going on active duty. The alert will remain effective for 12 months and will serve as a flag that the person is probably not using credit or opening accounts.

Finally, the rule allows CRAs to develop their own requirements to determine the "appropriate proof of identity" for a person who makes a fraud alert (a notice given to a CRA when a person suspects he or she is a victim of identity theft), an active duty alert, a consumer report information block (a request to block information from a consumer's credit file if the information is the result of identity theft), or a request for truncation of his or her Social Security number. However, CRAs must require enough information so that consumers can be matched with their files, and CRAs must adjust the requirements for more information if the risk of misidentifying the person is greater.

This final rule became effective December 1. For more information, see 69 *Federal Register*, pp. 63922-34.

SUMMARY OF JUDICIAL DEVELOPMENTS

Supreme Court Caps TILA Damages on Personal Property Loans

The U.S. Supreme Court ruled that a consumer who buys a motor vehicle may recover a maximum of only $1000 in Truth in Lending Act (TILA) damages after an auto dealership improperly included in the contract an alarm the buyer never requested (*Koons Buick Pontiac GMC Inc. v. Nigh*, No. 03-377). In 2000, Bradley Nigh traded in his vehicle for a used truck at Koons Buick Pontiac GMC. The dealership presented, and Nigh signed, several versions of a contract for the used truck before the dealership found financing. After the final contract was accepted, Nigh realized that the dealership had included in the contract a security alarm Nigh had never requested. Nigh made no payments on the truck and returned it to Koons Buick before filing suit against the dealership alleging, among other things, a violation of TILA.

At issue in this case is whether loans secured by personal property are subject to a $1000 cap in statutory damages under TILA. As originally enacted in 1968, TILA permitted statutory damages recovered under TILA to be no less than $100 and no more than $1000. Over the years, the law has been revised several times, and the provision explaining recovery for loans secured by personal property became ambiguous. In 1995, Congress added a new subpart that allows violations involving real estate loans to recover a minimum of $200 and a maximum of $2000 in statutory damages. Because this change was made, but no explicit recovery amounts were included for the subparagraph dealing with personal property loans, some lower courts have ruled that damages for violations involved in personal property loans are no longer subject to a cap.

However, the Supreme Court ruled that it makes little sense that violations involving loans secured by personal property would then be able to recover significantly higher damages than would be possible for violations involving loans secured by real property. Therefore, the Supreme Court left the $1000 cap intact for damages awarded to victims of violations involving personal property loans.

Debtors May Recover Emotional Distress Damages for Suffering Resulting from a Lender's Stay Violation

The U.S. Court of Appeals for the Ninth Circuit ruled that a bankrupt debtor may sue a lender for damages if the debtor suffered emotional distress because the lender violated a stay that follows filing a bankruptcy petition (*Dawson v. Washington Mutual Bank F.A.*, No. 02-16903). The bankrupt borrower in this case, George Dawson, could no longer make payments on his house to Washington Mutual Bank, the mortgagor. After some time, the bank scheduled a foreclosure sale of the house. Dawson filed for Chapter 7 bankruptcy, which carries with it an automatic stay. However, the bank violated that stay by serving Dawson a notice to quit the premises. Dawson made a claim to seek emotional distress damages resulting from the bank's violation of the stay, but the bankruptcy court originally denied Dawson's claim, ruling that the bank's stay violation was not egregious.

However, the U.S. Court of Appeals for the Ninth Circuit reversed that ruling. The court ruled that Congress intended to prevent not only financial loss but also the emotional and psychological toll that can result from a stay violation. The court ruled that a debtor can make a claim for emotional distress damages if he or she provides clear evidence to establish that he or she suffered significant harm and demonstrates that the significant harm was caused by the stay violation. The court remanded the case for further proceedings.

National Banks Are Citizens of Each State in Which They Are Located

The U.S. Court of Appeals for the Fourth Circuit ruled that national banks are "located" in, and therefore citizens of, each state in which they operate branch offices (*Wachovia Bank v. Schmidt*, No. 03-2061). In 2003, South Carolina resident Daniel Schmidt filed suit in state court against Wachovia Bank, a North Carolina-chartered bank that operates branch offices in South Carolina. The suit alleged that the bank had fraudulently induced Schmidt and others to engage in a risky tax-motivated investment scheme. Wachovia filed a counter-suit in the U.S. District Court in South Carolina seeking arbitration of the claims. The district court denied arbitration and Wachovia appealed. On appeal, Schmidt argued that since Wachovia operates branch offices in South Carolina and is therefore located in the state, the district court lacks jurisdiction. The U.S. Court of Appeals for the Fourth Circuit agreed.

The court ruled that a national bank becomes physically present in a state when it opens branch offices in that state. Using the plain definition of the word "located," the court ruled that by being physically present in South Carolina, Wachovia is located in South Carolina. The opinion states that nothing prevents a bank from being located in more than one state at a time, which is illustrated by an example of a tract of land extending across state borders and being located in each state. The court further said that it was important to distinguish between the terms "established" and "located," where established would refer to a bank's charter location, and "located" would refer to the places a bank has a physical presence. The court ruled that had Congress intended for a bank's "location" to mean its principal place of business and exclude branch locations, it could have easily done so but did not. Therefore, the court ruled that both Schmidt and Wachovia are citizens of South Carolina, which means that the district court lacks jurisdiction in this case.

Prepared by the Research Department. For further information, contact Joanna Ender at 215-574-4102 or joanna.m.ender@phil. frb.org. To subscribe to this publication go to www.philadelphiafed.org/forms/orderform.htm.

Federal Reserve Bank of Philadelphia

www.philadelphiafed.org