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NEWSLETTER OF THE MERGERS & ACQUISITIONS PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

Merging is Good . . .

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That is now the clear message from the Treasury and the federal regulators as they parcel out allocations under the Capital Purchase Program of TARP. Moreover, it appears that the Treasury and the regulators have had in place for some time a plan for the massive consolidation of the banking industry, presumably to be followed by a streamlined regulatory structure for the industry.

The most recent example is the PNC acquisition of National City, which is being touted as the template for regional and other bank takeovers, utilizing the tax benefits accorded by EESA regarding tax loss carryforwards. [[see link to MPP Tax Newsletter](#)] The Wells Fargo acquisition of Wachovia actually set the stage for what is likely to be major activity in this area for banks presaging developments across the spectrum of banking involving regional banks and community banks.

Thus, with the now explicit support of the Treasury and the federal regulatory agencies, banks and bank holding companies should be running merger and acquisition scenarios as part of the strategic planning process undertaken by senior executives and boards of directors. The bank examination process is likely to have this strategic process as part of its focus going forward.

Moreover, this consolidation will be fairly rapid under pressure from federal regulators, given the continuing stress on the balance sheets of banks and bank holding companies which cannot be met with just capital infusions. Again, senior management and bank boards must be attuned to this shift in emphasis and be nimble enough to accept the new reality even in the face of long-cherished traditions so as to best serve the interests of shareholders and other constituencies.

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OUR PRACTICE

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Whether the continued concentration of economic power is good for the long term health of the U.S. economy could be the subject of a major debate but the benefits of consolidation are seen as important to the short term health of our financial system. The challenge for senior executives and boards of directors will be to ensure the availability of credit and the provision of other customer services.

Manatt, Phelps & Phillips has the largest and most experienced team of bank mergers and acquisitions lawyers in the West with a mission and commitment to assist senior executives and boards of directors with their analysis and deliberations on these issues.

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His experience comprises a broad range of matters including: governance matters, sophisticated financial transactions such as asset securitization, LBOs, project finance, corporate lending and restructuring; representation of a variety of domestic and foreign financial institutions before the FDIC, Comptroller of the Currency, the Federal Reserve Board and other bank regulatory agencies in connection with new product development, chartering new banks and branches, issues arising out of the bank examination process and enforcement actions demanded by regulatory authorities.



Gordon M. Bava Mr. Bava is co-chairman of the firm after serving for a decade as its Chief Executive and Managing Partner until December 31, 1999. Mr. Bava's practice focuses on mergers and acquisitions, special committee representation, private and underwritten securities offerings and general corporate representation of clients in a variety of industries.