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**MEMORANDUM**

August 7, 2000

**To:           Our Clients and Friends**

**Re:           FDIC's Final Rule on the Treatment of Securitizations and  
Participations in Conservatorships and Receiverships**

The Federal Deposit Insurance Corporation ("FDIC") has adopted a rule regarding the treatment by the FDIC as receiver or conservator of an insured depository institution of financial assets transferred by the institution in connection with a securitization or in the form of a participation. The final rule resolves issues raised by Financial Accounting Standards Board ("FASB") Statement No. 125, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities ("SFAS 125").

The final rule provides that with respect to financial assets transferred by an insured depository institution in connection with a securitization or in the form of a participation, the FDIC will not exercise its statutory power to repudiate contracts, recover or reclaim such financial assets provided that the transfer meets all conditions for sale accounting treatment under GAAP. The rule also provides that the FDIC will not seek to enforce the "contemporaneous" requirement of various sections of the Federal Deposit Insurance Act.

The final rule defines both "securitization" and "participation," with "participation" specifically limited to those that are "without recourse" to the selling institution. The rule does not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of

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the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes. The rule applies to securitizations and participations that are engaged in while the rule is in effect, even if the rule is later repealed or amended.

The rule will not be construed as waiving or limiting any other rights or powers of the FDIC as conservator or receiver of an insured depository institution to take any action or exercise any power not specifically addressed in the rule. Such rights or powers include, but are not limited to, any rights or powers of the FDIC regarding any transfer taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

Please give us a call if you have any questions regarding this final rule. Please visit our web site, at [schwartzandballen.com](http://schwartzandballen.com), for links to other information regarding this and other rules.