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M E M O R A N D U M

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To Our Clients and Friends

Re: Federal Reserve Board Proposals on Anti-Tying Restrictions

The Federal Reserve Board (the “Board”) is requesting comment on an official interpretation of the anti-tying restrictions in section 106 of the Bank Holding Company Act Amendments of 1970 and on a proposed rule that would treat a financial subsidiary of a bank as an affiliate. Comments are due by September 30.

In its proposed official interpretation the Federal Reserve Board discusses and summarizes the scope and purposes of section 106, the elements of a tying arrangement prohibited by section 106 and the statutory and regulatory exceptions to the prohibitions of section 106. The interpretation does not alter or revise section 106, but is intended to assist financial institutions in understanding and complying with these anti-tying restrictions.

The interpretation also includes supervisory guidance that discusses the types of internal controls, including policies, procedures and systems, financial institutions should adopt to provide reasonable assurances that the financial institution complies with the anti-tying provisions of section 106. The Board intends to use the principles reflected in this interpretation and guidance in enforcing section 106 and in conducting anti-tying reviews at financial institutions.

The proposed rule adds an exception to section 106 that would treat a financial subsidiary of a state nonmember bank as an affiliate of the parent bank, and not as a subsidiary of the bank. As an affiliate, the financial subsidiary would not be subject to the anti-tying restrictions of section 106. This is the same treatment already accorded to financial subsidiaries of national and state member banks.

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The interpretation and supervisory guidance and the proposed rule can be found at http://www.schwartzandballen.com/whats_new.html.

If you have any questions concerning the interpretation or the proposed rule, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.