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MEMORANDUM

February 12, 2004

To Our Clients and Friends

Re: Applicability of the Anti-Tying Provisions of the Bank Holding Company Act

The staff of the Federal Reserve Board has issued a letter on the applicability of the anti-tying provisions of section 106 of the Bank Holding Company Act Amendments of 1970 to an arrangement whereby a bank required customers who borrowed from the bank on a secured basis to establish an account at a broker-dealer affiliate and maintain the loan collateral in that account.

Section 106 of the Bank Holding Company Act generally prohibits a bank from conditioning the availability or price of a product on a requirement that the customer obtains another separate product from, or provides another separate product to, the bank or an affiliate of the bank. The staff concluded that, based on the description of the securities-based loan program presented by the bank, such a requirement was permissible under, and consistent with, the purposes of the anti-tying provisions of Section 106.

The bank offers securities-based loans subject to the requirement that the securities collateralizing the loans are kept in collateral accounts with the bank's broker-dealer affiliate. Under the program the customer:

- is not charged for establishing, maintaining or withdrawing collateral from the account;
- is not obligated to trade in the account or purchase any other products or services from the bank or the broker-dealer affiliate;

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- is not required to maintain securities in the account beyond that necessary in the judgment of the bank to support the loan;
- is required to obtain prior approval from the bank to withdraw assets from the collateral account; and
- may trade the securities held in the collateral account in which case the broker-dealer affiliate charges its normal fee.

In its letter the staff offered the following reasons for concluding that the bank's security-based lending program is permissible under Section 106:

- The bank is not requiring that the customer obtain any product separate from the loan itself as the requirement to provide collateral is an integral part of the loan.
- The fact that the pledged securities are held in an account at a broker-dealer affiliate does not make the arrangement a product separate from the loan that the collateral secures. It is merely a mechanism that the bank has chosen for holding the required collateral.
- The requirement that the customer must maintain a specified level of collateral to secure the loan does not require the customer to obtain or provide any separate product or service in order to obtain the loan from the bank.
- The text and legislative history of section 106 make manifest that Congress did not intend the statute to impede the ability of banks to conduct the business of banking in a safe and sound manner.

The text of the letter can be found on our web site - http://www.schwartzandballen.com/whats_new.html.

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