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M E M O R A N D U M

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To Our Clients and Friends

Re: OCC Standards for Residential Mortgage Lending

The Office of the Comptroller of the Currency (“OCC”) has released guidelines for national banks (and their operating subsidiaries) to protect against their involvement in predatory, abusive, unfair or deceptive residential mortgage lending practices (the “Guidelines”). The Guidelines apply to loans or other extensions of credit made by national banks to individuals for personal, family or household purposes and secured by an owner-occupied, 1-4 family residential dwelling, including cooperative units or mobile homes.

The Guidelines provide that a national bank’s residential mortgage lending activities must reflect standards and practices that enable the bank to effectively manage credit, legal, compliance and reputational and other risks associated with such lending. The standards must effectively prevent the national bank from becoming involved in abusive, predatory, unfair, or deceptive practices directly, through mortgage brokers or other intermediaries or through purchased loans. Each bank may determine how best to meet these objectives, as appropriate to the bank’s size, complexity and nature and scope of its activities.

Specific practices cited as inconsistent with sound residential mortgage lending include equity stripping, fee packing, loan flipping, refinancing of special subsidized mortgages on terms adverse to consumers and encouraging borrowers to breach a contract and default on existing loans prior to and in connection with refinancing. The Guidelines set out certain loan features that may constitute prohibited practices under certain circumstances, yet which may be acceptable and even beneficial to consumers if the bank takes proper risk mitigation measures. These include such terms as negative amortization, balloon payments and financing single premium insurance.

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The Guidelines caution banks to take heightened care when soliciting or offering loans to certain consumers who are particularly susceptible to the prohibited practices, such as the elderly or those who are not financially sophisticated. Loans purchased or made through a mortgage broker or other intermediary should reflect standards and practices, including risk mitigation practices, consistent with those applied by the bank in its direct lending activities. Finally, the bank should take appropriate action in response to consumer complaints and failures to comply with applicable law and the bank's lending standards.

The Guidelines are enforceable pursuant to the process provided in Section 39 of the Federal Deposit Insurance Act and the procedural rules contained in the OCC's regulations, 12 C.F.R. Part 30, as well as under other applicable law.

A copy of the OCC's Guidance can be found on our web site at 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.