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MEMORANDUM

July 12, 2005

To Our Clients and Friends

Re: Court Upholds Preemption of State Law for National Bank Operating Subsidiaries

The U.S. Court of Appeals for the Second Circuit has held that federal law preempts state regulation of a national bank operating subsidiary to the same extent that it preempts regulation of the parent national bank. Wachovia Bank, N.A. v. Burke (No. 04-3770). The decision came as a result of a challenge by a national bank and its operating subsidiary to Connecticut law which required nonbank mortgage lenders to obtain licenses from the state and to comply with certain other requirements. The court noted that the Comptroller of the Currency's rules permit national banks to conduct business through operating subsidiaries. The Comptroller's rules also provide that state laws apply to operating subsidiaries to the same extent that they apply to the parent national bank. The court held that the Comptroller's view of the scope of the National Bank Act was entitled to deference and that its regulations "reflect a consistent and well-reasoned approach to preempting state regulation of operating subsidiaries so as to avoid interference with national banks' exercise of their powers."

A copy of the Court's decision 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.