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M E M O R A N D U M

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To Our Clients and Friends

Re: OFAC Economic Sanctions Enforcement Procedures for Banking Institutions

The Office of Foreign Assets Control (“OFAC”) has issued an interim final rule and a request for comments on Economic Sanctions Enforcement Procedures for Banking Institutions. The interim final rule is effective February 13, 2006 and supersedes OFAC’s proposed rule dated January 29, 2003 for enforcement actions relating to banking instructions. Comments on the interim rule are due by March 13, 2006.

The interim rule explains OFAC’s enforcement practices applicable to depository institutions regulated or supervised by a Federal banking agency. OFAC indicates that the procedures recognize that a banking institution’s compliance program should be tailored to its unique circumstances and should include an analysis of its size, business volume, customer base and product lines. The following are some of the standards OFAC will apply:

- Prior to taking enforcement action, OFAC will generally review violations by an institution over a period of time rather than evaluating each violation.
- However, if the violation is particularly egregious, OFAC may take prompt enforcement action.
- OFAC will provide the Federal banking agencies with information regarding apparent violations or compliance concerns.
- OFAC will periodically evaluate a banking institution’s violations in the context of the institution’s overall OFAC compliance program and record.
- OFAC will contact the institution to discuss the results of its review of apparent violations and its intended administrative action.

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- OFAC will notify the institution in writing of its decision with respect to violations occurring during the review period, including its intent to pursue a civil penalty.

The interim rule also provides a risk matrix that can be used by institutions to evaluate the quality of its compliance program and as a guide for evaluating the risk of encountering accounts or transactions subject to OFAC's regulations

OFAC also stated that while a voluntary disclosure by an institution is a factor it considers in its enforcement decisions, it does not regard a disclosure to be voluntary when another party is required to file a report concerning the same transaction. However, OFAC will give such cooperation due consideration in its review of possible enforcement actions.

OFAC indicated that it plans to issue guidance on its enforcement procedures for other types of institutions, including broker-dealers and CFTC regulated entities, in the future. However, OFAC requests comment on how its enforcement procedures should be modified to apply to other financial sector entities, such as insurance companies, pension funds, mortgage bankers and GSEs, as well as nonfinancial companies.

A copy of the rule 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.