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M E M O R A N D U M

June 15, 2006

To Our Clients and Friends

Re: OTS Letter on Federal Preemption of State Gift Card Restrictions

The Office of Thrift Supervision (“OTS”) Chief Counsel has issued a legal opinion concluding that certain state law restrictions on gift cards are preempted for federal savings associations and their operating subsidiaries. The OTS Chief Counsel concluded that five types of state laws are preempted—those imposing licensing requirements, disclosure requirements, fee restrictions, expiration date restrictions and requirements to permit the cardholder to redeem the card for cash.

The gift cards described in the letter can be purchased from the federal savings association’s website and used at any retailer that accepts signature-based Visa and MasterCard debit cards. These gift cards are not issued with a PIN, cannot be used for cash withdrawals or advances and are not re-loadable. The cards are issued with an expiration date and are subject to certain fees.

The OTS Chief Counsel found these categories of state laws relating to gift cards to be preempted for federal savings associations by virtue of the OTS’ authority granted in the Home Owners’ Loan Act (“HOLA”) to regulate all aspects of federal savings associations’ operations through implementing regulations. The OTS has occupied the field of regulation in this area and, consequently, all of these state restrictions impermissibly regulate the operation of federal savings associations because they are designed to add another layer of regulation and control operations of the federal savings association in that state.

Although these five types of state laws governing such gift cards are preempted by HOLA and OTS regulations, the Chief Counsel noted that the gift cards may be subject to other federal requirements and consumer protections as well.

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A copy of the OTS Chief Counsel legal opinion 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, Tom Fox or Heidi Wicker at (202) 776-0700.