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**M E M O R A N D U M**

December 14, 2006

To Our Clients and Friends

Re: SEC/Federal Reserve Proposed Rule on Securities Activities

The Securities and Exchange Commission and the Federal Reserve Board are proposing a joint rule to implement the bank broker provisions of the Gramm-Leach-Bliley Act (“GLB Act”).<sup>1</sup> The GLB Act replaced banks’ complete exemption from the definition of “broker” in the Securities Exchange Act of 1934 with eleven exceptions that permit banks to engage in certain securities activities. The proposed rule provides additional guidance on the types of transactions that banks may continue to conduct under the GLB Act exceptions. Public comments are due 90 days after the proposal is published in the *Federal Register*.

**PROPOSED EXCEPTIONS**

***1. Networking Arrangements***

Under the exception, banks are permitted to refer customers to broker-dealers and receive a share of the commissions charged. Banks may pay unregistered employees “nominal incentive compensation” for such referrals. The proposal defines the terms used in this exception and permits banks to pay more than nominal fees for referrals of certain institutional and high net worth customers.

***2. Trust and Fiduciary Activities***

A bank may conduct securities transactions in a trustee or fiduciary capacity if it is “chiefly compensated” for those transactions on the basis of specifically enumerated types of fees. The proposal refers to these fees as “relationship compensation,” which includes a broad range of administrative fees, as well as fees

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<sup>1</sup> The Regulatory Relief Act, enacted on October 13, 2006 requires the SEC and the Federal Reserve to jointly adopt final rules implementing the bank broker exceptions in the Securities Exchange Act of 1934. The SEC approved the proposal on December 13, 2006. The Federal Reserve will consider the proposal on December 18, 2006.

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paid by investment companies. To determine whether it is “chiefly compensated” by relationship compensation, a bank would conduct an account-by-account review using a two-year rolling average comparison of the fees from an account. Alternatively, banks would be permitted to compare relationship compensation to total aggregate compensation on a bank-wide basis using a two-year rolling average comparison.

### ***3. Sweep Accounts and Transactions in Money Market Funds***

This exception permits a bank to sweep deposits into no-load, money market funds. The proposal would provide banks with a conditional exemption for transactions in money market funds that are not no-load funds as well as for transactions that are not sweeps.

### ***4. Safekeeping and Custody***

This exception permits banks to perform specified services in connection with safekeeping and custody of securities. Banks can take orders for securities transactions from employee benefit plan accounts and individual retirement and similar accounts for which the bank acts as a custodian, as well as on an accommodation basis for other safekeeping and custody accounts on an accommodation basis. No bank employee may receive compensation that is based on whether a securities transaction is executed for the account, or on the quantity, price, or identity of the securities purchased or sold.

### ***5. Transactions in Investment Company Securities***

This exemption permits banks to effect mutual fund transactions through the National Securities Clearing Corporation’s Mutual Fund Services or directly with a transfer agent.

### ***6. Securities Lending***

This exemption permits banks to engage in noncustodial securities lending activities.

### ***7. Regulation S Securities***

The proposal also exempts banks from the definition of broker for agency transactions in Regulation S securities with non-U.S. persons.

Banks will have a transitional 18-month exemption until the first day of their first fiscal year commencing after June 30, 2008 to make any necessary changes in their compliance programs.

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### **PROPOSED DEALER EXCEPTIONS**

The SEC is also requesting public comment on an exemption from the definition of “dealer” for banks’ conduit securities lending activities and a conditional exemption for banks’ riskless principal transactions.

The proposed rules will be available on our web site at [http://www.schwartzandballen.com/whats\\_new.html](http://www.schwartzandballen.com/whats_new.html) after the Federal Reserve takes action on December 18, 2006.

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