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

September 22, 2008

To Our Clients and Friends

Re: Federal Reserve Policy on Equity Investments in Bank Holding Companies

The Federal Reserve Board has issued a revised policy statement on equity investments in banks and bank holding companies. The policy statement provides additional guidance on the Board's position on minority equity investments in banks and bank holding companies that do not constitute "control" for purposes of the Bank Holding Company Act.

The policy statement reviews the standards the Board has applied in the past for minority equity investments in banks and bank holding companies by bank holding companies, nonbank financial companies, private equity funds, and other firms. However, the statement revises the Board's previous guidance in several important areas.

- The Board will permit a minority investor to make an equity investment of up to 33.3 percent of the bank or bank holding company's total equity as long as the investor is not permitted to own, hold or vote 15 percent or more of any class of voting securities of the organization. Previously, the maximum investment could not exceed 25 percent of the organization's total equity. The statutory limit of 25 percent of any class of the organization's voting shares continues to apply.
- The Board has relaxed its policy regarding director representation on the board of directors. A minority investor will be able to have at least one representative on the banking organization's board.
- In addition, a minority investor will be permitted to have up to two representatives on the banking organization's board when the investor's aggregate director representation is proportionate to its total interest in the banking organization but does not exceed 25 percent of the voting

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members of the board, and another shareholder is a bank holding company that controls the banking organization.<sup>1</sup>

- A minority investor, like any other shareholder, generally will be permitted to communicate with management about and advocate with management for changes in the banking organization's policies and operations. Previously, minority investors generally were required to agree not to attempt to influence the banking organization's management, policies or strategies.

The revised policy also discusses the Board's position with regard to business relationships between minority investors and banking organizations, permissible covenants and other indications of control.

A copy of the Board's policy statement can be found on our website at [http://www.schwartzandballen.com/whats\\_new.html](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.

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<sup>1</sup> For example, an investor with a 10 percent voting interest and a 20 percent total equity interest generally could have two representatives on the board of directors of the banking organization if the investor's director representation does not exceed 20 percent of the board seats. On the other hand, an investor with a 15 percent voting interest and a 33 percent total equity interest generally could have two representatives on the board of directors of the banking organization if the investor's director representation does not exceed 25 percent (rather than 33 percent) of the board seats.