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**MEMORANDUM**

December 15, 2009

To Our Clients and Friends

Re: Amendments to Risk-Based Capital Guidelines  
to Reflect Issuance of FAS 166 and FAS 167

The Federal Deposit Insurance Corporation (“FDIC”) has adopted an amendment to its risk-based capital guidelines to permit banking organizations to phase in implementation of FAS 166 and FAS 167 for purposes of the risk-based capital requirements. It is anticipated that the other Federal banking agencies will take similar action in the near future.

**FAS 166 AND FAS 167**

FAS 166 and FAS 167 revised the treatment for structured finance transactions involving special purpose entities by requiring banks to consolidate many variable interest entities that previously were treated as off-balance sheet exposures. The categories of securitization and structured finance exposures that are likely to be subject to consolidation on the balance sheet of the originating or servicing bank include:

- ABCP conduits
- Loan securitizations in which a bank retains a residual interest and servicing rights
- Revolving securitizations structured as master trusts
- Certain tender option bond trusts that were designed as QSPEs

Accordingly, the implementation of FAS 166 and FAS 167 will increase the amount of assets and liabilities that some banks report and may result in significantly higher regulatory capital requirements.

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### IMPLEMENTATION OF DELAY

The accounting changes implemented by FAS 166 and 167 are effective for the first annual reporting period that begins after November 15, 2009 and for subsequent interim and annual periods. The FDIC's action provides for an optional two-quarter implementation delay followed by an optional two-quarter partial implementation of the effect on risk-weighted assets that will result from changes to generally accepted accounting principles resulting from FAS 166 and FAS 167. In addition, the action permits banking organizations to include in Tier 2 capital, for purposes of the first two regulatory reporting periods following the implementation of FAS 166 and FAS 167, any increase in the allowance for loan and lease losses ("ALLL") attributable to assets consolidated under the requirements of FAS 166 and FAS 167, followed by a two-quarter phase-in of the regulatory restriction on the amount of such ALLL that may be included in Tier 2 capital.

The transition mechanisms will apply only to risk-based capital requirements and not to the leverage capital ratio. The change also eliminates the exclusion of certain consolidated asset-backed commercial paper programs from risk-weighted assets. The FDIC and the other agencies reserve authority to require banking organizations to treat entities that are not consolidated under GAAP as if they were consolidated for risk-based capital purposes, commensurate with the risk relationship of the banking organization to the entity.

A copy of the FDIC's *Federal Register* notice can be found on our website at <http://www.schwartzandballen.com>.

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