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

February 9, 2009

To Our Clients and Friends

Re: SEC Final Rules and Proposals Regarding Rating Agencies

The Securities and Exchange Commission has adopted final rules that impose additional requirements on nationally recognized statistical rating organizations (“NRSROs”) to address concerns about the integrity of their credit rating procedures and methodologies. The Commission is also proposing rules that would require the public disclosure of credit rating histories for certain outstanding credit ratings issued on or after June 26, 2007.

**FINAL RULES**

In June, 2008, the Commission proposed amendments to address concerns about the integrity of the process by which NRSROs rate-structured finance products, especially mortgage-related securities. The Commission has adopted the proposed amendments with significant revisions based upon comments it received. The final rules are designed to increase the transparency of rating methodologies, strengthen disclosures of ratings’ performance, prohibit certain practices that create conflicts of interest, and enhance recordkeeping and reporting requirements.

The final rules require NRSROs to:

- Provide enhanced disclosure of performance measurement statistics and the procedures and methodologies used in determining credit ratings for structured finance products and other debt securities on Form NRSRO
- Make, keep and preserve additional records
- Make publicly available on its Internet Web site in eXtensible Business Reporting Language (“XBRL”) format a random sample of 10 percent of

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the histories of credit ratings paid for by the obligor being rated or by the issuer, underwriter, or sponsor of the security being rated

- Furnish the Commission with an additional annual report

The new rules are generally effective April 10, 2009.

### **PROPOSED RULES**

The Commission is also proposing amendments which would require NRSROs to make additional disclosure requirements. The proposal would require NRSROs to disclose rating action histories for all credit ratings issued after June 25, 2007 at the request of an obligor, the issuer or underwriter or sponsor of the security being rated, with a 12 month delay. The Commission is requesting public comment on whether the proposal should apply to subscriber-paid credit ratings in addition to issuer-paid credit ratings.

The Commission is also proposing the following:

- NRSROs that are hired by arrangers to perform credit ratings for structured finance products would need to disclose to other NRSROs the deals for which they were in the process of determining such credit ratings
- Arrangers would need to provide NRSROs they hire to rate structured finance products with a representation that they will provide information given to the hired NRSRO to other NRSROs
- NRSROs seeking to access information maintained by the NRSROs and arrangers would need to furnish the Commission with an annual certification that they are accessing the information solely to determine credit ratings and will determine a minimum number of credit ratings using the information

Comments on the proposed rules are required by March 26, 2009.

A copy of the Commission's final and proposed rules 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.