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

January 8, 2001

**TO: Our Clients and Friends**

**RE: Federal Reserve Final Rule on Finder Activities**

**SUMMARY**

The Federal Reserve Board (“Board”) has issued a final rule permitting financial holding companies to act as “finders.” Financial holding companies will be permitted to bring together buyers and sellers of products and services that the parties themselves negotiate and consummate. The rule is effective January 22, 2001.

**DESCRIPTION OF FINDER ACTIVITIES**

As a result of the amendments made by the Gramm-Leach-Bliley Act to the Bank Holding Company Act, a bank holding company or foreign bank that qualifies as a financial holding company may engage in activities that the Board determines to be financial or incidental to a financial activity. In August 2000, the Board proposed to permit financial holding companies to act as “finders.” The Board has now finalized its proposal. Under the new rule, a finder may engage in the following:

- Identifying potential parties, making inquiries as to interest, introducing and referring potential parties to each other and arranging contacts between and meetings of interested parties;
- Conveying expressions of interest, bids, offers, orders and confirmations relating to a transaction; and
- Transmitting information concerning products and services to potential parties in connection with the above activities.

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### **EXAMPLES OF FINDER SERVICES**

The rule provides examples of services that a financial holding company could provide as a finder. The examples are not exclusive. A finder may:

- Host an electronic marketplace Internet web site that provides hypertext or similar links to the web sites of third party buyers or sellers;
- Host the Internet web site of a buyer or seller that provides information concerning the products or services the buyer seeks to purchase or which the seller seeks to sell. Permit buyers or sellers to submit expressions of interest, bids, offers, orders, and confirmations relating to such products or services;
- Host the Internet web site of a government or government agency that provides information concerning the services or benefits made available by the government or government agency, assist in completing applications to receive such services or benefits from the government or agency and allow transmission of applications for services or benefits to the government or agency;
- Operate an Internet web site that permits multiple buyers and sellers to exchange information concerning the products and services they are willing to purchase or sell, locate potential counter parties for transactions, aggregate orders for goods or services, and enter into transactions between themselves; and
- Operate a telephone call center that provides finder services.

A finder may act through any means, electronic or otherwise.

### **LIMITATIONS**

A financial holding company may only act as an intermediary between a buyer and a seller. It may not bind a buyer or seller or negotiate on behalf of a buyer or seller concerning a specific transaction. The rule prohibits a financial holding company from taking title to, acquiring or holding an interest in any product or service offered or sold. Similarly, a financial holding company may not own or operate any real property that is used for the purpose of manufacturing, storing or assembling products offered or sold through the company's finder services, or provide distribution services for physical products or services offered or sold

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through the company's finder services. Finally, the rule does not permit a financial holding company to engage in any activity that would require the company to register or obtain a license as a real estate agent or broker under applicable law.

However, the final rule clarifies that a finder may establish rules of general applicability governing the use and operation of the finder service and the manner in which buyers and sellers bind themselves to the terms of a specific transaction. A financial holding company may also arrange for buyers that use its finder services to receive preferred terms from sellers so long as the terms are not negotiated as part of any individual transaction, are made available to broad categories of customers, and are provided by the seller and not the financial holding company. The finder rule does not affect the ability of financial holding companies to conduct activities that are otherwise permissible for financial holding companies, such as securities brokerage and insurance agency activities. Finally, bank holding companies that do not qualify as financial holding companies may not engage in finder activities.

### **REQUIRED DISCLOSURES**

A financial holding company acting as a finder must distinguish the products and services it offers from those offered by a third party through its finder services. The Board did not identify specific disclosures that must be provided by financial holding companies. However, the Board expects disclosures to be reasonably designed to ensure that users are not led to believe that the financial holding company is providing the products or services offered or sold by third parties through the finder service.

Please call us if you have any questions regarding this rule. Please visit our web site at [schwartzandballen.com](http://schwartzandballen.com) for links to information regarding this rule and other rules.