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**MEMORANDUM**

January 21, 2004

To Our Clients and Friends

Re: Proposed Amendment of Community Reinvestment Act Regulations

The Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency and the Office of Thrift Supervision are about to announce a joint interagency notice of proposed rulemaking (“NPR”) amending the Community Reinvestment Act (“CRA”) regulations.<sup>1</sup> Comments on the NPR are due 60 days after its publication in the *Federal Register*.

The CRA directs the federal bank and thrift regulatory agencies to assess a financial institution’s record of meeting the credit needs of its entire community and to consider that record when acting on certain applications for deposit facilities. The NPR proposes to amend the definition of “small bank” and to expand and clarify the provision in the agencies’ regulations that an institution’s CRA evaluation is adversely affected when the institution has engaged in specified discriminatory, illegal or abusive credit practices in connection with certain loan.

**DEFINITION OF “SMALL INSTITUTION”**

Under the proposal the definition of “small institution” would change from an institution with total assets of less than \$250 million that was independent or an

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<sup>1</sup> An Advanced Notice of Proposed Rulemaking (“ANPR”) was issued on July 19, 2001. The NPR is the result of an interagency review of the current CRA regulations (a commitment to review the regulations in 2002 was made when the CRA regulations were adopted) and consideration of comments received in response to the ANPR.

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affiliate of a holding company that had total assets of less than \$1 billion to an institution with total assets of less than \$500 million, with no consideration of the assets of affiliated holding companies.

The proposed change would not alter the obligation of small institutions to help meet the credit needs of their communities nor would it affect the statutory examination cycle established under the Gramm-Leach-Bliley Act for institutions above and below \$250 million of assets. The principal benefit of the change would be to reduce the regulatory burden associated with the amount of information that small institutions must collect and report.

### **CRA EVALUATION**

The NPR provides that evidence that an institution has engaged in discriminatory, illegal or abusive credit practices would adversely affect the institution's CRA evaluation. It further provides that a pattern or practice of secured lending based predominantly on the liquidation or foreclosure value of the collateral, where the borrower cannot be expected to make the payments required under the terms of the loan, would similarly adversely affect an institution's CRA evaluation. Examples of such practices include loan flipping and fee packing that are shown to be unfair or deceptive or equity-stripping motivated underwriting.

The NPR also clarifies that an institution's CRA evaluation could be affected by evidence of discriminatory, other illegal and abusive credit practices in an assessment area by any affiliate, if any loans of that affiliate have been considered in the institution's CRA evaluation.

### **CRA DISCLOSURE STATEMENT**

The NPR provides that the CRA disclosure statement would contain the number and amount of the institution's small business and small farm loans by census tract, rather than by disclosing such loans in the aggregate as is currently done. This would not change an institution's data collection or reporting procedures.

Upon publication in the *Federal Register*, the NPR will be available on our web site - [http://www.schwartzandballen.com/whats\\_new.html](http://www.schwartzandballen.com/whats_new.html).

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