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

August 3, 2007

To Our Clients and Friends

Re: OTS Proposal on Unfair or Deceptive Acts or Practices

The Office of Thrift Supervision (“OTS”) has issued an advanced notice of proposed rulemaking seeking public comment on whether it should expand its current prohibitions against unfair or deceptive acts or practices. The public comment period extends for 90 days after publication in the *Federal Register*.

The OTS is authorized by the Federal Trade Commission Act (“FTC Act”) to prescribe regulations to prevent unfair or deceptive acts or practices by savings associations. The OTS used its rulemaking authority in this area to adopt its Credit Practices Rule in 1985. Now, the OTS is considering whether to use its authority to consider additional rules on unfair and deceptive acts or practices and whether to apply these rules to related entities such as subsidiaries of savings associations and savings and loan holding companies.

Among the approaches under consideration is the possibility of listing specific practices that would be prohibited as unfair or deceptive. These could include such practices as:

- Credit Card Lending
  - Imposing an interest rate increase that is triggered by adverse information unrelated to the credit card account or card issuer
  - Imposing an over-the-limit fee that is triggered by the imposition of a late fee
  - Charging penalty fees in consecutive months based on previous late or over-the-limit transactions
  - Requiring, as a condition of a credit card account, a consumer’s consent to binding arbitration
  - Applying payments first to balances subject to a lower rate of interest before applying them to balances subject to higher rates of interest

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- Residential Mortgage Lending
  - Repetitive refinancing of the same mortgage loan by the same lender
  - Imposition of changes in loan terms upon default, such as imposing significant interest rate increases or a balloon payment
  - Force placing hazard insurance without first giving reasonable notice to borrowers to cure a deficiency
  
- Gift Cards
  - Imposing fees that exceed a certain amount or percentage of the original gift amount
  - Setting an expiration date less than one year from the date of issuance
  
- Deposit Accounts
  - Freezing accounts containing federal benefit payments upon receipt of attachment or garnishment

The OTS also requests suggestions on any other issues related to unfair or deceptive acts or practices. A copy of the OTS's proposal can be found on our web site 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.