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M E M O R A N D U M

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To Our Clients and Friends

Re: House Passes Business Checking Legislation

The U.S. House of Representatives has passed the Business Checking Freedom Act of 2005 (H.R. 1224) by a vote of 424 to 1. The bill removes the current prohibition against the payment of interest on checking accounts maintained by businesses in stages and provides for the payment of interest on reserves maintained by banks.

INTEREST ON BUSINESS CHECKING

Initially, the legislation permits depository institutions to pay interest on deposits maintained by businesses in accounts that permit depositors to make up to 24 withdrawals and transfers each month to other accounts in the same institution. This provision, therefore, permits 24 transfers of funds each month from a business depositor's interest-bearing deposit account to the depositor's checking account. The bill provides that the interest-bearing deposit account from which the transfers are made is a transaction account and is therefore subject to transaction account reserve requirements, unless the Federal Reserve Board determines otherwise. After two years, the bill removes the current prohibition against payment of interest on demand deposits and the prohibition on business NOW accounts.

INDUSTRIAL BANKS

The bill also addresses concerns raised by the Federal Reserve regarding the mixing of banking and commerce if industrial banks were permitted to pay interest on business checking accounts. To alleviate these concerns, the bill provides that an industrial loan company that is controlled by a commercial firm may not pay interest on demand deposits or other deposits withdrawable by check that are maintained by a business. A commercial firm is an entity whose revenue from nonfinancial activities

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exceeds 15 percent of its annual consolidated gross revenue. The bill grandfathers industrial loan companies that were controlled by commercial companies prior to October 1, 2003 regardless of the nature of the companies' business.

INTEREST ON RESERVES

The legislation permits the Federal Reserve to pay interest on reserves maintained at Federal Reserve Banks and provides the Federal Reserve with greater flexibility in the range of reserve requirements it may impose.

OTHER PROVISIONS

The bill requires the Federal Reserve to conduct an annual survey of bank fees and services. It also provides that any benefit obtained by a holder or beneficiary of an escrow account maintained for the purpose of completing the settlement of real estate transactions is not interest, and a depository institution is not required to pay interest on escrow accounts maintained in connection with real estate transactions.

Despite the overwhelming vote in favor of the legislation and the fact that this is the sixth time the House has passed similar legislation, it is uncertain if and when the Senate will consider this matter.

A copy of the House-passed bill can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

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