

**SCHWARTZ & BALLEN LLP**

1990 M STREET, N.W. • SUITE 500  
WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE  
(202) 776-0720

www.schwartzandballen.com

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

October 17, 2005

To Our Clients and Friends

Re: FDIC Proposal Preempting State Law

The Federal Deposit Insurance Corporation (“FDIC”) is requesting public comment on a proposed rule concerning the interstate activities of insured state banks and their subsidiaries to provide parity between state banks and national banks. The proposed rule would preempt the laws of the host state<sup>1</sup> for activities conducted in that state by a branch of a state bank located in another state if that host-state law would not apply to the same activities when conducted by a branch of a national bank in the host state. Comments are due by December 13, 2005.

Under the Federal Deposit Insurance Act (“FDI Act”), the laws of a state apply to a branch in that state of an out-of-state bank to the same extent that those state laws apply to the branch in that state of an out-of-state national bank. If state law does not apply to the branch of an out-of-state bank, the laws of the bank’s home state<sup>2</sup> apply. The proposed rule provides that a branch of an out-of-state state bank will obtain the benefit of this provision of the FDI Act if the activity is “conducted at a branch” in the host state. Under the FDIC’s proposal, an activity is conducted at a branch of the bank in a host state if it is an activity of, by, through, in, from or substantially involving a branch, whether or not the entire activity is performed at the branch. However, the proposal would not apply if the out-of-state bank does not have a branch in the host state.

As a result, the proposed rule would apply to state banks operating interstate branches the regulations, rulings and interpretations in which the Office of the

---

<sup>1</sup> A “host” state is a state, other than the home state, in which the bank maintains a branch.

<sup>2</sup> The “home” state of a bank is the state in which the main office of the bank is located (national bank) or the state in which the bank is chartered (state bank).

**SCHWARTZ & BALLEN LLP**

Comptroller of the Currency (“OCC”) determined that state law does not apply to national banks. The proposal states that in order to determine if host-state law is preempted for a branch of an out-of-state bank, the FDIC expects to consult with the OCC.

A second aspect of the FDIC’s proposal relates to the application of state interest rate limitations to state banks. The proposed rule would formally recognize that insured state banks have the same most favored lender authority as national banks. That is, state banks would be permitted to export the interest rate of the bank’s home state to customers in other states. In addition, the proposed rule would adopt a federal definition of “interest” for purposes of determining whether a particular charge is interest subject to Section 27 of the FDI Act. The proposed rule also addresses where a state bank that does not maintain branches in another state or that only operates over the Internet and where an insured U.S. branch of a foreign bank is “located” by reference to the state that issued the bank charter or the foreign bank’s branch license.

A copy of the proposed rule 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 or Tom Fox at (202) 776-0700.