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M E M O R A N D U M

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To Our Clients and Friends

Re: FDIC Proposal on Recordkeeping Requirements for Qualified Financial Contracts

The Federal Deposit Insurance Corporation (“FDIC”) is issuing a notice of proposed rulemaking that would require troubled depository institutions to maintain certain records on qualified financial contracts (“QFCs”). The purpose of the proposal is, in the event an institution fails, to assist the FDIC in deciding whether to transfer the QFC to another financial institution, repudiate the QFC or retain the QFC in the receivership estate. Comments on the proposed rule are due 60 days after publication of the proposal in the *Federal Register*.

QFCs are securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master or security agreements covering these five categories, and any other similar agreements as determined by the FDIC. Under the Federal Deposit Insurance Act (“FDI Act”), in the event of a failure of an insured depository institution, QFC counterparties can exercise their contractual right to terminate QFCs and offset or net out any amounts due between the institution and the counterparties and apply any pledged collateral for payment. In order to provide the FDIC with time to decide whether to transfer a QFC, repudiate it or retain it, counterparties cannot terminate or exercise other contractual rights until 5 p.m. on the business day following the appointment of the FDIC as receiver.

The proposal would require institutions in a troubled condition, upon written notification by the FDIC, to produce at the close of each business day:

- Electronic files for certain position level and counterparty level data;
- Electronic files or written lists of:
 - QFC counterparty and portfolio location identifiers,
 - Certain affiliates of the institution and the institution’s counterparties to QFC transactions

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- Contact information and organizational charts for key personnel involved in QFC activities, and
- Contact information for vendors for such activities;
- Copies of key agreements and related documents for each QFC.

The FDIC requests comments on whether the proposed QFC recordkeeping requirements should apply to all institutions, whether or not they are in a troubled condition, whether or not the specified recordkeeping categories are appropriate and whether or not additional requirements are necessary.

A copy of the proposed rule can be found on our website at 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.