

SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465
WWW.SCHWARTZANDBALLEN.COM

TELEPHONE
(202) 776-0700

FACSIMILE
(202) 776-0720

MEMORANDUM

August 27, 2009

To Our Clients and Friends

Re: FDIC Policy Statement on Acquisition of Failed Depository Institutions

The Federal Deposit Insurance Corporation (the "FDIC") has adopted a final policy which provides guidance to private capital investors regarding terms and conditions that will apply to acquisitions of failed depository institutions. The guidance relaxes some of the restrictions contained in the FDIC's July proposal.

The policy statement addresses the following areas:

APPLICABILITY

The policy applies to private investors in a company that proposes to assume deposit liabilities from the resolution of a failed insured depository institution, including through a shelf charter or a *de novo* charter.

CAPITAL COMMITMENT

The depository institution will be required to maintain a ratio of Tier 1 common equity capital to total assets of at least 10 percent for three years and will be required to be "well capitalized" thereafter.

CROSS SUPPORT

If one or more investors own 80 percent of two or more depository institutions, the stock of the commonly controlled institutions must be pledged to the FDIC to cover losses incurred by the FDIC in the event one of the institutions fails.

TRANSACTIONS WITH AFFILIATES

A depository institution may not make an extension of credit to its investors, their investment funds or any affiliates.

SCHWARTZ & BALLEN LLP

SECURITY LAW JURISDICTIONS

Investors using ownership structures that involve entities domiciled in secrecy jurisdictions must be subsidiaries of companies that are subject to comprehensive consolidated supervision. They must also agree to provide information about their operations and activities and maintain records in the U.S.

CONTINUITY OF OWNERSHIP

Investors are prohibited from selling their interests in the depository institution for three years.

PROHIBITED STRUCTURES

Investors with complex ownership structures will not be permitted to bid if it is difficult to ascertain their beneficial ownership and which parties are responsible for making decisions.

DISCLOSURE

Investors will be required to submit information regarding the participants in the ownership chain, the size of the capital fund, diversification, marketing documents, management information and the business model.

SPECIAL OWNERSHIP LIMITATIONS

Investors that hold 10 percent of the equity of a depository institution in receivership are not eligible investors.

A copy of the FDIC's policy statement 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.