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MEMORANDUM

October 12, 2010

To Our Clients and Friends

Re: FDIC Proposal on Orderly Liquidation Authority

The Federal Deposit Insurance Corporation (“FDIC”) has proposed a rule clarifying how it will treat certain creditor claims under the new liquidation authority provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). The Dodd-Frank Act provides for the appointment of the FDIC as receiver for a financial company where the failure of the company and its liquidation under the Bankruptcy Code or other insolvency procedures would pose a significant risk to the financial stability of the United States. The FDIC is requesting comment on a proposed rule on specific issues related to creditor claims as well as on broader questions. Public comment on the proposed rule is due in 30 days, and in 90 days for the broader questions.

The FDIC requests comment on the availability of additional payments to creditors under the Dodd-Frank Act authority. The proposal would impose an absolute bar on any additional payments to holders of long-term senior debt, subordinated debt, or equity interests that would result in those creditors recovering more than other creditors entitled to the same priority of payments under the law.

The FDIC also indicates that all creditors must expect to absorb losses in a liquidation. No creditor would receive any additional payment unless the FDIC has determined that the payments meet the statutory standards. Such payments will be subject to recoupment if ultimate recoveries are insufficient to repay any temporary government liquidity support provided as part of the orderly wind-down.

The proposal further provides that secured creditors will only be protected to the extent of the fair value of their collateral. To the extent that any portion of the claim is unsecured, it will absorb losses along with other unsecured creditors.

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The FDIC also requests comment on the following issues:

- The authority to continue operations by paying for services provided by employees and others
- The treatment of creditors by clarifying the measure of damages for contingent claims
- The application of proceeds from the liquidation of subsidiaries

A copy of the FDIC's proposal can be found on our website at <http://www.schwartzandballen.com/news.html>

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