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**MEMORANDUM**

November 24, 2010

To Our Clients and Friends

Re: FDIC Guidance on Automated Overdraft Payment Programs

The Federal Deposit Insurance Corporation (“FDIC”) today issued guidance to address reputational and safety and soundness risks associated with automated deposit account overdraft payment programs. These programs are used by depository institutions to determine whether non-sufficient fund transactions qualify for overdraft coverage based upon pre-established criteria. The FDIC expects financial institutions to provide clear and meaningful disclosures and other communications about overdraft payment programs, fees, and other features and options, and demonstrate compliance with new opt-in requirements for ATM withdrawals and one-time point-of-sale debt card transactions.

The FDIC also expects financial institutions to:

- Promptly honor customers’ requests to opt out from coverage of overdrafts resulting from non-electronic transactions
- Give consumers the opportunity to affirmatively choose the overdraft payment product that overall best meets their needs
- Monitor accounts and take meaningful and effective action to give customers a reasonable opportunity to choose a less costly alternative and to decide whether to continue with fee-based overdraft coverage
- Institute appropriate daily limits on overdraft fees
- Consider eliminating overdraft fees for transactions that overdraw an account by a de minimis amount
- Not process transactions in a manner designed to maximize the cost to consumers

Depository institutions subject to the FDIC’s supervisory jurisdiction are expected to implement policies consistent with the guidance by July 1, 2011.

**SCHWARTZ & BALLE LLP**

A copy of the FDIC's guidance 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.