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**MEMORANDUM**

August 13, 2010

To Our Clients and Friends

Re: FDIC Proposed Supervisory Guidance on Overdraft Programs

The Federal Deposit Insurance Corporation is requesting public comment regarding proposed supervisory guidance on automatic overdraft programs for consumer deposit accounts. Unlike recent Federal Reserve Regulation E amendments which apply only to overdraft programs involving debit and ATM card transactions, the FDIC's guidance would apply to all overdraft programs in which customers are automatically enrolled. The guidance would apply only to FDIC-supervised financial institutions (i.e., state nonmember banks).

The FDIC proposal would require a financial institution to:

- Ensure that its board/management oversees the automatic overdraft program, including annual reviews of the features of the overdraft program
- Provide education/disclosure to its customers to ensure appropriate use of overdraft features
- Monitor customers' use of the overdraft feature, and contact customers if they are "overusing" the overdraft service
- Impose daily limits on total overdraft fees on a customer's account
- Not post checks in a manner that seeks to maximize overdraft fees
- Provide consumers with the right to opt out of the automatic overdraft feature for check and other non-electronic transactions (not just ATM and debit card transactions)

The comment period closes on September 27, 2010.

A copy of the proposed supervisory guidance can be found at our website at <http://www.schwartzandballen.com>

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