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MEMORANDUM

March 16, 2011

To Our Clients and Friends

Re: Orderly Liquidation Authority Under the Dodd-Frank Act

The Federal Deposit Insurance Corporation (“FDIC”) has proposed a rule to clarify several aspects of the orderly liquidation authority of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

The proposed rule establishes standards for determining if a company is predominately engaged in financial activities, and thus subject to the orderly liquidation provisions of the Dodd-Frank Act. A financial company is deemed to be “predominately engaged” in financial activities if the organization derived at least 85% of its total consolidated revenue from financial activities over the two most recent fiscal years.

The proposal also sets forth the process by which compensation may be clawed back from senior executives and directors. The FDIC, as receiver, is authorized to recoup two years of compensation from persons who are substantially responsible for the failed condition of a financial company. The FDIC will investigate whether each senior executive or director performed his or her responsibilities with the requisite degree of skill and care, and whether the individual caused a loss that materially contributed to the failure of the financial company. For the most senior executives, the FDIC proposes to establish a rebuttable presumption that the senior executives are substantially responsible for the company’s failure.

The proposed rule also addresses the priority for the payment of claims, the process for the determination of claims by the receiver, as well as the process for seeking a judicial adjudication of any disallowed claims.

Comments are due 60 days after publication in the *Federal Register*.

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

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