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MEMORANDUM

January 27, 2009

To Our Clients and Friends

Re: FDIC Action on Interest Rates and Deposit Account Processing

The Federal Deposit Insurance Corporation (“FDIC”) has proposed a modification of its rule on the maximum interest rate banks that are less than well capitalized may pay on deposits. The FDIC also adopted a final rule on processing deposit accounts in the event of a bank failure. The final rule also requires banks offering deposit sweep arrangements to inform customers of the nature of their swept funds and how their funds would be treated if the bank fails.

PERMISSIBLE INTEREST RATES

The FDIC currently prohibits banks that are less than “well capitalized” from paying interest on deposits at rates that significantly exceed prevailing market rates. Currently, interest rates on deposits that are solicited nationally are tied to yields on U.S. Treasury securities of comparable maturities. Rates on deposits solicited locally are tied to prevailing local interest rates. The FDIC proposes to provide greater specificity by defining nationally prevailing deposit rates as a direct calculation of national averages, as computed and published by the FDIC, rather than basing the rates on Treasury yields. Because of recent innovations in deposit-raising techniques, such as use of the Internet, the FDIC proposes to establish a presumption that locally prevailing deposit rates equal the national rates published by the FDIC. This presumption could be overcome by evidence presented by banks to the FDIC. The FDIC expects that the proposed rule, if adopted, would result in lower deposit rates being paid by some 150 banks that are less than well capitalized.

DEPOSIT ACCOUNT PROCESSING

The FDIC also finalized its 2008 interim rule on processing deposit accounts in the event of failure. The rule establishes the FDIC's practices for determining deposit account balances at a failed depository institution and generally codifies the agency's

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long-standing practices. The final rule also requires insured depository institutions to inform their sweep account customers of the nature of their swept funds and how those funds would be treated if the institution should fail. Excluded from the requirement are sweep arrangements where funds are moved between deposit accounts and the deposit insurance available to the customer is unchanged. The rule is effective July 1, 2009.

Copies of the FDIC's actions can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

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