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M E M O R A N D U M

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To Our Clients and Friends

Re: New FDIC Proposed Rule on Whether Funds Underlying
Stored Value Cards Qualify as Insurable Deposits

Today the Federal Deposit Insurance Corporation (“FDIC”) proposed a new rule regarding insurance coverage of funds underlying stored value cards and other non-traditional access devices. The proposed rule discusses when funds would be considered “deposits,” who would be classified as the insured party and whether and what kind of disclosures should be given to cardholders.

This proposed rule revises the FDIC’s first proposed rule on insurance coverage of stored value issued on April 16, 2004. If adopted as a final rule, this proposed rule would replace General Counsel’s Opinion No. 8 which currently addresses insurance coverage for stored value products.

Comments on the proposed rule are due 90 days after publication in the Federal Register.

CLASSIFICATION AS A “DEPOSIT”

The new proposed rule classifies funds underlying stored value cards or other nontraditional access mechanisms as “deposits” if the funds have been placed at an insured depository institution. The proposed rule attempts to treat the funds as deposits in the same manner as funds that are accessed through traditional means, such as checks. The FDIC is requesting comments on narrow exceptions not yet included in the proposed rule, such as a de minimis exception for funds with balances under \$100.

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DESIGNATION AS THE INSURED PARTY

Because cardholders generally obtain stored value cards from a third party, the proposed rule would extend the FDIC's "pass-through" requirements to funds underlying stored value cards and other non-traditional access methods. Therefore, if the identity of the owner of the funds is reflected in the bank records and the identity of the cardholder and amount payable is reflected either in the bank records or records of the issuer of the card or its agent, the cardholder will be the insured party. Otherwise, the third party who issued the card would be the insured party and there would be no pass-through insurance to the cardholder.

DISCLOSURES TO CARDHOLDERS

In the new rule, the FDIC does not mandate specific disclosures. Instead, the proposed rule suggests several options for providing disclosures to cardholders, such as a statement on the card, and requests comment on these different approaches.

A copy of the proposed rule will soon be available 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.