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MEMORANDUM

August 13, 2015

To Our Clients and Friends

Re: OCC, FDIC and CFPB Impose Penalties for Incorrect Deposit Credits

The Comptroller of the Currency, Federal Deposit Insurance Corporation and the Consumer Financial Protection Bureau have imposed civil money penalties totaling \$20.5 million on Citizens Bank, N.A. and Citizens Bank of Pennsylvania and ordered restitution of approximately \$11 million to customers for failing to credit the full amount of their deposited funds.

The agencies stated that between 2008 and 2013, if the amount reflected on customers' deposit slips did not equal the total of the amount of the deposit as calculated by the banks' deposit system, the banks only investigated when the dollar amount of the discrepancies were above a certain threshold and did not fix the errors if the discrepancies fell below a certain dollar amount. As a result of this practice, the banks often did not credit customers for their entire deposit when there was a discrepancy between the amount appearing on customer deposit slips and funds deposited. It was noted that the banks' account agreements informed customers that deposits were subject to verification, implying that the banks would take steps to ensure they were credited with the correct deposit amount. The agencies concluded that although some customers whose deposit slip amounts exceeded their actual deposit benefited from the banks' practice, nonetheless the banks engaged in unfair and deceptive practices by failing to properly credit customers' accounts.

In addition to making restitution to customers who were under credited, the banks also were required to rebate any fees consumers incurred related to the under-crediting, including overdraft fees, insufficient funds fees and monthly maintenance fees, and pay a reasonable estimate of interest on the amounts credited.

The agencies' actions raise the question of the appropriate level of resources a bank must expend to investigate and resolve discrepancies that arise between amounts depositors state they are depositing and the amounts the bank's deposit system calculates as the amount deposited. The agencies' enforcement orders seem to suggest that banks

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are required to attempt to resolve every identified discrepancy regardless of the dollar amount, in particular if the account agreement states that the bank will verify customer deposits.

A copy of the agencies' enforcement orders 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, Heidi Wicker, or Ben Gray at (202) 776-0700.