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MEMORANDUM

November 13, 2015

To Our Clients and Friends

Re: FDIC Modifies Guidance on Brokered Deposits

The Federal Deposit Insurance Corporation has updated its previously issued guidance on identifying, accepting, and reporting brokered deposits. The FDIC no longer identifies the document as “guidance,” but rather as frequently asked questions (“FAQs”) that summarizes previous FDIC guidance. The document is intended to be a starting point for banks analyzing whether a product of program involves brokered deposits. The FDIC also is requesting comments on the updated FAQs by December 28th.

The FDIC provided a more explicit explanation of several areas than the previous version. Banks will not generally be required to refile past Call Reports if they were unaware of the required treatment before the FAQs were released. The FDIC also clarified that when business professionals in a community informally refer customers to a bank, they would generally not be considered deposit brokers. However the person would be a deposit broker if it was a more programmatic arrangement. In reviewing whether a program results in a brokered deposit, the FDIC will consider whether the cost of the incentive package is small, payments are capped, and the materiality of the fee.

The FDIC also clarified when contractors and dual employees are to be regarded as deposit brokers. Dual-employees who perform administrative work and are not involved in facilitating the placement of the deposits would not be deposit brokers. The FAQs discuss other situations in which the employee is involved in referring customers to the bank or opening deposit accounts which may give rise to a brokered deposit arrangement.

The FDIC reaffirmed that general purpose prepaid cards are brokered deposits, stating that the card and the deposit account funds are inseparable in that the card is the device to access the funds in the account.

The FAQs also address the treatment of federal or state agency funds being distributed through debit or prepaid cards. The agency would be a deposit broker when

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programs are structured such that each beneficiary gets his or her own deposit account at a particular institution, or when multiple beneficiaries have a commingled deposit account accessed through prepaid cards. The only exceptions to this would be if the agency is mandated by law to disburse the funds to beneficiaries, the agency is the sole source of funding for the deposit accounts, or the deposits owned by the beneficiaries do not produce fees payable to the agency by the depository institution.

A copy of the FDIC's FAQs 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.