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**MEMORANDUM**

December 12, 2019

To Our Clients and Friends

Re: FDIC Proposes Amendments to Brokered Deposit Rule

The FDIC is proposing changes to its brokered deposit rule in order to update and modernize the rule. Public comment is due 60 days after publication in the *Federal Register*. The proposed changes to the FDIC's brokered deposit rule include the following:

- Any person that places deposits at depository institutions on behalf of a depositor as part of its business relationship with that depositor will be regarded a deposit broker.
- Currently, a person is a deposit broker if it “facilitates” the placement of deposits with depository institutions. Under the proposal, a person facilitates the placement of deposits by engaging in any of the following activities:
  - The person directly or indirectly shares any third-party information with the insured depository institution;
  - The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another depository institution;
  - The person provides assistance or is involved in setting rates, fees, terms, or conditions for the deposit account; or
  - The person is acting, directly or indirectly, with respect to the placement of deposits, as an intermediary between a third party that is placing deposits on behalf of a depositor and a depository institution, other than in a purely administrative capacity.
- The primary purpose exception will apply when the primary purpose of the third party's business relationship with its customers is not the placement of funds with depository institutions. A mandatory application and reporting process will be established to determine if the primary purpose exception is warranted.
  - The primary purpose of a third party's business relationship with its customers will not be considered to be the placement of funds if less than 25 percent of the total assets that the party has under management for its customers, in a particular business line, is placed at depository institutions.
  - For example, a broker dealer that sweeps uninvested cash balances to depository institutions meets the primary purpose exception if the amount of customer funds

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it places at deposit accounts represents less than a quarter of the total amount of customer assets it manages for its broker dealer business.

- The primary purpose of a third party's business relationship with its customers will not be considered to be the placement of funds if the party places depositors' funds into transactional accounts for the purpose of enabling payments.
- Parties that do not fit within the express exceptions would be eligible to apply for the primary purpose exception.
- A person engaged in the business of placing deposits with depository institutions for the purpose of selling interest in those deposits to third parties (i.e., brokered CDs) will continue to be regarded as deposit brokers.
- Currently, a depository institution is not a deposit broker when it or its employees place funds at the institution. The proposal extends this exception to wholly-owned operating subsidiaries that operate as divisions of the institution.
- The FDIC will consider modifications to the deposit insurance assessment regulation at some future time.

A copy of the FDIC's proposal is available on our website at <http://schwartzandballen.com/news.html>.

For more information, please call Gilbert Schwartz, Robert Ballen, Heidi Wicker, or Victor Razon at (202) 776-0700.