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MEMORANDUM

November 19, 2019

To Our Clients and Friends

Re: OCC and FDIC Interest Rate Proposals

The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) are requesting public comment on proposed rules to clarify that when insured banks and savings associations sell, assign, or otherwise transfer loans, interest permissible prior to the transfer continues to be permissible following the transfer. The proposals are intended to override the U.S. Court of Appeals for the Second Circuit's 2015 decision in *Madden v. Midland Funding, LLC*.¹ Comments are due 60 days after publication of the proposals in the *Federal Register*.

The agencies indicated that the *Madden* decision has created uncertainty about the ongoing validity of the interest term after a bank exercises its authority to sell, assign, or otherwise transfer a loan. They state that Federal law establishes a clear and comprehensive scheme governing the interest that an insured bank may charge, *viz.*, the ability to charge interest on a loan at a rate allowed by the laws of the state in which the bank is located. The proposal will codify the long-held position that the rate of interest on a loan, as permitted by the law where the bank is located, would not be affected by subsequent events, such as the sale, assignment or transfer.

It is noteworthy the OCC and FDIC expressly stated that the issue of which entity is the true lender when a bank makes a loan and assigns it to a third party is outside the scope of the rulemaking. Nonetheless, the FDIC indicated it views unfavorably entities that partner with a state bank with the sole goal of evading a lower interest rate established under the law of the bank's licensing state.

Copies of the OCC and FDIC's proposed rules are 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.

¹ 786 F.3d 246 (2d Cir. 2015).