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**MEMORANDUM**

March 18, 2020

To Our Clients and Friends

Re: FDIC Proposal Regarding Parent Companies of Industrial Banks

The Federal Deposit Insurance Corporation is proposing a rule to require certain conditions and commitments in connection with applications that result in an insured industrial bank (or an industrial loan company) becoming a subsidiary of a company that is not subject to consolidated supervision by the Federal Reserve Board. The objective is to codify existing FDIC practices to ensure that the parent company that owns or controls an industrial bank serves as a source of strength for its subsidiary and reduce undue risk to the Deposit Insurance Fund that may otherwise be presented in the absence of Federal consolidated supervision of an industrial bank and its parent company. Comments are due 60 days after publication in the *Federal Register*.

Because an industrial bank or an industrial loan company is not a bank for purposes of the Bank Holding Company Act, a company that owns or controls the institution is not a bank holding company and is therefore not subject to consolidated supervision by the Federal Reserve Board. Moreover, such a company is not subject to the Bank Holding Company Act restriction on engaging in commercial activities.

The FDIC reports that no industrial banks have been established since 2008. However, it now has deposit insurance applications pending from five industrial banks and anticipates continued interest in the establishment of industrial banks. As a result, it proposes to codify its current practice of requiring capital and liquidity maintenance agreements as well as commitments from the industrial bank's parent company to provide financial resources should it fail to comply with the agreements.

Under the proposal, a company that applies to control an industrial bank and is not subject to consolidated supervision by the Federal Reserve would be required to agree to the following eight commitments:

- Furnish an initial listing, with annual updates, of the company's subsidiaries
- Consent to the examination
- Submit an annual report on the company and its subsidiaries, and other reports
- Maintain records as deemed necessary
- Conduct an independent annual audit of the industrial bank

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- Limit the company's representation on the industrial bank's board of directors to 25 percent
- Maintain the industrial bank's capital and liquidity at such levels as deemed appropriate and take such other action to provide the industrial bank with additional capital or liquidity
- Enter into a tax allocation agreement

In addition, depending on the facts and circumstances, the company may be required to provide, adopt, and implement a contingency plan that sets forth strategies for recovery actions and the orderly disposition of the industrial bank without the need for a receiver or conservator.

A copy of the FDIC's announcement 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.