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MEMORANDUM

October 30, 2020

To Our Clients and Friends

Re: Comptroller Issues True Lender Rule

The Comptroller of the Currency (OCC) has issued a final rule that determines when a national bank or federal savings association makes a loan and is the “true lender” in the context of a business relationship between a bank and a third party. The rule is effective December 29, 2020.

The OCC’s rule specifies that a bank is the true lender if as of the date of origination it (1) is named as the lender in the loan agreement or (2) funds the loan. The rule also provides that if as of the date of origination one bank is named as the lender in the loan agreement for a loan and another bank funds that loan, the bank that is named as the lender in the loan agreement is the one deemed to make the loan.

The OCC states that the rule provides legal certainty as to how to determine which entity in a lending program is the lender and therefore the laws that will apply to the loans. At the same time, the OCC underscored that so-called “rent-a-charter” arrangements in which the bank receives a fee to rent its charter in order to have banking laws apply to the loans “have absolutely no place in the federal banking system.”

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

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Heidi Wicker, or Victor Razon at (202) 776-0700.