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MEMORANDUM

December 21, 2020

To Our Clients and Friends

Re: FDIC Requirements for Parents of Industrial Banks

The Federal Deposit Insurance Corporation has adopted a rule that requires companies that are parents of industrial banks (or industrial loan companies)¹ that are not subject to consolidated supervision by the Federal Reserve Board to agree to certain conditions when applying to the FDIC for deposit insurance and in connection certain other applications. Industrial banks parents that become subject to the requirements are required to comply with the rule beginning April 1, 2021.

Because an industrial bank is not a “bank” under the Bank Holding Company Act, a nonbanking organization that proposes to acquire control an industrial bank is not required to apply to the Federal Reserve Board to become a bank holding company. Accordingly, the nonbanking organization would not be subject to consolidated supervision by the Federal Reserve. Notwithstanding its conclusion that it had not found that industrial banks pose unique safety and soundness concerns based upon the activities of the parent company, the FDIC determined to adopt the rule in order to reduce what it perceives may be undue risk to the deposit insurance fund because of the lack of consolidated supervision, and to ensure that the parent continues to serve as a source of strength to its industrial bank subsidiary.

The rule provides that in order to obtain FDIC deposit insurance or obtain approval to acquire or merge an industrial bank or FDIC non-objection to a change in control, an industrial bank’s parent company that is not subject to consolidated supervision by the Federal Reserve Board will be required to enter into an agreement with the FDIC and the subsidiary industrial bank to comply with eight conditions. These include:

- Limit the parent company’s direct and indirect representation to less than 50 percent of the board of the industrial bank
- Provide an initial and annual listing of all subsidiaries
- Consent to FDIC examination of the company and its subsidiaries
- Submit an annual report describing the company’s operations and activities
- Maintain records as the FDIC deems necessary

¹ Industrial banks and ILCs are currently chartered in California, Hawaii, Minnesota, Nevada and Utah.

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- Maintain the capital and liquidity of the subsidiary industrial bank at levels determined by the FDIC and take other actions the FDIC determines appropriate, including indemnification and pledging assets
- Enter into a tax allocation agreement with its subsidiary industrial bank

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

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