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MEMORANDUM

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To Our Clients and Friends

Re: FDIC Brokered Deposit New FAQ

The FDIC periodically issues questions and answers (FAQs) explaining its brokered deposit rule adopted on December 15, 2020. The FDIC recently released a new brokered deposit FAQ which provides an important clarification of what constitutes “facilitation” of the placement of deposits. If a third party meets any of the three prongs of the FDIC “facilitation” definition, it is a deposit broker, and an insured depository institution must treat deposits placed through that deposit broker as brokered deposits.

The new FAQ addresses the first prong of the facilitation definition; that is, whether a person is a deposit broker because it has the legal authority, contractual or otherwise, to close the depositor’s account at an insured depository institution or move the depositor’s funds to another insured depository institution. The FAQ states that a person who has legal authority, contractual or otherwise, to direct another entity (e.g., a custodial agent) to move the depositor’s funds or close the depositor’s account would meet this prong of the “facilitation” definition and therefore would be a deposit broker. However, it goes on to provide that a person that has legal authority, contractual or otherwise, to direct another entity to move a depositor’s funds or close the depositor’s account based only upon either instructions or an approval received from the depositor for each occurrence and specific to each deposit account would not meet the first prong of the “facilitation” definition. The FAQ states further that depending on the particular facts and circumstances, a third party that recommends that the customer’s funds be placed in a specific account may meet the second or third prong of the facilitation definition.

The FDIC’s brokered deposit FAQs can be found at: https://www.fdic.gov/resources/bankers/brokered-deposits/brokered-deposits-qa.pdf?source=govdelivery&utm_medium=email&utm_source=govdelivery.

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