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MEMORANDUM

April 26, 2021

To Our Clients and Friends

Re: FDIC Proposes Rule Regarding False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo

The Federal Deposit Insurance Corporation has proposed a rule to implement the provision of the Federal Deposit Insurance Act (FDIA),¹ which prohibits the making of false statements or knowing misrepresentations that a deposit is insured or using the FDIC's name or logo in a manner that would imply that an uninsured financial product is insured or guaranteed by the FDIC. Comments on the proposed rule are due 60 days after publication in the *Federal Register*.

The proposed rule:

- Applies to anyone who violates the FDIA's advertising provisions as well as a person who aids in such a violation.
- Sets forth standards that the FDIC will use to determine if a statement violates the FDIA, including examples of advertisements and publications which violate the rule.
- Provides that, when a person continues to make representations about deposit insurance after having been advised that such representations are false or misleading, the FDIC will presume that the representations have been knowingly made.
- Sets forth a process by which the public may submit complaints to the FDIC regarding suspected false or misleading representations about deposit insurance.
- States the FDIC may notify other authorities of potential violations that it becomes aware of.
- Establishes a process by which the FDIC will pursue informal resolution of violations. The FDIC will issue an advisory letter which states the basis for the FDIC's concerns, requests the false or misleading representation be withdrawn or corrected, and provides an opportunity to substantiate the representation. If the recipient of the letter takes the requested corrective action, the FDIC will generally take no further action.
- Establishes the jurisdiction and venue framework for formal enforcement actions.

A copy of the proposed rule 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.

¹ 12 U.S.C. § 1828(a)(4).