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MEMORANDUM

May 19, 2022

To Our Clients and Friends

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

The Federal Deposit Insurance Corporation has finalized a rule to implement Section 18(a)(4) 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. The rule takes effect 30 days after publication in the *Federal Register*.

The final rule:

- Applies to anyone who violates or aids in a violation of the FDIA's advertising provisions.
- 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 the FDIC will presume a representation is knowingly made if a person continues to make the representation after having been advised that the representation is false or misleading.
- 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an advisory letter which states the basis for the FDIC's concerns, request the false or misleading representation be withdrawn or corrected within 15 days, and provide an opportunity to

¹ 12 U.S.C. § 1828(a)(4).

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substantiate the representation. If the recipient of the letter takes the requested corrective action, the FDIC will generally take no further action.

In connection with the FDIC's final rule, the Consumer Financial Protection Bureau issued an enforcement memorandum clarifying that regardless of whether the practice is engaged in knowingly, misuse of the FDIC's logo or misrepresentations pertaining to deposit insurance likely qualify as deceptive acts or practices and violate the Consumer Financial Protection Act (CFPA).²

A copy of the FDIC's final rule and the CFPB's enforcement memorandum can be found at our website at <http://www.schwartzandballen.com/news.html>

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

² 12 U.S.C. § 5536(a).