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Banking Regulators’ Examination Authority Does Not Override Attorney-Client Privilege

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Notwithstanding the venerable status of the attorney-client privilege and the important purposes it serves, the federal banking regulators and the Consumer Financial Protection Bureau have taken the position that they have the legal authority to override the privilege and compel supervised institutions to produce information protected by the privilege. Seven law firms, including Davis Polk & Wardwell LLP, have prepared a memorandum analyzing the regulators’ position. This memorandum, which was shared with the relevant regulators, analyzes the regulators’ position and explains why it is not legally sustainable.

This memorandum was prepared with the participation of the Staff of The Clearing House Association and reflects the views of the seven law firms whose names appear in the caption and of The Clearing House. It is not intended to reflect the views of any other client of the seven law firms. This memorandum should not be considered or relied upon as legal advice.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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