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MEMORANDUM

July 21, 2011

To Our Clients and Friends

Re: FinCEN Clarifies Money Services Businesses Definitions

The Financial Crimes Enforcement Network (“FinCEN”) has issued a final rule to clarify which businesses are regarded as Money Services Businesses (“MSBs”). Under the Bank Secrecy Act (“BSA”), MSBs must implement anti-money laundering (“AML”) programs, make certain reports to FinCEN and maintain certain records. Most types of MSBs are required to register with FinCEN and all are subject to examination for BSA compliance by the Internal Revenue Service.

FinCEN did not alter the current rule whereby all MSBs¹ (other than money transmitters) that conduct \$1,000 in transactions for a person on any day are required to comply with AML rules. (The \$1,000 threshold does not apply to money transmitters.) Importantly, the rule also clarifies that entities located in foreign countries that engage in MSB activities in the U.S. are subject to BSA rules. However, FinCEN exempted foreign banks and foreign broker-dealers from the MSB definition.

The rule replaces the term “currency dealer or exchanger” with the new term “dealer in foreign exchange” as a category of MSBs to clarify that persons meet the definition not only by exchanging currency, but also by exchanging other monetary instruments, funds or other instruments denominated in currency. In anticipation of final FinCEN rules relating to prepaid access, the rule separates provisions dealing with stored value from those dealing with issuers, sellers and redeemers of traveler’s checks and money orders. Accordingly, stored value will be treated as a separate category of MSB.

The rule is effective 60 days after publication in the *Federal Register*. Newly covered MSBs are required to register within six months after that date.

¹ MSBs include a currency exchanger; an issuer, redeemer or cashier of travelers’ checks, check, money orders or similar instruments; and a person who provides money transmission services.

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A copy of the rule can be found on our web site at
<http://www.schwartzandballen.com/news.html>.

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker, or Lauren Bianchini at (202) 776-0700.