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MEMORANDUM

October 14, 2011

To Our Clients and Friends

Re: FinCEN Proposal on Cross-Border Transport of Tangible Prepaid Devices

The Financial Crimes Enforcement Network (“FinCEN”) has issued a proposal to add “tangible prepaid access devices” to the list of monetary instruments that must be reported when transported into or out of the United States if their aggregate value exceeds \$10,000. Comments are due 60 days after publication in the *Federal Register*, which is expected shortly.

Bank Secrecy Act (“BSA”) regulations currently require the filing of a Currency and Monetary Instrument Report (“CMIR”) on any international transportation, mail or shipment of currency or other monetary instruments in an aggregate amount that exceeds \$10,000. FinCEN’s proposal would amend existing BSA regulations to:

- Expand the definition of “monetary instrument,” only for purposes of CMIR filing obligations, to include tangible prepaid access devices;
- Establish that the reportable value of tangible prepaid access devices will be determined by the amount of funds available through the device at the time it crosses into or out of the United States;
- Clarify that credit cards and debit cards are not a form of monetary instrument for BSA purposes, and also exclude from the CMIR requirement unactivated products being transported prior to delivery to a seller for sale to the public.

The proposal defines “tangible prepaid access devices” to include devices such as general-use prepaid cards, gift/store cards, payroll and government benefit cards, and certain cell phones or other tangible devices that provide direct access to prepaid funds.

A copy of the proposed 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.