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**MEMORANDUM**

June 19, 2012

To Our Clients and Friends

Re: FinCEN Ruling on Prepaid Access

The Financial Crimes Enforcement Network (“FinCEN”) has issued an interpretation regarding who is the “provider” of prepaid access in connection with bank prepaid card programs. FinCEN reviewed a prepaid access program in which a bank issued reloadable and non-reloadable open-loop cards, established and maintained account balances and processed card transactions. Another party was responsible for selling the cards to consumers and conforming to the bank’s anti-money laundering compliance program.

Under FinCEN’s rules, a provider of prepaid access is the program participant that agrees to serve as the principal conduit for access to information from program participants. The participants in a prepaid access program must designate a participant to serve as the provider of prepaid access. Under the program reviewed by FinCEN, the bank and the other participant agreed that the bank would be designated the provider of prepaid access.

FinCEN indicated that a provider of prepaid access is a defined category of money services business. Because under FinCEN rules banks are excluded from being a money services business, they cannot be designated as the provider of a prepaid access program. As a result, FinCEN advised that where a bank has primary oversight and control over an arrangement to provide prepaid access, no participant is required to register as the provider of prepaid access. FinCEN noted that a contractual designation of a bank as a provider of prepaid access would serve as evidence of a bank’s oversight and control over an arrangement to provide prepaid access. Under FinCEN rules, the person that exercises oversight and control is a matter of facts and circumstances. Activities that indicate oversight and control include organizing the program, establishing terms and conditions, determining other program participants and controlling or directing the appropriate party to initiate, freeze or terminate prepaid access.

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A copy of FinCEN's interpretive ruling can be found at our website 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.