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MEMORANDUM

November 20, 2013

To Our Clients and Friends

Re: Recent FinCEN Rulings

The Federal Crimes Enforcement Network (“FinCEN”) recently issued two rulings related to the definition of a money services business (“MSB”) under the Bank Secrecy Act. The rulings address whether engaging in a secondary market gift card exchange business affects the closed loop status of retailer-issued prepaid access and whether offering a payment mechanism for commercial customers that employs payable-through drafts constitutes money transmission.

SECONDARY MARKET EXCHANGE OF CLOSED LOOP PREPAID ACCESS

In response to an inquiry from a company that offered a web-based service for consumers to sell and purchase closed loop prepaid access at a discount from face value, FinCEN stated that trading closed loop prepaid access on the secondary market does not affect the closed loop status of prepaid access. FinCEN indicated that if the prepaid access originally qualified as closed loop, and therefore exempt from FinCEN regulations, its status will remain unchanged regardless of the availability of a secondary market for the product.

PAYABLE-THROUGH DRAFTS

FinCEN also considered whether a company that offers customers a payment mechanism based upon payable-through drafts constituted money transmission. Under the offering, customers would open accounts at the company and fund them with their own funds or with credit extended by the company. Customers could pay for purchases from merchants and third parties by presenting payable-through drafts, which cleared through the check clearing system. The company contended that it was providing merchant payment processing services and therefore was not engaged in money transmission.

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FinCEN concluded that the company was engaged in money transmission because it received funds from its customers, stored those funds in accounts at the company and sent the funds to third-parties at the instruction of its customers. In order to qualify for the merchant payment processor exemption, FinCEN stated that the company would have to be acting on behalf of sellers and must have an agreement with sellers which provides for the transmission of funds only to the sellers.

A copy of FinCEN's rulings 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 Ben Gray at (202) 776-0700.