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**MEMORANDUM**

March 19, 2013

To Our Clients and Friends

Re: FinCEN Guidance on Virtual Currencies

The Federal Crimes Enforcement Network (“FinCEN”) has issued guidance on when issuers and exchangers of virtual currencies will be regarded as money transmitters under the Bank Secrecy Act. If the issuer or exchanger is a money transmitter, it must register with FinCEN as a money services business and comply with anti-money laundering, recordkeeping and reporting requirements.

FinCEN’s guidance focuses on “convertible virtual currency,” which has an equivalent value in real currency or acts as a substitute for real currency. FinCEN regards a person issuing (putting into circulation) a virtual currency and who has the authority to redeem it (withdraw from circulation) as an “administrator. An “exchanger” is a person who exchanges virtual currency for real currency or other virtual currency. An administrator or exchanger that accepts and transmits convertible virtual currency, or buys or sells convertible virtual currency is a money transmitter under FinCEN’s rules.

FinCEN determined that administrators and exchangers engaged in the following activities are money transmitters:

- **E-currency and e-precious metals.** The broker or dealer of e-currency or e-precious metals is a money transmitter where the transmission of funds is no longer a fundamental element of the transaction to execute the purchase or sale of the e-currency or e-precious metal.
- **Centralized convertible virtual currencies.** An administrator of a central repository for convertible virtual currency that allows transfers of value between persons or from one location to another is a money transmitter. Also, an exchanger that accepts and transmits convertible virtual currency on behalf of others, including to pay a third party for virtual goods and services, is a money transmitter.

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- **De-centralized convertible virtual currencies.** Convertible virtual currency is de-centralized if there is no central repository and no single administrator, and it is obtained by a person's own computing or manufacturing effort. A person who creates de-centralized convertible virtual currency and sells it for real currency is a money transmitter. In addition, a person who accepts decentralized convertible virtual currency from another person and transmits it to a third person is an exchanger and a money transmitter. However, a person that creates de-centralized convertible virtual currency and uses it to purchase real or virtual goods and services is a user of virtual currency and is not a money transmitter.

FinCEN noted that persons accepting and/or transmitting convertible virtual currency are not providers or sellers of prepaid access because prepaid access is limited to real currencies. Similarly, a person who accepts real currency in exchange for virtual currency is not a foreign exchange dealer under FinCEN rules.

A copy of FinCEN's guidance 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 or Heidi Wicker at (202) 776-0700.