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**MEMORANDUM**

April 30, 2014

To Our Clients and Friends

Re: FinCEN Guidance Regarding Money Services Businesses

The Financial Crimes Enforcement Network (“FinCEN”) has issued the following guidance relating to money services businesses.

**ARMORED CAR SERVICES**

FinCEN reviewed an armored car coin and currency exchange service that provides retailers with currency and coin to meet their operational needs. A customer places an order for currency and coin with the company, which then prepares a sealed bag containing the currency and coin drawn from the company’s cash inventory. The company delivers the bag to the customer through an armored carrier on regularly scheduled stops. In return, the customer gives the armored carrier a bag containing currency and coin in the exact amount of the currency order.

FinCEN concluded that while the company did not come within the exception for armored carriers because it performed the additional activity of exchanging currency, the company’s armored cars effectively acted as remote teller counters. Accordingly, FinCEN advised, the service was not a money services business.

**RENTING VIRTUAL CURRENCY MINING EQUIPMENT**

FinCEN determined that a company that only rents computer systems to third parties for mining virtual currency administered by other entities was not itself an administrator of virtual currency or a money transmitter.

**ONLINE DEPOSIT, SETTLEMENT AND PAYMENT SERVICES**

FinCEN considered whether a company that provides online real-time deposit, settlement, and payment services for banks, businesses and consumers is a money transmitter or a provider of prepaid access. Although customers may place funds with the company in advance of a transaction, FinCEN nevertheless concluded that because the funds can only be transferred to one designated person in connection with a specific sale transaction, the arrangement was not prepaid access. However, FinCEN concluded that

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the service was money transmission, in part because it found that the company's payment and transmission services were not necessary or integral to any other service it performed.

### **SECURED TRANSACTION SERVICES**

FinCEN was asked whether providing secured transaction services to buyers and sellers of goods and services via the Internet requires registration as a money transmitter. When the parties agree to a transaction, the buyer transfers funds in the amount of the purchase to the company. The company then instructs the seller to deliver the goods or services. When the buyer indicates that it is satisfied with the goods or services, the company debits the buyer's account and credits the seller's account maintained at the company. The company also performs management services which include assisting the parties in creating, negotiating, and managing their transactions as well as dispute resolution and document handling.

FinCEN stated that to perform its service, the company was required to take possession of the funds and hold them in escrow until the conditions for payment to the seller were met. As a result, the acceptance and transmission of funds are a necessary and integral part of the service and do not constitute a separate and discrete service. Accordingly, FinCEN determined that the company would not be a money transmitter.

### **ESCROW SERVICES**

FinCEN also concluded that escrow services that a company offers to the buyer and the seller in an Internet sale would not require the company to register with FinCEN because the company would not be considered to be a money transmitter. The company receives funds from the buyer and holds them in escrow until releasing them to the seller, subject to the satisfaction of specified conditions. The company keeps the funds in an account at a depository institution that is segregated from the account it uses for its other operations. FinCEN concluded that the acceptance and transmission of funds do not constitute a separate and discrete service provided by the company in addition to the underlying service of transaction management. They are a necessary and integral part of the service. Therefore, FinCEN advised that the company would not be a money transmitter under its regulations.

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, Heidi Wicker, or Ben Gray at (202) 776-0700.