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**MEMORANDUM**

February 17, 2014

To Our Clients and Friends

Re: FinCEN and DOJ Guidance Regarding Providing  
Banking Services to Marijuana-Related Businesses

The Financial Crimes Enforcement Network (“FinCEN”) and the U.S. Department of Justice (“DOJ”) have issued guidance to financial institutions that wish to provide banking services to marijuana-related businesses. The FinCEN guidance clarifies its expectations regarding compliance with the Bank Secrecy Act (“BSA”). The DOJ guidance, which is directed to all U.S. Attorneys, addresses the impact the Department’s marijuana enforcement policy has on certain financial crimes such as money laundering.

**FINCEN GUIDANCE**

FinCEN’s guidance provides that a financial institution’s due diligence should include verifying whether the business is licensed and registered, reviewing the license application and related documentation submitted by the business, requesting from state authorities information about the business and related parties, developing an understanding of the normal and expected activity for the business, conduct ongoing monitoring for adverse information and suspicious activity, including for any of the red flags described in this guidance, and periodically updating customer due diligence.

FinCEN underscores that a financial institution’s obligation to file a Suspicious Activity Report (“SAR”) is unaffected by state laws legalizing marijuana-related activities. Accordingly, a financial institution is required to file a SAR on activity involving a marijuana-related business, including those licensed under state law. To facilitate compliance, the guidance establishes several types of SAR filings. A financial institution providing services to a marijuana-related business that it reasonably believes does not violate state law or implicate one of the eight enforcement priorities set forth in DOJ’s policy regarding enforcement of marijuana-related conduct should file a “Marijuana Limited” SAR. A financial institution filing a SAR on a marijuana-related business that it reasonably believes violates state law or implicates one of the DOJ enforcement priorities should file a “Marijuana Priority” SAR. If the financial institution terminates a customer for reasons related to its anti-money laundering program, it should file a “Marijuana Termination” SAR. The term “MARIJUANA LIMITED,”

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“MARIJUANA PRIORITY” or “MARIJUANA TERMINATION,” as appropriate, should appear in the narrative section of the SAR.

The guidance provides examples of red flags that may indicate that a marijuana-related business is engaged in inappropriate activity. Further, FinCEN states that a business engaged in marijuana-related activity may not be treated as a “non-listed business” and therefore is not eligible for consideration for an exemption from filing Currency Transaction Reports.

### **DOJ GUIDANCE**

DOJ’s guidance states that money laundering statutes, the BSA and unlicensed money transmitter statutes remain in effect with respect to marijuana-related activities. Accordingly, financial transactions involving proceeds of such activities can lead to federal prosecution. Moreover, financial institutions could face prosecution for their failure to identify and report transactions that involve the proceeds of marijuana-related activities.

The guidance provides that in determining whether to file charges against a financial institution for such violations, U.S. Attorneys should apply the eight enforcement priorities set forth in DOJ’s policy regarding enforcement of marijuana-related conduct. These priorities include preventing the revenue from the sale of marijuana from going to criminal enterprises. The guidance provides that prosecution may be appropriate if the financial institution fails to conduct due diligence of its customer’s activities. On the other hand, prosecution may not be appropriate if the customer’s activities do not implicate any of DOJ’s eight enforcement priorities.

DOJ’s guidance also provides that financial institutions must apply appropriate risk-based anti-money laundering policies, procedures and controls sufficient to address the risks posed by its customers, including performing customer due diligence designed to identify conduct that relates to any of DOJ’s eight enforcement priorities. Importantly, DOJ advises that the guidance does not provide a legal defense to a violation of federal law.

A copy of the FinCEN and DOJ 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.