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MEMORANDUM

August 4, 2014

To Our Clients and Friends

Re: FinCEN Notice of Proposed Rulemaking on Customer Due Diligence

The Financial Crimes Enforcement Network (FinCEN) has issued a notice of proposed rulemaking regarding customer due diligence (CDD) requirements for banks, securities broker-dealers, mutual funds, futures commission merchants and introducing brokers in commodities. Comments on the proposed rule are due October 3, 2014.

FinCEN proposes to apply CDD requirements to financial institutions which are currently subject to a customer identification program (CIP) requirement under its regulations implementing the Bank Secrecy Act. The rule would require covered institutions to incorporate four “pillars” of an effective CDD program into their written anti-money laundering (AML) program:

- Identify and verify the identity of customers;
- Understand the nature and purpose of customer relationships;
- Conduct ongoing monitoring to maintain and update customer information and identify and report suspicious transactions; and
- Identify and verify the identity of beneficial owners of legal entity customers.

The pillar relating beneficial owners of legal entity customers imposes new requirements. The other pillars are intended to incorporate existing supervisory guidance into the AML program requirements.

A “beneficial owner” is an individual who directly or indirectly owns 25% or more of the equity interests of a legal entity or who has significant responsibility to control, manage or direct the legal entity. Beneficial ownership information of an entity opening an account would be required to be collected on a standard certification form, verified using existing risk-based CIP practices, and updated as appropriate on a risk-basis. Entities that are exempt from the CIP requirements would be exempt from these requirements, as well as specified entities whose beneficial ownership information is generally available from other sources.

FinCEN’s notice of proposed rulemaking 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.