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MEMORANDUM

June 6, 2016

To Our Clients and Friends

Re: Washington DFI Revises Payment Processing Interpretation

The Washington Department of Financial Institutions (“DFI”) has revised its interpretation previously released on December 7, 2015, regarding application of the Washington Uniform Money Services Act (“Act”) to payment processing. Payment processors not licensed in Washington State as money transmitters must request an analysis from the DFI by April 30, 2017, of their eligibility for a waiver from the licensing requirement. Companies already licensed by the DFI and providing processing services eligible for a license waiver must request confirmation of their eligibility.

The DFI defines “payment processors” as receiving, either in accounts they maintain or constructively control, payments from consumers, settling payment transactions, and transmitting payments to merchants or creditors. The revised interpretation clarifies that payment processors include companies that constructively transmit electronic instructions on behalf of merchants to financial institutions for clearing and settling transactions.

The DFI states it developed the license waiver for payment processors who meet criteria similar to the payment processing exception under the federal Financial Crimes Enforcement Network’s (FinCEN) regulations in part because such activities have low risk of consumer harm.

The DFI may issue a license waiver if the following criteria are met:

- The company facilitates payments for goods and services or bill payment, either by receiving money and delivering it to the merchant/creditor/payee, or by constructively controlling the flow of money
- The company operates through a settlement system admitting only financial institutions subject to the federal Bank Secrecy Act
- The company operates pursuant to a formal agreement with the merchant/creditor/ payee
- An agreement creates an agency relationship between the merchant/creditor/payee and the company so that payment to the company satisfies the consumer/debtor/ payor’s obligation to the merchant/creditor/payee

The DFI states that a payment processor holding value beyond the time period necessary to complete the purchase of goods or services is not eligible for the waiver.

A copy of the Washington DFI’s interpretive statement is available on 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.