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**MEMORANDUM**

August 8, 2007

To Our Clients and Friends

Re: FinCEN Final Rule on Special Due Diligence Program for Certain Foreign Accounts

The Financial Crimes and Enforcement Network (“FinCEN”) has issued a final rule to implement the enhanced due diligence requirements for correspondent bank accounts for certain foreign banks under Section 312 of the USA PATRIOT Act (“Section 312”). The rule applies to accounts established at banks, broker-dealers, futures commission merchants, mutual funds and certain other institutions by three categories of foreign banks, including those with an offshore banking license and certain high-risk banks. The rule is effective for new accounts 180 days after publication in the *Federal Register* and after 270 days for existing accounts.

**DISCUSSION**

Section 312 requires U.S. financial institutions to establish due diligence policies, procedures and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts established or maintained by U.S. financial institutions for non-U.S. persons. Under certain circumstances, a financial institution must adopt enhanced due diligence procedures.

FinCEN’s final rule applies the requirement for enhanced due diligence programs to correspondent accounts maintained in the U.S. for a foreign bank operating under:

- An offshore banking license
- A banking license issued by a country that has been designated as being non-cooperative with international anti-money laundering principles or procedures by an intergovernmental organization of which the U.S. is a member and with which designation the U.S. concurs or
- A license issued by a country designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns

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The rule requires financial institutions to include in their due diligence programs enhanced procedures that are designed to ensure that the institution takes reasonable steps to guard against money laundering and to identify and report suspicious transactions. The enhanced procedures are to reflect a risk assessment of the account. Financial institutions are also required to determine the identity of each owner of a foreign bank whose shares are not traded publicly. (An “owner” is a person who directly or indirectly owns, controls or has the power to vote 10 percent or more of any class of the foreign bank’s securities.)

A copy of FinCEN’s final rule can be found on our web site at [http://www.schwartzandballen.com/whats\\_new.html](http://www.schwartzandballen.com/whats_new.html).

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox or Heidi Wicker at (202) 776-0700.