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MEMORANDUM

September 19, 2002

To Our Clients and Friends

Re: FinCEN's Final Rule on Information Sharing Practices
To Deter Money Laundering and Terrorist Activity

SUMMARY

As mandated by the USA Patriot Act (Public Law 107-56), the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") has issued a final rule designed to combat money laundering and terrorism through information sharing among financial institutions and federal law enforcement authorities. The final rule is similar to the interim rule adopted last March. The rule is effective upon publication in the *Federal Register*.

INFORMATION SHARING BETWEEN THE GOVERNMENT AND FINANCIAL INSTITUTIONS

Section 314 of the USA Patriot Act encourages the sharing of information between the government and financial institutions about activities that may involve money laundering or terrorism. Under the rule, FinCEN, acting on behalf of a federal law enforcement agency investigating money laundering or terrorist activity and based upon certification from that agency, may require any financial institution¹ to search its records to determine whether the financial institution maintains or has maintained accounts for, or has engaged in transactions with, specified individuals, entities, or organizations. The institution must search its records for current accounts, accounts maintained during the preceding 12 months, and funds transfers involving the party during the preceding six months.² However, FinCEN may specify a different time period for the records search. An institution is not required to report on future customer activity unless requested to do so by FinCEN.

¹ The term "financial institution" has the same meaning as it does under the Bank Secrecy Act, 31 U.S.C. §5312(a)(2).

² However, a financial institution need not search its customer's processed checks to determine if the named party is a payee of a check.

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If a financial institution identifies a matching account or transaction, it must report to FinCEN in the manner and timeframe specified in the request:

- the name of the individual, entity or organization;
- the account number or transaction date and type; and,
- identifying information provided by the individual or organization (*e.g.*, address, Social Security number, date of birth).

A financial institution is:

- prohibited from disclosing to any other party the fact that FinCEN has requested or obtained information about the party;
- required to designate a person to be the point of contact regarding the request and future requests;
- required to maintain adequate procedures to protect the security and confidentiality of information requested; and
- prohibited from using any information provided by FinCEN for any purpose other than to reply to the request, to decide whether to do business with the party named in the request or to share the information with another financial institution as permitted by Treasury rules.

VOLUNTARY INFORMATION SHARING AMONG FINANCIAL INSTITUTIONS

A financial institution or an association of financial institutions that shares information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries for purposes of detecting and reporting activities that may involve money laundering or terrorist activity qualifies for the protections of the safe harbor of the USA Patriot Act if the institution meets the requirements of the rule. The safe harbor protects the institution (or association) from any liability for such sharing or for any failure to provide notice of such sharing.

In order to qualify an institution (or association) must file a notice with FinCEN of its intent to share information under section 314(b) using the form set forth in the rule. An institution is required to submit a new form to FinCEN each year. An institution is also required to take reasonable steps to verify that the recipient institution has filed the required notice with FinCEN. FinCEN states that it will maintain a list of qualifying institutions. The rule also expands the definition of eligible institutions to include any financial institution that is required to maintain an anti-money laundering program, or any institution that is treated as having satisfied those requirements.

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A financial institution is required to maintain procedures to protect the security of information it has shared. Moreover, it may not use information obtained through this process for any purpose other than to identify and report possible terrorist or money laundering activities or to determine whether to open or maintain an account or engage in a transaction. Any suspected money laundering or terrorist activity detected by the institution through information sharing with another financial institution is to be reported by filing a Suspicious Activity Report.

The final rule can be found at <http://www.schwartzandballen.com/WhatsNew.htm>. If you have any questions concerning the rule, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.