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**M E M O R A N D U M**

April 28, 2008

To Our Clients and Friends

Re: OCC Guidance on Risk Management of Payment Processor Accounts

The Office of the Comptroller of the Currency (OCC) has issued guidance for national banks regarding due diligence, underwriting and monitoring obligations with regard to accounts of entities that process payments for telemarketers and other high risk merchants.

The guidance states that vigilance by banks is particularly important with regard to processors that deposit remotely created checks (RCCs) and initiate ACH transactions for merchants. The guidance instructs banks to consider the legal, reputation and other risks presented by relationships with processors, including risks associated with customer complaints, returned items and potential unfair or deceptive practices.

The OCC's guidance directs national banks to implement due diligence and underwriting policies requiring background checks of the processor and the merchants for which it processes payments to confirm the validity of their businesses, creditworthiness and business practices. Controls are to be more rigorous for higher risk processors and merchants such as telemarketers. National banks are also required to monitor high-risk accounts for high levels of unauthorized returns and chargebacks and for suspicious patterns of activity.

If a bank identifies fraudulent or other improper activity by a processor or its merchant clients, the guidance instructs the bank to take immediate steps to address the problem, including filing a Suspicious Activity Report when appropriate, terminating the bank's relationship with the processor or requiring the processor to cease processing for the merchant at issue. The bank's anti-money laundering/Bank Secrecy Act policies also should assess risks associated with its third-party processor customers, and the bank's risk management program should include procedures for

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monitoring processor information, such as merchant data, transaction volume and chargeback history.

A copy of the OCC's guidance can be found on our website 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.