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M E M O R A N D U M

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To Our Clients and Friends

Re: Interagency Guidance on Sharing Suspicious Activity Reports
with Head Offices and Controlling Companies

The Financial Crimes Enforcement Network, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (the “Agencies”) have issued guidance to permit, under the Bank Secrecy Act, a U.S. branch or agency of a foreign bank to disclose a Suspicious Activity Report (“SAR”) to its head office outside the U.S., and a U.S. bank or savings association to disclose an SAR to controlling companies which are either domestic or foreign.

The Bank Secrecy Act generally prohibits a depository institution from notifying any person involved in the suspicious transaction that the institution has filed an SAR. Under the Agencies’ regulations, an SAR is confidential and the fact that an SAR has been filed may be disclosed only when such disclosure is requested by the Agencies or law enforcement agencies. The Agencies did not expressly authorize a depository institution to disclose to anyone outside the organization the fact that an SAR had been filed.

The Agencies have now concluded that in view of the need for a head office or controlling entity to fulfill its risk management oversight responsibilities and to determine compliance with applicable law, a U.S. branch or agency of a foreign bank may share an SAR with its foreign head office, and a U.S. bank or savings association may disclose the SAR to its controlling company, regardless of location.

A depository institution must establish written confidentiality agreements or arrangements specifying that the head office or controlling company must protect the confidentiality of the SAR. The head office or controlling company may not disclose the SAR to any other party and may not reveal that an SAR has been filed.

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The Agencies indicated that a depository institution should not share an SAR with an affiliate other than the company that controls the affiliate.

A copy of the Agencies' guidance can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

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