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MEMORANDUM

May 12, 2009

To Our Clients and Friends

Re: FinCEN Proposed Amendment to MSB Regulations

The Financial Crimes Enforcement Network (“FinCEN”) is proposing revisions to its rules regarding money services businesses (“MSBs”). The proposal revises the current definition of an MSB in order to more clearly specify what entities are regulated as MSBs. FinCEN also requests comment on several issues relating to stored value. Comments are due by September 9, 2009.

The proposal provides greater specificity as to the types of activities that will subject a business to the MSB rules. For example:

- A person that engages in money services activities in substantial part in the U.S. will be regarded as an MSB regardless of the person’s location. Accordingly, a person located outside the U.S. who is substantially engaged in MSB activities in the U.S. through the Internet or through an account at a U.S. bank could become subject to FinCEN regulations even if it does not have a physical presence in the U.S.
- A person who accepts in substantial part in the U.S. more than \$1,000 per day in foreign currency or monetary instruments denominated in foreign currency in exchange for currency or monetary instruments denominated in another currency will be an MSB.
- A person who issues, sells or redeems stored value of more than \$1,000 per day in substantial part in the U.S. will be an MSB

In addition, the proposal would revise the definition of a “money transmitter” to be a person who provides money transmission services. Money transmission services are defined as the acceptance of currency, funds or other value that substitutes for currency and the transmission of such amounts to another location or to a person by any means.

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The proposal also sets out examples of activities that will not be regarded as money transmission. These include certain forms of payment processing as well as providing delivery, communication or network access services used by money transmitters.

A copy of FinCEN's proposal can be found on our website at 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.