

SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465

WWW.SCHWARTZANDBALLEN.COM

TELEPHONE
(202) 776-0700

FACSIMILE
(202) 776-0720

MEMORANDUM

June 16, 2009

To Our Clients and Friends

Re: FinCEN Guidance on Permissible Information Sharing

The Financial Crimes Enforcement Network (“FinCEN”) has issued guidance to financial institutions to clarify the scope of permissible information sharing covered by the safe harbor of section 314(b) of the USA PATRIOT Act. The guidance clarifies that a financial institution may share information relating to transactions that the institution suspects may involve the proceeds of one or more specified unlawful activities and remain within the safe harbor of section 314(b).

Section 314(b) provides a safe harbor from liability for financial institutions that share with other financial institutions information regarding certain parties suspected of possible terrorist or money laundering activities. To qualify for the safe harbor, a financial institution must comply with certain requirements, including providing notice to FinCEN and taking reasonable steps to verify that the other institution has provided the required notice as well.

FinCEN’s guidance clarifies that information related to a variety of unlawful activities, such as mortgage fraud and other criminal activities, may be shared within the safe harbor to the extent that the institution (1) suspects that the transaction may involve the proceeds of one or more unlawful activities, and (2) the purpose of sharing the information is to identify and report activities that the financial institution suspects may involve possible terrorist activity or money laundering. Although a financial institution may not disclose a suspicious activity report or the fact of its existence to another financial institution, it may share the underlying information.

A copy of FinCEN’s guidance 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.