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M E M O R A N D U M

March 5, 2002

To Our Clients and Friends

Re: Treasury's Proposed/Interim Rules on Information Sharing Practices
Designed to Combat Money-Laundering and Terrorism

SUMMARY

As mandated by the USA Patriot Act (Public Law 107-56), the Treasury Department has issued proposed and interim rules designed to combat money-laundering and terrorism through information sharing among financial institutions. The proposed rule authorizes information sharing between financial institutions and federal government authorities. The interim rule, which is also part of the proposed rule, provides for a certification process that permits voluntary information sharing among financial institutions.

Comments on the proposed rule are due by April 3, 2002. The effective date of the interim rule is March 4, 2002.

Information Sharing Between the Government and Financial Institutions

Section 314 of the USA Patriot Act is intended to encourage the sharing of information between the government and financial institutions about activities that may involve money laundering or terrorism. Under the proposed rule the Financial Crimes Enforcement Network (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. FinCEN and the federal law enforcement agency seeking the information will specify the time period for the records search.

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

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If a financial institution identifies a matching account or transaction, it must report as soon as possible to FinCEN by e-mail (or by other means requested by FinCEN) 1) the identity of the individual, entity or organization, 2) the account number or transaction date and type; and, 3) identifying information provided by the individual or organization (e.g., address, social security number, date of birth.)

Under this proposed rule a financial institution is:

- prohibited from taking any action that would alert the individual, entity or organization that FinCEN has requested information;
- not required to take, or not take, actions with respect to accounts or transactions for which FinCEN has requested information;
- required to maintain adequate procedures to protect the security and confidentiality of information requested;
- prohibited from using any information provided by FinCEN for any purpose other than to reply to the request, to decide whether to continue to do business with the individual or entity named in the request or to share the information with another financial institution as permitted by Treasury rules; and,
- not relieved of its obligations to file Suspicious Activity Reports.

FinCEN may also request a financial institution to identify one person to receive requests for information from FinCEN.

Information Sharing Among Financial Institutions

Under the interim rule, a financial institution² or an association of financial institutions may share 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 provided the institution first submits a certification in the form proscribed by FinCEN to FinCEN. The certification is effective for one year. Re-certification, using the same form, can be done annually.

A financial institution must maintain procedures to protect the security of the information shared and cannot use information obtained through this process for any purposes 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.

² A “financial institution” is 1) a financial institution that is subject to SAR reporting that is not a money services business, which includes banks, savings associations, and credit unions; 2) a broker or dealer registered with the Securities and Exchange Commission; 3) an issuer of travelers checks or money orders; 4) a registered money transmitter; or 5) an operator of a credit card system that is not a money services business.

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Failure to comply with any of these provisions may result in the financial institution's certification being revoked or suspended. Institutions or associations that share information will not be liable to any person under any law, regulation or agreement for such sharing or for failing to notify the person that information is being shared.

Any suspected money-laundering or terrorist activity detected through information sharing with another financial institution is to be reported by using the Financial Institutions Hotline and/or by filing a Suspicious Activity Report.

A copy of the proposed and interim rules can be found at <http://www.schwartzandballen.com/WhatsNew.htm>.

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