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M E M O R A N D U M

April 24, 2002

To Our Clients and Friends

Re: FinCEN's Interim Final Rule on Anti-Money Laundering
Programs For Financial Institutions Regulated by a
Federal Functional Regulator or a Self-Regulatory Organization

Section 352(a) of the USA Patriot Act amended the Bank Secrecy Act ("BSA") to require every financial institution to establish an anti-money laundering program that includes:

- the development of internal policies, procedures, and controls;
- the designation of a compliance officer;
- an on-going employee training program; and
- an independent audit function to test programs.

The BSA authorizes the Treasury Department to issue regulations to implement the anti-money laundering programs of financial institutions. Accordingly, the Treasury's Financial Crimes Enforcement Network ("FinCEN") has issued an interim final rule that provides that banks, savings associations and credit unions will be deemed to be in compliance with the requirements of section 352(a) if they comply with the regulations of their Federal functional regulator governing the establishment and maintenance of anti-money laundering programs. Similarly, the interim final rule provides that registered securities broker-dealers and future commission merchants will be deemed to be in compliance if they comply with the rules, regulations or requirements of their self-regulatory organizations (SROs) governing anti-money laundering programs. For these institutions, the rule is effective April 24, 2002.

By virtue of these interim final rules, all financial institutions presently subject to FinCEN's existing BSA regulations are now subject to anti-money laundering program requirements. FinCEN is issuing separate interim final rules concerning the establishment of anti-money laundering programs for three other types of financial institutions - money services businesses, operators of credit card systems and mutual funds. These types of institutions have 90 days to develop anti-money laundering programs.

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All other types of financial institutions¹ covered by the BSA, including insurance companies, are temporarily exempted from complying with the requirement to establish anti-money laundering programs. Treasury's rationale is that these businesses have never been defined for the purposes of the BSA, nor have Treasury and FinCEN had the opportunity to identify the nature and scope of the money laundering and terrorist financing risks associated with these businesses.

During the next six months, Treasury and FinCEN will study these businesses and will issue rules, tailored to each industry, concerning the establishment of anti-money laundering programs by industry members. A rule governing insurance companies will be among the first rules that will be issued. Treasury and FinCEN intend to issue regulations for all exempted financial institutions by October 24, 2002. Any category of financial institution for which regulations have not been proposed or promulgated by that date will be required to establish anti-money laundering programs that comply with the requirements of section 352(a).

The exemption of a financial institution from the requirement to establish anti-money laundering programs does not relieve any business from existing requirements to report transactions in cash or currency, or certain monetary instruments, that exceed \$10,000. Such transactions must be reported to FinCEN and the IRS using Form 8300.

The interim final rule can be found at <http://www.schwartzandballen.com/WhatsNew.htm>.

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

¹ Financial institutions exempted are: dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; certain investment companies; commodity pool operators and commodity trading advisors. The exemption does not extend to investment bankers or securities broker-dealers subject to anti-money laundering program requirements under section 103.102(b) or (c).