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MEMORANDUM

July 1, 2003

To Our Clients and Friends

Re: Customer Identification Programs

In May the Department of the Treasury (“Treasury”) and the federal financial institution regulatory agencies¹ issued a final rule implementing section 326 of the USA Patriot Act, which requires banks and other financial institutions to establish procedures for identifying and verifying the identity of customers opening new financial accounts. Under this rule financial institutions are required to implement a written Customer Identification Program that is part of the institution’s anti-money laundering program and that includes:

- risk-based procedures for verifying the identity of each customer, to the extent reasonable and practicable; and
- procedures for making and maintaining a record of all information obtained in verifying a customer’s identity.²

The Treasury is now seeking comments on two issues relating to the final rule. These issues are:

- whether and under what circumstances financial institutions should be required to retain photocopies of identification documents relied on to verify customer identity; and
- whether there are situations when the regulations should preclude reliance on certain forms of foreign government issued identification to verify customer identity.

Comment are due by July 31.

¹ Federal financial institution regulatory agencies include the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the National Credit Union Administration.

² See our memo on Final Patriot Act Rules on Customer Identification dated May 2, 2003, for a detailed description of these rules. The memo can be found on our web site.

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RECORDKEEPING REQUIREMENT

Under the final rule, a financial institution is not required to make and maintain a photocopy of documents used for identification. Rather, it is required to make and maintain a record of the description of any document upon which it relies to verify a customer's identity. Treasury is now seeking comment on whether the rule should:

- require financial institutions to always make and maintain a photocopy of identification documents upon which the financial institution relies to verify identity;
- identify specific instances in which financial institutions should make and maintain a photocopy of identification documents upon which they may rely to verify identity; and
- provide guidance to financial institutions concerning risk factors and indicating when photocopying identification documents may be appropriate.

DOCUMENTARY VERIFICATION OF THE IDENTITY OF FOREIGN INDIVIDUALS

Under the final rule financial institutions are given discretion in determining which identification documents may be used to verify the identity of foreign individuals who seek to open an account. The Treasury is now seeking comment on whether the rule should stipulate the types of documents that can be accepted to verify the identity of foreigners. Specifically:

- should the rule preclude financial institutions' reliance on certain forms of identification issued by certain foreign governments;
- should the rule require financial institutions to obtain a passport number from all customers who are non-US citizens;
- is there sufficient empirical information to enable Treasury to assess the utility of the various forms of foreign-issued identification for purposes of accurately identifying the holder; and
- what would the impact be on the use of the conventional financial system if financial institutions were prohibited from accepting certain forms of government-issued identification.

The request for comment can found at 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.