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**MEMORANDUM**

February 12, 2003

To Our Clients and Friends

Re: Reinstatement of USA Patriot Act Section 314(a) Information Requests

Under Section 314(a) of the USA Patriot Act, the Financial Crimes Enforcement Network (“FinCEN”) may require a financial institution<sup>1</sup> 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. Due to logistical problems, FinCEN last November issued a moratorium on information requests.

FinCEN lifted this moratorium on Section 314(a) information requests on February 6 and also issued new instructions to financial institutions for complying with these requests. Accordingly, financial institutions should be prepared to receive information requests beginning February 17. If a financial institution does not receive a request during that week, it should contact its Federal regulator to ensure that it is on FinCEN’s distribution list.

**GENERAL INSTRUCTIONS<sup>2</sup>**

Section 314(a) requests will be batched and issued once every two weeks by FinCEN. Upon receiving a request, a financial institution must immediately begin searching its records to determine whether it, its head office or one of its branches operating in the United States, maintains or have maintained accounts for, or have engaged in transactions with, any individual, entity, or organization (“named subject”) listed in the request. The search is to be completed no later than fourteen calendar days after receiving the request. A financial institution is required to conduct a one-time search of its records. There is no obligation to watch for future transactions with the named subject unless otherwise requested by FinCEN.

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

<sup>2</sup> FinCEN may send specific instructions with a 314(a) request. In such a case, the specific instructions supersede these general instructions.

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When a match is found, the financial institution is to stop its search on that particular named subject and report the match to FinCEN by completing the Subject Information Form. This form requires the financial institution to indicate only that a match has been found and to provide contact information. A financial institution that submits a positive response will likely receive a Grand Jury subpoena, a National Security Letter or an Administrative Summons from a law enforcement agency. If no match is found, the financial institution should not send a reply to FinCEN. If information matches only one portion of a named subject's name and no other information provided corresponds to the account or transaction, no report is required.

A financial institution is not required to close an account or take any other action as a result of a match of a named subject on a 314(a) request. A financial institution should not maintain a list of named subjects for the purpose of determining whether to open an account or conduct a transaction. A financial institution may not disclose to any other person that FinCEN has requested information on a named subject<sup>3</sup>. It should be noted that the Section 314(a) process is separate and distinct from compliance with OFAC requirements.

### **RECORDS TO BE SEARCHED**

Financial institutions must search the following records whether or not they are kept in electronic form:

- deposit account records to determine whether a named subject is or was an accountholder;
- funds transfer records maintained pursuant to 31 CFR 103.33 to determine whether a named subject was an originator/transmittor of a funds transfer or a beneficiary/recipient of such a transfer;
- records of the sale of monetary instruments (e.g., cashier's checks, money orders, or traveler's checks) maintained pursuant to 31 CFR 103.33 to determine whether a named subject purchased a monetary instrument;
- loan records to determine whether a named subject is or was a borrower;

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<sup>3</sup> A financial institution may disclose the list of named subjects to a third-party vendor who is assisting the financial institution in complying with FinCEN's request provided the financial institution takes steps to ensure that the third-party safeguards the information. Also, a financial institution may share 314(a) requests with affiliates and establish a central point of contact and reporting with FinCEN provided that the affiliate is itself a "financial institution" for purposes of the Bank Secrecy Act and has submitted a notice to FinCEN under section 314(b) of the USA Patriot Act indicating that is sharing information with another financial institution.

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- trust department account records to determine whether a named subject matches the name in which an account is titled;
- records of accounts to purchase, sell, lend, hold or maintain custody of securities to determine whether a named subject is or was an accountholder;
- commodity futures, options or other derivative account records to determine whether a named subject is or was an accountholder; and,
- safe deposit box records (but only if such records are searchable electronically) to determine if a named subject maintains or maintained, or has or had authorized access to, a safety deposit box.

Financial institutions are not required to search any other records, including:

- checks processed through an account to determine whether a named subject was payee of a check;
- monetary instruments issued by the financial institution to determine whether a named subject was a payee of such an instrument;
- signature cards to determine whether a named subject is signatory to an account; and
- reports (e.g., CTRs and SARs) previously filed with FinCEN by the financial institution.

The financial institution need only search current accounts and accounts maintained by a named subject during the preceding twelve months and transactions not linked to an account conducted by a named subject during the preceding six months. Any record that is not maintained in electronic form need only be searched if it is required to be kept under federal law or regulation.

FinCEN's instructions can be found at [www.schwartzandballen.com/WhatsNew.htm](http://www.schwartzandballen.com/WhatsNew.htm).

If you have any questions concerning 314(a) information requests, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.