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MEMORANDUM

April 24, 2003

To Our Clients and Friends

Re: Proposed Rule on Indorsement and Payment of
Checks Drawn on the United States Treasury

The Department of the Treasury (“Treasury”) has issued a proposed rule revising its regulations governing the indorsement and payment of checks drawn on the United States Treasury. The Treasury takes the position that federal law, not the Uniform Commercial Code, applies to Treasury checks. This proposed rule supersedes the rule proposed in 1997. Comments are due by June 23.

SIGNIFICANT CHANGES

- *Time for First Examination* – Under the proposed rule Treasury has a reasonable amount of time to make a first examination of a check and until that examination is completed, all payments are provisional (i.e., conditional). If Treasury has not declined payment within 90 days after the check has been presented for payment to a Federal Reserve Processing Center, Treasury will be deemed to have made final payment on the check.
- *Apportionment of Risk* – Treasury will reclaim a check after final payment only where an indorser has breached one of the presentment guarantees listed in the rule. Specifically, Treasury will reclaim:
 - Checks bearing a forged or unauthorized indorsement;
 - Checks that have been materially altered;
 - Checks where a party has knowledge that the check bears a forged or unauthorized drawer’s signature; and
 - Counterfeit checks.
- *Deceased Payee Check Intercepts* – The proposed rule contains procedures whereby after a payee’s death checks can be intercepted

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before payment and payment will be refused. The check will be returned to the presenting bank with a notation that the payee is deceased.

- *Limitation on Payment* – Treasury will not be required to pay any check unless it is presented for payment within one year of its issuance.
- *Declination Protests* – The proposed rule contains declination protest procedures which allow a presenting bank to protest a declination by Treasury of a payment of a check. To be successful a presenting bank must provide sufficient, credible evidence that the factual basis for the declination was in error.
- *Use of Debt Collection Tools in the Collection of Reclamation Debts¹* – The proposed rule revises provisions concerning the collection of reclamation debts (including allowing debts to be “offset” against payments due debtors and clarifying the types and amounts of charges assessed against these debts) and clarifies the rights of any indorser that directly receives a reclamation to protest the reclamation request. The reclamation protest procedures must be exhausted before civil suit can be filed against the Treasury.
- *Use of Powers of Attorney In Indorsing Treasury Checks* – The proposed rule revises the requirements relating to the use of powers of attorney in indorsing Treasury checks. Among other changes the Treasury will no longer require use of power of attorney forms specified by the Treasury.

The proposed rule can be found at www.schwartzandballen.com/WhatsNew.htm.

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

¹ A reclamation debt means the amount owed as a result of Treasury’s demand for refund of a check payment, and includes interest, penalties and administrative costs assessed in accordance with the proposed rule.