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MEMORANDUM

October 26, 2007

To Our Clients and Friends

Re: Federal Appeals Court Gift Card Preemption Ruling

The U.S. Court of Appeals for the Second Circuit has held that an entity that is not a national bank or a national bank subsidiary is not entitled to the same federal preemption of certain state laws relating to gift cards that would apply if the entity were a national bank. SPGGC, LLC v. Blumenthal, No. 05-4711 (2d Cir. Oct. 19, 2007). The decision involved a Simon Malls gift card program in which Simon Malls, rather than the national bank that issued the cards, charged and collected fees from customers in connection with issuance and use of gift cards. Simon Malls had tried to prevent the Connecticut Attorney General from enforcing a state consumer protection law prohibiting inactivity or dormancy fees as well as card expiration dates.

While a national bank was the issuer of the gift card and approved the gift card terms and fees, Simon Malls collected and retained fees associated with the cards. The Court held that state regulation of these fees did not interfere with the national bank's ability to exercise its powers, and therefore state-law restrictions on fees were not preempted as applied to Simon Malls. The court expressly indicated that it was not addressing whether it would reach a different conclusion were the fees established and collected by the bank.

The court also concluded that the state law prohibition on card expiration dates could interfere with the national bank's operation of the card program, and therefore may be preempted. Accordingly, the court remanded the case to the District Court to consider the issue of card expiration dates further.

A copy of the court's opinion can be found on our website at http://www.schwartzandballen.com/whats_new.html.

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