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MEMORANDUM

January 8, 2010

To Our Clients and Friends

Re: Interagency Guidance on Transparency in Cross-Border Funds Transfers

The Federal banking agencies¹ (“Agencies”) have issued guidance on transparency and compliance for U.S. banking organizations conducting cross-border funds transfers. The guidance clarifies the Agencies’ expectations for intermediary banks regarding Office of Foreign Assets Control sanctions screening and transaction monitoring to comply with Bank Secrecy Act and anti-money laundering requirements. The guidance also presents the Agencies’ approach to reviewing risk management practices with regard to cross-border funds transfers.

GUIDANCE

In May 2009, the Basel Committee on Banking Supervision issued a paper² which discussed the risks inherent in cover payment³ arrangements where an originator’s bank does not send full transaction information to an intermediary bank and the intermediary bank is therefore unable to effectively filter or monitor transactions. The BIS paper encouraged banks involved in international payments transactions to adhere to the message standards developed by the New York Clearing House and the Wolfsberg Group in 2007.

¹ The Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision and National Credit Union Administration.

² Basel Committee on Banking Supervision, *Due diligence and transparency regarding cover payment messages related to cross-border wire transfers*, May 2009, www.bis.org.

³ Cover payments, used in correspondent banking to facilitate international transactions, are payments made through a chain of correspondent banks to settle (cover) a credit transfer message that travels a more direct route to the ultimate beneficiary’s bank.

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As a follow up to the BIS recommendations, the Agencies advise that U.S. banks should screen transaction information on all automated funds transfers and should block or reject transactions as required by law and make required reports to OFAC. U.S. cover intermediary banks should monitor funds transfers that are processed through automated systems to identify suspicious activity. Banks may monitor the transfers after they are processed and may utilize a risk-based approach.

The guidance recognizes that intermediary banks are not required to gather information relating to incomplete fields in all payment orders or to verify the accuracy of information contained in payment message fields. The cover intermediary bank should have a process for addressing situations where a risk-based approach to monitoring flags a field that is “manifestly meaningless or incomplete,” *i.e.*, where it is obvious, without further research or investigation, that the message does not identify parties to a transaction. Banks engaged in processing cover payments should within reasonable timeframes develop and implement plans for adapting automated monitoring systems.

SUPERVISORY EXAMINATION APPROACH

The guidance instructs bank examiners to assess a bank’s risk management practices by:

- Reviewing whether the institution has current Bank Secrecy Act/anti-money laundering and OFAC risk assessments that address payments operations and take into consideration factors such as correspondent banking relationships, volume and jurisdictions of funds transfers, and the role of the institution in funds transfers
- Determining whether the institution has implemented transparency standards for international funds transfers and maintains systems for consistent adherence to standards
- Evaluating whether the institution has processes for conducting adequate due diligence on foreign correspondent banks

A copy of the Agencies’ guidance can be found on our website at <http://www.schwartzandballen.com>.

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