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M E M O R A N D U M

June 14, 2007

To Our Clients and Friends

Re: FinCEN Guidance on SARs and Requests to Maintain Accounts

The Financial Crimes Enforcement Network (“FinCEN”) has issued guidance relating to supporting documentation for Suspicious Activity Reports (“SARs”) and requests by law enforcement for financial institutions to maintain customer accounts.

SAR SUPPORTING DOCUMENTATION

The Bank Secrecy Act requires financial institutions to provide SAR supporting documentation in response to requests by FinCEN and law enforcement or supervisory agencies. The guidance discusses what constitutes supporting documentation and when legal process is required for disclosure of such documentation. “Supporting documentation” refers to all documents or records that assisted a financial institution in determining that certain activity required a SAR filing. Supporting documentation must be identified at the time the SAR is filed. What qualifies as supporting documentation depends on the facts and circumstances of each filing. Supporting documentation is required to be maintained for five years after the filing date.

The Right to Financial Privacy Act generally prohibits financial institutions from disclosing a customer’s financial records to a government agency without service of legal process, notice to the customer and an opportunity to challenge the disclosure. However, FinCEN advises that the requirement does not apply when the financial institution provides the information to FinCEN or a supervisory agency. In addition, no such requirement applies when FinCEN or an appropriate law enforcement or supervisory agency requests either a copy of a SAR or supporting documentation underlying the SAR. However, FinCEN advises that financial institutions should verify that the requestor is, in fact, a representative of FinCEN or an appropriate law enforcement or supervisory agency. This may include independent employment verification with the requestor’s field office or face-to-face review of the requestor’s credentials.

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MAINTAINING ACCOUNTS

FinCEN advises that the decision to maintain or close an account should be made by a financial institution in accordance with its own standards and guidelines. FinCEN recommends that if a law enforcement agency requests that a financial institution maintain a particular account, the financial institution should ask for a written request. The written request should indicate that the agency has requested the financial institution to maintain the account, the purpose of the request and the duration of the request, not to exceed six months, although it may be renewed. FinCEN recommends that financial institutions maintain documentation for at least five years after the request has expired.

A copy of FinCEN's guidance can be found on our web site 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.