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M E M O R A N D U M

February 5, 2002

To Our Clients and Friends

Re: Notice of Proposed Rulemaking By FTC
To Modify The Telemarketing Sales Rule

SUMMARY

The Federal Trade Commission (“FTC”) is proposing revisions to its Telemarketing Sales Rule (“TSR”),¹ which it adopted in 1995 to implement the Telemarketing Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”).

The proposal arises from requirements contained in the USA Patriot Act concerning the solicitation of charitable contributions and the results of a review to evaluate the effectiveness of the TSR’s provisions as mandated by The Telemarketing Act. Comments on these proposed modifications are required to be submitted by March 29.

PROPOSED MODIFICATIONS

The proposed changes would:

- Establish a national “do not call” registry on a two-year trial basis that would allow consumers to eliminate all telemarketing calls from all sellers and telemarketers covered by the TSR. The registry would be maintained by the FTC. Consumers on the “do not call” registry would also have the option of allowing calls from specific sellers to whom they have provided express verifiable authorization. Alternatively, consumers could opt to use the current company-specific approach which eliminates calls only from specific sellers.

¹ The TSR prohibits specific deceptive and abusive telemarketing acts or practices, requires disclosure of certain material information, requires express verifiable authorization for certain payment mechanisms, sets recordkeeping requirements, and specifies those transactions that are exempt from the TSR.

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- Require telemarketers to obtain express verifiable authorization when submitting billing information for payment when the method of payment does not have the dispute resolution protection or protection against unauthorized charges provided by, or comparable to, those in the Fair Credit Billing Act and the Truth in Lending Act. Telemarketers already have to obtain express verifiable authorization when sales involve payments by demand drafts or negotiable paper. In addition, the consumer must receive the name of the account to be charged and the account number for the authorization to be deemed verifiable. Written confirmation of a transaction sent to the customer before submission of the draft for payment will no longer be considered a verifiable authorization.
- Prohibit sellers or telemarketers from receiving from any person other than the consumer or donor for use in telemarketing any billing information about that consumer or donor, or disclosing billing information about a consumer or donor to any person for use in telemarketing.
- Extend the coverage of the TSR to calls made on behalf of non-profit entities soliciting charitable contributions, donations, gifts, money or any other thing of value on behalf of charities.
- Expand the list of defined deceptive telemarketing practices prohibited by the TSR to include seven specific misrepresentations concerning the solicitation of charitable contributions.
- Require additional standards to be met by sellers and telemarketers before they can claim the TSR “safe harbor”. Sellers and telemarketers will need to:
 - obtain and reconcile on not less than a monthly basis the names/numbers of persons listed on the national registry;
 - maintain consumers’ express verifiable authorization for those who have opted to receive calls from a specific seller; and,
 - monitor compliance and take disciplinary action for non-compliance.
- Prohibit the blocking or otherwise subverting the transmission of names or telephone numbers of the calling party for caller identification service purposes, and prohibit a telemarketer from denying or interfering in any way with a person’s right to be placed on a “do not call” list, including hanging up when a consumer makes such a request.

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- Mandate that telemarketers must disclose in any prize promotion that making a purchase will not improve a customer's chance of winning, and in selling credit card loss protection plans the legal limits on a cardholder's liability for unauthorized use of a card.
- Prohibit sellers and telemarketers from misrepresenting that any customer needs offered goods or services to provide protections a customer already has under the Consumer Credit Protection Act.
- Extend coverage of the TSR to certain telemarketers previously exempted from the Rule. The general media advertising exemption and the direct mail exemption are made unavailable to sellers and telemarketers of certain business opportunities and credit card loss protection plans. The business-to-business exemption is made unavailable to telemarketers of Internet services and web services. Exemptions for pay-per-call services, franchising and face-to-face transactions are retained but telemarketers of these services must comply with selected provisions of the TSR.

A copy of the proposed rule can be found at <http://www.schwartzandballen.com/WhatsNew.htm>.

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