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MEMORANDUM

December 17, 2003

To Our Clients and Friends

Re: FACT Act Effective Dates

The Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”), (Pub. L. No. 108-159) permanently extends the preemptions of state law provisions of the Fair Credit Reporting Act (“FCRA”) that are scheduled to expire at the end of 2003, including state laws on information sharing with affiliates. Under the act, the Federal Reserve Board and the Federal Trade Commission (the “Agencies”) are to determine the effective date for many provisions of the legislation. The Agencies have jointly issued an interim final rule and a proposed rule establishing effective dates for various sections of the act. Comments on both rules are due by January 12, 2004.

INTERIM FINAL RULE

- Establishes December 31, 2003, as the effective date for the extension of the federal preemption provisions of the FCRA that are scheduled to sunset on December 31, 2003 and certain other provisions that provide uniform national consumer protection standards. These include provisions relating to information sharing among affiliates, pre-screening of consumer reports, identity theft, and risk-based pricing notices.
- Establishes December 31, 2003, as the effective date for each provision of the FACT Act that authorizes an agency, without establishing an implementation date, to issue a regulation or to take other action to implement the Act. The Agencies did not specify which provisions of the FACT Act this provision applies to.
- The Agencies also determined that the effective date for any provision that requires one or more agencies to adopt rules is the date of enactment of the Fact Act (December 4, 2003).

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PROPOSED RULE

The Agencies are proposing a schedule of effective dates for certain provisions of the FACT Act for which the act does not specifically provide an effective date. This schedule establishes:

- March 31, 2004 as the effective date for those provisions which do not require significant changes to business procedures. These include provisions relating to statute of limitations, furnisher liability exception and liability and enforcement.
- December 1, 2004 as the effective date for those provisions which do require significant changes to business procedures. These include provisions relating to affiliate sharing, fraud alerts, blocking information resulting from identity theft, free consumer reports and disclosure of credit scores.

The Federal Register notices for both of these rules can be found at http://www.schwartzandballen.com/whats_new.html.

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