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MEMORANDUM

April 17, 2003

To Our Clients and Friends

Re: Do-Not-Call Implementation Act

The Federal Communications Commission (“FCC”) is seeking public comment on the Do-Not-Call Implementation Act, which was signed into law on March 11th (Pub. L. 108-10). The Act requires the FCC to issue a final rule on the FCC’s proposal to establish a nationwide do-not-call list for telemarketing solicitations.

In September 2002, the FCC proposed establishing a national database with which consumers could register to prevent unwanted telemarketing sales calls. The FCC’s proposal would complement the do-not-call rule that had been proposed by the Federal Trade Commission (“FTC”). The FTC’s rule, which was subsequently adopted in January 2003, establishes a do-not-call registry and database that applies to all entities that are subject to the FTC’s jurisdiction under the Federal Trade Commission Act.¹ Because organizations such as banks and companies engaged in the business of insurance are not subject to the FTC’s jurisdiction, the FTC’s do-not-call rule does not apply to such entities. The FCC’s proposal is intended to “level the playing field” by applying do-not-call requirements to all entities engaged in telemarketing activities, including banks and insurers.

The FCC is now requesting public comment on various aspects of its September 2002 proposed rule, including how the FCC should amend its rule to make it consistent with the FTC’s rule. The issues commenters may wish to consider include:

- The burden imposed on businesses in complying with the national do-not-call database;
- Methods of accessing the database;
- Costs to businesses for obtaining access to the database;

¹ The FTC has announced that it will begin taking registrations for its do-not-call registry on July 1st, and the registry will go into effect on October 1st.

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- Frequency with which the database is updated;
- Coordination with the FTC to maximize consistency with the FTC's rule;
- Harmonizing the national database with those of states that have adopted do-not-call statutes, or should the FCC preempt state do-not-call statutes;
- What records should businesses be required to maintain to verify that their telephone solicitations are authorized;
- The proposed rule does not apply to companies calling consumers with whom they have established business relationships. What constitutes an established business relationship;
- Should the do-not-call registry be established on a trial basis for perhaps two years rather than permanently; and
- What information should consumers provide in order to register – name, zip code and telephone number or just telephone number?

Comments are due by May 5th.

The notice for comment as well as the proposed rule can be found at www.schwartzandballen.com/WhatsNew.htm.

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