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MEMORANDUM

April 21, 2004

To Our Clients and Friends

Re: FACT Act: FTC Proposed Rule on
Disposal of Consumer Information and Records

Section 216 of the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) requires the Federal Trade Commission (“FTC”), the Federal banking agencies, the National Credit Union Administration and the Securities and Exchange Commission to coordinate with one another to adopt comparable and consistent rules regarding the disposal of sensitive consumer report information and records to prevent unauthorized disclosure of consumer information and to reduce the risk of consumer fraud.¹ After consultation with these agencies, the FTC is issuing its proposed disposal rule. Comments on the proposed rule are due by June 15.

PROPOSED DISPOSAL RULE

The proposed rule would require that any person who maintains or otherwise possesses consumer information must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. The FTC would expect entities to consider the sensitivity of the consumer information, the nature and size of its operations, the costs and benefits of different disposal methods and relevant technology in determining reasonable measures. Examples of disposal requirements that would be considered reasonable include policies and procedures that require burning, pulverizing, or shredding consumer information and destruction or erasure of electronic media containing consumer information.

¹ The Federal banking agencies (the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of Thrift Supervision), the National Credit Union Administration and the Securities and Exchange Commission are implementing Section 216 by amending their existing guidelines and rules on information security previously issued to implement § 501(b) of the Gramm-Leach-Bliley Act (the “GLB Act”). The FTC is not doing this as the entities subject to its jurisdiction are different under the GLB Act and the FACT Act.

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The FTC's proposed rule would apply to any person over whom it has jurisdiction that for a business purpose, maintains or otherwise possesses consumer information, or any compilation of consumer information

The proposed rule contains the following definitions:

- “Consumer information” is any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report. Information that is derived from consumer reports but does not identify any particular consumer is not covered under the proposed rule.
- The FTC would apply the proposed rule not only to consumer reports but also to records containing information, or any compilation of consumer information derived from consumer reports. This would include information resulting from manipulation of information from a consumer report or information from a consumer report that has been combined with other types of information.
- “Disposing” or “disposal” includes the discarding or abandonment of consumer information as well as the sale, donation, or transfer of any medium, including computer equipment upon which consumer information is stored.

The proposed rule 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.