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MEMORANDUM

June 8, 2004

To Our Clients and Friends

Re: **FACT Act: Interagency 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, 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 information derived from consumer reports to prevent unauthorized disclosure of consumer information and to reduce the risk of consumer fraud.¹ To carry out this requirement, the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision (the “Agencies”) are issuing a notice of proposed rulemaking that amends the Interagency Guidelines Establishing Standards for Safeguarding Customer Information (the “Guidelines”). Comments are due by July 23, 2004.

PROPOSED DISPOSAL RULE

Currently, the Agencies’ Guidelines require each financial institution to develop a written information security program designed to ensure the security and confidentiality of customer information. The proposed rule would amend the Guidelines to require financial institutions to implement controls designed to ensure the proper disposal of consumer information.

The Agencies propose to:

- define “consumer information” as any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a

¹ Our memorandum discussing the FTC’s proposed rule which was issued on April 20, 2004 can be found at www.schwartzandballen.com/factact.html.

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- consumer report and that is maintained or otherwise possessed by or on behalf of the financial institution for a business purpose, or a compilation of such records;
- add to the Guidelines an objective regarding the proper disposal of consumer information; and
 - add a provision to the Manage and Control Risk section of the Guidelines that would require financial institutions to develop, implement and maintain as part of its information security program appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of customer information.

The Agencies indicate that any changes to an institution's existing information security program to properly dispose of consumer information likely will be minimal. Accordingly, the Agencies propose to make the final rule effective three months after it is adopted.

The Agencies also propose to amend their Fair Credit Reporting Act regulations to add a provision setting forth the duties of users of consumer reports regarding identity theft. The proposed provision requires a financial institution to properly dispose of consumer information in accordance with standards set forth in the Guidelines.

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.