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MEMORANDUM

February 13, 2004

To Our Clients and Friends

Re: Amendment of the Telemarketing Sales Rule

The Consolidated Appropriations Act of 2004 mandates that the Federal Trade Commission (“FTC”) amend the Telemarketing Sales Rule (“TSR”) to require telemarketers subject to the TSR to obtain from the FTC the list of telephone numbers on the National Do Not Call Registry (“Registry”) once a month.¹ The TSR currently provides that telemarketers obtain this list every three months.

The FTC is proposing to amend the TSR by substituting the phrase “no more than thirty (30) days prior the date any call is made” for the existing phrase “no more than three (3) months prior to the date any call is made.” This will change the frequency with which telemarketers and sellers must scrub from their calling lists telephone numbers appearing on the Registry. The change will also allow a consumer to assert a valid Do Not Call complaint 30 days after entering his or her number in the Registry. Currently, a consumer must wait three months to lodge a complaint.

The FTC must amend the TSR by March 23, 2004. In its notice of proposed rulemaking it is asking for comments on the following issues by February 26th:

¹ Entities subject only to the Federal Communications Commission’s rules under the Telephone Consumer Protection Act would not be affected by the FTC’s change. They would still be required to obtain telephone numbers from the Registry every three months, unless the FCC takes similar action.

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- Is the term “thirty (30) days” a more precise term than the term “monthly”? Does this term make clear the interval at which data must be obtained from the Registry? Will the term prevent sellers and telemarketers from trying to subvert the intent of the Registry?
- When should the amendment be effective? How long will it take sellers and telemarketers to modify their systems to comply with the thirty day rule?

The Federal Register notice can be found on our web site - 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.