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M E M O R A N D U M

October 24, 2008

To Our Clients and Friends

Re: FTC Delays Enforcement of Red Flags Rule

The Federal Trade Commission has suspended enforcement of its Identity Theft Red Flags Rule until May 1, 2009, to give financial institutions and creditors additional time in which to implement written identity theft prevention programs. The federal banking agencies, however, did not extend the November 1, 2008 effective date for enforcement of their rules. Accordingly, the FTC's delay applies only to companies that are subject to the FTC's Red Flags Rule.¹

The Red Flags Rule was developed pursuant to the Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act"). Under the Rule, financial institutions and creditors with covered accounts must have identity theft prevention programs to identify, detect and respond to patterns, practices or specific activities that could indicate identity theft. The Rule applies to creditors and financial institutions and creditors. Financial institutions include entities offering accounts that enable consumers to write checks or to make payments to third parties through other means, such as other negotiable instruments or telephone transfers. A creditor is any entity that regularly extends, renews, or continues credit; any entity that regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who is involved in the decision to extend, renew, or continue credit. Creditors include finance companies, automobile dealers, mortgage brokers, utility companies, telecommunications companies and non-profit and government entities that defer payment for goods or services.

A copy of the FTC's announcement can be found on our website at http://www.schwartzandballen.com/whats_new.html.

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

¹ The FTC's action does not extend to the rule regarding address discrepancies applicable to users of consumer reports or to the rule regarding changes of address applicable to card issuers.