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**M E M O R A N D U M**

April 29, 2004

To Our Clients and Friends

Re: FACT Act – FTC Proposed Rule on Identity Theft

The Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) contains various provisions to help remedy identity theft. In connection with accomplishing this objective, the FACT Act requires the Federal Trade Commission (“FTC”) to establish definitions for the terms “identity theft” and “identity theft report,” to determine the duration of an “active duty alert,” and to determine what constitutes “appropriate proof of identity” for the purposes of the provisions relating to fraud and active duty alerts, information blocks and truncation of Social Security numbers. The FTC is issuing a proposed rule to carry out these requirements of the FACT Act. Comments on the proposed rule are due by June 15, 2004.

**PROPOSED DEFINITIONS FOR “IDENTITY THEFT” AND “IDENTITY THEFT REPORT”**

Section 111 of the FACT Act defines “identity theft” as a fraud committed using the identifying information of another person, subject to such further definitions as the FTC may prescribe by regulation. The FTC proposes to expand upon the statute by defining “identity theft” to mean a fraud committed or attempted using the identifying information of another person without lawful authority. In order to promote consistency with existing law defining what constitutes identity theft, the FTC proposes that the term “identifying information” have the same meaning as the term “means of identification” in 18 U.S.C. § 1028(d)(7).

The FACT Act provides that the term “identity theft report” means, at a minimum, a report:

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- That alleges identity theft;
- That is a copy of a valid official report filed by the consumer with an appropriate federal, state or local law enforcement agency; and
- The filing of which subjects the person filing the report to criminal penalties if the information in the report is false.

The FTC proposes to add two elements to the definition:

- A requirement that the consumer allege identity theft with as much specificity as the consumer can provide; and
- Allow information furnishers or consumer reporting agencies (“CRAs”) to request additional information or documentation to help determine the validity of the alleged identity theft.

### **DURATION OF ACTIVE DUTY ALERTS**

The FTC proposes to maintain the duration of the active duty alert at 12 months, as set forth under Section 112 the FACT Act.

### **APPROPRIATE PROOF OF IDENTITY**

CRAs must develop and implement reasonable requirements for what information constitutes appropriate proof of identity by the consumer for various purposes under the FACT Act. Examples of information that might constitute reasonable requirements for proof of identity are the following:

- A consumer file match – identification information of the consumer, including full name, address, Social Security number and date of birth.
- Additional proof of identity – copies of government issued identification, utility bills and other methods used to confirm identification, such as having the consumer answer a question to which only the consumer might be expected to know the answer.

The proposed rule can be found at [http://www.schwartzandballen.com/whats\\_new.html](http://www.schwartzandballen.com/whats_new.html).

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