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MEMORANDUM

February 5, 2004

To Our Clients and Friends

Re: Final Rule: FACT Act Effective Dates

The Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”), (Pub. L. No. 108-159) requires the Federal Reserve Board and the Federal Trade Commission (the “Agencies”) to determine the effective date for many provisions of the legislation for which the Act itself does not specifically provide an effective date. In December the Agencies jointly issued for comment an interim final rule and a proposed rule concerning these effective dates. Based upon comments received the Agencies have adopted the interim final rule and proposed rule as a final rule with an important exception. The Agencies determined that section 214, which relates to the use of information by an affiliate for making solicitations to a consumer, will be effective when the rules under this section become effective, which could be as late as March 2005.

FINAL RULE

- Establishes December 31, 2003, as the effective date for the extension of the federal preemption provisions of the FCRA that were scheduled to sunset on December 31, 2003 and as the effective date for those provisions of the FACT Act that address the relationship between the Fair Credit Reporting Act and state laws. These include provisions relating to information sharing among affiliates, credit scores and identity theft.
- The Agencies stated that the specific protections afforded under the FCRA override state laws only when the referenced federal provisions that require conduct by the affected persons are in effect because that is the time when conduct is required by those provisions of the FCRA. Only when a federal provision is in effect does the subject matter become regulated under that section and, consequently, state law preempted.

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- Establishes December 31, 2003, as the effective date for each provision of the FACT Act that authorizes an agency, without establishing an implementation date, to issue a regulation or to take other action to implement the Act. The Agencies do not specify to which provisions of the FACT Act this provision applies.
- Establishes March 31, 2004 as the effective date for those provisions which do not require significant changes to business procedures. These include provisions relating to statute of limitations, furnisher liability exception, liability and enforcement, rules of construction, action concerning complaints and communications for certain employee investigations.
- Establishes December 1, 2004 as the effective date for those provisions which require significant changes to business procedures. These include provisions relating to fraud alerts, procedures for identification of possible instances of identity theft, truncation of social security numbers in consumer reports, summary of rights of identity theft victims, blocking of information resulting from identity theft, coordination of identity theft complaint investigations, prevention of repollution of consumer reports, notice by debt collectors with respect to fraudulent information, summary of rights of consumers, disclosure of credit scores, enhanced disclosure of means available to opt out of preseeded lists, duty to provide notice to a consumer, risk-based pricing notice, procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies, improved disclosure of the results of reinvestigation, reconciling addresses, notice of dispute through reseller and duty to conduct a reasonable investigation.

Under the interim rule, this December 1, 2004 effective date had also applied to the use of information by an affiliate for making solicitations to a consumer, issuance of free consumer reports, and the disposal of consumer report information and records. The Agencies have decided that the effective dates for these sections are specified in the implementing language of the Act for these sections and thus, no effective date is required to be established by the Agencies.

The final 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.