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MEMORANDUM

December 21, 2004

To Our Clients and Friends

Re: **FACT Act: Interagency Final 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 banking agencies, the National Credit Union Administration, the Federal Trade Commission (“FTC”) and the Securities and Exchange Commission (“SEC”) 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. 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”) have now adopted final rules implementing Section 216 of the FACT Act. The final rules, which amend the Interagency Guidelines Establishing Standards for Safeguarding Customer Information (the “Guidelines”), are effective July 1, 2005. The FTC, the SEC and the National Credit Union Administration previously adopted rules for institutions subject to their jurisdiction.¹

FINAL DISPOSAL RULES

The Agencies’ Guidelines, which were issued in 2001 as provided by the Gramm-Leach-Bliley Act, require each financial institution to develop a written information security program designed to ensure the security and confidentiality of customer information. The final rules amend the Guidelines to require financial institutions to implement appropriate controls designed to ensure the proper disposal of consumer information by or on behalf of depository institutions.

¹ Our memoranda discussing the FTC’s and SEC’s final rules can be found at www.schwartzandballen.com/factact.html.

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The final rules:

- define “consumer information” to be any record about an individual, whether in paper, electronic or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the depository institution for a business purpose, or a compilation of such records
- add to the Guidelines the objective to ensure the proper disposal of consumer information
- add a provision to the Manage and Control Risk section of the Guidelines that requires depository institutions to develop, implement and maintain as part of their information security programs appropriate measures to properly dispose of consumer information in a manner consistent with each of the requirements of the institution’s information security program

In response to commenters, the Agencies extended the effective date to July 1, 2005. Contracts entered into before July 1, 2005 with third-party service providers that have access to consumer information and that may dispose of consumer information must be modified to comply with the new rules by July 1, 2006.

The Agencies also amended their Fair Credit Reporting Act regulations to add a provision requiring depository institutions to properly dispose of consumer information in accordance with standards set forth in the Guidelines.

The Agencies’ rules 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.