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MEMORANDUM

December 11, 2003

To Our Clients and Friends

Re: FACT Act Requirements for Users of Consumer Reports

The Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) permanently extends the provisions of the Fair Credit Reporting Act (“FCRA”) that are due to expire at the end of 2003 and provides additional consumer protections relating to identity theft. The legislation also imposes requirements on persons who use information contained in consumer reports (“users”).

LIMITATIONS ON USERS OF REPORTS CONTAINING FRAUD ALERTS

- A potential user of a consumer report that contains an initial fraud alert¹ that the consumer may be a victim of fraud or identity theft, or an alert that the consumer is on active duty with the military, may not:
 - establish a new credit plan or extension of credit (other than an open-end credit plan) in the consumer’s name;
 - issue an additional credit card on an existing account; or
 - grant an increase in the credit limit on an existing account at the consumer’s request

unless the user utilizes reasonable policies and procedures to form a reasonable belief that the user knows the identity of the consumer.

- If the consumer who requested the fraud alert specified a telephone number to be used for identity verification prior to authorizing a new credit plan, a user of the consumer report must:

¹ An “initial fraud alert” is a notice based upon a request from a consumer that is placed by a consumer reporting agency (“CRA”) in the consumer’s file and provided to users of a consumer report for a period of at least 90 days stating that the consumer may be the victim of identity theft or fraud.

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- contact the consumer at that telephone number; or
 - take reasonable steps to verify the consumer's identity and confirm the application for credit is not the result of identity theft.
- A prospective user of a consumer report or a credit score generated using information in a consumer's file that contains an extended fraud alert² must contact the consumer in person, by telephone or other reasonable contact method designated by the consumer to confirm that the application for a new credit plan or increase in credit limit, or request for an additional card is not the result of identity theft.

RISK-BASED PRICING NOTICES

- A person who uses a consumer report in connection with a provision of credit on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from that user based on a consumer report must provide an oral, written or electronic notice to the consumer.
- The notice may be provided at the time of an application for credit or at the time of communication of the approval of the provision of credit or, if permitted by federal regulation, after the terms offered to the consumer were set based on the consumer report information.
- The notice must, at a minimum:
 - inform the consumer that the terms were set based on information from a consumer report;
 - identify the consumer reporting agency ("CRA") furnishing the report;
 - inform the consumer that he or she may obtain a copy of the consumer report without charge; and
 - include contact information for obtaining such consumer reports, including a toll-free number if it is a national CRA.
- No notice is required if the user has provided or will provide an adverse action notice, or if the consumer applied for specific material terms and was granted those terms, unless the terms were initially specified by the user after the consumer initiated the transaction and the user obtained a consumer report.

² An "extended fraud alert" is a notice placed in a consumer's file, based upon the submission of an identity theft report to the CRA by the consumer, and provided to users of the consumer report for seven years. The consumer is also to be excluded from prescreened lists for offers of credit or insurance for five years.

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- The FTC and Federal Reserve Board are to jointly prescribe rules addressing the notice requirement.
- A user will not be liable for failure to perform under this section if the user maintained reasonable policies and procedures for compliance.
- Any attempt by a state to regulate the duties of users to provide notice of certain terms in credit transactions is permanently preempted by federal law. This section may only be enforced by federal agencies, and no private right of action exists with regard to this section.

USE OF CREDIT SCORE BY MORTGAGE LENDERS

Mortgage lenders who use a consumer's credit score in connection with an application must provide the consumer with the consumer's credit score and certain other information used by the lender along with a notice prescribed by the FACT Act.

RECONCILING ADDRESSES

- A person who requests a consumer report from a national CRA and is notified by the CRA that the address in the request substantially differs from the addresses in the consumer's file must use reasonable policies and procedures, prescribed by the federal banking agencies and the FTC, to form a reasonable belief the user knows the identity of the consumer.
- A user that establishes a continuing relationship with the consumer and regularly furnishes information to the CRA that provided the discrepancy notice must also use reasonable policies and procedures to be prescribed by the federal agencies to reconcile the addresses by furnishing the consumer's address as part of the information regularly furnished by the user to the CRA.

DISPOSAL OF CONSUMER REPORT INFORMATION AND RECORDS

- The federal banking agencies, the FTC and the Securities and Exchange Commission are to promulgate regulations within one year of enactment requiring any person who maintains or otherwise possesses consumer information derived from consumer reports for a business purpose to properly dispose of the information. The agencies may exempt certain entities as they believe appropriate.

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NOTICE BY DEBT COLLECTORS REGARDING FRAUDULENT INFORMATION

- A debt collector for a third-party creditor or other user of a consumer report who is notified that information relating to the debt may be fraudulent or the result of identity theft must:
 - notify the third party that the information may be fraudulent or the result of identity theft; and
 - upon request by the consumer, provide all information to which the consumer would be entitled by law if the consumer were not a victim of identity theft and wanted to dispute a debt.

A copy of the FACT Act and other memoranda relating to the Act can be found at www.schwartzandballen.com/Whats_New.htm.

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