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M E M O R A N D U M

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To Our Clients and Friends

Re: FACT Act: FTC Final Rule on Disposal of Consumer Information

Section 216 of the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) requires the Federal Trade Commission (“FTC”), the Federal banking agencies, the National Credit Union Administration and the Securities and Exchange Commission to adopt comparable and consistent rules regarding the disposal of sensitive consumer report information and records to prevent unauthorized disclosure of consumer information and to reduce the risk of consumer fraud. The FTC has issued a final rule on disposal of consumer information and records. The final rule also provides examples as to what constitutes reasonable measures for disposal of consumer information. The rule is effective June 1, 2005. The other agencies are expected to issue final disposal of information rules shortly.

The FTC’s final rule provides that “consumer information” is any record about an individual, whether in paper, electronic or other form, that is a consumer report or is derived from a consumer report. It also includes compilations of such records. Consumer information does not include information such as aggregate information or blind data that does not identify individuals. Under the rule the terms “dispose, disposing or disposal” mean the discarding or abandonment of consumer information, or the sale, donation, or transfer of any medium, including computer equipment upon which consumer information is stored.

The final rule requires any person who maintains or possesses consumer information to properly dispose of such information by taking reasonable measures to protect against unauthorized access to, or use of, the information in connection with its disposal. Examples of reasonable disposal methods include policies and procedures that require burning, pulverizing or shredding consumer information and destruction or erasure of electronic media containing consumer information. Entities subject to the

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Gramm-Leach-Bliley Act and the FTC's Standards for Safeguarding Customer Information ("Safeguards Rule") may incorporate their consumer information policies into the program that is required by the Safeguards Rule. Persons should also consider conducting due diligence of third-party vendors engaged to dispose of consumer information and monitor compliance with the rule.

The FTC's 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.