

**SCHWARTZ & BALLEN LLP**  
1990 M STREET, N.W. • SUITE 500  
WASHINGTON, DC 20036-3465  
(202) 776-0700

FACSIMILE  
(202) 776-0720

www.schwartzandballen.com

**MEMORANDUM**

January 25, 2005

To Our Clients and Friends

Re: FTC Rule on Opt-Out Disclosures for Prescreened Offers

The Federal Trade Commission (“FTC”) has issued a final rule to require companies that make prescreened solicitations for credit or insurance to provide additional disclosures regarding a consumer’s right to opt out of receiving future offers. The rule implements § 213(a) of the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”), which directs the FTC to establish a rule to make the disclosure of the opt-out from prescreened offers simple and easy to understand. The final rule, which is essentially the same as the rule proposed by the FTC in September 2004, is effective August 1, 2005.<sup>1</sup>

**REQUIREMENTS**

Under the Fair Credit Reporting Act (“FCRA”), when a company uses a consumer report to make an unsolicited (*i.e.*, “prescreened”) offer of credit or insurance, the company is required to include a clear and conspicuous statement that the consumer has a right to prohibit information contained in the consumer report maintained by a consumer reporting agency from being used in connection with any unsolicited offers of credit or insurance. The FACT Act requires that the disclosure be presented in a format, type size and manner that is simple and easy to understand, and directs the FTC, in consultation with the Federal banking agencies, to establish a rule to implement the requirement.

The final rule requires companies engaged in prescreened solicitations to provide “layered” notices to consumers, which consist of a short notice that provides

---

<sup>1</sup> Our memorandum describing the FTC’s proposed rule can be found at <http://www.schwartzandballen.com/Memos%202004/FTC%20Proposed%20Rule%20on%20Optout%20Notices%2009-28-04.pdf>

## SCHWARTZ & BALLEN LLP

basic opt-out information and a separate, longer notice that provides additional details. The short notice must be a clear, conspicuous, simple and easy-to-understand<sup>2</sup> statement that the consumer has a right to opt out of receiving prescreened solicitations, and it must include a toll-free number the consumer may call to opt out. The short notice must also direct consumers to the existence and location of the long notice. The short notice must be:

- prominent, clear and conspicuous
- in a type size that is larger than the principal text of the page, but no smaller than 12-point type
- on the front side of the first page of the principal promotional document<sup>3</sup> in the solicitation, or, if an electronic solicitation, on the same page and in close proximity to the principal marketing message
- in a format and type style that are distinct from other text on the page

The long notice also must be clear, conspicuous, simple and easy to understand, and must inform consumers of their rights under the FCRA relating to prescreened offers. However, it cannot include any information that interferes with, detracts from, contradicts or undermines the purpose of the notice. The long notice must:

- appear in the solicitation
- be in a type size no smaller than the principal text on the page and no smaller than 8-point type
- begin with an underlined heading in capital letters identifying the notice as the “PRESCREEN & OPT-OUT NOTICE”
- be in a typeface that is distinct from other typeface on the page
- be set apart from other text on the page

The FTC has also adopted model language that companies may use to comply with the rule. A copy of the FTC’s final rule can be found on our web site at [http://www.schwartzandballen.com/whats\\_new.html](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.

---

<sup>2</sup> The FTC defines “simple and easy-to-understand” as plain language designed to be understood by ordinary consumers, and the use of clear and concise sentences, paragraphs and sections.

<sup>3</sup> The “principal promotional document” is the document designed to be seen first by the consumer, such as the cover letter.