

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

FACSIMILE  
(202) 776-0720

[www.schwartzandballen.com](http://www.schwartzandballen.com)

**MEMORANDUM**

September 28, 2004

To Our Clients and Friends

Re: FTC Proposed Rule On Opt-Out Disclosures Relating to Prescreened Offers

The Federal Trade Commission (“FTC”) is requesting public comment on a proposed rule to require companies that make prescreened solicitations for credit or insurance to provide enhanced disclosures regarding the consumer’s right to opt out of receiving such offers in the future. The proposal 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 simple and easy to understand. The FTC proposes that the rule take effect sixty days after it is adopted. Comments are due October 28, 2004.

**PROPOSED REQUIREMENTS**

Under the Fair Credit Reporting Act (“FCRA”), when a company uses a consumer report to make an unsolicited (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 credit file with a consumer reporting agency from being used in connection with any unsolicited offers. 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 to establish a rule to implement the requirement.

The FTC proposal requires companies engaged in prescreened solicitations to provide “layered” notices to consumers, which consist of an initial prominent statement that provides basic opt-out information, and a separate longer explanation that provides greater details. The short notice must be a simple and easy to

## SCHWARTZ & BALLEN LLP

understand<sup>1</sup> statement that the consumer has a right to opt out of receiving prescreened solicitations, and it must include the toll-free number the consumer can call to opt out. The short notice must also direct the consumer to the location of the long notice. The short notice must be:

- prominent, clear and conspicuous
- in a type size that is larger than the text of the page, but no smaller than 12-point type
- on the front side of the first page of the solicitation, or on the first screen of an electronic solicitation
- in a format and typeface that are distinct from other text on the page

The long notice must be a simple and easy to understand statement that informs consumers of their additional rights under the FCRA relating to prescreened offers. However, it cannot include any information that may detract, contradict or undermine the purpose of the opt-out notice. The long notice must:

- be clear and conspicuous
- 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 a heading identifying the notice as the “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 proposes model language that companies may use to comply with the rule. A copy of the FTC’s proposal 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>1</sup> The FTC defines “simple and easy to understand” as plain language designed to be understood by ordinary consumers. Factors that are considered in this determination include using clear and concise sentences and the active voice, and avoiding legal and technical terminology as well as multiple negatives.