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MEMORANDUM

May 8, 2008

To Our Clients and Friends

Re: Risk-Based Pricing Notices

The Federal Reserve Board and the Federal Trade Commission have proposed regulations that would require a creditor to provide a consumer with a risk-based pricing notice when, based on the consumer's credit report, the creditor offers or provides credit to the consumer on terms less favorable than the terms it offers or provides to other consumers. The proposed rules implement section 311 of the Fair and Accurate Credit Transactions Act of 2003 (the "FACT Act"), which amends the Fair Credit Reporting Act. Comment is due 90 days after the proposal is published in the *Federal Register*.

Risk-based pricing refers to the practice of using a consumer's credit report to establish the price and other terms of credit extended to a consumer. The proposed rules would apply generally to all creditors that engage in risk-based pricing. A risk-based pricing notice would generally be provided to the consumer after the terms of credit have been set, but before the consumer becomes contractually obligated on the credit transaction.

The proposed rules generally require a creditor to provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to extend credit to a consumer on terms that are less favorable than the most favorable terms available to a substantial proportion of consumers from that creditor. The agencies propose two alternative methods creditors may use to determine when they are offering credit on terms that are materially less favorable. The proposed rules also include certain exceptions to the general rule, including an exception for creditors that provide a consumer with a disclosure of the consumer's credit score in conjunction with additional information that provides context for the credit score disclosure.

The proposal provides several approaches that creditors may use to identify consumers to whom they must provide risk-based pricing notices. In addition, the

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proposed rules include certain exceptions to the notice requirement. The most significant exception permits creditors, in lieu of providing risk-based pricing notices to those consumers who receive less favorable terms, to provide all of their consumers with their credit scores and explanatory information.

A copy of the proposed rules can be found on our website at http://www.schwartzandballen.com/whats_new.html.

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