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M E M O R A N D U M

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To Our Clients and Friends

Re: Privacy Questions and Answers of the Federal Agencies

On December 12th the Federal banking agencies¹ released questions and answers to provide additional guidance relating to financial institutions with regard to the privacy provisions of Title V of the Gramm-Leach-Bliley Act and the agencies' privacy rules. The questions and answers cover a broad range of topics, including

- notices to joint account holders
- complying with opt-out requirements for joint account holders
- limitations on redisclosure and reuse of nonpublic personal information
- limitations on disclosing account numbers
- complying with the exception for joint marketing arrangements

Generally, the questions and answers repeat the guidance provided in the privacy rules and preamble to the rules when they were adopted in June 2000.

SPECIFIC GUIDANCE

WHO IS COVERED?

- **Trust Services** – The guidance reaffirms that a trustee is not subject to the privacy rules because neither the trust, the trust grantor nor beneficiaries are consumers or customers.
- **IRA Custodians** – A custodian for an IRA is required to comply with the privacy rules.

¹ The release can be found at <http://www.schwartzandballen.com/WhatsNew.htm>

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- **Employee Benefit Plans** – A participant or beneficiary of an employee benefit plan is not a consumer or customer of the plan’s sponsor, trustee or fiduciary. Accordingly, the plan sponsor, trustee and fiduciary are not subject to the privacy rules.
- **Guarantors and Endorsers** – The guidance states that a guarantor or an endorser of another person’s obligation is a customer and is entitled to the protection of the privacy rules. However, a financial institution may treat the primary obligor and the guarantor/endorser as joint account holders, and provide a single notice to the primary obligor’s address.

DELIVERING NOTICES

- **Delayed Delivery** – The guidance confirms that financial institutions may provide written notices to customers within a reasonable time after establishing the customer relationship if the customer agrees and to do otherwise would substantially delay the customer’s transaction.
- **Affiliates** – A single notice may be sent on behalf of all affiliated companies. The notice need not name each affiliate. For example, the notice could say it applies to all companies in the “ABC” family of companies.
- **Sponsoring Financial Institutions** – Financial institutions that offer products and services that are actually provided by other financial institutions do not have a customer relationship with consumers and therefore are not required to send privacy notices to such consumers.
- **Tear Off Opt Out Forms** – The agencies state that a tear-off opt out form may be placed on the reverse side of a financial institution’s privacy policy. However, detaching the tear-off form may not result in the removal of text from the privacy policy.

JOINT ACCOUNT HOLDERS

- The guidance contains an extended discussion on to whom and how notices are to be sent to joint account holders, as well as how the opt out provisions apply.
- Generally, a single notice and opt out form sent to the account holders at the address of one of the account holders will be deemed to be notice to all joint account holders.

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REDISCLASURE AND REUSE

- The guidance reaffirms that nonpublic personal information which a financial institution discloses to a nonaffiliated third party under one of the exceptions can be used by the third party only for purposes of servicing the consumer, or on the same basis as the financial institution may disclose the information.
- Generally, nonpublic personal information disclosed outside of an exception (*i.e.*, the consumer has not opted out) may be further disclosed by the recipient without restriction. However, if the consumer subsequently opts out, the recipient is required to honor the consumer's opt out. This means that financial institutions must establish procedures for informing third parties to whom they have disclosed information of the consumer's subsequent opt out.

DISCLOSURE OF ACCOUNT NUMBERS

- The agencies advise that an arrangement with a nonaffiliated third party marketing organization that provides for the disclosure of customer account numbers to an affiliate of the marketer for purposes of effectuating payments is not permitted because the activity is an integral part of the arrangement with the marketer.

JOINT MARKETING PROGRAMS

- **Statement Inserts** – The guidance indicates that financial institutions must be careful not to “unwittingly” disclose customer nonpublic personal information to a vendor by virtue of a response to statement inserts. For example, if a code included in marketing materials reveals a consumer's personal characteristics to the third party, the consumer should be given an opportunity to opt out from the disclosure. (Please note, this would not apply to joint marketing arrangements between financial institutions.)
- **Joint Employees** – The agencies advise that providing customer information to a dual employee for purposes of marketing the other financial institution's products and services is deemed to be providing the information directly to the other financial institution. Accordingly, the customer must be provided an opportunity to opt out unless an exception applies.

If you have any questions concerning the agencies' Q's and A's, please call Gilbert Schwartz, Robert Ballen or Tom Fox at 202-776-0700.