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M E M O R A N D U M

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To Our Clients and Friends

Re: FCC's Do-Not-Call Rule

The Federal Communications Commission ("FCC") has established a national do-not-call registry for consumers wishing to avoid telemarketing calls. This national database, which covers both interstate and intrastate calls, will be administered by the Federal Trade Commission ("FTC") but enforcement will be coordinated between both agencies.

This rule, which applies to telephone solicitations made by banks and insurance companies as well as to other telemarketers, permits companies to call consumers with whom they have an "established business relationship." The FCC has adopted the FTC's definition of an established business relationship rather than using the much broader definition that was contained in its proposal. Under the FCC's rule an established business relationship exists if a business transaction has occurred with the consumer within the past 18 months or if the consumer has made an inquiry or completed an application within the preceding three months. In addition, even if the consumer has an established business relationship with a company, the company must maintain a company specific do-not-call list for consumers who ask the company not to call.

Other aspects of the FCC's rule are:

- The FCC declined to preempt state-administered do-not-call lists. A state may continue to maintain its own do-not-call registry provided its laws are no less restrictive than the FCC's rule and all registrants on the national do-not-call registry for that state are included on the state registry. A state may also adopt more restrictive do-not-call laws.

- The rule does not apply to calls made by tax-exempt nonprofit organizations nor calls made for political or religious purposes.
- Consumers registering with the national do-not-call registry will be able to give permission to specific companies from which they wish to receive telemarketing calls.
- Telemarketers using predictive dialers must ensure that no more than three percent of all calls are abandoned (i.e., not transferred to a live sales agent within two seconds of the recipient's greeting) and must deliver a prerecorded identification message when a call is abandoned. Prerecorded messages sent to consumers under the established business relationship exemption are permitted.
- Telemarketers must transmit caller ID information and are prohibited from blocking such information.
- A company must obtain express permission in writing before it can send faxed advertisements to a customer

The FCC's press release describing its rule can found at www.schwartzandballen.com/WhatsNew.htm.

If you have any questions concerning the FCC rule, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.