SCHWARTZ & BALLEN LLP
1990 M STREET, N.W. • SUITE 500
WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

M E M O R A N D U M

May 14, 2004

To Our Clients and Friends

Re: Foreign Outsourcing and Privacy of Customer Information

Federal Trade Commission Chairman Tim Muris recently responded to questions from Congressman Ed Markey concerning privacy issues relating to outsourcing by U.S. companies to offshore processors. Markey had asked how privacy laws and rules enforced by the FTC apply if consumer information is transferred to offshore service providers for purposes such as billing, customer service or support services.

Muris responded that if a company that is subject to U.S. laws chooses to outsource information processing to a U.S. or foreign service provider, the company will remain responsible for safeguarding customer information it sends to the processor. The FTC will look to whether the company that outsourced the processing employed sufficient "reasonable and appropriate" measures to maintain and protect the privacy and confidentiality of its customers' personal information.

DO-NOT-CALL REGISTRY

Muris indicated that the Telemarketing Sales Rule ("TSR"), which prohibits telemarketing calls to consumers who have placed their telephone numbers on the National Do-Not-Call Registry, applies to all sellers and telemarketers that place calls to consumers in the U.S., including those operating offshore. If a U.S. company retains an offshore telemarketer to place calls to the U.S. on its behalf, both the U.S. company and the offshore telemarketer may be held liable for violations of the TSR.

THE GRAMM-LEACH-BLILEY ACT

Muris also indicated that financial institutions are responsible for ensuring that the confidentiality of personal information of consumers is maintained by their service providers. Financial institutions, however, generally are not required to disclose to consumers that they are sharing personal information with service providers.

The FTC and the other agencies responsible for implementation of the Gramm-Leach-Bliley Act have adopted rules requiring financial institutions to design, implement and maintain information security programs that ensure the confidentiality of consumer information that is shared with U.S. and offshore service providers. Financial institutions must select service providers that are capable of safeguarding consumer information, and by contract, must require service providers to implement and maintain safeguards. If a financial institution fails to take the required steps with respect to the service provider and the service provider fails to safeguard consumer information, the agencies could find that the financial institution had violated the GLB Act rules.

THE FAIR CREDIT REPORTING ACT

According to Muris, under the Fair Credit Reporting Act, consumer reporting agencies ("CRAs") are required to maintain reasonable procedures to ensure that consumer reports are only furnished to those with permissible purposes as set forth in the Act. While the FCRA does not prohibit CRAs from using offshore service providers, a CRA may be liable if it does not take appropriate steps to ensure that its service providers had employed reasonable procedures to protect consumer report information.

Muris also indicated that to date the FTC has not brought any enforcement actions based on a service provider's failure to protect personal information.

The FTC's letter can be found at http://www.schwartzandballen.com/whats_new.html.

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