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M E M O R A N D U M

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To Our Clients and Friends

Re: Proposed Rule on GLB Act Model Privacy Form

The Federal agencies responsible for implementation of the privacy provisions of the Gramm-Leach-Bliley Act (“GLB Act”)¹ (the “Agencies”) are about to issue a proposed rule that adds a model form which financial institutions may use as a safe harbor for compliance with the initial and annual notice provisions of the GLB Act. The Agencies’ proposal is in response to concerns that the GLB Act privacy notices sent to consumers are difficult to understand. Comments on the proposed rule are due 60 days from the date of publication in the *Federal Register*.

BACKGROUND

In response to concerns that GLB Act notices were not meaningful, Congress enacted the Regulatory Relief Act in October 2006, which directed the Agencies to jointly develop a model form that financial institutions may use to make required disclosures to consumers under the privacy provisions of the GLB Act. Use of the model form provides a safe harbor for institutions. Congress directed that the model form be comprehensible to consumers and provide for clear and conspicuous disclosures. It also should enable consumers to identify easily a financial institution’s sharing practices and to compare privacy practices among financial institutions.

PROPOSED MODEL FORM

The proposed model form has either two or three pages, depending upon whether consumers have an opportunity to opt out. Each page must be on a separate 8 ½ x 11 inch piece of paper. The model form is designed to be customized by each institution.

¹ The agencies are the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, Federal Trade Commission, Commodities Futures Trading Commission, National Credit Union Administration, and Securities and Exchange Commission.

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The form is to include the name of the institution, contact information, and information about affiliates, non-affiliates and joint marketing partners with which it shares personal information. In addition, institutions will be required to complete the responses in each of the boxes provided on the form in a manner that accurately describes their information sharing policies and practices, including reasons the institutions share the consumer's personal information.

The Agencies also propose that institutions posting a pdf version of the model privacy notice on their websites may obtain a safe harbor. However, they request comment on whether to develop a web-based design for use on institution websites.

The proposal states that institutions using privacy notices based upon the sample forms currently contained in the Agencies' privacy rules would lose the benefit of a safe harbor for compliance if they are provided more than one year after the final rule is adopted.

A copy of the draft proposed rule can be found on our web site at 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.