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MEMORANDUM

December 20, 2002

To Our Clients and Friends

Re: Final Amendments to Telemarketing Sales Rule

The Federal Trade Commission (“FTC”) has announced amendments to the Telemarketing Sales Rule (“TSR”),¹ which implements the Telemarketing Consumer Fraud and Abuse Prevention Act. These amendments:

- Establish a national “do not call” registry;
- Impose additional requirements regarding billing and soliciting of charitable contributions by telemarketers;
- Require telemarketers to transmit caller-ID information; and
- Add requirements regarding call abandonment.

NATIONAL “DO NOT CALL” REGISTRY

The FTC will establish a centralized national “do not call” registry to enable consumers to stop most telemarketing calls by registering their phone numbers with the FTC, either via a dedicated web site or by calling a toll-free number. There will be no charge to consumers to register their numbers, and the registration will be good for five years. The registry will be phased in over approximately six months after Congress approves funding.

Telemarketers will be charged for access to the registry. Telemarketers will be required to update their calling lists every three months to remove phone numbers appearing on the “do not call” registry. However, telemarketers may continue to call consumers with whom telemarketers have an “established business relationship.” A telemarketer may 1) call a consumer for up to 18 months after the consumer’s last purchase, delivery, or payment even if the consumer’s phone number is on the registry and 2) call a consumer for up to three months after the consumer makes an inquiry, or

¹ The TSR prohibits specific deceptive and abusive telemarketing acts or practices, requires disclosure of certain material information, requires express verifiable authorization for certain payment mechanisms, and establishes certain recordkeeping requirements.

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submits an application to the company. However, even with an established business relationship exemption, consumers can make a specific request to the company not to call.

The rule retains the existing company specific “do not call” provisions that require a telemarketer to maintain its own “do not call” list. The rule also gives consumers the option of allowing calls from specific sellers to whom they have provided express verifiable authorization even if the consumer is on the national “do not call” registry.

BILLING AUTHORIZATION PROVISIONS

The FTC also added new provisions regarding billing authorization.

- Telemarketers are prohibited from receiving unencrypted consumer account numbers, except when the disclosure or receipt of these numbers is for the purpose of processing a payment according to the terms of a transaction approved by the consumer.
- Telemarketers are prohibited from processing any billing information for payment without the express informed consent of the customer.
- In transactions involving pre-acquired account information and “free-to-pay conversion”² offers, a telemarketer can obtain “express informed consent” only by:
 - Obtaining the consumer’s express agreement to be charged and to be charged using a particular account number;
 - Obtaining from the consumer at least the last four digits of the account number to be charged; and
 - Making and maintaining an audio recording of the entire transaction.
- Disclosure is required of all material terms of any offers that involve a free-to-pay conversion offer.
- When novel payment methods are used (e.g., “demand drafts” or “phone checks”), telemarketers must disclose specific information to ensure that the consumer has given an “express verifiable authorization.”

CHARITABLE SOLICITATIONS

The amended TSR:

- Modifies the definition of telemarketing to include interstate calls made to solicit charitable contributions;

² Free-to-pay conversion offers are offers where there is a free trial period after which the consumer automatically incurs charges, unless he or she takes affirmative action to cancel.

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- Requires telemarketers to promptly disclose the name of the organization making the request and that the purpose of the call is to ask for a charitable contribution;
- Expressly prohibits certain misrepresentations in charitable fundraising calls; and
- Exempts charitable fundraising calls from compliance with the national “do not call” registry but does require that they accept entity-specific “do not call” requests.

CALL ABANDONMENT AND CALLER ID

The amended rule bans call abandonment.³ However, telemarketers are given a “safe harbor” if they:

- Ensure than no more than three percent of calls that are answered by a person are abandoned, measured per day per calling campaign;
- Allow each called consumer’s telephone to ring for at least 15 seconds or four rings before disconnecting;
- Connect each call to a sales representative within two seconds of the consumer’s greeting or if a sales representative is not available, play a recorded message stating the name and telephone number of the seller (but the message cannot include a sales pitch); and
- Maintain records showing compliance with these requirements.

The amended TSR also requires telemarketers to transmit their telephone number to a consumer’s caller-ID service and if possible, the calling company’s name or that of the seller or charitable organization on behalf of which the call is being placed.

With the exception of the national “do not call” registry, these new provisions are effective immediately.

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

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

³ Call abandonment occurs when telemarketers use automatic dialing software to call many consumers at once but terminate the call because they do not have available sales representatives to handle the calls that are answered by consumers.