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M E M O R A N D U M

September 4, 2003

To Our Clients and Friends

Re: California Financial Information Privacy Act (SB 1)

The State of California recently enacted the Financial Information Privacy Act (the “Act”)¹ that imposes requirements on disclosures by financial institutions that do business with California residents that are more restrictive than those set forth in Title V of the Gramm-Leach-Bliley Act. The Act affects the ability of financial institutions to disclose information about customers to affiliates as well as nonaffiliates. The Act is effective July 1, 2004.

DISCLOSURES TO NONAFFILIATED THIRD PARTIES

The Act requires that a financial institution obtain a consumer’s explicit consent (*i.e.*, opt-in) prior to disclosing the consumer’s nonpublic personal information² to a nonaffiliated third party. Exceptions to this requirement are provided for disclosures that are necessary to deliver the product or service requested and for certain other operating reasons.

The consumer’s consent must be in writing, in a separate document, dated and signed by the consumer. The form must clearly and conspicuously state that, upon signing, the consumer consents to disclosure of nonpublic personal information to nonaffiliated third parties.

¹ California Financial Information Privacy Act, Senate Bill 1 (Cal. 2003).

² Nonpublic personal information” is personally identifiable financial information (1) provided by a consumer to a financial institution; (2) resulting from a transaction between the financial institution and the consumer; or (3) otherwise obtained by the financial institution. Nonpublic personal information includes any list, description or other grouping of consumers, and publicly available information about them, that is derived using nonpublic personal information.

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A financial institution may, however, disclose a consumer's nonpublic personal information to a nonaffiliated financial institution for purposes of jointly offering a financial product or service pursuant to a written agreement so long as the consumer has been provided an opportunity to direct the financial institution not to share information about the consumer with other institutions (*i.e.*, opt out) and the consumer has not opted out from such disclosures.

A financial institution may not discriminate against or deny an otherwise qualified consumer a product or service because the consumer has not provided his or her consent. However, this does not prevent a financial institution from denying a product or service if it could not provide it without the consumer's consent to disclose information and the consumer has failed to provide consent.

DISCLOSURES TO AFFILIATES

The Act provides that a financial institution may not disclose a consumer's nonpublic personal information to an affiliate unless the financial institution has notified the consumer annually that the information may be disclosed to an affiliate and the consumer has not informed the institution not to disclose the information to its affiliate (*i.e.*, the consumer has not opted out).

A financial institution does not disclose information to an affiliate merely because information is maintained in a common database that the affiliate has access to, provided that if a consumer has exercised his or her opt-out option, such information is not further disclosed or used by the affiliate. In addition, a financial institution is not prohibited from sharing nonpublic personal information with a financial institution affiliate if the two institutions are regulated by the same functional regulator, are engaged in the same line of business, and share a common brand which is used to identify the source of the products and services provided.

OPERATIONAL EXCEPTIONS

A financial institution may disclose nonpublic personal information if necessary to effect, administer or enforce a transaction requested or authorized by a consumer. The operational exceptions are essentially identical to those provided in the Gramm-Leach-Bliley Act. An entity that receives nonpublic personal information pursuant to an exception may not use it or disclose it except to carry out the activity covered by the exception under which the information was received.

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PENALTIES

An entity that negligently discloses nonpublic personal information in violation of the Act is liable for a civil penalty of up to \$2,500 per violation. A person who knowingly and willfully obtains, discloses, shares or uses information in violation of the Act is subject to the same penalty. Enforcement actions may be brought by the Attorney General of California and by the institution's functional regulator.

The text of the Act can be found at http://www.schwartzandballen.com/whats_new.html.

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