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MEMORANDUM

November 10, 2003

To Our Clients and Friends

Re: Amendments to Fair Credit Reporting Act (H.R. 2622)

The House of Representatives and Senate have enacted amendments to the Fair Credit Reporting Act (“FCRA”), which extend the preemptions of state law that are scheduled to expire at the end of the year. The legislation also provides consumers with additional protections against identity theft. The differences between the House and Senate versions will be ironed out in conference. The key provisions of the bills are as follows:

National Standards. Both bills permanently extend the federal preemption provisions of the FCRA to provide uniform national consumer protection standards, including provisions relating to information sharing among affiliated entities and prescreened offers. The Senate version also limits the ability of affiliated companies to share and use consumer information for marketing solicitations, unless the consumer is given an opportunity to opt out from such use.

Red Flags. The House and Senate bills direct the federal banking agencies and the Federal Trade Commission (“FTC”) to identify “red flags,” or patterns indicative of identity theft, and to require insured depository institutions to institute procedures to curb such activities. Red flags include receipt by a card issuer of a request for another credit or debit card within a certain time period of receiving a change of address.

Fraud Alerts. Under the House bill, if a consumer claims to be a victim of fraud or identity theft, a consumer reporting agency (“CRA”) must: (1) include a fraud alert in the consumer’s file for 90 days; (2) disclose that the consumer may request a copy of the file and provide it without charge within three business days; (3) exclude the consumer from any prescreened list for offers of credit or insurance for two years; and (4) refer the fraud alert information to other national CRAs. A consumer may extend the alert for seven years upon submitting evidence of identity theft to the CRA. The Senate bill

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contains comparable provisions, but does not exclude consumers from prescreened offer lists unless an identity theft report is submitted to the CRA.

Rights of Identity Theft Victims. The FTC is to prepare a model summary on how to remedy effects of fraud or identity theft. CRAs must provide such a statement to identity theft victims. The Senate bill also requires businesses to provide records of unauthorized transactions to victims or law enforcement officials.

Blocking Information Resulting From Identity Theft. CRAs must block information that a consumer identifies as resulting from identity theft and notify the furnisher of the information of the block.

Consumer Disputes. The House bill requires CRAs and resellers of information to investigate consumer complaints about the accuracy or completeness of the consumer's credit report, promptly correct any inaccuracy or incompleteness, and notify other entities that provided the information or maintain such information in the consumer's file. A furnisher of information may not furnish information that it knows or has reasonable cause to believe is inaccurate. The Senate bill contains similar requirements for CRAs, but not for resellers or furnishers, and prohibits the sale or transfer of a debt that resulted from identity theft.

Reconciling Addresses. CRAs must notify a requester of a consumer report if the address of the consumer submitted by the requester substantially differs from the address in the consumer's file.

Preventing Repollution. The House and Senate bills provide that a person may not furnish information to a CRA that a consumer has identified as resulting from identity theft, unless the furnisher knows the information is correct. The Senate bill also requires the furnisher to investigate and report the results to the CRA and the consumer.

Debt Collectors. If a debt collector uses information in a consumer report and learns it is a result of identity theft or fraud, the debt collector must notify the creditor, or if it originated from another person, notify the CRA, as well as provide information to the consumer upon request. The Senate bill requires notification of the creditor only, not a CRA.

Access to Credit Report and Score. Consumers may request a free copy of their credit reports from a CRA in any 12-month period, as well as their credit scores and a statement explaining the scores and how they are derived. Under the House bill, mortgage lenders are required to provide the consumer with the credit score that it used in connection with processing the consumer's application. The Senate bill requires CRAs to provide credit scores only in connection with an application secured by a dwelling.

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Notification of Security Breach. The Senate bill requires financial institutions to notify the FTC where there is unauthorized access to computerized or physical records which compromises the security of the consumer's information.

Prescreened Offers. A consumer must be provided a simple and easy method for notifying a CRA to opt out of receiving prescreened offers of credit or insurance. The Senate bill makes the consumer's election permanent.

Medical Information. CRAs can provide a consumer report containing medical information only if: (1) it is for insurance purposes and the consumer consents; (2) it is for employment purposes or a credit transaction, the information is needed to process or effect the transaction, and the consumer provides specific written consent; or (3) it relates to transactions, accounts, or debts from medical services, products or devices and the information is coded so as not identify the provider or nature of treatment. A creditor shall not use medical information about a consumer unless such use is determined to be necessary and appropriate under regulations adopted by the FTC, the federal banking agencies, or a state insurance authority. Both bills provide for the confidentiality of the name, address and telephone number of a furnisher of medical information, unless protected using codes, or the consumer report relates to the business of insurance (other than property or casualty).

Medical information is not a consumer report if disclosed (1) in connection with the business of insurance or annuities, (2) as permitted by federal regulations or HIPAA, or (3) as determined to be necessary and appropriate by the FTC, a federal banking agency or state insurance authority. The Senate bill also adds a definition of "medical information" to include information about a person's health, the provision of health care to a person, and healthcare payment information.

Truncation of Account Numbers. A person who accepts credit or debit cards may not print the expiration date or more than the last five digits of the account number on a receipt provided to the cardholder. The Senate bill authorizes consumers to request that his or her social security number be truncated in a consumer report to be sent to him or her.

Insurance Study. The Senate bill requires the FTC to conduct a study on the use of credit scores and insurance scores on the availability and affordability of financial products, including property and casualty insurance, as well as the extent to which use of credit scores benefit or negatively impact persons based on geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, or creed. Under the House bill, the FTC in consultation HUD is to conduct a study on the effects of the use of credit scores on the availability and affordability of financial products and services, including the extent to which the use of credit scores may result in disparate impact on consumers.

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Other Provisions Only in House Bill:

- CRAs must disclose sources of information in a consumer's file, end-users of reports and their contact information to consumers upon request.
- A financial institution lender that furnishes negative information about a consumer to a CRA must notify the consumer in writing.
- In connection with prescreened offers, a credit card company must disclose the ability to change the annual percentage rate for reasons other than consumer's actions.
- In connection with an investigation of employee misconduct, the House version modifies the requirements imposed on an employer regarding disclosures of investigative consumer reports.

Other Provisions Only in Senate Bill:

- Criminal penalties for identity theft are increased from three to five years.
- Establishes a statute of limitations for actions regarding violations of the FCRA of two years after date of discovery of the violation, or five years after date of violation, whichever is earlier.
- Persons that possess consumer information derived from consumer reports for a business purpose must properly dispose of such information.
- If a person provides credit to a consumer on terms materially less favorable than those it offers to most consumers based on the consumer's report, the person must provide a specified notice to the consumer, unless the consumer had applied for such terms.
- Federal agencies shall prescribe guidelines to ensure accuracy of information provided by furnishers of information.
- Establishes a Financial Literacy and Education Commission to improve financial literacy throughout the United States.

The text of the bills can be found at www.schwartzandballen.com/WhatsNew.htm.

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