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**MEMORANDUM**

September 15, 2004

To Our Clients and Friends

Re: FACT Act: SEC Proposed Rule on  
Disposal of Consumer Information and Records

Section 216 of the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) requires the Securities and Exchange Commission (“SEC”), the Federal Trade Commission and the Federal banking agencies to adopt comparable and consistent rules regarding the disposal of sensitive consumer report information and records to prevent unauthorized disclosure of consumer information and to reduce the risk of consumer fraud. The SEC is now proposing a rule relating to the disposal of consumer report information. The other agencies had previously issued proposed rules to implement Section 216.<sup>1</sup> Comments on the SEC’s proposed rule are due by October 20, 2004.

**PROPOSED DISPOSAL RULE**

The SEC is proposing to implement the FACT Act’s disposal rule by amending Regulation S-P, Privacy of Consumer Financial Information, which requires brokers, dealers, investment companies and investment advisors registered with the SEC to adopt policies and procedures to safeguard customer information. The proposed rule will require that any such firm that maintains or otherwise possesses consumer report information to properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

Under the proposal “consumer report information” is any record about an individual, whether in paper, electronic or other form that is a consumer report under

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<sup>1</sup> Memoranda concerning the FACT Act can be found on our website at <http://www.schwartzandballen.com/factact.html>.

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the Fair Credit Reporting Act or is derived from a consumer report. The term “disposal” means the discarding or abandonment of consumer report information, or the sale, donation or transfer of any medium, including computer equipment, on which consumer information is stored.

A copy of the SEC’s proposal can be found on our web site at [http://www.schwartzandballen.com/whats\\_new.html](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.