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**MEMORANDUM**

July 18, 2006

To Our Clients and Friends

Re: FACT Act: Interagency Proposals on  
Identity Theft Red Flags and Address Discrepancies

The Federal Trade Commission, Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Office of Thrift Supervision and National Credit Union Administration (the “Agencies”) have proposed regulations under sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) regarding identity theft red flags for financial institutions and procedures users of consumer reports should use in the event they receive notices from consumer reporting agencies (“CRAs”) of address discrepancies. Comments are due by September 18<sup>th</sup>.

**RED FLAG GUIDELINES**

Section 114 of the FACT Act requires the Agencies to jointly issue guidelines identifying patterns, practices and specific forms of activities that indicate the possible existence of identity theft. The Agencies are also to require financial institutions and creditors to establish reasonable policies and procedures regarding identity theft with respect to account holders and customers.

The Agencies are proposing Red Flag Regulations that require financial institutions and creditors to implement a written Identity Theft Prevention Program (the “Program”) which contains reasonable policies and procedures to address the risk of identity theft. The Agencies also propose Red Flag Guidelines that provide specific examples of the types of activities that may indicate the possible risk of identity theft.

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The Program is to be based upon a risk assessment of the financial institution and creditor and should be appropriate to the size and complexity of the financial institution or creditor and the nature and scope of its activities. An institution's Program must include policies and procedures to prevent identity theft from occurring, including policies and procedures to:

- Identify Red Flags that are relevant to detecting a possible risk of identity theft
- Verify the identity of persons opening accounts
- Detect Red Flags that are relevant to opening an account and to existing accounts
- Assess whether Red Flags detect a risk of identity theft
- Mitigate risk of identity theft commensurate with risk posed
- Train staff to implement Program
- Oversee service providers

The proposal requires the board of directors or an appropriate board committee to approve the Program. In addition, management is to report annually on the institution's compliance with the Red Flag Regulations.

### **CARDHOLDER CHANGE OF ADDRESS**

The proposed regulations also require credit and debit card issuers to implement policies and procedures to assess the validity of a change of address request when followed by a request for an additional or replacement card within 30 days. A card issuer may not issue an additional or replacement card unless it notifies the cardholder of the request at the cardholder's former address, notifies the cardholder by other means previously agreed to by the cardholder or uses other means of assessing the validity of the change of address.

### **RECONCILING ADDRESS DISCREPANCIES**

The Agencies also propose regulations to implement section 315 of the FACT Act regarding procedures users of consumer reports are to employ when the user receives notice from the CRA that the address for the consumer provided by the user differs substantially from the address in the consumer's file at the CRA. The proposal requires users of consumer reports to implement policies and procedures to verify the identity of the consumer for whom it has obtained a consumer report and for whom it has received a notice of an address discrepancy. The policies and procedures must be designed to enable the user either to form a reasonable belief that it knows the identity of the consumer or to determine that it cannot do so. A user that

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applies the policies and procedures regarding identification and verification set forth in the Customer Identification program rules under the USA PATRIOT Act will satisfy this requirement.

A copy of the Agencies' proposals 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, Tom Fox or Heidi Wicker at (202) 776-0700.