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MEMORANDUM

June 9, 2004

To Our Clients and Friends

Re: FACT Act: Board Final Rule on
Model Form for Use by Furnishers of Information

The Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) provides in Section 217¹ that if any financial institution furnishes negative information to a nationwide consumer reporting agency (“CRA”) regarding credit extended to a customer, the financial institution must provide, in writing, a clear and conspicuous notice about furnishing negative information to the customer.² The notice must be sent to the customer no later than 30 days after furnishing the negative information to the CRA.

As mandated by the FACT Act, the Federal Reserve Board (the “Board”) has issued a final rule containing a concise model form that financial institutions may use to comply with this notice requirement. The notice may appear on any notice of default, any billing statement or other material provided to the customer. Institutions are not required to use the model forms and are free to create their own notices. The rule will become effective July 16, 2004.

MODEL NOTICE OF FURNISHING NEGATIVE INFORMATION

The Board has simplified the language of the model notice to make it more understandable to consumers. Financial institutions may use the following model notices:

“We may report information about your account to credit bureaus. Late payments, missed payments, or other

¹ Section 217 is effective December 1, 2004.

² See our memorandum “Provisions of the FACT Act Relating to Furnishers of Information” of December 4, 2003 for a description of a financial institution’s obligations under this provision of the FACT Act.

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defaults on your account may be reflected in your credit report.”

or

“We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.”

Financial institutions may use the first notice if the institution provides the notice prior to furnishing negative information to a CRA and may use the second notice if the institution provides the notice after furnishing the negative information to the CRA.

The Board has included a safe harbor for financial institutions who wish to make certain changes to the language or format of the model notices. Examples of acceptable changes include:

- rearranging the order of references to late payment(s) or missed payment(s);
- pluralizing the terms credit bureau, credit report and account;
- specifying the type of account from which the information may be furnished; and
- rearranging phrases to read “We may report to credit bureaus information about your account.”

The final rule applies to all financial institutions subject to the Board’s jurisdiction as well as those subject to notice requirements in the FACT Act.

The final rule can be found at 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.