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**M E M O R A N D U M**

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To Our Clients and Friends

Re: Extension of Delayed Effective Date For FCC Junk Fax Rule

The Federal Communications Commission (“FCC”) has delayed until January 9, 2006 the effective date of its Do Not Fax Rule, which requires a person to obtain a recipient’s signed, written consent before sending fax advertisements. The FCC’s action was taken in view of Congress’ passage of the Junk Fax Prevention Act of 2005 (S. 714), which provides an exception to permit companies to send fax advertisements to persons with whom they have established business relationships.

In July, 2003, the FCC amended its Do Not Fax Rule to prohibit a person from sending an unsolicited advertisement by facsimile without the recipient’s prior express invitation or permission. Previously, the Do Not Fax Rule had permitted a person to send a fax to recipients with whom the person had an established business relationship. However, the FCC concluded that the Telephone Consumer Protection Act of 1991 did not permit persons to send fax advertisements to recipients who have an established business relationship with the sender. In response to public criticism of the FCC’s decision and concern with disruption of existing arrangements, the FCC delayed the effective date of the amended rule until July 1, 2005 to provide Congress with the opportunity to create a statutory exception for established business relationships.

The Junk Fax Prevention Act of 2005 permits a person to fax unsolicited advertisements if the sender has an established business relationship with the recipient. The act incorporates the definition of an established business relationship that the FCC had adopted in connection with its Do Not Call Rule. Under the Do Not Call Rule, an established business relationship is a relationship between the parties arising from a purchase or transaction within the preceding eighteen months or from the recipient’s inquiry or application within the preceding three months. The fax advertisement must contain a notice indicating that the recipient may opt out of future

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unsolicited faxes. It is expected that the FCC will propose amendments to its Do Not Fax Rule to implement the established business relationship exception authorized by Congress.

A copy of the FCC action 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.