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**MEMORANDUM**

December 22, 2015

To Our Clients and Friends

Re: Passage of the Cybersecurity Act of 2015

Congress has enacted the Cybersecurity Act of 2015 (the “Act”).<sup>1</sup> The Act establishes a framework for sharing cybersecurity information within the private sector and with the federal government. The Act is intended to encourage private-sector companies to share cybersecurity threat information within their own industries and to enhance government information sharing with the private sector.

The Act contains cybersecurity authorizations for sharing and monitoring information by private sector entities, which include allowing entities to monitor their systems (as well as the systems of others that have provided their consent) for threats, operating defensive measures and sharing threat indicators or defensive measures for a cybersecurity purpose with other private sector entities and the federal government. In order to encourage sharing, the Act includes liability protections for the sharing or receipt of cybersecurity information as well as exempting from U.S. antitrust laws the exchange of cybersecurity threat indicators or defensive measures between entities.

The Act establishes protections for private entities who share cyber threat indicators or defensive measures with the federal government by:

- Providing that sharing threat indicators and defensive measures with the government is not a waiver of any applicable privilege or protection provided by law, including trade secret protection
- Treating information shared with the government as commercial, financial and proprietary information of the sharing entity when so designated
- Exempting shared information from Freedom of Information Act disclosure
- Exempting shared information from agency rules or judicial doctrines related to *ex parte* communications with a decision-maker

The Act also contains provisions requiring the federal government to expand its sharing of cyber threat and defensive measures with the private sector. The Act provides for the government to have real-time information sharing capabilities, and encourages the government to leverage existing entities, such as sector-specific information sharing and analysis centers.

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<sup>1</sup> Division N of the Consolidated Appropriations Act, 2016.

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The Act also expands the scope of the criminal law provision governing counterfeit and unauthorized access devices by eliminating the condition that the offender transport, store or hold in the U.S. anything used to commit the offense or proceeds from the offense.<sup>2</sup>

A copy of the Act can be found on our website at  
<http://www.schwartzandballen.com/news.html>

If you have any questions, please call Gilbert Schwartz, Robert Ballen, Tom Fox, Heidi Wicker or Ben Gray at (202) 776-0700.

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<sup>2</sup> 18 U.S.C. § 1029.