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MEMORANDUM

January 3, 2017

To Our Clients and Friends

Re: NY DFS Revises Proposed Cybersecurity Requirements

The New York Department of Financial Services (DFS) has revised its proposed cybersecurity regulation. In addition to several substantive changes, DFS extended the effective date to March 1, 2017. Financial services companies covered by the requirements¹ will generally have 180 days from the effective date to comply with the requirements, and longer for certain provisions. Comments on the proposed regulation may be submitted until January 27th.²

Financial services companies will have greater discretion in how to comply with the revised requirements based on the company's risk assessment. The regulation also permits companies to depart from multi-factor authentication if their CEOs have approved the use of reasonably equivalent controls. Companies may also satisfy the cybersecurity program requirements by adopting a cybersecurity program maintained by an affiliate.

The proposal narrows the definition of "nonpublic information" as applied to individuals. It also clarifies that a "third party service provider" is an entity that maintains, processes, or otherwise has access to nonpublic information through its provision of services to a financial services company, and does not include affiliates of the financial services company. Additionally, companies will be required to retain records for five years rather than six as previously proposed.

Companies with fewer than 10 employees, or less than \$5,000,000 in gross revenue in each of the prior three years, or less than \$10,000,000 in year-end total assets will be exempt from the requirements. Further, agents, employees, representatives and designees of an entity not covered by the requirements will not be required to develop their own third party information security policies.

A copy of the DFS's revised Proposed Cybersecurity Requirements for Financial Services Companies is available 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 Magda Gathani at (202) 776-0700.

¹ A financial services company is covered by the requirements if it operates under a license, registration, charter, certificate, permit, accreditation or similar authorization under New York Banking Law, Insurance Law, or Financial Services Law.

² Please see our Memorandum of October 5, 2016 for a summary of other provisions of the DFS's proposed requirements. <http://schwartzandballen.com/news.html>