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**MEMORANDUM**

December 7, 2005

To Our Clients and Friends

Re: Court Holds GLB Privacy Requirements Do Not Apply To Attorneys

The U.S. Court of Appeals for the D.C. Circuit has held that the Federal Trade Commission's effort to apply the privacy provisions of the Gramm-Leach-Bliley Act (the "GLB Act") to attorneys was beyond the agency's authority. Accordingly, the court determined that the GLB Act privacy requirements do not apply to attorneys or law firms.

**DISCUSSION**

Under the GLB Act, financial institutions are subject to certain requirements regarding the privacy and confidentiality of nonpublic personal information of consumers. Financial institutions are institutions that engage in financial activities as described in the Bank Holding Company Act of 1956. The FTC has jurisdiction over financial institutions that are not regulated by another functional regulator. Accordingly, the FTC has authority to interpret how the privacy provisions of the GLB Act apply to institutions that are not depository institutions, securities firms or engaged in the business of insurance.

When the FTC adopted rules to implement the privacy provisions of the GLB Act, the American Bar Association asked the FTC whether it believed that the GLB Act and the FTC's privacy rules applied to attorneys. The FTC's response indicated that certain types of law practice would be regarded as financial activities and therefore would be subject to the GLB Act. For example, tax-planning, tax preparation and real estate settlement services are regarded as financial activities under the Bank Holding Company Act and, therefore, an attorney providing such services would be subject to the GLB Act privacy provisions.

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The court noted that the regulation of attorneys has long been within the exclusive jurisdiction of the states. The court indicated that had Congress intended to regulate the practice of law when it enacted the GLB Act, it would have done so through explicit Congressional consideration and statutory language. Accordingly, the court concluded that the FTC was not authorized to regulate attorneys' activities under the GLB Act.

A copy of the court's decision 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.