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**MEMORANDUM**

October 4, 2004

To Our Clients and Friends

Re: FCC Extends the Effective Date for the Do Not Fax Rule

The Federal Communications Commission (“FCC”) has extended the effective date of its amended Do Not Fax rule<sup>1</sup> from January 1, 2005 to June 30, 2005. As a result, businesses may continue to send unsolicited faxes to individuals and businesses with whom they have “established business relationships.” The extension was granted to provide Congress more time to consider legislation that will codify the established business relationship into the Telephone Consumer Protection Act of 1991 (“TCPA”).

In July 2003, the FCC amended its Do Not Fax rule to require senders to obtain prior express written consent of recipients before transmitting unsolicited fax advertisements. Prior written consent was required even if the sender had an existing business relationship with the recipient. The FCC had concluded that the TCPA does not provide an exception for unsolicited faxes sent to existing customers. In response to overwhelming negative reaction from the business community, the FCC delayed the effective date of the revised rule to January 1, 2005. Congress is actively considering legislation that will amend the TCPA to provide an exception that would not prohibit the sending of unsolicited faxes to those who have an established business relationship with the sender. In view of pending legislation, the FCC decided to extend the effective date to June 30, 2005.

A copy of the FCC order 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.

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<sup>1</sup> The Do Not Fax rule was revised by the FCC in 2003. Memoranda regarding the rule can be found on our website at <http://www.schwartzandballen.com/privacy.html>.