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

July 2, 2004

To Our Clients and Friends

Re: Federal Court Ruling Regarding Federal Preemption and California's SB 1

A United States District Court has held that the affiliate sharing provisions of the Fair Credit Reporting Act ("FCRA") do not preempt the provisions of SB 1, the California Financial Information Privacy Act, which became effective July 1, 2004.<sup>1</sup> While SB 1 imposes restrictions on the disclosure of personal financial information by financial institutions to affiliates and nonaffiliates, plaintiff trade groups had challenged only the provisions of SB 1 which imposed restrictions on the sharing of such information with affiliates.

The plaintiffs had argued that the FCRA pre-empts the affiliate sharing restrictions of SB 1 because the FCRA provides that no requirement may be imposed under state law with respect to the exchange of information among affiliated persons. In response, the court noted that the Gramm-Leach-Bliley Act ("GLB Act") expressly authorizes states to enact consumer protection statutes providing greater privacy protections. The court concluded that GLB Act "encompasses" general sharing of information among affiliates. The court then stated that to determine whether the FCRA preempts SB 1, it was required to ascertain the intent of Congress.

The court indicated that the FCRA preemption provision must be viewed in the context of the statute as a whole. While the court recognized that the literal language of the preemption provision of the FCRA relating to information sharing with affiliates was broad, it concluded that the FCRA applies only to information that is a consumer report. If information is not a consumer report, according to the court it is not governed by the FCRA. According to the court, if information is not subject to the FCRA, the FCRA preemption provisions cannot possibly apply. The court held that the FCRA prohibits states from enacting laws restricting only the sharing of consumer

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<sup>1</sup> *American Bankers Association, the Financial Services Roundtable and Consumer Bankers Association v. Lockyer et al.* ( USDC ED Ca.; Civ. S 04-0778).

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reports with affiliates, and does not restrict states from limiting the sharing of other information with affiliates.

It is expected that the decision will be appealed.

A copy of the court's decision can be found at [www.schwartzandballen.com/Whats\\_New.htm](http://www.schwartzandballen.com/Whats_New.htm).

If you have any questions concerning this case, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.