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MEMORANDUM

April 14, 2005

To Our Clients and Friends

Re: Senator Feinstein's Proposed Notification of Risk to Personal Data Act

Senator Feinstein has introduced S. 751, the Notification of Risk to Personal Data Act, that would require companies and federal agencies to notify individuals if their personal information was, or is reasonably believed to have been, acquired by unauthorized persons. The bill is one of several being considered by Congress which would mandate a national standard for notification of consumers whose personal information has been the subject of a breach of security.

SCOPE OF COVERAGE

Under the Feinstein bill, a "breach of security of the system" means the compromise of the security, confidentiality or integrity of data that results in, or where there is a reasonable basis to conclude has resulted in, the unauthorized acquisition of personal information maintained by a company or agency. The bill requires companies and agencies to notify individuals whose personal information was or is reasonably believed to have been obtained by unauthorized persons. Personal information includes an individual's last name in combination with one or more of the following:

- Social security number
- Driver's license number or state identification number
- Account number or credit or debit card number, or password or access code in combination with account or card number

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NOTICE

Notice to individuals may be provided by one or more of the following methods:

- Written notification
- E-mail notice, if the individual has consented to receive such notice, or
- Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed \$500,000, the number of individuals to be notified would exceed 500,000 or the agency or company does not have sufficient contact information for those to be notified

Substitute notice may be made by posting a notice on the company's website or by notifying major print and broadcast media. Notice may be delayed if a law enforcement agency determines that notification may impede a criminal investigation and requests a delay in writing.

The notice must contain a description of the categories of information that were acquired as well as a toll-free telephone number that the individual can use to contact the company or agency.

PENALTIES AND ENFORCEMENT

The bill provides for civil penalties for violations of the notification provisions of up to \$1,000 per individual whose personal information was acquired by unauthorized persons or up to \$50,000 per day while the failure to give notice persists. The Federal Trade Commission and state attorneys general are authorized to enforce the act's requirements.

A copy of the bill can be found at 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.