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MEMORANDUM

December 10, 2010

To Our Clients and Friends

Re: Red Flag Program Clarification Act of 2010

Congress has enacted the Red Flag Program Clarification Act of 2010, which narrows the definition of “creditors” which are required under the Fair Credit Reporting Act to have a written program to prevent and detect red flags of identity theft for covered accounts. As a result, the red flags requirement generally will not apply to professionals such as doctors, lawyers and accountants as well as small businesses. The legislation is effective when it is approved by the President.

The Act provides that for purposes of the red flags program requirement a “creditor” means a creditor as defined in the Equal Credit Opportunity Act, that regularly and in the ordinary course of its business:

- obtains or uses consumer reports in connection with a credit transaction;
- furnishes information to consumer reporting agencies in connection with a credit transaction; or
- advances funds to or on behalf of a person, which there is an obligation to repay or is repayable from pledged property.

Service providers who advance funds on behalf of persons for expenses incidental to the provision of services are not “creditors.” Any additional types of creditors subject to the red flags program requirement are required to be defined in a Federal Trade Commission rulemaking, based on a determination that the creditor offers or maintains accounts subject to a reasonably foreseeable risk of identity theft.

A copy of the Act can be found 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 Lauren Bianchini at (202) 776-0700.