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MEMORANDUM

March 18, 2004

To Our Clients and Friends

Re: FACT Act: Proposed FTC Rule on Free Annual Credit Reports

The Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) (Pub. L. No. 108-159) requires nationwide consumer reporting agencies (“CRAs”) and nationwide specialty CRAs¹ to provide to consumers, upon request, a free copy of their credit reports once every 12 months.² The Federal Trade Commission (the “FTC”) has issued a proposed rule requiring: 1) the establishment of a centralized source through which consumers may request a free annual file disclosure (i.e., credit report) from nationwide CRAs; 2) a standardized form to be used for such requests; and 3) a streamlined process for consumers to use to request a free annual file disclosure from nationwide specialty CRAs. Comments on the proposed rule are due by April 16th. The FTC anticipates that a final rule will be effective December 4, 2004, but provides for a regional roll-out.

NATIONWIDE CRAS

Centralized Source

The proposed rule requires the nationwide CRAs to jointly design, fund, implement, maintain and operate a centralized source for the purpose of enabling consumers to make a single request to obtain credit reports from all nationwide CRAs. The centralized source must include a single toll-free telephone number, Internet website and mail process for consumers to make requests. The FACT Act

¹ A nationwide consumer reporting agency is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. The three entities that currently meet this definition are Equifax, Inc., Experian and Trans Union LLP. A nationwide specialty consumer reporting agency is a consumer reporting agency that compiles and maintains files on consumers relating to medical records or payments, residential or tenant history, check writing history, employment history or insurance claims on a nationwide basis.

² At this time the FTC is not proposing that substantially nationwide consumer reporting agencies should be required to provide annual file disclosures.

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provides that a nationwide CRA is required to provide a free credit report only if the request comes through the centralized source. Under the proposed rule nationwide CRAs are given flexibility in the methods they use to deliver the file disclosures to consumers.

The proposed rule:

- requires nationwide CRAs to implement reasonable procedures to anticipate and respond to the volume of consumers who will contact the centralized source;
- requires the centralized source to have adequate capacity to accept requests from a reasonably anticipated volume of consumers contacting the centralized source;³
- limits the amount of information a nationwide CRA may collect through a centralized source to that which is reasonably necessary to properly identify the customer and to complete the request for the file disclosure. Nationwide CRAs are given flexibility to implement their own identification procedures;
- requires nationwide CRAs to communicate to customers, through the centralized source, in a clear and understandable manner, information and instructions that may be needed by a consumer to submit a request. The proposed rule requires the centralized source to provide specific information on the website and on the status of a consumer's request and requires a nationwide CRA to notify the consumer if the consumer cannot be properly identified;
- requires nationwide CRAs to comply with the FTC Standards for Safeguarding Customer Information⁴ regarding all personally identifiable information collected through, or disclosed by, the centralized source; and
- does not prohibit nationwide CRAs from advertising or offering their products and services through the centralized source but does require that any communications made through the centralized source may not interfere with, detract from, contradict or otherwise undermine the purpose of the centralized source.

³ Under the proposed rule when a centralized source request method, the centralized source as a whole, or an individual nationwide CRA experiences extraordinary request volume, the nationwide CRA may decline to accept some requests without being in violation of the adequate capacity requirement provided it has implemented reasonable procedures to anticipate and respond to the volume of consumers who will contact the centralized source. The nationwide CRA can ask consumers to make a request at a different time or collect the information in a queue and process it at a later time.

⁴ The Standards for Safeguarding Customer Information requires financial institutions over which the FTC has jurisdiction to develop, implement, and maintain a comprehensive information security program that contains administrative, technical and physical safeguards.

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Nationwide CRAs must provide an annual file disclosure to a consumer whose information is owned by an associated consumer reporting agency if the consumer makes a request through the centralized source.

Standardized Form

The proposed rule requires nationwide CRAs to establish a standardized form for customers to use in requesting free disclosure reports and to make it available through the centralized source. The FTC also provides a model form that nationwide CRAs may use.

Transition

To prevent nationwide CRAs being overwhelmed by requests, the FTC is proposing a regional roll-out for the centralized source. The schedule is as follows:

- Consumers residing in 13 western states will have access to the centralized source on December 1, 2004;
- Consumers residing in 12 midwestern states will have access on March 1, 2005;
- Consumers residing in 11 southern states will have access on June 1, 2005; and
- Consumers residing in 14 eastern states, the District of Columbia and US territories and possessions will have access on September 1, 2005.

NATIONWIDE SPECIALTY CRAS

The proposed rules require each nationwide specialty CRA to establish a streamlined process for accepting and processing consumer requests for annual file disclosures. This process must:

- include a toll-free telephone number for consumers to use to request a disclosure. When a consumer calls this number, he or she must be given access to clear and prominent instructions for making the request by any available request method offered by the nationwide specialty CRA. However, the nationwide specialty CRA is not required to offer any other request method;
- ensure that the toll-free number is published in any telephone directory in which any toll-free number for the nationwide specialty CRA is listed and is posted on any website the nationwide specialty CRA maintains;
- have adequate capacity to accept reasonably anticipated volume;

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- collect only as much personal information as is reasonably necessary to properly identify the consumer;
- provide clear and easily understandable information and instructions including status on a consumer's request while the consumer is making a request, access to "help" or "FAQs" if a website request method is used and procedures to follow if a consumer cannot be identified;
- implement reasonable procedures to anticipate and respond to the volume of consumers who contact the nationwide specialty CRA to request annual file disclosures. This includes developing and implementing contingency plans to address circumstances that may materially and adversely affect the operation of the nationwide specialty CRA or the streamlined process; and
- comply with the FTC Standards for Safeguarding Customer Information.

Unlike nationwide CRAs, nationwide specialty CRAs are required to honor requests for annual file disclosures made outside of the streamlined process either by accepting and processing them directly or redirecting the consumer to the streamlined process. All CRAs subject to the provision are required to provide the free credit report within 15 days after the consumer's request is received. The transition period described above for nationwide CRAs does not apply to nationwide specialty CRAs.

The proposed rule 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.