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**MEMORANDUM**

June 4, 2004

To Our Clients and Friends

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

The Fair and Accurate Credit Transactions Act of 2003 (the “FACT Act”) requires nationwide consumer reporting agencies (“CRAs”) and nationwide specialty CRAs<sup>1</sup> to provide to consumers, upon request, a free copy of their credit reports once every 12 months. The Federal Trade Commission (the “FTC”) has issued a final 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. The final rule essentially retains all of the requirements of the proposed rule and adds a requirement relating to the use and disclosure of personally identifiable information that is collected through the centralized source. The final rule will be effective December 1, 2004.

**NATIONWIDE CRAS**

*Centralized Source*

The final rule requires 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 toll-free telephone number, Internet website and a postal address for consumers to make requests. The FACT Act provides that a

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<sup>1</sup> A nationwide consumer reporting agency is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. 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.

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nationwide CRA is required to provide a free credit report only if the request comes through the centralized source.

The final 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;
- limits the amount of information nationwide CRAs 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;
- 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;
- requires nationwide CRAs to notify the consumer if the consumer cannot be properly identified and to provide directions on how the consumer can complete the request and submit information;
- 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 shall not interfere with, detract from, contradict or otherwise undermine the purpose of the centralized source; and
- requires that 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 final rule requires nationwide CRAs to establish a standardized form for consumers to use in requesting annual disclosures. The FTC provides a model form that nationwide CRAs may use.

### *Information Use and Disclosure*

The final rule adds a provision on personally identifiable information. Any personally identifiable information collected from consumers as a result of a request for annual file disclosures may be used or disclosed by the centralized source or nationwide CRAs only for:

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- providing the annual file disclosure;
- processing a transaction requested by the consumer at the same time as the request for the annual file disclosure;
- complying with applicable legal requirements; and
- updating personal information already maintained by the nationwide CRA.

### *Transition*

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

- Consumers residing in western states<sup>2</sup> will have access to the centralized source on December 1, 2004;
- Consumers residing in midwestern<sup>3</sup> states will have access on March 1, 2005;
- Consumers residing in southern states<sup>4</sup> will have access on June 1, 2005; and
- Consumers residing in eastern states,<sup>5</sup> the District of Columbia and U.S. territories and possessions will have access on September 1, 2005.

### **NATIONWIDE SPECIALTY CRAS**

The final rule requires 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. The consumer 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;

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<sup>2</sup> Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington and Wyoming.

<sup>3</sup> Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin.

<sup>4</sup> Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee and Texas.

<sup>5</sup> Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia.

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- have adequate capacity to accept reasonably anticipated volume;
- collect only as much personal information as is reasonably necessary to properly identify the consumer;
- provide clear and easily understandable information and instructions;
- include procedures to follow if a consumer cannot be identified, including directions on how the consumer can complete the request and submit information; and
- implement reasonable procedures to anticipate and respond to the volume of consumers who contact the nationwide specialty CRA to request annual file disclosures.

The final rule requires nationwide specialty CRAs to comply with the same provisions for information use and disclosure as nationwide CRAs. 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 by redirecting the consumer to the streamlined process. Nationwide specialty CRAs are required to comply with the rule beginning December 1, 2004. No transition period is provided for these CRAs.

The final rule can be found 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.