



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

December 29, 2003

Dolores S. Smith, Director  
Division of Consumer and Community Affairs  
Board of Governors of the Federal Reserve System  
Washington, D.C. 20551

Dear Ms. Smith:

This letter responds to your request for information regarding the enforcement activities of the Federal Trade Commission (“Commission” or “FTC”) under the Truth in Lending, Consumer Leasing, Equal Credit Opportunity, and Electronic Fund Transfer Acts (“Acts”) during the 2003 calendar year for use in preparing the Federal Reserve Board’s (“Board”) Annual Report to Congress. You have asked for information regarding the Commission’s enforcement activities pursuant to those Acts, including methods of enforcement, and the extent to which compliance is achieved by entities subject to the Commission’s enforcement authority.<sup>1</sup> Also, you have asked whether the Commission recommends any changes to these laws or their implementing regulations or wishes to provide other comments or observations.

## **I. THE COMMISSION’S 2003 ENFORCEMENT ACTIVITIES UNDER THE ACTS<sup>2</sup>**

### **Truth in Lending Act**

In calendar year 2003, the Commission continued its enforcement activities to halt certain illegal practices of subprime lenders. The Commission entered into two settlements, issued one new complaint (currently in litigation), and pursued two ongoing litigations for alleged violations of the TILA, Regulation Z, and the FTC Act. Other investigations of potential TILA violations are ongoing.

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<sup>1</sup> The Commission is charged with enforcement of the FTC Act and various federal consumer financial laws and regulations, including the Truth in Lending Act (“TILA”), Consumer Leasing Act (“CLA”), Equal Credit Opportunity Act (“ECOA”), and Electronic Fund Transfer Act (“EFTA”), with respect to most nonbank entities in the nation. The Commission does not have data regarding the extent of compliance by these numerous nonbank entities with these mandates. As a result, this letter does not provide information on that issue.

<sup>2</sup> Information concerning the Commission’s enforcement and other activities discussed in this report is also available at the Commission’s web site at “<http://www.ftc.gov>.”

**A. Mortgage Cases Alleging TILA Violations**<sup>3</sup>

The Commission continued its litigation against Capital City Mortgage Corp. (“Capital City Mortgage”) and its owner, Thomas K. Nash, for violations of the TILA and Regulation Z and the FTC Act, among other federal statutes.<sup>4</sup> The complaint alleges that defendants engaged in unfair or deceptive acts or practices in offering and extending financing and during the loans, resulting in many borrowers being overcharged on their loans and forced into default, losing their homes and equity. This year, the Court granted the Commission’s motion to add relief defendants, including various trusts and family members receiving the bulk of Mr. Nash’s assets outside the probate estate after his death. The court also issued an opinion regarding the “willfulness” standard under Section 108(e) of the TILA, 15 U.S.C. Section 1607(e).<sup>5</sup> The trial is scheduled for March 15, 2004.

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<sup>3</sup> The Commission settled one other mortgage case alleging unfair and deceptive practices in violation of the FTC Act in subprime lending that pertains to the TILA. The agreement settled charges filed last year in federal district court against mortgage broker Mark Diamond and OSI Financial Services, Inc. The Commission and State of Illinois alleged, among other things, that defendants deceived borrowers about their loan terms by presenting them with incomplete loan documents, including TILA disclosure statements in which the loan terms (including the APR, monthly payment amount, and/or balloon payment amount) were left blank. Under the settlement, the defendants must pay \$270,000 in consumer redress and comply with specific injunctive relief, such as providing consumers with a disclosure of key loan terms three days before the loan closing; retaining an independent settlement agent to conduct all of defendants’ closings; and audio-taping all closings for a three-year period. Federal Trade Commission and State of Illinois, et re. Attorney General James E. Ryan v. OSI Financial Services, Inc. and Mark Diamond, No. 02-C-5078 (N.D. Ill. Nov. 3, 2003). The State of Illinois joined the case with respect to alleged state law violations.

<sup>4</sup> Federal Trade Commission v. Capital City Mortgage Corp., No. 1:98CV00237 (D.D.C. filed Jan. 29, 1998).

<sup>5</sup> Id. (D.D.C. Aug. 7, 2003) (order on willfulness standard).

## **B. Other TILA Cases**<sup>6</sup>

The Commission filed a complaint in federal district court against Stewart Finance Company, its owner John Ben Stewart, Jr. and nine related companies (collectively, “Stewart Finance”) for alleged violations of the FTC Act and TILA, among other statutes.<sup>7</sup> The complaint alleges that Stewart Finance, which provides small personal loans to consumers in the subprime market, engages in deception and other illegal practices to induce consumers to unknowingly purchase expensive add-on products, such as insurance and car club memberships, to participate in a direct deposit program, and to repeatedly refinance their loans. The complaint also alleges Stewart Finance fails to include the cost of its ancillary products in the finance charge and annual percentage rate disclosed to consumers. The court entered a temporary restraining order and asset freeze against the defendants, and the parties subsequently agreed to entry of two preliminary injunction orders.<sup>8</sup> The orders enjoin defendants from violating the FTC Act and TILA pending the final outcome of the trial. In addition, the order issued against John Ben Stewart, Jr. freezes his personal and business assets except for limited business expenses, which are subject to approval by an independent auditor.

The Commission settled charges filed this year in federal district court against Georgia-based Preferred Alliance, Inc. and its principal Bruno Faillace, doing business as VacantSun Travel Discounts and Genesis Card.<sup>9</sup> The complaint alleged, among other things, that Preferred Alliance violated the FTC Act, TILA, and Regulation Z, by failing to disclose material information to consumers, unfairly billing consumers without their knowledge or authorization,

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<sup>6</sup> The Commission continued its litigation in federal district court against Canadian-based Consumer Alliance, Inc. The Commission alleged that Consumer Alliance deceptively marketed worthless credit-card protection programs to U.S. consumers by misrepresenting the \$50 limit established by the TILA for liability for unauthorized credit card charges, which induced consumers to disclose their credit card account numbers, and caused unauthorized charges to be posted on those accounts. The court granted the Commission’s motion for summary judgment as to liability under the FTC Act and other federal requirements and issued a permanent injunction against defendants. A date for a hearing on the remaining issue of damages has not been set. Federal Trade Commission v. Consumer Alliance, Inc., No. 1:02-CV-2429 (N.D. Ill. filed Apr. 4, 2002).

<sup>7</sup> Federal Trade Commission v. Stewart Finance Company Holdings, Inc., No. 1:03-CV-2648-JTC (N.D.Ga. filed Sept. 4, 2003). In addition, the Commission is litigating in bankruptcy court, where Stewart Finance Company, Inc., Stewart National Finance Company, Inc., and D & E Acquisitions, have filed for relief under the reorganization provisions of Chapter 11 of the Bankruptcy Code. In re Stewart Finance Company, Nos. 03-30277 (RHF), 03-30278 (RHF), and 03-30398 (RHF) (Bankr. M.D. Ga. filed Feb. 10, 2003 and Feb. 27, 2003).

<sup>8</sup> Id. (N.D.Ga. Sept. 12, 2003) (temporary restraining order with asset freeze); (N.D. Ga. Oct. 8, 2003) (two orders of preliminary injunction over debtor and nondebtor defendants).

<sup>9</sup> Federal Trade Commission v. Preferred Alliance, Inc., No. 1:03-CV-0405 (N.D. Ga. filed Feb. 12, 2003).

and failing to promptly credit consumers for money they were owed. Under the settlement, the bankrupt corporate defendant, through its Chapter 7 trustee, is permanently barred from engaging in any business and from seeking authority to operate defendant's business.<sup>10</sup> Other charges against the individual defendant are still pending.

The Commission filed a complaint in federal district court against 30 Minute Mortgage Inc., as well as its principals Gregory P. Roth and Peter W. Stolz (collectively, "30 Minute Mortgage"), for alleged violations of the FTC Act, TILA, and Regulation Z, and other statutes.<sup>11</sup> According to the complaint, 30 Minute Mortgage misrepresented to consumers via email solicitations and its Web sites that it was a "national mortgage lender" and falsely advertised "3.95% 30 year mortgages." Although the defendants urged consumers to complete detailed online loan applications, the complaint alleged, 30 Minute Mortgage is not a mortgage lender and does not offer such loans. Instead, the defendants allegedly sold or offered to sell thousands of completed applications to nonaffiliated third parties without the consent of consumers. In addition, the Commission alleged that defendants' loan solicitations failed to make certain disclosures required by the TILA and Regulation Z. A stipulated preliminary judgment was ordered against all defendants. A stipulated final judgment providing for injunctive and other equitable relief was entered as to both individual defendants,<sup>12</sup> and a final default judgment and order for permanent injunction and equitable relief was entered against the corporate defendant.<sup>13</sup>

The Commission continued its litigation in federal district court against National Audit Defense Network, Inc., Tax Coach, Inc. (doing business as Tax Ready), and various officers of both companies, filed last year.<sup>14</sup> The Commission filed an amended complaint in the matter adding individual and corporate defendants. The case is now in the discovery phase. The court's preliminary injunction issued last year remains in effect. The company has filed for reorganization under Chapter 11 of the Bankruptcy Code.

### **C. Consumer and Business Education**

The Commission's consumer and business education efforts are vital to achieving its mission and enforcement goals. In 2003, the Commission issued updates to various consumer publications to provide current and useful information to consumers, including significant

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<sup>10</sup> Id. (N.D. Ga. Nov. 12, 2003).

<sup>11</sup> Federal Trade Commission v. 30 Minute Mortgage Inc., No. 03-60021(JAL) (S.D. Fla filed Jan. 9, 2003).

<sup>12</sup> Id. (S.D. Fla. Sept. 16, 2003); (S.D. Fla. Nov. 26, 2003).

<sup>13</sup> Id. (S.D. Fla. Nov. 26, 2003).

<sup>14</sup> The complaint alleges the defendants violated the FTC Act and TILA and Regulation Z regarding misrepresentations about merchandise refunds and by failing to timely credit consumers' credit card accounts after accepting the return of tax-information products or otherwise acknowledging that refunds were owed. Federal Trade Commission v. National Audit Defense Network, Inc., No. CV-S-02-0131 (D. Nev. filed Jan. 30, 2002).

expansion to “Need a Loan? Think Twice About using Your Home as Collateral,” “Reverse Mortgages,” and “Credit and Debit Card Blocking,” warning about the effect of merchants placing “holds” on consumers’ credit and debit cards. In addition, the Commission issued new publications, including an inter-agency brochure on deceptive subprime lending called “Putting Your Home on the Loan Line Is Risky Business;” and a joint publication with the National Automobile Dealers’ Association and American Financial Services Association called “Understanding Vehicle Financing.” All of the Commission’s consumer protection materials were made available to the public through the Commission’s website.

### **Equal Credit Opportunity Act**

In calendar year 2003, the Commission continued its litigation against a mortgage lender for alleged violations of the ECOA and Regulation B. This case seeks an order awarding equitable relief and/or civil penalties. Other enforcement efforts continue.

The Commission’s complaint against Capital City Mortgage, discussed above, alleged, among other things, that the company and its owner, Thomas K. Nash, violated the ECOA and Regulation B by: 1) failing to take written applications for mortgage loans; 2) failing to collect required information about the race or national origin, sex, marital status, and age of applicants; 3) failing to provide rejected applicants with written notice of adverse action; and 4) when providing notice of adverse action, failing to provide applicants with the correct name and address of the Commission, the federal agency that administers compliance with the ECOA with respect to defendants Capital City Mortgage and Nash.

The Commission continued its consumer and business education efforts, including efforts to increase awareness of and compliance with the ECOA. The Commission also continued its participation in the Interagency Task Force on Fair Lending.

### **Electronic Fund Transfer Act**

In 2003, the Commission filed and subsequently settled one case, and the U.S. Department of Justice filed another case on behalf of the Commission, involving the EFTA.<sup>15</sup>

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<sup>15</sup> The Commission also filed a case in federal district court against Electronic Financial Group, Inc. and its principals, Paul McClinton, Jerry Federico, and Randy Balusek, alleging they violated the FTC Act and the Telemarketing Sales Rule (“TSR”) when they deceptively marketed and sold advance-fee debit cards by misrepresenting that they are credit cards and that the defendants report consumers’ account activity to the three major credit bureaus, thereby improving consumers’ credit ratings. Although the complaint does not allege violations of the EFTA, the defendants were charged with violating the TSR by processing Automated Clearinghouse Transactions on behalf of numerous fraudulent outbound telemarketing operations, including at least four client telemarketer engaged in deceptively selling advance-fee credit cards. Federal Trade Commission v. Electronic Financial Group, Inc., No. W03-CA-0211 (W.D. Tex. filed July 7, 2003).

The Commission filed and settled a case in federal district court charging MicroFinancial, Inc. and its wholly owned subsidiary, Leasecomm, with violations of the FTC Act and EFTA in connection with false and misleading representations made by Leasecomm about the financing of business ventures sold by third-party vendors and finance contracts.<sup>16</sup> Among other things, the Commission alleged that Leasecomm conditions the extension of credit to consumers on agreement to compulsory electronic funds transfers from accounts established primarily for personal, family or household purposes, in violation of the EFTA. The settlement requires defendants to cancel and cease collections on approximately \$24 million in final court judgments against consumers; bars misrepresentations about the terms of any contract; and requires defendants to give consumers the option to switch their method of payment.

On behalf of the Commission, the U.S. Department of Justice filed a complaint in federal district court against Mantra Films, Inc. ("Mantra") and its sole officer and director, Joseph R. Francis (Francis), the marketers and sellers of "Girls Gone Wild" videos and DVDs.<sup>17</sup> The complaint alleged, among other things, violations of the FTC Act and EFTA. The complaint charged that since December 2000, Mantra and Francis deceptively marketed Girls Gone Wild videos and DVDs to consumers, enrolled consumers in continuity programs advertised on the Internet and television and each month shipped consumers unordered videos and DVDs on a negative option basis. The complaint also charged that consumers' credit and debit cards were charged for each shipment, and consumers' checking accounts were debited on a recurring basis without obtaining consumers' authorization for preauthorized electronic fund transfers from the accounts as required by the EFTA. The complaint seeks, among other things, injunctive relief and consumer redress.

In 2003, the Commission continued its consumer and business education efforts in this area. The Commission issued updates to various consumer publications, including "Credit and Debit Card Blocking," as noted above. The Commission also revised "E-Checks (Electronic Check Conversion)" and "Electronic Banking" in light of the increasing use of electronic checks, payments, and banking services by consumers and businesses. These publications provide consumers with information on how to safely utilize new forms of electronic banking and are available to the public via the Commission's website.

## **II. ANY SUGGESTIONS FOR CHANGES IN THE ACTS OR THEIR IMPLEMENTING REGULATIONS**

The Commission has no suggestions for changes in the Acts or their implementing Regulations at this time.

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<sup>16</sup> Federal Trade Commission v. Leasecomm Corp. and MicroFinancial, Inc., No. 1:03-cv-11034 (REK) (D. Mass. filed May 29, 2003).

<sup>17</sup> United States of America v. Mantra Films, Inc., and Joseph R. Francis, No. CV03-9184 (C.D. Cal. filed Dec. 16, 2003).

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The Commission hopes that the information contained in this letter responds to your inquiry and will assist in preparation of the Board's Annual Report to Congress. If any other information would be useful or if you wish to request additional assistance, please contact Joel Winston, Associate Director, Division of Financial Practices, at (202) 326-3224.

By direction of the Commission.

Donald S. Clark  
Secretary