

**SCHWARTZ & BALLEN LLP**

1990 M STREET, N.W. • SUITE 500  
WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE  
(202) 776-0720

DIRECT  
(202) 776-0701

April 15, 2004

VIA ELECTRONIC MAIL

Federal Trade Commission  
Office of the Secretary  
Room 159-H  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: FACT Act Free File Disclosures Proposed Rule, Matter No. R411005

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Federal Trade Commission's (the "Commission") proposed rule on free annual file disclosures under the Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159 (the "FACT Act"). Section 211(a) of the FACT Act ("Section 211") amends section 612 of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681j, to require nationwide consumer reporting agencies ("Nationwide CRAs") to provide to a consumer annually, upon the consumer's request, one free copy of the consumer's file maintained by the Nationwide CRAs. The Commission's proposed rule, which appears at 69 *Fed. Reg.* 13192 (March 19, 2004), is intended to implement this requirement by establishing a centralized source, standardized form and streamlined process for requesting free annual file disclosures as provided in Section 211.

As a financial services law firm, Schwartz & Ballen LLP provides advice to financial institutions concerning matters relating to the implementation of the FACT Act and matters relating to compliance with the FCRA. Because our clients will be affected by the Commission's proposed rule, we believe it is appropriate to inform the Commission of what we perceive are likely to be the effects on consumers and competition of permitting Nationwide CRAs to advertise or offer products and services through the centralized source.

We believe that permitting Nationwide CRAs to make advertisements and offers through the centralized source will interfere with the ability of consumers to obtain free credit reports, thereby undermining the intent of Congress that such reports be available

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to consumers annually without charge in a convenient manner. The Commission will also find itself hopelessly entangled in determining whether advertisements or offers are permitted under the proposed rule. Moreover, as the Commission itself acknowledges, Nationwide CRAs will have an “unparalleled” and “unique opportunity” to market credit-related products and services to consumers. This “unique opportunity” will provide Nationwide CRAs with an unfair advantage over competitors who provide similar products and services and will have an adverse effect on competition. Accordingly, the Commission should not permit Nationwide CRAs to advertise or market other products or services through the centralized source.

### DISCUSSION

Section 610.2 of the Commission’s proposed rule provides for the establishment and operation of a centralized source through which consumers may make a single request to obtain annual file disclosures from the Nationwide CRAs. The Commission’s notice states that the proposed rule would permit Nationwide CRAs to advertise and to offer additional products and services through the centralized source, provided that those activities do not interfere with, detract from, contradict or undermine the purpose of the centralized source. 69 *Fed. Reg.* at 13195, fn 8. We believe that permitting Nationwide CRAs to advertise and to offer additional products and services through a centralized source is inappropriate. Permitting Nationwide CRAs to advertise and make offers for other products and services will undoubtedly interfere with the ability of consumers to obtain their file disclosures and will dilute the important objective of facilitating unimpaired access by consumers to their credit files annually without charge. The Commission should not turn this Congressionally conferred benefit into a blatant opportunity for Nationwide CRAs to market their products and services to consumers.

We disagree with the Commission’s assertion that advertisements and offers relating to additional products and services provided by Nationwide CRAs will be beneficial and convenient for consumers. In providing for the establishment of the centralized source, the Commission is required to take into account “the ease by which consumers should be able to contact consumer reporting agencies with respect to access to such consumer reports.” FACT Act § 211(d)(2)(C). The presence of advertisements for products or services will be a source of confusion and will distract consumers from the basic purpose for which they contacted the centralized source, *viz.*, to request a free copy of their files. Given the myriad products and services sold by the National CRAs,<sup>1</sup> consumers will be forced to wade through numerous promotional schemes posted on the centralized website by the three National CRAs or will be required to listen to a prolonged advertising spiel before progressing to the telephone request prompt. This will likely distract consumers from their intended objective and therefore will undermine Congressional intent to provide a straightforward, simple process for consumers to

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<sup>1</sup> Examples of the numerous products and services National CRAs promote can be found at: <http://www.transunion.com/Personal/PersonalSolutions.jsp>; <https://www.econsumer.equifax.com/consumer/forward.ehtml?forward=catalog>; [https://www.econsumer.equifax.com/consumer/forward.ehtml?forward=cr\\_detail](https://www.econsumer.equifax.com/consumer/forward.ehtml?forward=cr_detail).

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request free annual file disclosures. Limiting marketing by Nationwide CRAs to an interval after consumers have requested their files will not cure the likelihood of confusion because consumers will be unaware that the request portion of the transaction has been completed and that they are not required to listen to the promotional messages, or they may be fearful that their requests will not be processed unless they listen to the remaining marketing pitches.

The Commission's proposed rule states that a Nationwide CRA's advertising or marketing through the centralized source should not interfere with, detract from, contradict or otherwise undermine the purpose of the centralized source. Adoption of such a vague and ambiguous standard will require the Commission to inject itself into endless determinations as to whether or not advertisements through the centralized source are permitted. Such micromanagement by the Commission would be an inefficient use of the Commission's resources and undesirable. Moreover, the examples provided in the proposed rule of communications that are not permissible through the centralized source are subjective and raise more questions than they answer.

Nationwide CRAs, by virtue of their status, will have access to the multitude of consumers requesting free annual disclosures from the centralized source. Companies that are not Nationwide CRAs, but which offer products and services that compete with those of the Nationwide CRAs, will find themselves at a distinct competitive disadvantage as a result of the Commission's proposed rule. It was not Congress' intent in enacting the FACT Act to provide Nationwide CRAs with an unfair competitive advantage over competitors.

In view of the foregoing, and so as not to thwart Congressional intent that the free annual file disclosure be conveniently available to consumers, we request that the Commission not permit National CRAs to advertise or offer products and services through the centralized source.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'G. Schwartz', with a long horizontal line extending to the right.

Gilbert T. Schwartz