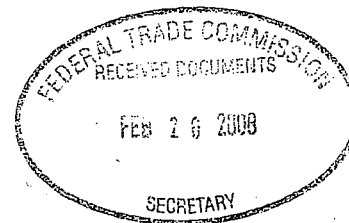


**AKIN GUMP
STRAUSS HAUER & FELD LLP**

Attorneys at Law



DANIEL F. MCINNIS
202.887.4359/fax: 202.887.4288
damlin@akingump.com

February 26, 2008

Federal Trade Commission/Office of the Secretary
Room H-135 (Annex K)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Comment on Credit Report Freezes – Project No. P075420

On behalf of our client, a company that provides consumers with effective and affordable tools to combat identity theft, including credit reports and credit file monitoring services to consumers, we submit the following comments in response to the Federal Trade Commission's request for public comment regarding credit freeze laws. We address Topic Number 38 of the FTC's list of Topics for Comment: "What aspects of state-mandated credit freeze requirements would or would not operate well at the federal level?"

Companies have developed effective credit monitoring services to help consumers combat the all too prevalent problem of identity theft by providing consumers easy access to their current credit history and alerting them to suspicious activity. However, certain state credit freeze laws threaten the ability of such monitoring services to operate effectively. Any federal legislation that addresses credit freezes should preserve, or at least not hinder, the ability of the private sector to provide solutions to the issue of protecting consumers' privacy.

While there are many features of the various credit monitoring services available to consumers, almost all such services have the following two features in common: 1) providing access to the consumer's credit reports; and 2) enrollment in a credit monitoring service. Among other items, the credit monitoring service provides the customer with information regarding:

- any new accounts opened in the customer's name;
- any derogatory information added to their credit file;
- any individuals or entities that have inquired into the customer's credit report;
- public record information (including any bankruptcies and judgments); and
- any changes or discrepancies in the customer's address.

In order for a credit monitoring service to function, the provider must be able to access quickly and efficiently a customer's credit history as reported by the nationwide credit reporting agencies (Equifax, Experian, and TransUnion). Pursuant to the typical arrangement between the customer and the credit monitoring provider, the customer grants the provider permission to

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

February 26, 2008

Page 2

monitor that customer's credit as well as to request and provide a credit report to the customer upon the customer's request.

Comments on FTC Topic No. 38—State Credit Freeze Laws

Credit monitoring services provide a valuable and effective private market solution to the problems of credit and identity theft. However, this type of service can be hindered and in some cases threatened by certain elements of state credit freeze laws. Great care should be taken in considering any federal legislation so as not to prohibit inadvertently the efforts of private firms, especially innovative companies not directly connected to the three national credit reporting agencies, which are developing market solutions for the serious problem of identity theft.

Most states have now enacted some form of credit freeze regulation. While the proliferation of these laws does add complexity and costs to credit monitoring providers, most states at least have taken care to preserve the ability of private credit monitoring services to operate. Specifically, the overwhelming majority of states that have enacted credit freeze laws have included provisions excepting or exempting providers of credit file monitoring services from the reach of the respective state statutes.¹ These exceptions do not hinder the purpose and effectiveness of the state credit freeze laws, but rather appropriately allow market-based solutions to supplement credit and identity theft protections offered by the government.²

Not all states have been so careful. Of the 39 states (in addition to the District of Columbia) that have enacted credit freeze requirements, we are aware of two states (Kentucky and Louisiana) that do not contain exemptions or exceptions for companies engaging in credit file monitoring services.

¹ See, e.g., CAL. CIV. CODE § 1785.11.2(1)(8) ("The provisions of this section do not apply to the use of a consumer credit report by any of the following . . . Any person or entity administering a credit file monitoring subscription service to which the consumer has subscribed"); D.C. CODE ANN. § 28-3862(m)(8) ("Nothing in this section shall prevent the lawful use of a credit report by any of the following: . . . A person or entity administering a credit file monitoring subscription service to which the consumer has subscribed"); N.Y. GEN. BUS. LAW § 380-t(m)(7) ("The provisions of this section do not apply to the use of a consumer credit report by any of the following: . . . any person or entity administering a credit file monitoring subscription or similar service to which the consumer has subscribed").

² Our client is not aware of any complaints regarding or public sentiment criticizing the exceptions/exemptions for credit file monitoring providers contained in 37 of the 39 state credit freeze laws. Absent any significant problems with such an exception, there is little reason for federal authorities to depart from the practice adopted by the overwhelming majority of states that have enacted credit freeze laws.

AKIN GUMP
STRAUSS HAUER & FELD LLP

Attorneys at Law

February 26, 2008

Page 3

The ability of private firms to provide credit monitoring services in the absence of exceptions or exemptions for credit monitoring providers is significantly jeopardized due to increased burdens, expenses, and other inefficiencies. If a credit report of a credit file monitoring service customer is “frozen” and there is no exception for monitoring service providers, firms would be unable to provide instant credit reports and monitor credit files for those customers in an efficient manner. Instead, the provider would have to contact the customer, ask the customer to lift the freeze, and wait days until the freeze was lifted before carrying out the express wishes of the customer and effectuating one of the primary services that has been purchased by the consumer. Under the practice of most states, this process would also cost the consumer between \$10 and \$20. Moreover, it is likely that the provider would have no direct way of knowing when a freeze was implemented until its service was rendered ineffective—hardly a pro-customer result.

In sum, the burden associated with responding to the situation discussed above will lead to increased administrative costs for credit monitoring service providers (and consumers), in turn leading to higher prices for consumers.

Moreover, it appears that the Kentucky and Louisiana statutes arguably create an exception for the three national credit reporting agencies. Although Kentucky and Louisiana do not have blanket exemptions for providers of credit monitoring services, the respective statutes do have exceptions for “A credit reporting agency for the purposes of providing a consumer with a copy of his own report on his request.” At the federal level, such a government sanctioned oligopoly would be unwise and obviously contrary to the FTC’s mission to promote competition that fosters lower prices and sparks innovation. Moreover, allowing some states to favor one set of competitors over others creates a perverse incentive for companies to engage in further state-focused rent seeking.

Recommendation

Our client respectfully contends that, if any federal credit freeze legislation is considered, it must contain an explicit and broad exception to allow credit monitoring services by a broad array of firms. While we are not advocating for federal legislation in this comment, the best approach if such legislation is considered is the model adopted by an overwhelming majority of state credit freeze laws: include an exception or exemption for companies that provide credit monitoring services pursuant to contracts with customers. Further, it is important that any exception or exemption be fair to all industry participants and preserve, rather than hinder, competition. Therefore, should the Commission come to the conclusion that a federal credit freeze law is appropriate and necessary, we respectfully request the Commission to recommend

**AKIN GUMP
STRAUSS HAUER & FELD LLP**

Attorneys at Law

February 26, 2008

Page 4

the inclusion of a broad and open exception or exemption for providers of credit file and monitoring services.

Conclusion

The goal of private credit file monitoring services is to provide consumers effective and affordable tools to combat identify theft. Whatever tools the federal government can bring to bear against the serious problems of identity theft, they can only be complemented and strengthened by effective private sector efforts. Federal and state laws, therefore, should preserve a full and fair opportunity for the private sector firms to be part of the fight.

Respectfully submitted,

Daniel F. McInnis
Don P. Amlin

Akin Gump Strauss Hauer & Feld LLP
1333 New Hampshire Avenue, NW
Washington, DC 20036