

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION**

**on**

*“Leveraging FTC Resources  
to Protect Consumers of Financial Services and Promote Competition”*

**Before the**

**HOUSE COMMITTEE ON APPROPRIATIONS  
SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT  
UNITED STATES HOUSE OF REPRESENTATIVES**

**Washington, D.C.  
March 31, 2009**

## **I. Introduction**

Chairman Serrano, Ranking Member Emerson, and members of the Subcommittee, I am Jon Leibowitz, Chairman of the Federal Trade Commission (FTC or Commission).<sup>1</sup> I appreciate the opportunity to appear before you today to discuss the Commission's efforts to protect consumers of financial services. In the last five years, the FTC has brought more than 70 financial services consumer protection cases.

The FTC is the only federal agency with both consumer protection and competition jurisdiction in broad sectors of the economy. The agency enforces laws that prohibit practices that are harmful to consumers because they are anticompetitive, deceptive, or unfair, and it promotes informed consumer choice.

The current economic crisis has demonstrated the need for federal agencies to more effectively police the financial services industry. The crisis has had devastating effects on consumers' ability to obtain credit, make their credit payments, and maintain their credit ratings. Although the Commission believes that it has provided important protections to consumers of

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<sup>1</sup> The views expressed in this statement represent the views of the Commission. My oral presentation and responses to any questions are my own, however, and do not necessarily reflect the views of the Commission or any other Commissioner.

## **II. Overview of FTC Authority in the Financial Services Arena**

Although many federal agencies have authority over financial services, the FTC is the only federal agency whose sole objective with respect to financial services is to protect consumers. The Commission enforces the Federal Trade Commission Act (FTC Act), which prohibits unfair or deceptive acts or practices in or affecting commerce. 15 U.S.C. § 45(a). The



only defraud consumers out of desperately needed funds but a

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<sup>5</sup> *FTC v. EMC Mortgage Corp.*, No. 4:08-cv-338 (E.D. Tex. Sept. 9, 2008).

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<sup>6</sup> *FTC v. Gateway Funding Diversified Mortgage Services, L.P.*, No. 08-5805 (E.D. Pa. Dec. 17, 2008).

<sup>7</sup> *E.g., FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. 2006); *FTC v. Ranney*, No. 04-1065

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<sup>10</sup> *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

<sup>11</sup> *In the Matter of American Nationwide Mortgage Co.*, FTC Dkt. No. C-4249 (Feb. 17, 2009); *In the Matter of Shiva Venture Group, Inc.*, FTC Dkt. No. C-4250 (Feb. 17, 2009); *In the Matter of Michael Gendrolis*, FTC Dkt. No. C-4248 (Feb. 17, 2009).

<sup>12</sup> For example, in November 2008, the FTC and the State of Nevada charged ten related Internet payday lenders and their principals, based mainly in the United Kingdom, with violations of federal and state law. See *FTC and State of Nevada v. Cash Today, Ltd.*, No. 3:08-cv-00590 (D. Nev. Nov. 6, 2008).

<sup>13</sup> Banks, savings associations, and credit unions issue the vast majority of credit cards, with national banks alone being responsible for approximately 75 perc

## E. Debt Collection

The Commission has stepped up its commitment to enforcing the FDCPA, which prohibits third-party debt collectors from engaging in abusive, deceptive, and unfair debt

debt.

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<sup>16</sup> See, e.g., *FTC v. Check Investors, Inc.*, No. 03-2115, 2005 U.S. Dist. LEXIS 37199 (D.N.J. July 18, 2005) (ban on debt collection and \$10.2 million judgment), *aff'd*, 503 F.3d 159 (3d Cir. 2007), *petition for reh'g denied*, Nos. 05-3558, 05-3957 (3d Cir. Feb. 6, 2008).

<sup>17</sup> *United States v. Academy Collection Servs., Inc.*, No. 2:08-CV-1576 (D. Nev. Nov. 18, 2008).

<sup>18</sup> The Commission also recently issued a report recommending legislative and other changes to reform and modernize the debt collection regulatory system. FTC Workshop Report, *Collecting Consumer Debts – The Challenges of Change* (Feb. 2009), *available at* <http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf>.

<sup>19</sup> For a list of these cases, see Prepared Statement of the Federal Trade Commission on Consumer Protection and the Credit Crisis before the Senate Committee on Commerce, Science, and Transportation (Feb. 26, 2009), *available at* <http://www.ftc.gov/os/2009/02/P084800creditcrisis.pdf>.



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*See* Press Release, FTC's Operation "Clean Sweep" Targ

penalties for unfair or deceptive acts and practices relating to all financial services and authorize the agency to bring suit in its own right in federal court to obtain civil penalties. Third, the Commission recommends that Congress ensure that, because of the Commission's unequalled and comprehensive focus on consumer protection, its independence from providers of financial services, and its emphasis

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<sup>21</sup> These recommendations are discussed in greater detail in the FTC's March 24, 2009 testimony before the House Committee on Energy and Commerce, Subcommittee on Commerce, Trade, and Consumer Protection, which is available at <http://www.ftc.gov/os/2009/03/P064814consumercreditdebt.pdf>.

of which remain in litigation. The Commission resolved another sixteen merger matters by consent order and the parties restructured or abandoned an additional six mergers in the face of the Commission's concerns.

Antitrust merger litigation is highly resource-intensive because the issues litigated increasingly are technically complex and involve sophisticated economic theories; necessarily, over time the size of litigation teams assigned to matters has grown. Thus, when less staff time is needed for processing and reviewing filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (HSR Act), staff time may be reassigned to these litigations and other matters requiring collection and review of information in preparation for litigation or possible litigation. In addition, the FTC continues to look for and review transactions not subject to the HSR filing requirements and transactions where an antitrust problem may arise or become identifiable only after the deal is consummated. The two matters currently in litigation, and two matters in which the Commission recently obtained favorable results, are of these types. Further, the decrease in filings may reflect a decrease in types of mergers that do not raise competitive concerns; we continue to see significant filings that do raise concerns.

On the non-merger side, the FTC has advanced an enforcement program to attack collusive "pay-for-delay" settlements in the pharmaceutical industry, where the brand name drug company pays the generic drug company to delay its entry into the market. These deals cost billions of dollars – for consumers and ultimately the government, which pays almost one-third of the nation's prescription drug costs. The Commission currently has two cases in court challenging patent settlement agreements between branded and generic pharmaceutical manufacturers as anticompetitive agreements to delay generic entry. Other such matters remain under investigation.

The agency also issued five consent orders this year involving allegations of agree

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<sup>22</sup> Commissioner Kovacic believes the Commission will need additional resources but he disagrees with certain aspects of the analysis in Section V of this testimony.

from other parts of the agency), which, in addition to financial services, comprises privacy and data security, marketing practices (including spyware, spam, the Do Not Call Registry, deceptive advertising of prepaid calling cards, and enforcement of the Telemarketing Sales Rule) and advertising practices for a broad range of products, from violent video games marketed to children to fake cancer cures to so-called “green” products and services.

In 1979, when the Commission’s FTEs were at their peak, the U.S. population was approximately 225 million. It is now 30 percent greater, and although the agency is always striving to do more with less, the size of the agency has not kept pace with the growth in the population and the sophistication of the marketplace. In addition, the FTC anticipates a further need for resources to fund expanded regulation and enforcement for consumer protection in the area of financial services.

As you know, the agency’s appropriation (including offsetting HSR and DNC fees) funds the consumer protection mission of the Commission, which includes the substantial and now heightened efforts regarding financial practices, as well as the competition mission.<sup>23</sup> As we saw in FY 2008 and expect to see in FY 2009, shortfalls in these fee collections result in more of the FTC’s funding coming from the Treasury’s General Fund to support the agency’s critical mission.

## **VI. Conclusion**

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<sup>23</sup> The FTC’s appropriation is partially offset by collections of two separate fees. The first offsetting collections are fees collected under the HSR Act and are tied to the number and size of premerger filings. The second offsetting collections are fees collected under the Do-Not-Call Registry Fee Extension Act.

development, and consumer and business outreach – to protect consumers of financial services. To enable the FTC to perform a greater and more effective role protecting consumers in the financial services area, it recommends changes in the law and additional resources to enhance its authority to promulgate needed rules, prosecute cases against law violators, and conduct critical research. The Commission appreciates the opportunity to appear before you today to discuss the FTC's work and your consideration of its views.