

**PREPARED STATEMENT OF  
THE FEDERAL TRADE COMMISSION ON**

would facilitate the Commission's ability to address these practices.

that consumers care deeply about the privacy of their personal information.<sup>(12)</sup>

The Commission also has extensive experience enforcing the FCRA, which gives consumers certain privacy protections regarding their sensitive financial information. Congress enacted the FCRA to address privacy concerns associated with the sharing of consumers' financial and credit history, typically contained in consumer credit reports.<sup>(13)</sup> The FCRA provides that consumer credit reports may be distributed only to entities with specified "permissible purposes" (such as evaluating individuals for credit, insurance, employment, or similar purposes) under specified cond

Principles provide that if such identifying information is obtained from *non-public* or *proprietary* sources,<sup>(20)</sup> a

500 Section 13(b) cases in federal court.

We believe the act of pretexting by information brokers likely violates the FTCA's prohibition of "unfair or deceptive acts or practices in or affecting commerce" and would warrant filing a Section 13(b) action in federal court to obtain equitable relief.<sup>(27)</sup> First, making misrepresentations to a financial institution to obtain confidential information for resale may be a *deceptive* act affecting commerce.<sup>(28)</sup> Second, representing to customers that information will be obtained legally, when in fact it can be obtained only through actions that likely violate the FTCA and certain other statutes<sup>(29)</sup> may also be a *deceptive* act affecting commerce.<sup>(30)</sup>

In addition, obtaining and reselling a consumer's confidential financial information may be *unfair* acts, in violation of Section 5. To establish an unfairness theory, the Commission must show (1) that the practice of obtaining consumers' private financial information without permission or under false pretenses causes, or is likely to cause, substantial injury; (2) that the injury is not outweighed by countervailing benefits to consumers or competition; and, (3) that consumers could not have avoided the injury.<sup>(31)</sup>

information violates the FTCA; and (2) deter information brokers from pretexting by authorizing the imposition of civil and criminal sanctions.<sup>(41)</sup>

The Act would add an important tool to the Commission's arsenal in a case against pretexters -- the ability to obtain to civil penalties.<sup>(42)</sup> Since 1975, the Commission had authority to seek civil penalties for violations of its trade regulation rules.<sup>(43)</sup> In addition, the Commission enforces several statutes, including the Equal Credit Opportunity Act, the Fair Debt Collection Practices Act, and the Fair Credit Reporting Act, which give the Commission civil penalty authority.<sup>(44)</sup> It has been the Commission's experience that sanctions that go beyond merely ordering future compliance with the law, such as civil penalties, provide stronger incentives for compliance.

The imposition of civil penalties would be particularly appropriate against pretexters, given

1. The views expressed in this statement represent the views of the Federal Trade Commission. My oral testimony and responses to questions you may have reflect my own views and are not necessarily the views of the Commission.

2. 15 U.S.C. § 45(a).

3. Certain entities, such as banks, savings and loan associations, and common carriers, as well as the business of insurance, are wholly or partially exempt from Commission jurisdiction. *See* Section 5(a)(2) of the FTC Act, 15 U.S.C. § 45(a)(2) and the McCarran-Ferguson Act, 15 U.S.C. § 1012(b).

4. 15 U.S.C. § 46.

5. 15 U.S.C. §§ 1681 *et seq.*

6. The Commission held its first public workshop on Internet privacy in April 1995. In a series of hearings held in October and November 1995, the FTC examined the implications of globalization and technological innovation for competition and consumer protection issues, including privacy concerns. This workshop culminated in an FTC Staff Report: *Anticipating the 21st Century: Consumer Protection Policy in the New High-Tech, Global Marketplace*, May 1996. At a public workshop in June 1996, the Commission examined a wide range of consumer privacy issues, including Web site practices with respect to the collection and use of consumers' personal information. FTC staff issued a report summarizing this workshop. FTC Staff Report: *Public Workshop on Consumer Privacy on the Global Information Infrastructure*, December 1996. The agency held a four-day workshop in June 1997 to explore issues relating to unsolicited commercial e-mail, online privacy, children's online privacy, and individual reference services.

7. In connection with the Commission's study of this industry, the Commission solicited public comment and held a Public Workshop in June 1997, which served as a forum for dialogue among suppliers of personal









Part 453; Holder in Due Course Rule, 16 C.F.R. Part 433; Credit Practices Rule, 16 C.F.R. Part 444. In addition, the Commission may seek civil penalties for other rule violations, as authorized specifically by certain statutes: *e.g.*, Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992 ("The 900-Number Rule"), 16 C.F.R. Part 308; and the Telemarketing Sales Rule Pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 16 C.F.R. Part 310.

44. Section 704(c) of the Equal Credit Opportunity Act; Section 814(a) of the Fair Debt Collection Practices Act; Section 621 of the Fair Credit Reporting Act.

45. The amount of consumer redress or disgorgement the defendant would have to pay would likely correspond to the amount customers pay for these services, typically a few hundred dollars per transaction. On the other hand, if the Commission had the civil penalty authority proposed in the Act, the defendants could have to pay as much as \$11,000 per violation.

46. If the pretexter were making misrepresentations to customers regarding how it obtains financial information (*i.e.*, falsely stating that the information is obtained legally), the harm from such misrepresentations (*i.e.*,