



June 15, 2004

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
Room 159-H (Annex H)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: The FACT Act Disposal Rule, R-411007

Dear Mr. Clark:

The Consumer Data Industry Association (“CDIA”) respectfully submits these comments on the proposed rule regarding the proper disposal of consumer report information and records, pursuant to § 216 of The Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”), 69 CFR 21388 *et seq.* (April 20, 2004).

CDIA is an international trade association representing over 500 consumer information companies that provide fraud prevention and risk management products, credit and mortgage reports, tenant and employment screening services, check fraud and verification services and collection services in the United States. CDIA sets industry standards and provides business and professional education for its members. It also provides educational materials for consumers regarding their credit rights and how consumer reporting agencies can better serve their needs.

### ***The Proposed Rule’s General Objectives And Approach***

CDIA strongly supports the proposed rule’s objectives. CDIA members believe that safeguarding and properly disposing of consumer information is one of our most important responsibilities.

CDIA applauds the proposed rule’s approach because it is non-prescriptive, allowing for flexibility and tailoring. Each covered entity is permitted to develop a

method that is tailored to its own operation. The proposed standard does not require perfection, but only requires persons to take “reasonable measures” to protect against unauthorized access to or use of consumer information in connection with its disposal. CDIA agrees that the final rule should permit entities to consider the sensitivity of the information, the nature and size of the entity’s operations, the costs and benefits of different disposal methods, as well as relevant technological changes. The success of CDIA members in protecting our data is attributable to our ability to adapt to a rapidly changing environment and meet new threats to data security as they arise.

CDIA commends the proposed rule’s treatment of information that does not identify a particular individual. In the Summary of the Proposed Rule, the Commission states that under the definition of “consumer information”, information that is “derived from consumer reports but does not identify any particular consumers would not be covered under the proposed Rule.” We urge the Commission to retain this language and insert it into the text of the Final Rule. To apply the rule to information that does not include consumer identities would not further the statutory purpose of reducing the risk of identity theft. Obviously, such information would not be about a specific consumer and regulating its disposal would not further the purpose of the rule – preventing unauthorized disclosure and reducing the risk of identify theft. Therefore, CDIA believes that it is appropriate that information that does not identify particular consumers is not covered by the disposal rule requirements.

Additionally, the proposed rule does not address *when* consumer report information must be disposed, but only how it must be disposed. This too is a proper approach and permits compliance with other laws that govern how long consumer report information must be kept.

CDIA urges the Commission not to add additional prescriptive requirements to the rule, especially those which may not be required from an actual data security perspective. Unnecessary requirements only increase the costs of the use of consumer reports, which are passed on to consumers and others.

### ***The Proposed Rule’s Scope Is Overbroad As Applied to Consumer Reporting Agencies***

Section 216 of the FACT Act provides that the Commission “issue final regulations requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.”

Under a plain reading of § 216, consumer reporting agencies are not covered by the disposal requirement. The phrase “derived from consumer reports for a business purpose” modifies *both* “possesses consumer information” and “any compilation of consumer information.” A person cannot “derive” information from a consumer report for a business purpose until it is provided to that person by the consumer reporting