April 23, 2004

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

RE: FACTA Interim Final Rule Prohibiting Circumvention, Project No. P044804

I. Introduction

Equifax Information Services LLC (EIS) is a consumer reporting agency that furnishes consumer reports to its financial institution customers, other businesses that have a permissible purpose as defined in the FCRA, and consumers.[1] It is a subsidiary of Equifax Inc., a 105-year-old company and member of the Standard & Poor's (S&P) 500® Index, a global leader in turning information into intelligence, serving customers across a wide range of industries and markets, including financial services, retail, telecommunications, utilities, mortgage, brokerage, insurance, automotive, healthcare, direct marketing and transportation. Equifax Inc. is not a consumer reporting agency. However, the circumvention rule potentially impacts both Equifax Inc. and EIS. These comments are submitted by both companies and references herein to Equifax shall mean both companies.

Equifax appreciates the opportunity to submit formal written comments in the above referenced matter. Because EIS is engaged in multiple consumer information and other businesses, Equifax has a profound interest in the circumvention rule. The rule has serious implications for the ability of Equifax management to make future business decisions about strategy, operational matters and market developments with the flexibility required in a fast moving marketplace. It is imperative that the rule not impact legitimate business decisions in a competitive free market.

II. Corporate Considerations by Equifax

Since its parent is a publicly traded company, EIS requires precision in the regulatory framework governing its businesses so that decisions can be made knowledgably on a level playing field with its competitors, which are not publicly traded in the United States. As a publicly traded company, Equifax Inc., its board of directors and its management are subject to significant legal and regulatory obligations. These additional obligations raise issues in connection with the rule that require careful consideration by the FTC.

[1] The rule does not define §603(p) consumer reporting agencies. For purposes of this comment, we will assume that Equifax Information Services LLC is a §603(p) agency.

Recent scandals at high-profile public companies have led to heightened scrutiny of, and greater accountability for, boards of directors and management of publicly traded companies. These increased demands and accountability require boards and management to execute their duties and responsibilities to their shareholders with increasing certainty and precision.

For Equifax Inc.'s board of directors and management appropriately to discharge their myriad responsibilities in the public arena, legal certainty is a critical issue. Accordingly, the Commission must balance the need to ensure that all obligations imposed by the rules do not conflict at a practical level with the other important obligations and responsibilities imposed upon EIS or Equifax Inc.

A. Fiduciary Obligations

As a general proposition, the board of directors and management of Equifax Inc. are required to act at all time with due care and in the best interests of the company and its shareholders. In the context of this fiduciary obligation, the rule is inappropriately broad and vague and fails to provide sufficient guidance. Rather than identifying the prohibited activities or conduct, the rule, without definition, simply states that a §603(p) consumer reporting agency cannot circumvent treatment as such through a corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture or asset sale of a consumer reporting agency. The rule does not define the elements necessary to determine whether circumvention or evasion has occurred. Instead, the rule lists numerous types of transactions, all of which are routinely entered into for legitimate purposes. The rule thus casts doubt over the legitimacy of any such transaction in which EIS or Equifax Inc. might engage. In fact, the fiduciary duties of Equifax Inc.'s board and management in many circumstances could compel them to pursue transactions of these types for the benefit of shareholders. By injecting an element of doubt with respect to the legitimacy of transactions otherwise in the best interests of shareholders, the rule as proposed runs contrary to the recent trend emphasizing corporate fidelity to shareholder interests.

B. Reporting and Disclosure Obligations

As a public company, Equifax Inc. is routinely required to report on and disclose to the SEC and its public investors the results of its operations, its financial status, significant events, and risks in its business including its consumer reporting subsidiary, EIS. One of the important features of these reporting and disclosure obligations is the requirement that Equifax Inc. describe the risks inherent in its business operations including that of its consumer reporting subsidiary, EIS.