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March 7, 2011

Hon. Donald S. Clark
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW
Washington, DC 20580

Via Electronic Filing

Re: In the Matter of Settlement One Credit Corporation, et al., File No. 082 3208
In the Matter of ACRAnet, Inc., File No. 092 3088
In the Matter of Fajilan and Associates, et al. File No. 092 3089

Dear Mr. Clark:

Avantus, LLC appreciates the opportunity to comment on the Federal Trade Commission's ("FTC") proposed settlements in the three above-referenced matters.

Avantus is a national mortgage reporting reseller as defined in Fair Credit Reporting Act ("FCRA") and has been in existence through its member companies since 1929. As a "reseller" of consumer reports, similar to the respondents' companies referenced above, we obtain reports from the three nationwide consumer reporting agencies and create "tri-merge" reports and other specialty consumer reports for our mortgage banking and brokerage clients.

Avantus Security Initiatives

Avantus takes the duty of being a good steward of the consumers' data within our control very seriously and have taken extensive measures to protect consumer information.

Please visit our Avantus Security Help Center at www.avantus.com/security-help-center.shtml for detailed information regarding our on-going initiatives. This website was created specifically for the purpose of assisting our customers in the mortgage lending and brokerage businesses their legal obligations under FCRA and GLBA to protect consumer information.

The Missing Parties in the Proposed Orders

None of the unprotected computer systems involved in the data breaches that led to these enforcement actions was within the ownership or control of the above referenced resellers. The FTC's complaints allege that the breaches occurred because the End Users lacked adequate firewalls or other security controls. Thus, the alleged failures of these independent third parties, and not the resellers' actions, contributed to the security breaches. These End Users apparently did not meet their own legal obligations under the FCRA and the GLBA, and they would also have breached their contractual obligations to the resellers. For these reasons, I believe that the Commission's enforcement actions targeted the wrong parties in these matters.

The proposed orders essentially require the respondent resellers to comply with their legal obligations under the GLBA and the FCRA. Because the End Users are not subject to these consent orders, the FTC's enforcement actions will not protect consumers with respect to the security and confidentiality of consumer information held by these End Users.

It is important to understand that mortgage lenders and brokers who receive and maintain consumers' identifying information and highly confidential financial information from applications, financial institutions, employers and others, in addition to consumer reports from resellers, and that these End Users are subject to the same GLBA and FCRA laws as the resellers. Yet, the FTC's orders will not require these End Users to implement any measures to comply with these laws. Clearly, we believe the FTC has brought the wrong parties under order.

The Commissioners' Statement

Despite the fact that the FTC's orders apply only to the resellers, the Commissioners' Statement asserts that "these are the first cases in which the Commission has held resellers responsible for downstream data protection failures." This statement is at odds with the terms of the consent orders and, for the most part, even the complaint's allegations. As an owner of a consumer reporting agency, I am deeply troubled by the Commissioners' apparent plan to hold resellers responsible for the potential failures of independent third parties to protect consumer data. There is no basis in the FCRA or even the GLBA Safeguards Rule for this kind of liability.

Further, the Commissioners state that they will seek civil penalties in future cases involving "resellers—indeed, all of those in the chain of handling consumer data" based on their "legal obligations to proactively protect consumers' data." The FCRA imposes certain legal requirements on resellers in providing reports to End Users with permissible purposes. However, FCRA does not require resellers or others in the chain of handling consumer data to "proactively protect consumers' data." Resellers' data security obligations with respect to consumer information are governed by the GLBA Safeguards Rule, which does not provide for civil penalties for violations of its requirements.

Recommendation

The FTC can best promote the important objective of protecting consumer information by focusing on each of the entities that are in a position to provide this protection. The Commission should hold resellers responsible for consumer information and access to that information within their control, but the Commission should also hold End Users responsible for their own data security as well.

In this case, the FTC ignores End Users altogether and instead would require resellers to assume responsibility for third parties' internal data security measures. Not only will this impose an unfair and unworkable burden on firms such as ours, but it would also create a less efficient system that leaves consumers more vulnerable than they would be if the FTC required each of these financial entities to take responsibility for its own data security systems as prescribed in the GLB Safeguards Rule.

Thank you again for the opportunity to comment on these matters.

Sincerely,

Louis R. Capobianco
President