

FEDERAL TRADE COMMISSION DECISIONS

**FINDINGS, OPINIONS, AND ORDERS
JULY 1, 2008, TO DECEMBER 31, 2008**

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MEMBERS OF THE FEDERAL TRADE COMMISSION
DURING THE PERIOD JULY 1, 2008, TO DECEMBER 31, 2008

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Took oath of office January 4, 2006.

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Took oath of office August 4, 2003.

JON LEIBOWITZ, *Commissioner*
Took oath of office September 3, 2004.

J. THOMAS ROSCH, *Commissioner*
Took oath of office January 5, 2006.

DONALD S. CLARK, *Secretary*
Appointed August 28, 1988.

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FEDERAL TRADE COMMISSION DECISIONS

FINDINGS, OPINIONS, AND ORDERS
JULY 1, 2008, TO DECEMBER 31, 2008

IN THE MATTER OF

REED ELSEVIER INC.
AND
SEISINT, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4226; File No. 052 3094
Complaint, July 29, 2008 – Decision, July 29, 2008

This consent order applies to practices of Reed Elsevier Inc. and Seisint, Inc., that failed to provide reasonable and appropriate security for sensitive consumer information stored in Seisint databases. Breaches of the system by identity thieves disclosed sensitive information about more than 300,000 consumers. The order requires each respondent to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of nonpublic personal information collected from or about consumers. The security programs must contain administrative, technical, and physical safeguards appropriate to the respondent's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. The order requires each respondent to obtain on a biennial basis for a period of 20 years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that it has in place a security program that provides protections that meet or exceed the protections required by the order. and its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information has been protected. The order requires the respondents to retain documents relating to their compliance with the order, to disseminate the order to persons with responsibilities relating to the subject matter of the order, to notify the Commission of changes in corporate status, and to submit periodic compliance reports.

Participants

For the *Commission*: Katrina A. Blodgett, Kathleen L. Claffie,
Kathryn D. Ratté, Jessica Rich, Alain Sheer, and Joel Winston.

Complaint

For the *Respondents: J. Howard Beales, III; Jeffrey I. Cox, Thomas R. Kraemer, and Ronald I Raether, Faruki, Ireland, & Cox P.L.L.; and Emilio W. Cividanes and Lisa Jose Fales, Venable LLP.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Reed Elsevier Inc. and Seisint, Inc. have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Reed Elsevier Inc. (“REI”) is a Massachusetts corporation with its principal office or place of business at 125 Park Avenue, Suite 2300, New York, New York 10017. REI engaged in the acts and practices at issue in this complaint through LexisNexis, a division of REI with its principal office or place of business at 9333 Springboro Pike, Dayton, Ohio 45401.

2. Respondent Seisint, Inc. (“Seisint”) is a Florida corporation with its principal office or place of business at 6601 Park of Commerce Boulevard, Boca Raton, Florida 33487.

3. Respondent REI acquired respondent Seisint on September 1, 2004, and since then has operated it as a wholly-owned subsidiary within LexisNexis. Respondent REI integrated respondent Seisint into LexisNexis by, among other things, using respondent Seisint’s facilities, personnel, technologies, and products in LexisNexis’ other business operations. Since the acquisition, respondent REI has controlled the acts and practices of respondent Seisint at issue in this complaint. Respondent Seisint is solely liable for its practices prior to the acquisition.

4. The acts and practices of respondents as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

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RESPONDENTS' BUSINESS PRACTICES

5. At all relevant times before and after the acquisition, respondents Seisint and REI have been in the business of collecting, maintaining, and selling information about consumers. Among other things, each respondent sells products that customers use to locate assets and people, authenticate identities, and verify credentials (collectively, "verification products").

6. Respondent Seisint sells verification products under its Accurint trade name (collectively, "Accurint verification products"). Accurint verification product customers include insurance companies, debt collectors, employers, landlords, law firms, and law enforcement and other government agencies. Respondent REI sells similar verification products, under various LexisNexis trade names.

7. In connection with their verification products, respondents:

(a) collect and aggregate information about millions of consumers and businesses from public and nonpublic sources, including motor vehicle records and consumer identification information from credit reporting agencies, and maintain and store the information in computer databases.

(b) operate computer networks and websites and provide software (such as web applications and search engines) through which a customer can use a verification product to search electronically for information in the respondent's computer databases. To conduct such a search, the customer enters a search term, such as a consumer's name, and retrieves through the search other items of information about the consumer.

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(c) charge customers a fee to search for and retrieve information from their databases.

8. Respondents' databases contain nonpublic and often highly sensitive personal information about consumers, including consumer identification information obtained from credit reporting agencies, such as Social Security numbers. It is widely recognized that misuse of such information – and in particular consumers' Social Security numbers – can facilitate identity theft and related consumer harms.

9. At all relevant times, respondents have implemented procedures to identify customers seeking access to their databases, limit access to nonpublic information to customers meeting certain criteria, and track searches their customers make. Such procedures include:

(a) steps to authenticate customers (or verify that the customers are who they claim to be) before permitting them to search the databases, usually by requiring each customer to log-in using a user ID and a password (collectively, "user credentials").

(b) rules governing the format of user credentials that customers must present for authentication.

(c) rules governing which customers can access nonpublic information and which are restricted to public information only.

(d) codes, assigned to each customer's user credentials, that permit the customer to access the types of information the customer is authorized to access.

Under these procedures, an unauthorized person logging-in with the user credentials of a legitimate verification product customer would be authenticated and could then access all of the

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information the legitimate customer could access, including sensitive nonpublic information if the customer were so authorized.

RESPONDENTS' SECURITY PRACTICES

10. Until at least mid-2005, respondents engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security to prevent unauthorized access to the sensitive consumer information stored in databases accessible using Accurint verification products ("Accurint databases"). In particular, respondents failed to establish or implement reasonable policies and procedures governing the creation and authentication of user credentials for authorized customers accessing Accurint databases. Among other things, respondents:

(a) failed to establish or enforce rules sufficient to make user credentials hard to guess. For example, respondents allowed Accurint customers to use the same word, including common dictionary words, as both the password and user ID, or a close variant of the user ID as the password;

(b) permitted the sharing of user credentials among a customer's multiple users, thus reducing likely detection of, and accountability for, unauthorized searches;

(c) failed to require periodic changes of user credentials, such as every 90 days, for customers with access to sensitive nonpublic information;

(d) failed to suspend user credentials after a certain number of unsuccessful log-in attempts;

(e) allowed customers to store their user credentials in a vulnerable format in cookies on their computers;

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(f) failed to require customers to encrypt or otherwise protect credentials, search queries, and/or search results in transit between customer computers and respondents' websites;

(g) allowed customers to create new credentials without confirming that the new credentials were created by customers rather than identity thieves;

(h) did not adequately assess the vulnerability of the Accurint web application and computer network to commonly known or reasonably foreseeable attacks, such as "Cross-Site Scripting" attacks; and

(i) did not implement simple, low-cost, and readily available defenses to such attacks.

11. By the security practices set out in Paragraph 10, respondents established user ID and password structures that created an unreasonable risk of unauthorized access to sensitive consumer information stored in Accurint databases. Security professionals have issued public warnings about the security risk presented by weak user ID and password structures since the late 1990s, when well-publicized attacks to obtain customer passwords began to occur. Further, from attacks on user ID and password structures controlling access to Accurint databases, respondents have had notice of the risk since at least 2002. In addition, respondents did not use readily-available security measures to prevent or limit such attacks, such as by using well-known procedures that would limit or block attacks on user credentials. As a result of respondents' security practices, an attacker could easily guess or intercept the user credentials of legitimate customers and use them to gain access to sensitive information – including Social Security numbers – about millions of consumers.

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12. On multiple occasions since January 2003, attackers exploited respondent Seisint's user ID and password structures to obtain without authorization the user credentials of legitimate Accurint customers. The attackers then used these credentials to make thousands of unauthorized searches for consumer information in Accurint databases. These attacks disclosed sensitive information about several hundred thousand consumers, including, in many instances, names, current and prior addresses, dates of birth, and Social Security numbers. Although some of these attacks occurred before respondent REI acquired respondent Seisint, they continued for at least 9 months after the acquisition, during which time respondent Seisint was operating under the control of respondent REI. Since March 2005, respondent REI through LexisNexis has notified over 316,000 consumers that the attacks disclosed sensitive information about them that could be used to conduct identity theft.

13. In a number of the incidents referred to in Paragraph 12, new credit accounts were opened in the names of consumers whose information was disclosed without authorization, and purchases were made on the new accounts. In other instances, identity thieves used sensitive information obtained without authorization from Accurint databases to activate newly-issued credit cards stolen from legitimate cardholders, and then made fraudulent purchases on the cards. In response to such incidents, cards were cancelled and consumers holding them were unable to use them to access their credit and bank accounts until they received replacement cards. Further, because the incidents referred to in Paragraph 12 disclosed Social Security numbers and other sensitive information, several hundred thousand consumers face the possibility of future fraud.

VIOLATIONS OF THE FTC ACT

14. As set forth in Paragraphs 10 through 13, respondents failed to employ reasonable and appropriate measures to prevent

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unauthorized access to sensitive consumer information stored in Accurant databases. Respondents' practices caused, or are likely to cause, substantial injury to consumers that is not offset by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This practice was, and is, an unfair act or practice.

15. The acts and practices of respondents as alleged in this complaint constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission this twenty-ninth day of July, 2008, has issued this complaint against respondents.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Respondents named in the caption hereof, and the Respondents having been furnished thereafter with a copy of a draft Complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the Respondents with violation of the Federal Trade Commission Act, 15 U.S.C. § 45 *et seq*;

The Respondents, their attorney, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), an admission by the

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Respondents of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the Respondents have violated the said Act, and that a Complaint should issue stating its charges in that respect, and having thereupon accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure described in Section 2.34 of its Rules, the Commission hereby issues its Complaint, makes the following jurisdictional findings and enters the following Order:

1. Respondent Reed Elsevier Inc. is a Massachusetts corporation with its principal office or place of business at 125 Park Avenue, Suite 2300, New York, New York 10017. Respondent Seisint, Inc. is a Florida corporation with its principal office or place of business at 6601 Park of Commerce Boulevard, Boca Raton, Florida 33487.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents, and the proceeding is in the public interest.

Decision and Order

ORDER**DEFINITIONS**

For purposes of this order, the following definitions shall apply:

1. “Personal information” shall mean individually identifiable information from or about a consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name that reveals a consumer’s email address; (d) a telephone number; (e) a Social Security number; (f) a date of birth; (g) a driver’s license number; (h) credit and/or debit card information, including but not limited to card number and expiration date and transaction detail data; (i) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies a consumer; or (j) any other information from or about a consumer that is combined with (a) through (i) above.
2. “Information product or service” shall mean each product, service, or other means by which respondents individually or collectively provide direct or indirect access to personal information from or about consumers that is comprised in whole or part of nonpublic information; *provided, however,* that this term shall not include information products or services that: (a) provide access solely to personal information that is publicly available information, or (b) permit customers to upload or otherwise supply, organize, manage, or retrieve information that is under the customer’s control.

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3. “Publicly available information” shall mean information that respondents have a reasonable basis to believe is lawfully made available to the general public from: (a) Federal, State, or local government records, (b) widely distributed media, or (c) disclosures to the general public that are required to be made by Federal, State, or local law. Respondents shall have a reasonable basis to believe information is lawfully made available to the general public if respondents have taken reasonable steps to determine: (a) that the information is of the type that is available to the general public, and (b) whether an individual can direct that the information not be made available to the general public and, if so, that the individual has not done so.
4. “LexisNexis” shall mean Seisint, Inc., and its successors and assigns, officers, agents, representatives, and employees, and the LexisNexis division of respondent Reed Elsevier Inc., and its successors and assigns, officers, agents, representatives, and employees; *provided, however,* that, for the purposes of this order, LexisNexis shall:
 - (a) be treated as a corporation under the control of respondent Reed Elsevier Inc. for the purpose of determining whether any other entity is a successor or assign of LexisNexis; and
 - (b) include any other corporation, subsidiary, division, or other device under the control of respondent Reed Elsevier Inc. (collectively, “entity”) to the extent that such entity advertises, markets, promotes, offers for sale, or sells any information product or service that includes a Social Security number; driver’s license number; date of birth; or bank, credit card, or other financial account number (collectively, “designated information”), including, but not limited to, any

Decision and Order

information product or service that can be used to access, view, or retrieve designated information from databases under the entity's possession or control.

5. Unless otherwise specified, "respondents" shall mean Reed Elsevier Inc., its successors and assigns, officers, agents, representatives, and employees, and Seisint, Inc., and its successors and assigns, officers, agents, representatives, and employees.

I.

IT IS ORDERED that each respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of personal information collected from or about consumers made available through any information product or service of LexisNexis ("the information"), in or affecting commerce, shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of the information. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to each respondent's size and complexity, the nature and scope of each respondent's activities, and the sensitivity of the information, including:

- A. the designation of an employee or employees to coordinate and be accountable for the information security program.
- B. the identification of material internal and external risks to the security, confidentiality, and integrity of the information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of the information, and assessment of the

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sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures.

- C. the design and implementation of reasonable safeguards to control the risks identified through risk assessment, and regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures.
- D. the development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from respondent, and requiring service providers by contract to implement and maintain appropriate safeguards; *provided, however*, that this subparagraph shall not apply to personal information about a consumer that respondent provides to a government agency or lawful information supplier when the agency or supplier already possesses the information and uses it only to retrieve, and supply to respondent, additional personal information about the consumer.
- E. the evaluation and adjustment of respondent's information security program in light of the results of the testing and monitoring required by subparagraph C, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its information security program.

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II.

IT IS FURTHER ORDERED that, in connection with its compliance with Paragraph I of this order, each respondent shall obtain initial and biennial assessments and reports (“Assessments”) from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

- A. set forth the specific administrative, technical, and physical safeguards that respondent has implemented and maintained during the reporting period;
- B. explain how such safeguards are appropriate to respondent’s size and complexity, the nature and scope of respondent’s activities, and the sensitivity of the personal information collected from or about consumers;
- C. explain how the safeguards that have been implemented meet or exceed the protections required by Paragraph I of this order; and
- D. certify that respondent’s security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies by a person qualified as a Certified Information System Security Professional (CISSP) or as a

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Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

III.

IT IS FURTHER ORDERED that each respondent shall maintain, and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy of each document relating to compliance, including but not limited to:

- A. for a period of five (5) years: any documents, whether prepared by or on behalf of respondent, that contradict, qualify, or call into question its compliance with this order; and
- B. for a period of three (3) years after the date of preparation of each Assessment required under Paragraph II of this order: all materials relied upon to prepare the Assessment, whether prepared by or behalf of respondent, including, but not limited to, all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments and any other materials relating to its compliance with Paragraphs I and II of this order, for the compliance period covered by such Assessment.

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IV.

IT IS FURTHER ORDERED that each respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having managerial responsibilities relating to the subject matter of this order. Each respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that each respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in either corporate name or address. *Provided, however,* that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Paragraph shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that each respondent shall, within one hundred and eighty (180) days after service of this order, and at such other times as the Commission may require, file

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with the Commission an initial report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VII.

This order will terminate on July 29, 2028, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. any Paragraph in this order that terminates in less than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Paragraph.

Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Paragraph as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from Reed Elsevier Inc. (“REI”) and Seisint, Inc. (“Seisint”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

The Commission’s proposed complaint alleges that REI (through its LexisNexis division) and Seisint are data brokers. REI acquired Seisint on September 1, 2004 and has continued to operate Seisint under the Seisint name; REI also uses Seisint’s technologies and facilities in REI’s LexisNexis data broker business. In connection with Seisint’s business, proposed respondents collect, and store in electronic databases, information about millions of consumers, including names, current and prior addresses, dates of birth, driver’s license numbers, and Social Security numbers (“SSNs”). They also sell products customers use to retrieve information from the databases, including products to locate assets and people, authenticate identities, and verify credentials. Until at least mid-2005, access to information in Seisint databases was controlled using only user IDs and passwords (“credentials”). Seisint customers include insurance companies, debt collectors, employers, landlords, law firms, and law enforcement and other government agencies.

The complaint further alleges that REI and Seisint engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for sensitive consumer information stored in Seisint databases. In particular, they: (1)

Analysis to Aid Public Comment

failed to make credentials hard to guess; (2) failed to require periodic changes of credentials (such as every 90 days, for customers with access to sensitive consumer information); (3) failed to suspend credentials after a certain number of unsuccessful log-in attempts; (4) allowed customers to store their credentials in a vulnerable format in cookies on their computers; (5) failed to require customers to encrypt or otherwise protect credentials, search queries, and/or search results in transit between customer computers and Seisint websites; (6) allowed customers to create new credentials without confirming that the new credentials were created by customers rather than identity thieves; (7) permitted users to share credentials; (8) did not adequately assess the vulnerability of Seisint's web application and computer network to commonly known or reasonably foreseeable attacks, such as "Cross-Site Scripting" attacks; and (9) did not implement simple, low-cost, and readily available defenses to such attacks. As a result, an attacker could easily guess or intercept the user credentials of legitimate customers and use them to access sensitive information – including SSNs – about millions of consumers.

The complaint alleges that on multiple occasions since January 2003, identity thieves exploited these vulnerabilities to obtain the credentials of legitimate Seisint customers. The thieves then used the credentials to make thousands of unauthorized searches for consumer information in Seisint databases. These breaches disclosed sensitive information about more than 300,000 consumers, including, in many instances, names, current and prior addresses, dates of birth, and SSNs. In some instances, the thieves opened new credit accounts in the names of consumers whose information was disclosed and made purchases on the new accounts. In other instances, they used the information to activate newly-issued credit cards stolen from legitimate cardholders and then made fraudulent purchases on the cards. Although some of these breaches occurred before REI acquired Seisint on

Analysis to Aid Public Comment

September 1, 2004, they continued for at least 9 months after the acquisition, during which time Seisint was under REI's control.

The proposed order applies to nonpublic information sold by Seisint and LexisNexis, as well as by any other business within REI to the extent that the business sells products that include an SSN, driver's license number; date of birth; or bank, credit card, or other financial account number or information. The order also contains provisions designed to prevent respondents from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order requires each respondent to establish and maintain a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of nonpublic personal information collected from or about consumers. The security programs must contain administrative, technical, and physical safeguards appropriate to the respondent's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires each respondent to:

- Designate an employee or employees to coordinate and be accountable for the information security program.
- Identify material internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.

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- Develop and use reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from the respondent, and require service providers by contract to implement and maintain appropriate safeguards.
- Evaluate and adjust its information security programs in light of the results of testing and monitoring, any material changes to operations or business arrangements, or any other circumstances that it knows or has reason to know may have material impact on its information security program.

Part II of the proposed order requires each respondent to obtain within 180 days, and on a biennial basis thereafter for a period of twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that: (1) it has in place a security program that provides protections that meet or exceed the protections required by Part I of the proposed order; and (2) its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information has been protected.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires respondents to retain documents relating to their compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the third-party assessments and supporting documents, respondents must retain the documents for a period of three years after the date that each assessment is prepared. Part IV requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that each respondent submit a compliance report to the FTC within 180 days, and periodically

Analysis to Aid Public Comment

thereafter as requested. Part VII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

This is the Commission’s nineteenth case to challenge the failure by a company to implement reasonable information security practices. Each of the Commission’s cases to date has alleged that a number of security practices, taken together, failed to provide reasonable and appropriate security to prevent unauthorized access to consumers’ information. The practices challenged in the cases have included, but are not limited to: (1) creating unnecessary risks to sensitive information by storing it on computer networks without a business need to do so; (2) storing sensitive information on networks in a vulnerable format; (3) failing to use readily available security measures to limit access to a computer network through wireless access points on the network; (4) failing to adequately assess the vulnerability of a web application and computer network to commonly known or reasonably foreseeable attacks; (5) failing to implement simple, low-cost, and readily available defenses to such attacks; and (6) failing to use readily available security measures to limit access between computers on a network and between such computers and the Internet. This proposed action against REI and Seisint is the first to challenge alleged security failures involving the security of passwords. Passwords are a critical part of a reasonable and appropriate security program because passwords are typically the first (and are often the only) method used to authenticate (or authorize) users to access resources, such as programs and databases, available on a computer network or online.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

THE TJX COMPANIES, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket C-4227; File No. 072 3055
Complaint, July 29, 2008 – Decision, July 29, 2008*

This consent order addresses practices of The TJX Companies, Inc., that failed to provide reasonable and appropriate security for personal information on its computer networks. TJX sells apparel and home fashions in over 2,500 stores worldwide. A breach of its computer networks compromised tens of millions of unique payment cards used by consumers in the United States and Canada. The order requires TJX to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to TJX's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. The order requires that TJX obtain, on a biennial basis for 20 years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that TJX has in place a security program that provides protections that meet or exceed the protections required by the order, and that its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information is protected. TJX is required to retain documents relating to its compliance with the order; to disseminate the order to principals, officers, directors, and managers having responsibilities relating to the subject matter of the order; to notify the Commission of changes in corporate status; and to file compliance reports with the Commission.

Participants

For the *Commission*: *Molly Crawford, Jessica Rich, Alain Sheer, and Joel Winston.*

For the *Respondents*: *Lisa J. Sotto, Hunton & Williams, and Mit Spears, Ropes & Gray LLP.*

Complaint

COMPLAINT

The Federal Trade Commission, having reason to believe that The TJX Companies, Inc. (“respondent”) has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent The TJX Companies, Inc. is a Delaware corporation with its principal office or place of business at 770 Cochituate Road, Framingham, Massachusetts, 01701.

2. The acts and practices of respondent as alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

3. Respondent is an off-price retailer selling apparel and home fashions in over 2,500 stores worldwide, including, but not limited to, T.J. Maxx, Marshalls, A.J. Wright, Bob’s Stores, and HomeGoods stores in the United States; Winners and HomeSense in Canada; and T.K.Maxx stores in the United Kingdom, Ireland, and Germany. Consumers may pay for purchases at these stores with credit and debit cards (collectively, “payment cards”), cash, or personal checks.

4. Respondent operates corporate computer networks in the United States (“central corporate network”) and internationally, as well as networks in each store (“in-store networks”). These networks link worldwide corporate headquarters in the United States with each store, and, among other things, are used to process sales transactions and provide wireless access to the networks for wireless devices, such as devices for marking down prices.

5. In selling its products, respondent routinely uses its computer networks to collect personal information from consumers to obtain authorization for payment card purchases,

Complaint

verify personal checks, and process merchandise returned without receipts (“unreceipted returns”). Among other things, it collects: (1) account number, expiration date, and an electronic security code for payment card authorization; (2) bank routing, account, and check numbers and, in some instances, driver’s license number and date of birth for personal check verification; and (3) name, address, and drivers’ license, military, or state identification number (“personal ID numbers”) for unreceipted returns (collectively, “personal information”). This information is particularly sensitive because it can be used to facilitate payment card fraud and other consumer harm.

6. To obtain payment card authorization, respondent formats personal information from the card into an authorization request. It typically transmits authorization requests from in-store networks to designated computers (“card authorization computers”) on the central corporate network, and from there to the banks that issued the cards (“issuing banks”). Respondent receives responses authorizing or declining the purchase from issuing banks over the same networks.

7. Until December 2006, respondent stored authorization requests and personal information obtained to verify checks and process unreceipted returns in clear text on its in-store and corporate networks. At all relevant times, respondent transmitted authorization requests and responses in clear text between and within its in-store and corporate networks.

8. Since at least July 2005, respondent engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for personal information on its networks. In particular, respondent:

- (a) created an unnecessary risk to personal information by storing it on, and transmitting it between and within, in-store and corporate networks in clear text;

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(b) did not use readily available security measures to limit wireless access to its networks, thereby allowing an intruder to connect wirelessly to in-store networks without authorization;

(c) did not require network administrators and other users to use strong passwords or to use different passwords to access different programs, computers, and networks;

(d) failed to use readily available security measures to limit access among computers and the internet, such as by using a firewall to isolate card authorization computers; and

(e) failed to employ sufficient measures to detect and prevent unauthorized access to computer networks or to conduct security investigations, such as by patching or updating anti-virus software or following up on security warnings and intrusion alerts.

9. Between July 2005 and November 2005, an intruder connected to respondent's networks without authorization, installed hacker tools, found personal information stored in clear text, and downloaded it over the internet to remote computers. Further, between May and December 2006, an intruder periodically intercepted payment card authorization requests in transit from in-store networks to the central corporate network, stored the information in files on the network, and transmitted the files over the internet to remote computers. After learning of the breach, respondent took steps to prevent further unauthorized access and to notify law enforcement and affected consumers.

10. In January 2007, respondent issued a press release stating that payment card and other personal information had been stolen from its computer networks by an intruder. In February 2007, respondent issued another press release stating that additional personal information may have been stolen from stores located in the United States and Canada as early as July 2005.

Complaint

11. The breach compromised tens of millions of unique payment cards used by consumers in the United States and Canada. To date, issuing banks have claimed tens of millions of dollars in fraudulent charges on some of these accounts. Issuing banks also have cancelled and re-issued millions of payment cards, and consumers holding these cards were unable to use them to access their credit and bank accounts until they received the replacement cards. In addition, the breach compromised the personal information of approximately 455,000 consumers who had made un-receipted merchandise returns. This personal information included personal ID numbers, which in some instances were also consumers' Social Security numbers. Further, some consumers have obtained or will have to obtain new personal ID numbers, such as new drivers' licenses.

12. As described in Paragraphs 8 through 11, respondent's failure to employ reasonable and appropriate security measures to protect personal information caused or is likely to cause substantial injury to consumers that is not offset by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers. This practice was and is an unfair act or practice.

13. The acts and practices of respondent as alleged in this complaint constitute unfair acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this twenty-ninth day of July, 2008, has issued this complaint against respondent.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Respondent named in the caption hereof, and the Respondent having been furnished thereafter with a copy of a draft of Complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued, would charge the Respondent with violation of the Federal Trade Commission Act; and

The Respondent and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the Respondent of all the jurisdictional facts set forth in the aforesaid draft complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by the Respondent that the law has been violated as alleged in such complaint, or that any of the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the Respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent The TJX Companies, Inc. is a Delaware corporation with its principal office or place of business at 770 Cochituate Road, Framingham, Massachusetts, 01701.

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2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondent, and the proceeding is in the public interest.

ORDER**DEFINITIONS**

For purposes of this Order, the following definitions shall apply:

1. “Personal information” shall mean individually identifiable information from or about an individual consumer including, but not limited to: (a) a first and last name; (b) a home or other physical address, including street name and name of city or town; (c) an email address or other online contact information, such as an instant messaging user identifier or a screen name, that reveals an individual’s email address; (d) a telephone number; (e) a Social Security number; (f) credit or debit card information, including card number, expiration date, and data stored on the magnetic strip of a credit or debit card; (g) checking account information, including the ABA routing number, account number, and check number; (h) a driver’s license, military, or state identification number; (i) a persistent identifier, such as a customer number held in a “cookie” or processor serial number, that is combined with other available data that identifies an individual consumer; or (j) any information that is combined with any of (a) through (i) above.
2. Unless otherwise specified, “respondent” shall mean The TJX Companies, Inc., and its successors and assigns, officers, agents, representatives, and employees.
3. “Commerce” shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

Decision and Order

I.

IT IS ORDERED that respondent, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product or service, in or affecting commerce, shall, no later than the date of service of this order, establish and implement, and thereafter maintain, a comprehensive information security program that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. Such program, the content and implementation of which must be fully documented in writing, shall contain administrative, technical, and physical safeguards appropriate to respondent's size and complexity, the nature and scope of respondent's activities, and the sensitivity of the personal information collected from or about consumers, including:

- A. the designation of an employee or employees to coordinate and be accountable for the information security program.
- B. the identification of material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assessment of the sufficiency of any safeguards in place to control these risks. At a minimum, this risk assessment should include consideration of risks in each area of relevant operation, including, but not limited to: (1) employee training and management; (2) information systems, including network and software design, information processing, storage, transmission, and disposal; and (3) prevention, detection, and response to attacks, intrusions, or other systems failures.
- C. the design and implementation of reasonable safeguards to control the risks identified through risk assessment and

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regular testing or monitoring of the effectiveness of the safeguards' key controls, systems, and procedures.

- D. the development and use of reasonable steps to select and retain service providers capable of appropriately safeguarding personal information they receive from respondent, and requiring service providers by contract to implement and maintain appropriate safeguards.
- E. the evaluation and adjustment of respondent's information security program in light of the results of the testing and monitoring required by sub-Part C, any material changes to respondent's operations or business arrangements, or any other circumstances that respondent knows or has reason to know may have a material impact on the effectiveness of its information security program.

II.

IT IS FURTHER ORDERED that, in connection with its compliance with Part I of this order, respondent shall obtain initial and biennial assessments and reports ("Assessments") from a qualified, objective, independent third-party professional, who uses procedures and standards generally accepted in the profession. The reporting period for the Assessments shall cover: (1) the first one hundred and eighty (180) days after service of the order for the initial Assessment, and (2) each two (2) year period thereafter for twenty (20) years after service of the order for the biennial Assessments. Each Assessment shall:

- A. set forth the specific administrative, technical, and physical safeguards that respondent has implemented and maintained during the reporting period;
- B. explain how such safeguards are appropriate to respondent's size and complexity, the nature and scope of

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respondent's activities, and the sensitivity of the personal information collected from or about consumers;

- C. explain how the safeguards that have been implemented meet or exceed the protections required by the Part I of this order; and
- D. certify that respondent's security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of personal information is protected and has so operated throughout the reporting period.

Each Assessment shall be prepared and completed within sixty (60) days after the end of the reporting period to which the Assessment applies by a person qualified as a Certified Information System Security Professional (CISSP) or as a Certified Information Systems Auditor (CISA); a person holding Global Information Assurance Certification (GIAC) from the SysAdmin, Audit, Network, Security (SANS) Institute; or a similarly qualified person or organization approved by the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

Respondent shall provide the initial Assessment to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, within ten (10) days after the Assessment has been prepared. All subsequent biennial Assessments shall be retained by respondent until the order is terminated and provided to the Associate Director of Enforcement within ten (10) days of request.

III.

IT IS FURTHER ORDERED that respondent shall maintain, and upon request make available to the Federal Trade Commission for inspection and copying, a print or electronic copy

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of each document relating to compliance, including but not limited to:

- A. for a period of five (5) years: any documents, whether prepared by or on behalf of respondent, that contradict, qualify, or call into question respondent's compliance with this order; and
- B. for a period of three (3) years after the date of preparation of each Assessment required under Part II of this order, all materials relied upon to prepare the Assessment, whether prepared by or on behalf of the respondent, including but not limited to all plans, reports, studies, reviews, audits, audit trails, policies, training materials, and assessments, and any other materials relating to respondent's compliance with Parts I and II of this order, for the compliance period covered by such Assessment.

IV.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers having responsibilities relating to the subject matter of this order. Respondent shall deliver this order to such current personnel within thirty (30) days after service of this order, and to such future personnel within thirty (30) days after the person assumes such position or responsibilities.

V.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices

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subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however,* that with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

VI.

IT IS FURTHER ORDERED that respondent shall, within one hundred eighty (180) days after service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VII.

This order will terminate on July 29, 2028, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however,* that the filing of such a complaint will not affect the duration of:

- A. any Part in this order that terminates in less than twenty (20) years;
- B. this order's application to any respondent that is not named as a defendant in such complaint; and
- C. this order if such complaint is filed after the order has terminated pursuant to this Part.

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Provided, further, that if such complaint is dismissed or a federal court rules that respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission has accepted, subject to final approval, a consent agreement from The TJX Companies, Inc. (“TJX”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement’s proposed order.

According to the Commission’s complaint, TJX is an off-price retailer selling apparel and home fashions in over 2,500 stores worldwide. Consumers may pay for purchases at these stores with credit and debit cards (collectively, “payment cards”), cash, or personal checks. In selling its products, TJX routinely uses its computer networks to collect personal information from

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consumers to obtain authorization for payment card purchases, verify personal checks, and process merchandise returned without receipts (“unreceipted returns”). Among other things, it collects: (1) account number, expiration date, and an electronic security code for payment card authorization; (2) bank routing, account, and check numbers and, in some instances, driver’s license number and date of birth for personal check verification; and (3) name, address, and drivers’ license or military or state identification number (“personal ID numbers”) for unreceipted returns (collectively, “personal information”). This information is particularly sensitive because it can be used to facilitate payment card fraud and other consumer harm.

The Commission’s proposed complaint alleges that since at least July 2005, TJX engaged in a number of practices that, taken together, failed to provide reasonable and appropriate security for personal information on its computer networks. Among other things, TJX: (a) created an unnecessary risk to personal information by storing it on, and transmitting it between and within, in-store and corporate networks in clear text; (b) did not use readily available security measures to limit wireless access to its networks, thereby allowing an intruder to connect wirelessly to in-store networks without authorization; (c) did not require network administrators and other users to use strong passwords or to use different passwords to access different programs, computers, and networks; (d) failed to use readily available security measures to limit access among computers and the internet, such as by using a firewall to isolate card authorization computers; and (e) failed to employ sufficient measures to detect and prevent unauthorized access to computer networks or to conduct security investigations, such as by patching or updating anti-virus software or following up on security warnings and intrusion alerts.

The complaint alleges that the breach compromised tens of millions of payment cards as well as the personal information of approximately 455,000 consumers who had made unreceipted

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returns. The complaint further alleges that issuing banks have claimed tens of millions of dollars in fraudulent charges on some of these payment card accounts. Issuing banks also have cancelled and re-issued millions of payment cards, and according to the complaint, consumers holding these cards were unable to use them to access their credit and bank accounts until they received the replacement cards. Additionally, the complaint alleges that some consumers have obtained or will have to obtain new personal ID numbers, such as new drivers' licenses.

The proposed order applies to personal information TJX collects from or about consumers. It contains provisions designed to prevent TJX from engaging in the future in practices similar to those alleged in the complaint.

Part I of the proposed order requires TJX to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information collected from or about consumers. The security program must contain administrative, technical, and physical safeguards appropriate to TJX's size and complexity, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. Specifically, the order requires TJX to:

- Designate an employee or employees to coordinate and be accountable for the information security program.
- Identify material internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, loss, alteration, destruction, or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- Design and implement reasonable safeguards to control the risks identified through risk assessment, and regularly

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test or monitor the effectiveness of the safeguards' key controls, systems, and procedures.

- Develop and use reasonable steps to retain service providers capable of appropriately safeguarding personal information they receive from respondents, require service providers by contract to implement and maintain appropriate safeguards, and monitor their safeguarding of personal information.
- Evaluate and adjust its information security program in light of the results of the testing and monitoring, any material changes to its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on the effectiveness of their information security program.

Part II of the proposed order requires that TJX obtain, covering the first 180 days after the order is served, and on a biennial basis thereafter for twenty (20) years, an assessment and report from a qualified, objective, independent third-party professional, certifying, among other things, that (1) it has in place a security program that provides protections that meet or exceed the protections required by Part I of the proposed order; and (2) its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of consumers' personal information is protected.

Parts III through VII of the proposed order are reporting and compliance provisions. Part III requires TJX to retain documents relating to its compliance with the order. For most records, the order requires that the documents be retained for a five-year period. For the third-party assessments and supporting documents, TJX must retain the documents for a period of three years after the date that each assessment is prepared. Part IV requires dissemination of the order now and in the future to principals,

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officers, directors, and managers having responsibilities relating to the subject matter of the order. Part V ensures notification to the FTC of changes in corporate status. Part VI mandates that TJX submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VII is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

This is the Commission’s twentieth case to challenge the failure by a company to implement reasonable information security practices. Each of the Commission’s cases to date has alleged that a number of security practices, taken together, failed to provide reasonable and appropriate security to prevent unauthorized access to consumers’ information. The practices challenged in the cases have included, but are not limited to: (1) creating unnecessary risks to sensitive information by storing it on computer networks without a business need to do so; (2) storing sensitive information on networks in a vulnerable format; (3) failing to use readily available security measures to limit access to a computer network through wireless access points on the network; (4) failing to adequately assess the vulnerability of a web application and computer network to commonly known or reasonably foreseeable attacks; (5) failing to implement simple, low-cost, and readily available defenses to such attacks; (6) failing to use readily available security measures to limit access between computers on a network and between such computers and the internet, and (7) failing to use strong passwords to authenticate (or authorize) users to access programs and databases on computer networks or online.

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

TALX CORPORATIONCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE FEDERAL
TRADE COMMISSION ACT

*Docket C-4228; File No. 061 0209
Complaint, August 6, 2008 – Decision, August 6, 2008*

This consent order addresses TALX Corporation's consummated acquisitions of several of its competitors, which substantially reduced competition in the provision of unemployment compensation management services and verification of income and employment services nationwide. The order prohibits the respondent from enforcing certain restrictions on competition, solicitation, and trade secret disclosure against certain current and former employees who accept employment with its competitors. The order lists and categorizes such employees and limits the number of persons in each category subject to this provision. In addition, the provision will end two years after such person's receipt of the required notice from TALX. The order requires TALX to allow certain customers with long-term contracts to terminate their contracts if those customers outsource their services to a competitor of TALX, and it places an upper limit of \$10 million on the total value of terminated long-term contracts. TALX is also required to transfer certain specified customer file information to former customers, upon request. TALX is barred from entering into agreements that would prevent or discourage any entity from supplying goods or services to any of its competitors. The order requires TALX to notify current and former employees and long-term contract customers of their rights under the order, and to notify customers of their right to cancel contracts that would otherwise be renewed automatically, as well as to post information on websites concerning the rights of employees and customers. The order prohibits TALX from entering into certain agreements and requires that TALX notify the Commission before acquiring or entering into a management contract with a provider of unemployment compensation management services or verification of income and employment services. Additional provisions appoint a monitor/administrator to assist in monitoring the respondent's compliance with the order and require the respondent to comply with certain reporting requirements to the Commission.

Complaint

Participants

For the *Commission*: *Morris A. Bloom, David Conn, Linda Cunningham, Mark Frankena, Sean Hughto, Michael H. Knight, Adam W. Strayer, Christopher T. Taylor, and Robert S. Tovsky.*

For the *Respondent*: *Perry Johnson and Rebecca Nelson, Bryan Cave.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that respondent TALX Corporation (“TALX”), now a wholly-owned subsidiary of Equifax, Inc. (“Equifax”), has violated and is violating Section 7 of the Clayton Act, and that TALX has violated and is violating Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

I. Nature of the Case

1. This complaint concerns the acquisitions consummated by TALX of James E. Frick Inc., Unemployment Compensation Business Services Division of Gates, McDonald & Company, Johnson & Associates, L.L.C., substantially all of the assets of the Unemployment Compensation Management (“UCM”) and small employment verification businesses of Sheakley-Uniservice, Inc., UI Advantage, Jon-Jay Associates, Inc., and the unemployment tax management business of Employers Unity, Inc. This series of acquisitions occurred between March 2002 and December 2005.

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II. Respondent TALX, Inc.

2. Respondent TALX was acquired by Equifax on or about May 15, 2007. TALX is a wholly-owned subsidiary of Equifax. Equifax is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Georgia, with its office and principal place of business located at 1550 Peachtree Street, N.W., Atlanta, Georgia, 30309. Prior to May 15, 2007, respondent TALX operated as a corporation organized, existing, and doing business under and by virtue of the laws of the State of Missouri with its principal place of business located at 11432 Lackland Drive, St. Louis, Missouri 63146.

3. TALX provides, and at all times relevant herein has provided Verification of Income and Employment (“VOIE”) nationwide. TALX has provided UCM services beginning on or about March 27, 2002, nationwide. VOIE services are provided under the name The Work Number, and UCM services are provided by UC eXpress. TALX had overall revenue of about \$270 million in fiscal year 2007, which ended March 31, 2007.

4. TALX is, and at all times relevant herein has been, engaged in commerce, or in activities affecting commerce within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

III. The Acquisitions

5. On or about March 27, 2002, TALX acquired James E. Frick, Inc. (“Frick”), of St. Louis, Missouri, and the unemployment cost business management business of Gates McDonald & Company, a subsidiary of Nationwide Mutual Insurance Company, headquartered in Columbus, Ohio. Frick provided both UCM and employment verification services. The acquisition of the unemployment compensation management business of Gates McDonald enabled TALX to acquire an additional UCM services business. TALX did not operate in the

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UCM business until it acquired both Frick and Gates McDonald for a price of about \$125 million in cash. Prior to the acquisitions described in this paragraph, TALX operated as the nation's leading provider of out-sourced employer verification services through its provision of VOIE services.

6. On or about June 30, 2003, TALX acquired Johnson & Associates, L.L.C., an Omaha, Nebraska based company, that specialized in providing UCM and employment tax credit administration services for a price of about \$1.5 million.

7. On or about March 31, 2004, TALX acquired substantially all of the assets of the UCM and small employment verification businesses of Sheakley-Uniservice, Inc., based in Cincinnati, Ohio, for a price of about \$39 million.

8. On or about October 25, 2004, TALX acquired TBT Enterprises, Inc., based in Gaithersburg, Maryland, and its sister corporation, UI Advantage, Inc., a start-up UCM company for a price of about \$9 million.

9. On or about April 20, 2005, TALX acquired Jon-Jay Associates, Inc., a company headquartered in Boston, Massachusetts, that specialized in providing UCM services and a smaller employment verification service, for a price of about \$24 million.

10. On or about November 1, 2005, TALX acquired the unemployment tax management business of Employers Unity, Inc., headquartered in Arvada, Colorado, for a price of about \$32 million. The unemployment tax management business of Employers Unity, Inc., included both UCM services and employment verification.

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IV. TALX Alliances

11. TALX has alliance partners. Its alliance partners include Automated Data Processing, Inc. (“ADP”), Convergys, Inc. (“Convergys”), and Ceridian, Inc. (Ceridian). The main business of TALX’s alliance partners is to provide data processing, human resources, and other employment services to their customers. ADP, Convergys, and Ceridian also contract to provide UCM services to their customers. The alliance partners have agreements with TALX to out-source or sub-contract to TALX some or all of the UCM services component of their customers.

12. The largest outsource alliance partner of TALX is ADP. By terms of the ADP/TALX Agreement of June 27, 2001, ADP may out-source UCM services of its clients with more than 1,000 employees to TALX, out-source those clients to another UCM service provider, or provide UCM services in-house.

V. The Relevant Markets

13. The relevant lines of commerce (product market) in which to analyze the effects of the consummated acquisitions and agreement are:

(a) the provision of out-sourced UCM services for large multistate employers who receive unemployment claims in many states or nationwide; and

(b) the provision of out-sourced employment verification services known as VOIE.

14. The provision of out-sourced “UCM Services” and “Unemployment Compensation Management Services” consists of the management, administration, or processing, on behalf of an employer, of unemployment compensation claims filed with a State or Territory.

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15. The provision of outsourced employment verification services, known as VOIE Services and Verification Of Income And Employment Services, consists of the provision of employment and income verifications including, but not limited to, the collection, maintenance, or dissemination of payroll data and other data relating to employment.

16. The relevant geographic area (geographic market) in which to analyze the effects of the consummated acquisitions and agreement in each of the relevant lines of commerce is the United States as a whole.

VI. Market Structure and Concentration

17. The relevant markets (relevant lines of commerce) are highly concentrated, and the consummated acquisitions increased concentration substantially, whether concentration is measured by the Herfindahl-Hirschman Index (“HHI”), or the number of competitively significant firms remaining in the market.

VII. Entry

18. Entry into the relevant markets (relevant lines of commerce) would not be timely, likely or sufficient in magnitude, character, and scope to counteract anticompetitive effects of the Acquisitions.

19. Entry into the market for the provision of out-sourced UCM services to large multistate employers is difficult and slow. The sales process for each such client can last months, and in many cases years. The market is mature in that most such employers interested in outsourcing UCM management have already done so. Large employers are often reluctant to trust their UCM work to small providers without established track records for the efficient and competent administration of large claim volumes.

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20. Entry and expansion in the provision of out-sourced UCM services to large multistate employers is made more difficult by long term customer contracts and by non-compete and non-solicitation agreements with current and former employees. TALX and the acquired UCM companies have entered into numerous three- and five-year customer contracts. Such long-term contracts have drastically reduced the number of potential clients available for would-be competitors to enter or expand in the near term. The non-compete and non-solicitation agreements with employees reduce the number of experienced and talented employees available to be hired by would-be competitors to enter or expand in the near term.

21. Entry or expansion into out-sourced employment verification services is difficult and expansion is typically slow. Effective entrants must first develop complex software to automate the process. Entrants must then build a reputation for reliability and security so as to attract and significant numbers of employer and verifier customers.

VIII. Anticompetitive Effects

22. The acquisitions by TALX of James E. Frick, Inc. and the UCM business of Gates McDonald & Company eliminated direct and actual competition between Frick and Gates McDonald for the provision of outsourced UCM services. The acquisitions by TALX of Johnson Associates, LLC, the UCM assets of Sheakley-Uniservice, Inc., UI Advantage, Inc, Jon-Jay Associates, Inc., and Employers Unity, Inc., eliminated direct and actual competition between TALX and each of the enumerated acquired firms or businesses in the provision of outsourced UCM services.

23. The acquisitions by TALX of the employment verification businesses of James E. Frick, Inc., Sheakley-Uniservice, Inc, Jon-Jay Associates, Inc., and Employers Unity, Inc., eliminated direct and actual competition in the provision of employer verification services.

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24. The acquisitions by TALX of its competitors have enhanced its ability to increase prices unilaterally and enhanced its ability to decrease the quality of services provided in each of the relevant lines of commerce.

IX. Violations Charged

25. The Acquisitions described in Paragraphs 5 through 10 constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

26. The Acquisitions described in Paragraphs 5 through 10 constitute a violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45 because TALX has engaged in unfair methods of competition in or affecting commerce.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this sixth day of August, 2008, issues its complaint against said Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of TALX Corporation (hereafter referred to as “Respondent”), now a wholly-owned subsidiary of Equifax Inc. (“Equifax”), including the acquisitions by Respondent of James E. Frick Inc.; the Unemployment Compensation Business Services Division of

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Gates, McDonald & Company; Johnson & Associates, Inc.; substantially all of the assets of the unemployment compensation management and small employment verification businesses of Sheakley-Uniservice, Inc., UI Advantage, and Jon-Jay Associates, Inc.; and the unemployment tax management business of Employers Unity, Inc.; and

Respondent and Equifax having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent and Equifax, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders (“Consent Agreement”), containing an admission by Respondent and Equifax of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent or Equifax that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from interested persons pursuant to section 2.34 of its Rules, and having modified the Decision and Order in certain respects, now in further conformity

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with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent TALX Corporation is a corporation organized, existing and doing business under and by virtue of the laws of Missouri with its office and principal place of business located at 11432 Lackland Road, St. Louis, Missouri 63146.

2. Equifax Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia with its office and principal place of business located at 1550 Peachtree Street, N.W. Atlanta, Georgia 30309.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER**I.**

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. “TALX” means:

1. TALX Corporation, and all joint ventures, subsidiaries, divisions, groups, and affiliates controlled by TALX Corporation,
2. Equifax Inc. and all joint ventures, subsidiaries, divisions, groups, and affiliates controlled by Equifax Inc., and

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3. the respective directors, officers, employees, agents, representatives, successors, and assigns of TALX Corporation and of Equifax Inc., and of each joint venture, subsidiary, division, group, and affiliate controlled by TALX Corporation or Equifax Inc.
- B. “Commission” means the Federal Trade Commission.
- C. “Acquired Entities” mean:
1. the following businesses and assets (“Acquired Businesses And Assets”):
 - a. James E. Frick Inc.,
 - b. all businesses and assets acquired, during the calendar year 2002, by TALX Corporation from Gates, McDonald & Company,
 - c. Johnson & Associates, Inc.,
 - d. all businesses and assets acquired, during the calendar year 2004, by TALX Corporation from Sheakley-Uniservice. Inc.,
 - e. all businesses and assets acquired, during the calendar year 2004, by TALX Corporation from UI Advantage,
 - f. all businesses and assets acquired, during the calendar year 2005, by TALX Corporation from Jon-Jay Associates, Inc., and
 - g. all businesses and assets acquired, during the calendar year 2005, by TALX Corporation from Employers Unity, Inc.;

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2. the joint ventures, subsidiaries, divisions, groups and affiliates controlled by the Acquired Businesses And Assets; and
 3. the successors and assigns of the Acquired Businesses And Assets, and the joint ventures, subsidiaries, divisions, groups and affiliates they control.
- D. “ADP” means ADP, Inc., and the joint ventures, subsidiaries, divisions, groups and affiliates controlled by ADP, Inc.
- E. “ADP/TALX Agreement Of June 27, 2001” means the agreement entitled “Services Agreement Between ADP, Inc. and the Frick Company for UCM Services” and dated June 27, 2001, (“Primary Agreement”) as modified by:
1. the addendum entitled “Addendum to Services Agreement Between ADP, Inc. and the Frick Company” and dated February 21, 2003 (“Addendum To The Primary Agreement”),
 2. the amendment entitled “Amendment No. 2 to Services Agreement” and dated January 1, 2006 (“Amendment To The Primary Agreement”), and
 3. the amended agreement entitled “Amended and Restated Service Agreement” and dated September 13, 2007 (“Restated Agreement”)

Provided, however, that “ADP/TALX Agreement Of June 27, 2001” does not mean:

- (i) any change to the Primary Agreement other than the Addendum To The Primary Agreement, the Amendment To The Primary Agreement, and the Restated Agreement;

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- (ii) any change to the Addendum To The Primary Agreement, the Amendment To The Primary Agreement, and the Restated Agreement; and
 - (iii) any agreement other than the Primary Agreement, the Addendum To The Primary Agreement, the Amendment To The Primary Agreement, and the Restated Agreement.
- F. “Affiliated Entity” means, with respect to a Long Term Contract Customer:
1. the Ultimate Parent Entity of the Long Term Contract Customer, and
 2. each joint venture, subsidiary, division, group, and affiliate controlled, directly or indirectly, by such Ultimate Parent Entity.
- G. “Annualized Value Of Terminated Long Term Contract” means the amount accruing under a Long Term Contract for UCM Services rendered under the contract during the four (4) most recent Billing Quarters preceding the date on which the contract is terminated. For example, if a Long Term Contract is terminated on June 15, 2008, and if the term “Billing Quarter” is defined for purpose of this Long Term Contract as Calendar Quarter, then the Annualized Value Of Terminated Long Term Contract is the amount accruing as base fees and any additional fees or charges under the contract for UCM Services rendered from April 1, 2007, through March 31, 2008.

Provided, however, that, if less than four (4) full Billing Quarters of service have been rendered under a Long Term Contract on the date the contract is terminated, then “Annualized Value Of Terminated Long Term Contract” means the value of the amount accruing for UCM Services

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rendered under the contract during the Billing Quarters fully covered by the contract, divided by the number of such Billing Quarters, and multiplied by four. For example, if the term of a Long Term Contract began on May 10, 2007, if the contract is terminated on May 15, 2008, if the amount of revenue accruing under the contract for UCM Services rendered from July 1, 2007, through March 31, 2008, is sixty thousand dollars (\$60,000), and if the term "Billing Quarter" is defined for purpose of this Long Term Contract as Calendar Quarter, then the Annualized Value Of Terminated Long Term Contract is sixty thousand dollars (\$60,000) divided by three (3) and multiplied by four (4), or eighty thousand dollars (\$80,000).

Provided, further, however, that, if less than one (1) full Billing Quarter of service has been rendered under a Long Term Contract on the date the contract is terminated, then "Annualized Value Of Terminated Long Term Contract" means the amount that has accrued for UCM Services rendered during the effective term of the contract, divided by the number of calendar days, whether full or partial, on which UCM Services were rendered under the contract, and multiplied by three hundred sixty five (365). For example, if the term of a Long Term Contract began at 6:00 p.m. on January 15, 2008, if the contract is terminated at 8:00 a.m. on April 20, 2008, if the term "Billing Quarter" is defined for purpose of this Long Term Contract as Calendar Quarter, and if the total amount accruing under the contract during its effective term is nine thousand seven hundred dollars (\$9,700), then the Annualized Value Of Terminated Long Term Contract is nine thousand seven hundred dollars (\$9,700) divided by ninety seven (97), and multiplied by three hundred sixty five (365), or thirty six thousand five hundred dollars (\$36,500).

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- H. “Appendix A Notice To Relevant Person” means the form of notice attached as Appendix A to the Order.
- I. “Appendix B Notice To Long Term Contract Customer” means the form of notice attached as Appendix B to the Order.
- J. “Appendix C Notice To Negative Option Contract Customer” means the form of notice attached as Appendix C to the Order.
- K. “Appendix D Web Page” means the form of Internet site attached as Appendix D to the Order.
- L. “Appendix E Web Page” means the form of Internet site attached as Appendix E to the Order.
- M. “Appendix F Employee List” means the document attached as Appendix F to the Order.
- N. “Billing Quarter” means Calendar Quarter.

Provided, however, that, if a Long Term Contract Customer is billed four times a year, and no more than four times a year, pursuant to the terms of a Long Term Contract, then, with respect to such Long Term Contract, the term “Billing Quarter” means each of the four billing periods per year during which services covered by a bill are rendered.

- O. “Calendar Quarter” means each of the following periods of time:
 - 1. January 1 through March 31,
 - 2. April 1 through June 30,

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3. July 1 through September 30, and
4. October 1 through December 31.

P. “Designated UCM Services Provider” means:

1. Barnett Associates; Corporate Cost Control, Inc.; Ernst & Young; Employers Edge LLC; PeopleSystems (a.k.a. National Employers Council, Inc.); Thomas & Thorngren, Inc.; UC Advantage, Inc.; U.C. Consultants; and
2. any Person that:
 - a. is neither TALX nor ADP,
 - b. is not a Person that has, at any time since January 1, 2008, directly or indirectly through a subsidiary or joint venture, subcontracted to TALX the responsibility for performing any services listed in Paragraphs I.P.2.c.(1)., I.P.2.c.(2)., I.P.2.c.(3)., I.P.2.c.(4)., or I.P.2.c.(5). of the Order, or any joint venture, subsidiary, division, group, or affiliate controlled by such Person, and
 - c. provides, within the jurisdiction of more than one State or Territory, the following UCM Services to a Major Multi-State Employer that does not have the same Ultimate Parent Entity as such Person:
 - (1) holding a power of attorney, or other authorization, sufficient to act as such Major Multi-State Employer’s qualified agent in dealings with States or Territories Relating To UC Claims,

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- (2) receiving and processing UC Claims on behalf of such Major Multi-State Employer,
 - (3) gathering, organizing, and maintaining information relating to UC Claims filed with respect to such Major Multi-State Employer,
 - (4) evaluating the validity of UC Claims filed with respect to such Major Multi-State Employer, and
 - (5) representing such Major Multi-State Employer in disputing UC Claims.
- Q. “Designated Recipient For Notice” means, with respect to a Long Term Contract Customer that is a party to a Long Term Contract:
1. each natural person, or agent for service of process, to be notified, on behalf of such customer, pursuant to any notice provision of such contract, or
 2. if such contract does not specify any natural person, or agent for service of process, to be notified, on behalf of such customer, pursuant to any notice provision of such contract, then the chief executive officer of such customer.
- R. “Document” means the complete original, or a true, correct, and complete copy, of any written or graphic matter, no matter how produced, recorded, stored, or reproduced, including, but not limited to, matter that is stored electronically.
- S. “Effective Date” means, with respect to a contract or with respect to the amendment or renewal of a contract, the

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earliest date on which any term of a contract, or any amended or renewed term of a contract, goes into effect.

- T. "Former UCM Customer" means:
1. any Person to which TALX has ceased to provide any UCM Service after the date this Order becomes final, and
 2. each joint venture, subsidiary, division, group, or affiliate controlled by such Former UCM Customer.
- U. "Hearing And Appeal Files" means all Documents prepared or collected in preparation for a hearing or appeal Relating To an Open UCM Claim, which may include, but are not limited to, any termination forms, witness statements, signed policy statements, signed handbooks, and written warnings collected in preparation for such hearing or appeal.
- V. "Joint Venture" means a collaboration between TALX and any other Person.
- W. "Long Term Contract" means any agreement:
1. to which TALX or any Acquired Entity is a party,
 2. that provides, in whole or in part, for the sale or provision of UCM Services by TALX or by any Acquired Entity,
 3. that has a term of over one (1) year, and
 4. for which an Effective Date of such agreement, of any amendment to such agreement, or of any renewal of such agreement was on or after November 1, 2005.

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X. “Long Term Contract Customer” means any Person (other than TALX or an Acquired Entity) that is a party to a Long Term Contract:

1. for which an Effective Date of such contract, of any amendment to such contract, or of any renewal of such contract was on or before the date this Order became final, and
2. that had one or more provisions that were in effect on the date this Order became final.

Provided, however, that if after the date this Order becomes final, TALX provides UCM Services to any Long Term Contract Customer pursuant to a contract between TALX and an Affiliated Entity of such Long Term Contract Customer, then such Affiliated Entity will also be deemed to be a Long Term Contract Customer.

Y. “Major Multi-State Employer” means any Person that:

1. employs at least three thousand five hundred (3,500) employees, and
2. does business, and has employees based, within the jurisdiction of more than one State or Territory.

Z. “Monitor/Administrator” means:

1. Erwin O. Switzer, or
2. any Person appointed by the Commission pursuant to Paragraph IX.C. of the Order.

Provided, however, that “Monitor/Administrator” does not mean any Person who has been replaced pursuant to Paragraph IX.C. or Paragraph IX.F. of the Order.

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- AA. “Negative Option Contract” means any contract:
1. to which TALX or any Acquired Entity is a party,
 2. that provides, in whole or in part, for the sale or provision of UCM Services by TALX or by any Acquired Entity, and
 3. that provides that the failure of any party to the contract to exercise a specified right to terminate the contract shall constitute such party’s assent to the automatic renewal of the contract for an additional term.
- BB. “Negative Option Contract Customer” means any party to a Negative Option Contract, other than TALX or an Acquired Entity.
- CC. “Negative Option Notice Date” means the last date by which a Negative Option Contract Customer must provide notice to TALX in order to avoid automatic renewal of its Negative Option Contract.
- DD. “Noncompetition Restriction” means any contractual provision that restricts the ability of a Person to:
1. accept employment with a UCM Services Provider, or
 2. otherwise participate, directly or indirectly, in selling or providing UCM Services to any Person.
- EE. “Non-In-House UCM Services Provider” means, with respect to the sale of UCM Services from a UCM Services Provider to a Long Term Contract Customer, a UCM Services Provider that has a different Ultimate Parent Entity than such Long Term Contract Customer.

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FF. “Nonsolicitation Restriction” means any contractual provision that restricts the ability of a Person to solicit, or otherwise contact, a potential purchaser or recipient of UCM Services.

GG. “Open UC Claim” means any UC Claim that is pending with a State or Territory or that is otherwise subject to further action by, or a proceeding with, a State or Territory.

HH. “Other Relevant Current Person” means any Person that:

1. on February 28, 2008, was employed by TALX Corporation,
2. on October 1, 2007, or on February 28, 2008, was employed by TALX Corporation as a customer relationship manager, account manager, unemployment insurance consultant, hearing representative, or tax consultant,
3. is not a Relevant Current Person, and
4. is not Debra Bretz.

II. “Person” means any natural person, partnership, corporation, association, trust, joint venture, government, government agency, or other business or legal entity.

JJ. “Received Delivery” means a delivery in which the sender acquires and retains a delivery receipt signed by the recipient or by an agent of the recipient.

KK. “Relating To” and “Relate To” mean pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to.

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LL. “Relevant Current Person” means any Person who:

1. is listed in the Appendix F Employee List, and
2. is not a Relevant Past Person.

MM. “Relevant Past Person” means any Person who:

1. on or between February 28, 2005, and the date the Order became final, participated, directly or indirectly, in providing UCM Services while acting in the capacity of a director, officer, or employee of TALX or of an Acquired Entity, and
2. at no time after the date this Order became final, has acted in the capacity of a director, officer, or employee of TALX or of an Acquired Entity.

NN. “Relevant Person” means:

1. Relevant Past Person,
2. Relevant Current Person, and
3. Other Relevant Current Person.

OO. “Relevant Information” means any information Relating To the sale or production of UCM Services.

Provided, however, that “Relevant Information” does not mean information about TALX’s projected or expected profit margins, TALX’s projected or expected sales targets for its overall unemployment compensation management business operations, or TALX’s product development activities.

PP. “Relevant Restriction” means:

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1. Noncompetition Restriction,
2. Nonsolicitation Restriction, and
3. Restriction On The Use Of Relevant Information In Memory.

QQ. “Remaining Term Of The Contract” means, with respect to a Long Term Contract that has been terminated prior to the end of its full term:

1. the calendar day following the date on which such Long Term Contract was terminated, and
2. each subsequent calendar day until, and including, the last date on which UCM Services were to have been provided pursuant to the terms of such Long Term Contract.

RR. “Relevant Value Of Terminated Long Term Contract” means, with respect to a terminated Long Term Contract:

1. Annualized Value Of Terminated Long Term Contract, if the Remaining Term Of The Contract is greater than, or equal to, three hundred sixty five (365) days; or
2. Residual Value Of Terminated Long Term Contract, if the Remaining Term Of The Contract is less than three hundred sixty five (365) days.

SS. “Residual Value Of Terminated Long Term Contract” means, with respect to a terminated Long Term Contract, the Annualized Value Of Terminated Long Term Contract times the number of calendar days in the Remaining Term Of The Contract divided by three hundred sixty five (365).

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TT. “Restriction On The Use Of Relevant Information In Memory” means any contractual provision that restricts the ability of a natural person to use Relevant Information:

1. obtained by such natural person as a director, officer, or employee of TALX or of an Acquired Entity, and
2. retained by such person only in memory after leaving such position with TALX or with such Acquired Entity.

UU. “State” means the government of one of the fifty (50) states of the United States.

VV. “TALX Address” means the following address:

Office of the Chief Executive Officer
TALX Corporation
11432 Lackland Avenue
St. Louis, MO 63146

WW. “Territory” means the government of the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, American Samoa, or the Northern Mariana Islands.

XX. “Total Of Relevant Values Of Terminated Long Term Contracts” means the sum total of Relevant Values Of Terminated Long Term Contract for all Long Term Contracts:

1. that have been terminated both:
 - a. in accordance with Paragraph III. of the Order, and
 - b. before the end of the full term of the Long Term Contract; and

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2. for which, after such termination, the Long Term Contract Customer purchases from a Non-In-House UCM Services Provider the UCM Services previously purchased under the terminated Long Term Contract.

YY. “UC Claim” means any claim for unemployment compensation filed with a State or Territory.

ZZ. “Ultimate Parent Entity” has the same meaning it has under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, and the rules promulgated thereunder, 16 C.F.R. § 801 et seq.

AAA. “UC Tax Rate Notice” means the official notice sent to an employer by a State or Territory informing the employer of its unemployment compensation tax rate.

BBB. “UCM Services” and “Unemployment Compensation Management Services” both mean the management, administration, or processing, on behalf of an employer, of UC Claims, including, but not limited to,

1. receiving and processing UC Claims;
2. acting as an employer’s agent with respect to UC Claims;
3. gathering, organizing, or maintaining information relating to UC Claims;
4. evaluating the validity of UC Claims;
5. disputing UC Claims;
6. representing an employer in an UC Claim hearing or appeal, and in any other dealing with a State or Territory in a matter Relating To UC Claims;

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7. developing procedures to reduce an employer's expenditures on UC Claims;
8. determining whether an unemployment compensation tax rate is correct and disputing errors in such tax rates;
9. performing audits of unemployment compensation benefit charges, and seeking refunds or credits for overpayments;
10. generating reports with regard to UC Claim activity and trends, with regard to the results of efforts to change such activity and trends; and
11. counseling and training an employer or an employer's personnel with regard to UC Claim matters.

CCC. "UCM Services Provider" means any Person that sells or provides any Unemployment Compensation Management Services.

DDD. "VOIE Services" and "Verification Of Income And Employment Services" both mean the provision of employment and income verifications, including, but not limited to, the collection, maintenance, or dissemination of payroll data and other data relating to employment.

EEE. "VOIE Services Provider" means any Person that sells or provides Verification Of Income And Employment Services.

II.

IT IS FURTHER ORDERED that:

A. TALX shall not:

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1. enforce any Relevant Restriction against any Relevant Past Person, or against any Other Relevant Current Person, during the time that such Person is employed by a Designated UCM Services Provider, or
 2. seek damages for the violation by any Relevant Past Person, or by any Other Relevant Current Person, of any Relevant Restriction if such violation occurred during the time that such Person was employed by a Designated UCM Services Provider.
- B. TALX shall not enforce any Relevant Restriction against any Relevant Current Person during the time that such Person is employed by any Designated UCM Services Provider, and shall not seek damages for the violation by any Relevant Current Person of any Relevant Restriction if such violation occurred during the time that such Person was employed by any Designated UCM Services Provider:
1. if such Relevant Current Person:
 - a. submits to the Monitor/Administrator, after the date this Order becomes final and no more than two (2) years after the date that such Relevant Current Person is given notice in accordance with Paragraph VI.A. of the Order, a notice that he or she is terminating his or her employment with TALX and is accepting employment with a Designated UCM Services Provider (“Notice Of New Employment”), and
 - b. subsequently terminates his or her employment with TALX and accepts employment with such Designated Services Provider, or
 2. if such Relevant Current Person:

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- a. is no longer employed by TALX as the result of having his or her employment terminated involuntarily by TALX,
- b. submits to the Monitor/Administrator, after the date this Order becomes final and no more than two (2) years after the date that such Relevant Current Person is given notice in accordance with Paragraph VI.A. of the Order, a Notice Of New Employment stating that he or she is accepting employment with a Designated UCM Services Provider, and
- c. subsequently accepts employment with such Designated Services Provider.

Provided, however, that, if the Person named as a Designated UCM Services Provider in a Notice Of New Employment (“New Employer”) is not listed in Paragraph I.P.1. of the Order, then the submission of such notice shall not comply with Paragraphs II.B.1.a. and II.B.2.b. of the Order, and the Monitor/Administrator shall not forward such notice to TALX, unless the Relevant Current Person submitting such notice also submits to the Monitor/Administrator a signed letter from such New Employer stating that the New Employer qualifies as a Designated UCM Services Provider pursuant to Paragraph I.P.2. of the Order. If and when the Monitor/Administrator forwards such Notice Of New Employment to TALX, the Monitor/Administrator shall attach the letter from the New Employer to such notice.

Provided, further, however, that, if TALX sends the notice required under Paragraph VI.A. of the Order by a form of Receipted Delivery that generates reliable documentation that the notice was in fact sent and if

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TALX retains such documentation for a period of three (3) years after the date that it sends such notice, then for purposes of Paragraph II.B., a Relevant Current Person will be deemed to have been given notice pursuant to Paragraph VI.A. on the earlier of the following dates:

- (i) the date that such Relevant Current Person actually receives such notice, or
- (ii) five (5) business days after TALX deposits the notice to any such Relevant Current Person in the United States mail or with a private courier, shipping, or messenger company.

Provided, further, however, that this Paragraph II.B. shall not apply to such Relevant Current Person if the Monitor/Administrator has not forwarded to TALX the Notice Of New Employment that such Relevant Current Person submitted to the Monitor/Administrator in accordance with Paragraphs II.B.1.a. or II.B.2.b. of the Order, and if:

- (i) such Relevant Current Person is identified in the Appendix F Employee List as a “Client Relationship Manager,” and he or she submits his or her Notice Of New Employment after the Monitor/Administrator has certified to the Commission that ten (10) Relevant Current Persons who are each identified as “Client Relationship Managers” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order became final;
- (ii) such Relevant Current Person is identified in the Appendix F Employee List as an “Account

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Manager,” and he or she submits his or her Notice Of New Employment after the Monitor/Administrator has certified to the Commission that four (4) Relevant Current Persons who are each identified as “Account Managers” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order became final;

- (iii) such Relevant Current Person is identified in the Appendix F Employee List as an “Unemployment Insurance Consultant,” and he or she submits his or her Notice Of New Employment after the Monitor/Administrator has certified to the Commission that twenty three (23) Relevant Current Persons who are each identified as “Unemployment Insurance Consultants” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order became final;
- (iv) such Relevant Current Person is identified in the Appendix F Employee List as a “Hearing Representative,” and he or she submits his or her Notice Of New Employment after the Monitor/Administrator has certified to the Commission that five (5) Relevant Current Persons who are each identified as “Hearing Representatives” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order became final; or
- (v) such Relevant Current Person is identified in the Appendix F Employee List as a “Tax

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Consultant,”and he or she submits his or her Notice Of New Employment after the Monitor/Administrator has certified to the Commission that four (4) Relevant Current Persons who are each identified as “Tax Consultants” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order became final.

- C. The purpose of Paragraphs II., III., IV., V., and VI. of the Order are to facilitate the entry and expansion of firms in competition with TALX in markets for UCM Services and to remedy the lessening of competition in markets for UCM Services alleged in the Commission’s Complaint.

III.

IT IS FURTHER ORDERED that, if after the date this Order becomes final and no more than three (3) years after the date that a Long Term Contract Customer receives notice in accordance with Paragraph VI.B. of the Order, such Long Term Contract Customer submits a notice to TALX, via Receipted Delivery to the TALX Address, that such customer is terminating a Long Term Contract and will be purchasing or obtaining the UCM Services previously purchased or obtained under such Long Term Contract from a Non-In-House UCM Services Provider (“Notice Of Long Term Contract Termination”), then TALX shall terminate such Long Term Contract on a pro rata basis (i) ninety (90) days after receiving such Notice Of Long Term Contract Termination from the Long Term Contract Customer or (ii) the date specified for termination by the Long Term Contract Customer, whichever is later:

- A. without the payment by such Long Term Contract Customer to TALX of any liquidated damages or other financial penalty for such termination, and

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- B. without any requirement that the Long Term Contract Customer give TALX notice of competing offers or give TALX the opportunity to meet or surpass competing offers; *provided, however*, that nothing in this Paragraph III.B. of the Order shall prevent TALX from offering to meet or surpass competing offers.

Provided, however, that the failure of TALX to give a Long Term Contract Customer the notice required by Paragraph VI.C. of the Order, shall toll, with respect to such customer, the running of the three (3) year time limits set by this Paragraph III. and by Paragraph VI.C. until such time as TALX provides to such customer the notice required by Paragraph VI.C. of the Order.

Provided, further, however, that, if TALX sends the notice required under Paragraph VI.B. of the Order by a form of Receipted Delivery that generates reliable documentation that the notice was in fact sent and if TALX retains such documentation for a period of three (3) years after the date that it sends such notice, then for purposes of Paragraph III. of the Order, a Long Term Contract Customer will be deemed to have received notice pursuant to Paragraph VI.B. on the earlier of the following dates:

- (i) the date that such Long Term Contract Customer actually receives such notice, or
- (ii) five (5) business days after TALX deposits the notice to any such Long Term Contract Customer in the United States mail or with a private courier, shipping, or messenger company.

Provided, further however, that TALX shall not be required to terminate, pursuant to Paragraph III., the Long Term Contract of a Long Term Contract Customer, if such customer's Notice Of Long Term Contract Termination is received by TALX more than two business days after:

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- (i) the calendar day on which Monitor/Administrator certifies to the Commission that the Total Of Relevant Values Of Terminated Long Term Contracts exceeds ten million dollars (\$10,000,000), and
- (ii) the calendar day on which TALX posts notice of such certification on the Appendix E Web Page.

IV.**IT IS FURTHER ORDERED** that:

- A. For a period of five (5) years from the date this Order becomes final and at the request of any Former UCM Customer, TALX shall provide to such Former UCM Customer or to the UCM Services Provider that is providing or will provide UCM Services to such Former UCM Customer:
 - 1. for each Open UC Claim that Relates To the termination of employment with such Former UCM Customer, the following information:
 - a. the name of the claimant,
 - b. the claimant's social security number,
 - c. the State or Territory in which the claim is pending,
 - d. the beginning date of the benefit year,
 - e. the type of UC Claim at issue,
 - f. whether the claim is being protested,

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- g. the State (or Territory) identification number for such Former UCM Customer, and
 - h. and the status or determination of each claim;
2. for each UC Claim that is not an Open UC Claim, that Relates To the termination of employment with such Former UCM Customer, and that was filed no more than three (3) years prior to such request for such information by such Former UCM Customer, the following information:
 - a. the name of the claimant,
 - b. the claimant's social security number,
 - c. the State or Territory in which the claim was pending,
 - d. the beginning date of the benefit year,
 - e. the type of UC Claim at issue,
 - f. whether the claim was protested,
 - g. the State (or Territory) identification number for such Former UCM Customer, and
 - h. the determination of the claim;
3. for each charge or credit made, no more than three (3) years prior to such request for information, against such Former UCM Customer as the result of a UCM Claim that Relates To the termination of employment with such Former UCM Customer, the following information:

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- a. the social security number of the relevant claimant,
 - b. the State or Territory in which the claim was filed,
 - c. the State (or Territory) identification number for such Former UCM Customer,
 - d. the benefit week for which the charge or credit was incurred, and
 - e. the benefit charge amount (or, if applicable, the benefit credit amount);
4. with respect to any UC Tax Rate Notice from a State or Territory that Relates To any unemployment compensation tax rate charged by the State or Territory against such Former UCM Customer within three (3) years of such request for information, or that Relates To the calculation of such unemployment compensation tax rate, the following information:
 - a. the State or Territory,
 - b. the State (or Territory) identification number for such Former UCM Customer,
 - c. the relevant rate year, and
 - d. all other information contained in each such UC Tax Rate Notice; and
 5. with respect to quarterly contribution reports filed with a State or Territory by such Former UCM Customer no more than three (3) years prior to such request for information, the following information from each such report:

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- a. the State or Territory,
 - b. the State (or Territory) identification number for such Former UCM Customer,
 - c. the name of such Former UCM Customer,
 - d. the federal employment identification number for such Former UCM Customer,
 - e. the year and quarter of the report,
 - f. the gross wages,
 - g. the taxable wages, and
 - h. the contribution payment.
- B. Respondent shall be required to provide to a Former UCM Customer, pursuant to Paragraph IV.A. of the Order, only information that is in an electronic database under the control of TALX.
- Provided, however,* that for five (5) years after the date this Order becomes final, TALX shall not discard from the electronic databases under its control any information specified in Paragraph IV.A. of the Order.
- C. If there is no agreement between TALX and a Former UCM Customer that has requested information pursuant to Paragraph IV.A. of the Order on the form in which TALX will provide such information to the Former UCM Customer, then TALX shall provide such information to the Former UCM Customer in the form of Microsoft Excel spreadsheets.

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- D. For a period of five (5) years from the date this Order becomes final, if a Former UCM Customer chooses to transfer from TALX to another UCM Services Provider the responsibility for an Open UCM Claim, then, at the request of such Former UCM Customer, TALX shall provide to such Former UCM Customer, or to any UCM Services Provider it designates, all Hearing And Appeal Files for such Open UCM Claim.

Provided, however, that, with respect to this Paragraph IV.D. of the Order, TALX shall be required only to provide those Hearing And Appeal Files in its possession, and shall not be required to compile or create such Hearing And Appeal Files.

Provided, further, however, that for five (5) years after the date of this Order becomes final, TALX shall not discard any such Hearing And Appeal Files unless and until either:

- (i) the UCM Claim that Relates To such files is no longer an Open UCM Claim, or
 - (ii) copies of such files have been provided to such Former UCM Customer.
- E. TALX shall forward to each Former UCM Customer any notice, letter, or other Document that:
1. TALX receives from a State or Territory, and
 2. is addressed to such Former UCM Customer, or that otherwise is intended for such Former UCM Customer or for a UCM Services Provider providing UCM Services to such Former UCM Customer.

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V.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date this Order becomes final, TALX shall not enter into agreements that would prevent or discourage any Person from selling goods or services to any UCM Services Provider.

Provided, however, that this Paragraph V. does not apply to TALX's contracts of employment with its individual employees.

VI.

IT IS FURTHER ORDERED that:

- A. Within sixty (60) days of the date this Order becomes final, TALX shall send by Receipted Delivery to each Relevant Past Person and to each Relevant Current Person at his or her current home address or current primary business address:
1. an Appendix A Notice To Relevant Person, and
 2. a copy of the Order.

Provided, however, that if, at the time this Order becomes final, TALX does not have any record of the current home or primary business address of a Relevant Past Person, then TALX shall send the Appendix A Notice To Relevant Person and a copy of the Order to the last known home or business address of such Relevant Past Person.

Provided, further, however, that if, at the time this Order becomes final, TALX does not have any record of any home or business address, current or past, of a Relevant Past Person, then TALX shall not be required to send an

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Appendix A Notice To Relevant Person or a copy of the Order to such Relevant Past Person.

- B. Within sixty (60) days of the date this Order becomes final, TALX shall send by Receipted Delivery to each Designated Recipient For Notice for each Long Term Contract Customers:
1. an Appendix B Notice To Long Term Contract Customer, and
 2. a copy of the Order.
- C. Each calendar year, for a period of three (3) years from the date this Order becomes final, TALX shall provide notice to each Long Term Contract Customer by either one of the following two means:
1. On each and every invoice, sent by TALX to such customer with regard to any Long Term Contract:
 - a. include the following three sentences on the first page of the invoice (or, if the invoice is transmitted electronically, within the first two hundred (200) words of the invoice): “You may have a right to cancel this contract on ninety (90) days notice pursuant to an order of the Federal Trade Commission. If you have questions about whether you have such right to cancel, please call [*telephone number of the Monitor/Administrator*] for a confidential consultation. Additional information concerning this right to cancel can be found at <http://www.talx.com/contracts>.”
 - b. begin the first word of the first sentence at the left hand margin of the invoice, and

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- c. print the sentences in type that is at least as large as the largest type, and at least as bold as the boldest type (excepting the TALX trademark or logo), appearing on the first page of the invoice (or, if the invoice is transmitted electronically, within the first two hundred (200) words of the invoice), but that, in no event, is smaller or less bold than Times New Roman Bold 12-Point type; or
 2. By Received Delivery, send an Appendix B Notice To Long Term Contract Customer to each Designated Recipient For Notice for each such customer.
- D. Beginning sixty (60) days after the Order becomes final, and continuing until five (5) years after the date this Order becomes final, TALX shall provide notice to each Negative Option Contract Customer by either one of the following two means:
1. On each and every invoice sent by TALX to such customer with regard to any Negative Option Contract:
 - a. include the following sentence on the first page of the invoice (or, if the invoice is transmitted electronically, within the first two hundred (200) words of the invoice): “Your contract for unemployment compensation services, which expires on [date], will be automatically renewed for an additional [number of years and/or months] unless you exercise your right to cancel this contract on or before [date].”
 - b. begin the first word of such sentence at the left hand margin of the invoice, and
 - c. print such sentence in type that is at least as large as the largest type, and at least as bold as the

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boldest type (excepting the TALX trademark or logo), appearing on the first page of the invoice (or, if the invoice is transmitted electronically, within the first two hundred (200) words of the invoice), but that, in no event, is smaller or less bold than Times New Roman Bold 12-Point type; or

2. At least thirty (30) days, but not more than ninety (90) days, before the Negative Option Notice Date for such customer's Negative Option Contract, send by Receipted Delivery to each such customer an Appendix C Notice To Negative Option Contract Customer; *provided, however*, that if such customer has a Negative Option Notice Date greater than thirty (30) days before the end of the term of the customer's Negative Option Contract, TALX may elect to send the notice specified in this Paragraph VI.D.2. of the Order to such customer less than thirty (30) days before the Negative Option Notice Date, but only if (i) TALX sends such notice to such customer at least sixty (60) days before the end of the term of such Negative Option Contract, (ii) TALX permits such customer to give, on any date up to thirty (30) days prior the end of such contract term, the notice such customer is required to give in order to avoid automatic renewal of such Negative Option Contract, and (iii) the Appendix C Notice To Negative Option Contract Customer sent to such customer specifies a Negative Option Notice Date no earlier than thirty (30) days notice prior to the end of such contract term.

Provided, however, that if TALX fails to give the notice required by this Paragraph VI.D. of the Order with respect to a Negative Option Contract, and if such Negative Option Contract is then renewed automatically for a subsequent term, then, during such subsequent term of the

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contract, TALX shall, at the request of such customer, terminate such contract on a pro rata basis within thirty (30) days of receiving such request:

- (i) without the payment by such Negative Option Customer to TALX of any liquidated damages or other financial penalty for such termination, and
- (ii) without any requirement that such Negative Option Customer give TALX notice of competing offers or give TALX the opportunity to meet or surpass competing offers; *provided, however*, that nothing in this paragraph shall prevent TALX from offering to meet or surpass competing offers.

Provided, further, however, that if, within a calendar year, TALX has provided a Negative Option Contract Customer with the notice required by Paragraph VI.C. of the Order, then TALX need not also provide such customer with any notice required by Paragraph VI.D. of the Order.

- E. Beginning ten (10) days after the date the Order becomes final, and until five (5) years after the date the Order becomes final:
1. post and maintain an Appendix D Web Page at <http://www.talx.com/noncompetes>,
 2. post and maintain an Appendix E Web Page at <http://www.talx.com/contracts>.

VII.

IT IS FURTHER ORDERED that, for a period of five (5) years from the date this Order becomes final:

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- A. TALX shall cease and desist from entering into, attempting to enter into, soliciting, attempting to solicit, adhering to, or attempting to adhere to any agreement with any UCM Services Provider, or with any potential UCM Services Provider, in the United States to allocate or divide markets, customers, contracts, or territories for UCM Services in any part of the United States; *provided, however,* that it shall not, of itself, constitute a violation of this Paragraph VII.A. of the Order for TALX to enter into, attempt to enter into, solicit, attempt to solicit, adhere to, or attempt to adhere to an agreement to allocate or divide markets, customers, contracts, or territories for UCM Services if such agreement is, or would be, reasonably related to a lawful Joint Venture and reasonably necessary to achieve the procompetitive benefit of such Joint Venture; and
- B. TALX shall not enter into, attempt to enter into, solicit, attempt to solicit, adhere to, or attempt to adhere to an agreement with ADP that requires ADP to subcontract the rendering of any UCM Services to TALX if, at the time TALX solicits, enters into, or enforces such agreement, the Person for which such UCM Services will be rendered has not yet entered into an agreement to purchase such UCM Services from ADP.

Provided, however, that adherence to the ADP/TALX Agreement Of June 27, 2001, shall not constitute a violation of this Paragraph VII. of the Order.

Provided, further, however, that nothing in this Paragraph VII. of the Order shall prevent TALX from submitting a quote or an estimate to ADP regarding the costs or fees that TALX would charge to ADP for rendering UCM Services to any specific Person under a subcontract.

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VIII.

IT IS FURTHER ORDERED that for a period of ten (10) years from the date this Order becomes final, TALX shall not, without providing advance written notification to the Commission in the manner described in this paragraph, directly or indirectly:

- A. acquire any assets of or financial interest in any UCM Services Provider or VOIE Services Provider; or
- B. enter into any agreement to participate in the management or operation of a UCM Services Provider or VOIE Services Provider.

Said advance written notification shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) of the Premerger Notification and Report Form under the Hart-Scott-Rodino Premerger Notification Act, Section 7A of the Clayton Act, 15 U.S.C. § 18a, and Rules, 16 C.F.R. § 801-803, Relating To the proposed transaction (hereinafter referred to as “the Notification”), *provided, however*, (i) no filing fee will be required for the Notification, (ii) an original and one copy of the Notification shall be filed only with the Secretary of the Commission and need not be submitted to the United States Department of Justice, and (iii) the Notification is required from TALX and not from any other party to the transaction. TALX shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the “first waiting period”). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), TALX shall not consummate the transaction until thirty days after submitting such additional information or documentary material. Early termination of the waiting periods in this paragraph may be requested and,

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where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification shall not be required by this Paragraph VIII. of the Order for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

IX.

IT IS FURTHER ORDERED that:

- A. Erwin O. Switzer shall be appointed Monitor/Administrator to assure that TALX complies with all of its obligations and performs all of its responsibilities as required by this Order.
- B. No later than twenty (20) days after the date that TALX executes the Agreement Containing Consent Order, TALX shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor/Administrator all the rights and powers necessary to permit the Monitor/Administrator to carry out the duties and responsibilities of the Monitor/Administrator in a manner consistent with the purposes of this Order.
- C. In the event a substitute Monitor/Administrator is required, the Commission shall select the Monitor/Administrator, subject to the consent of TALX, which consent shall not be unreasonably withheld. If TALX has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor/Administrator within ten (10) days after notice by the staff of the Commission to TALX of the identity of any proposed Monitor/Administrator, TALX shall be deemed to have consented to the selection of the proposed Monitor/Administrator. Not later than ten (10) days after

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appointment of a substitute Monitor/Administrator, TALX shall execute an agreement that, subject to the prior approval of the Commission, confers on the Monitor/Administrator all the rights and powers necessary to permit the Monitor/Administrator to carry out the duties and responsibilities of the Monitor/Administrator in a manner consistent with the purposes of this Order.

- D. TALX shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor/Administrator:
1. The Monitor/Administrator shall have the power and authority to monitor TALX's compliance with the terms of the Order and to administer the voluntary transfer of Relevant Persons to Designated UCM Services Providers, and Long Term Contract Customers to Non-In-House UCM Services Providers, pursuant to Paragraphs II., III., IV. and VI. of the Order, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor/Administrator in a manner consistent with the purposes of this Order and in consultation with the Commission, including, but not limited to assuring that TALX expeditiously complies with all of its obligations and performs all of its responsibilities as required by the Order.
 2. The Monitor/Administrator shall act in a fiduciary capacity for the benefit of the Commission.
 3. The Monitor/Administrator shall serve for such time as is necessary to monitor TALX's compliance with the terms of this Order and to administer the voluntary transfer of Relevant Persons to Designated UCM Services Providers, and Long Term Contract Customers to Non-In-House UCM Services Providers,

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pursuant to Paragraphs II., III., IV., and VI. of the Order.

4. Subject to any demonstrated legally recognized privilege, the Monitor/Administrator shall have full and complete access to TALX's personnel, books, documents, records, facilities and technical information, and such other relevant information as the Monitor/Administrator may reasonably request, Relating To TALX's compliance with its obligations under the Order. TALX shall cooperate with any reasonable request of the Monitor/Administrator and shall take no action to interfere with or impede the Monitor/Administrator's ability to monitor TALX's compliance with the Order.
5. The Monitor/Administrator shall:
 - a. have the authority and, upon request, the responsibility to provide information to:
 - (1) Relevant Persons concerning such Persons' eligibility to be free of Relevant Restrictions pursuant to Paragraph II.A. and Paragraph II.B. of the Order, and
 - (2) Long Term Contract Customers concerning such customers' eligibility to terminate their Long Terms Contracts pursuant to Paragraph III. of the Order;
 - b. expeditiously respond to requests for such information from Relevant Persons and Long Term Contract Customers; and
 - c. treat as confidential any such communication between the Monitor/Administrator and a Relevant Person or Long Term Contract Customer, and not

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reveal to TALX, or to any Person other than the Commission or its staff, the fact or content of such communication without the permission of the Relevant Person or Long Term Contract Customer that is a party to such communication

Provided, however, that, in the event that the Monitor/Administrator is an attorney, he or she shall not have the authority to enter into an attorney-client relationship with any Relevant Person or Long Term Contract Customer.

6. The Monitor/Administrator shall have the authority and responsibility to:
 - a. collect and process data, from TALX and other sources, Relating To the eligibility of:
 - (1) Relevant Persons to be free of Relevant Restrictions pursuant to Paragraphs II.A. and II.B. of the Order, and
 - (2) Long Term Contract Customers to terminate their Long Terms Contracts pursuant to Paragraph III. of the Order;
 - b. certify to the Commission that:
 - (1) ten (10) Relevant Current Persons who are each identified as “Client Relationship Manager” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order becomes final,

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- (2) four (4) Relevant Current Persons who are each identified as “Account Managers” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order becomes final,
 - (3) twenty three (23) Relevant Current Persons who are each identified as “Unemployment Insurance Consultants” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order becomes final,
 - (4) five (5) Relevant Current Persons who are each identified as “Hearing Representatives” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order becomes final,
 - (5) four (4) Relevant Current Persons who are each identified as “Tax Consultants” in the Appendix F Employee List have accepted employment with a Designated UCM Services Provider after the date this Order becomes final,
 - (6) the Total Of Relevant Values Of Terminated Long Term Contracts exceeds ten million dollars (\$10,000,000);
- c. endeavor to make any certification to the Commission pursuant to Paragraph IX.D.6.b of the Order within five (5) business days of receiving sufficient information from Respondent to make such certification, and

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- d. receive notices of contract termination from Relevant Current Persons and Other Relevant Current Persons, and forward such notices to TALX with the permission of such Relevant Persons.
7. The Monitor/Administrator shall:
 - a. have the authority and responsibility to:
 - (1) expeditiously determine whether Relevant Persons are eligible to be free of Relevant Restrictions pursuant to Paragraph II.B. of the Order, and
 - (2) notify such Relevant Persons of such determinations;
 - b. be given by TALX the discretionary authority to make such determinations even if the Monitor/Administrator is unable to obtain information Relating To such determinations from TALX or other sources; and
 - c. be held harmless by TALX against any losses, claims, damages, liabilities, or expenses arising out of any such determinations, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor/Administrator.
 8. The Monitor/Administrator shall serve, without bond or other security, at the expense of TALX on such reasonable and customary terms and conditions as the Commission may set. The Monitor/Administrator shall have authority to employ, at the expense of TALX,

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such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor/Administrator's duties and responsibilities. The Monitor/Administrator shall account for all expenses incurred, including fees for services rendered, subject to the approval of the Commission.

9. TALX shall indemnify the Monitor/Administrator and hold the Monitor/Administrator harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor/Administrator's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor/Administrator.
10. TALX shall report to the Monitor/Administrator in accordance with the requirements of this Order and/or as otherwise provided in any agreement approved by the Commission.
11. Within one (1) month from the date the Monitor/Administrator is appointed pursuant to this paragraph, every ninety (90) days thereafter, and otherwise as requested by the Commission, the Monitor/Administrator shall report in writing to the Commission concerning performance by TALX of its obligations under this Order.
12. TALX may require the Monitor/Administrator and each of the Monitor/Administrator's consultants, accountants, attorneys, and other representatives and

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assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the ability of the Monitor/Administrator to provide any information to the Commission.

- E. The Commission may, among other things, require the Monitor/Administrator and each of the Monitor/Administrator's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement Relating To Commission materials and information received in connection with the performance of the Monitor/Administrator's duties.
- F. If the Commission determines that the Monitor/Administrator has ceased to act or failed to act diligently, the Commission may appoint a substitute Monitor/Administrator in the same manner as provided in this Paragraph IX. of the Order.
- G. The Commission may on its own initiative, or at the request of the Monitor/Administrator, issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Order.

X.**IT IS FURTHER ORDERED** that:

- A. Sixty (60) days after the date this Order becomes final, TALX shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the terms of this Order. TALX shall submit at the same time a copy of this report to the Monitor/Administrator.

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- B. Beginning twelve (12) months after the date this Order becomes final, and annually thereafter on the anniversary of the date this Order becomes final, for the next nine (9) years, TALX shall submit to the Commission verified written reports setting forth in detail the manner and form in which it is complying and has complied with this Order. TALX shall submit at the same time a copy of these reports to the Monitor/Administrator.

XI.

IT IS FURTHER ORDERED that TALX shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of TALX,
- B. Any proposed acquisition, merger or consolidation of TALX, or
- C. Any other change in TALX that may affect compliance obligations arising out of this Order, including but, not limited to, assignment, the creation or dissolution of subsidiaries, or any other change in TALX.

XII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice, TALX shall permit any duly authorized representative of the Commission:

- A. Access, during office hours of TALX and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other Documents in the possession or under the

Decision and Order

control of TALX related to compliance with this Order;
and

- B. Upon five (5) days' notice to TALX and without restraint or interference from TALX, to interview officers, directors, or employees of TALX, who may have counsel present, regarding such matters.

XIII.

IT IS FURTHER ORDERED that this Order shall terminate on August 6, 2018.

By the Commission.

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Appendix A
(Appendix A Notice To Relevant Person)*[Letterhead of TALX Corporation]**[date]**[address]*

Re: Your Contract of Employment

Dear *[name]*:

This is to inform you that, pursuant to a consent agreement between TALX Corporation ("TALX") and the Federal Trade Commission, TALX has agreed, under certain conditions, not to enforce certain provisions of your contract of employment in the event you elect to terminate your contract. Specifically, pursuant to either Paragraph II.A. or Paragraph II.B. of the enclosed Decision and Order issued by the Federal Trade Commission ("Decision and Order"), TALX may not enforce against you certain covenants not to compete, certain covenants not to solicit, and certain restrictions on your use of trade secrets.

If you have questions about whether, and to what extent, you are eligible to be released from such covenants and restrictions, you may call *[telephone number of the Monitor/Administrator]* for a consultation with the independent Monitor/Administrator appointed by the Federal Trade Commission in this matter. Neither the fact that you have consulted with the Monitor/Administrator nor the content of those consultations will be disclosed to TALX without your permission.

Additional information concerning this matter can be found at the following Web address: <http://www.talx.com/noncompetes>.

Sincerely,

[CEO of TALX Corporation]

Enclosure

Decision and Order

Appendix B
(Appendix B Notice To Long Term Contract Customer)

[Letterhead of a TALX Corporation]

[date]

[address]

Re: Termination of Contract

Dear [name]:

This is to inform you that, pursuant to a consent agreement between TALX Corporation ("TALX") and the Federal Trade Commission, TALX has agreed, under certain conditions, to allow many of its customers to terminate, on ninety (90) days notice, the customers' long term contracts for unemployment compensation management services. I direct your attention to Paragraph III. of the enclosed Decision and Order issued by the Federal Trade Commission ("Decision and Order").

If you have questions about whether, and to what extent, you are eligible to terminate your long term contract(s) with TALX, you may call [telephone number of the Monitor/Administrator] for a consultation with the independent Monitor/Administrator appointed by the Federal Trade Commission in this matter. Neither the fact that you have consulted with the Monitor/Administrator nor the content of those consultations will be disclosed to TALX without your permission.

Additional information concerning this matter can be found at the following Web address: <http://www.talx.com/contracts>.

Sincerely,

[CEO of TALX Corporation]

Enclosure

Decision and Order

Appendix C
(Appendix C Notice To Negative Option Contract Customer)

[Letterhead of a TALX Corporation]

[date]

[address]

Re: Automatic Renewal of *[title of contract]*

Dear *[name]*:

Your contract for unemployment compensation services, which expires on *[date]*, will be automatically renewed for an additional *[number of years and/or months]* unless you exercise your right to cancel this contract on or before *[date]*.

Sincerely,

[CEO of TALX Corporation]

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Appendix D
(Appendix D Web Page)**Version 1 of Appendix D**

Until (a) two years after the date that all Relevant Current Persons have been given notice in accordance with Paragraph VI.A. of the Order, or (b) the date on which the Monitor/Administrator has certified that ten Client Relationship Managers, four Account Managers, twenty three Unemployment Insurance Consultants, five Hearing Representatives, and four Tax Consultants listed on the Appendix F Employee List have accepted employment with a Designated UCM Services Provider, whichever is earlier, the Appendix D Web Page shall appear as follows:

["TALX" trademark]

Pursuant to a consent agreement between TALX Corporation ("TALX") and the Federal Trade Commission, TALX has agreed, under certain conditions, not to enforce certain provisions of certain contracts with certain current and former directors, officers, and employees of TALX and of certain firms acquired by TALX. Specifically, pursuant to Paragraphs II.A and II.B. of the Decision and Order issued by the Federal Trade Commission [*hypertext "Decision and Order issued by the Federal Trade Commission" to copy of Decision and Order on Commission's Web site*] ("Decision and Order"), TALX may not, under certain circumstances, enforce (a) certain covenants not to compete, (b) certain covenants not to solicit and (c) certain restrictions on the use of trade secrets.

Links to the Decision and Order [*hypertext "Decision and Order" to copy of Decision and Order on Commission's Web site*], to the Complaint issued by the Federal Trade Commission in this matter [*hypertext "Complaint" to copy of Complaint on Commission's Web site*], and to related documents can be found at [*hypertexted Web address of docket in this matter on Commission's Web site*].

If you are a current or former director, officer, or employee of TALX, and you have questions about whether, and to what extent, you are eligible to be released from such covenants and restrictions, you may contact the following independent Monitor/Administrator appointed by the Federal Trade Commission in this matter:

[*name of the Monitor/Administrator*]
[*address of the Monitor/Administrator*]
[*telephone number of the Monitor/Administrator*]

Neither the fact that you have consulted with the Monitor/Administrator nor the content of those consultations will be disclosed to TALX without your permission.

Pursuant to the proviso to Paragraph II.B. of the Decision and Order, the Monitor/Administrator has, or has not, made the following certifications:

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[TALX may update individually the certifications below by inserting or deleting the word "not" where indicated and when appropriate.]

Certification Regarding Client Relationship Managers

The Monitor/Administrator has [*not*] certified to the Commission that ten (10) Relevant Current Persons who are each identified as "Client Relationship Managers" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Account Managers

The Monitor/Administrator has [*not*] certified to the Commission that four (4) Relevant Current Persons who are each identified as "Account Managers" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Unemployment Insurance Consultants

The Monitor/Administrator has [*not*] certified to the Commission that twenty three (23) Relevant Current Persons who are each identified as "Unemployment Insurance Consultants" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Hearing Representatives

The Monitor/Administrator has [*not*] certified to the Commission that five (5) Relevant Current Persons who are each identified as "Hearing Representatives" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Tax Consultants

The Monitor/Administrator has [*not*] certified to the Commission that four (4) Relevant Current Persons who are each identified as "Tax Consultants" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

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Version 2 of Appendix D

After (a) the date on which the Monitor/Administrator has certified that ten Client Relationship Managers, four Account Managers, twenty three Unemployment Insurance Consultants, five Hearing Representatives, and four Tax Consultants listed on the Appendix F Employee List have accepted employment with a Designated UCM Services Provider or (b) two years after the date that all Relevant Current Persons have been given notice in accordance with Paragraph VI.A. of the Order, whichever is earlier, and until (i) the Commission ends the term of the Monitor/Administrator and (ii) TALX no longer is required to maintain the Appendix D Web Page pursuant to Paragraph VI.E.1. of the Order, the Appendix D Web Page shall appear as follows:

[“TALX” trademark]

Pursuant to a consent agreement between TALX Corporation (“TALX”) and the Federal Trade Commission, TALX has agreed, under certain conditions, not to enforce certain provisions of certain contracts with certain former directors, officers, and employees of TALX and of certain firms acquired by TALX. Specifically, pursuant to Paragraphs II.A and II.B. of the Decision and Order issued by the Federal Trade Commission [*hypertext “Decision and Order issued by the Federal Trade Commission” to copy of Decision and Order on Commission’s Web site*] (“Decision and Order”), TALX may not, under certain circumstances, enforce (a) certain covenants not to compete, (b) certain covenants not to solicit and (c) certain restrictions on the use of trade secrets.

Links to the Decision and Order [*hypertext “Decision and Order” to copy of Decision and Order on Commission’s Web site*], to the Complaint issued by the Federal Trade Commission in this matter [*hypertext “Complaint” to copy of Complaint on Commission’s Web site*], and to related documents can be found at [*hypertexted Web address of docket in this matter on Commission’s Web site*].

If you are a former director, officer, or employee of TALX, and you have questions about whether, and to what extent, you are eligible to be released from such covenants and restrictions, you may contact the following independent Monitor/Administrator appointed by the Federal Trade Commission in this matter:

[*name of the Monitor/Administrator*]
 [*address of the Monitor/Administrator*]
 [*telephone number of the Monitor/Administrator*]

Neither the fact that you have consulted with the Monitor/Administrator nor the content of those consultations will be disclosed to TALX without your permission.

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Pursuant to the proviso to Paragraph II.B. of the Decision and Order, the Monitor/Administrator has[, or has not,] made the following certifications:

[TALX may update individually the certifications below by inserting or deleting the word "not" where indicated and when appropriate.]

Certification Regarding Client Relationship Managers

The Monitor/Administrator has [*not*] certified to the Commission that ten (10) Relevant Current Persons who are each identified as "Client Relationship Managers" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Account Managers

The Monitor/Administrator has [*not*] certified to the Commission that four (4) Relevant Current Persons who are each identified as "Account Managers" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Unemployment Insurance Consultants

The Monitor/Administrator has [*not*] certified to the Commission that twenty three (23) Relevant Current Persons who are each identified as "Unemployment Insurance Consultants" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Hearing Representatives

The Monitor/Administrator has [*not*] certified to the Commission that five (5) Relevant Current Persons who are each identified as "Hearing Representatives" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Tax Consultants

The Monitor/Administrator has [*not*] certified to the Commission that four (4) Relevant Current Persons who are each identified as "Tax Consultants" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

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Version 3 of Appendix D

After the Commission has ended the term of the Monitor/Administrator and until TALX no longer is required to maintain the Appendix D Web Page pursuant to Paragraph VI.E.1. of the Order, the Appendix D Web Page should appear as follows:

[“TALX” trademark]

Pursuant to a consent agreement between TALX Corporation (“TALX”) and the Federal Trade Commission, TALX has agreed, under certain conditions, not to enforce certain provisions of certain contracts with certain former directors, officers, and employees of TALX and of certain firms acquired by TALX. Specifically, pursuant to Paragraphs II.A and II.B. of the Decision and Order issued by the Federal Trade Commission [*hypertext “Decision and Order issued by the Federal Trade Commission” to copy of Decision and Order on Commission’s Web site*] (“Decision and Order”), TALX may not, under certain circumstances, enforce (a) certain covenants not to compete, (b) certain covenants not to solicit and (c) certain restrictions on the use of trade secrets.

Links to the Decision and Order [*hypertext “Decision and Order” to copy of Decision and Order on Commission’s Web site*], to the Complaint issued by the Federal Trade Commission in this matter [*hypertext “Complaint” to copy of Complaint on Commission’s Web site*], and to related documents can be found at [*hypertexted Web address of docket in this matter on Commission’s Web site*].

Pursuant to the proviso to Paragraph II.B. of the Decision and Order, the Monitor/Administrator has[, or has not,] made the following certifications:

[TALX may update individually the certifications below by inserting or deleting the word “not” where indicated and when appropriate.]

Certification Regarding Client Relationship Managers

The Monitor/Administrator has [*not*] certified to the Commission that ten (10) Relevant Current Persons who are each identified as “Client Relationship Managers” in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

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Certification Regarding Account Managers

The Monitor/Administrator has [not] certified to the Commission that four (4) Relevant Current Persons who are each identified as "Account Managers" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Unemployment Insurance Consultants

The Monitor/Administrator has [not] certified to the Commission that twenty three (23) Relevant Current Persons who are each identified as "Unemployment Insurance Consultants" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Hearing Representatives

The Monitor/Administrator has [not] certified to the Commission that five (5) Relevant Current Persons who are each identified as "Hearing Representatives" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

Certification Regarding Tax Consultants

The Monitor/Administrator has [not] certified to the Commission that four (4) Relevant Current Persons who are each identified as "Tax Consultants" in the Appendix F to the Decision and Order have accepted employment with a Designated UCM Services Provider after the date the Decision and Order became final.

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Appendix E
(Appendix E Web Page)**Version 1 of Appendix E**

Until (a) three years after the date that all Long Term Contract Customers have been given notice in accordance with Paragraph VI.B. of the Order, or (b) the date on which the Monitor/Administrator has certified that the Total Of Relevant Values Of Terminated Long Term Contracts exceeds ten million dollars, whichever is earlier, the Appendix E Web Page shall appear as follows:

["TALX" trademark]

Pursuant to a consent agreement between TALX Corporation ("TALX") and the Federal Trade Commission, TALX has agreed, under certain conditions, to allow many of its customers to terminate certain long term contracts for unemployment compensation management services. Specifically, pursuant to Paragraph III. of the Decision and Order issued by the Federal Trade Commission [*hypertext "Decision and Order issued by the Federal Trade Commission" to copy of Decision and Order on Commission's Web site*] ("Decision and Order"), customers will be permitted, on ninety (90) days notice, to terminate certain long term contracts on a pro rata basis without the payment of any penalty for termination

Links to the Decision and Order [*hypertext "Decision and Order" to copy of Decision and Order on Commission's Web site*], to the Complaint issued by the Federal Trade Commission in this matter [*hypertext "Complaint" to copy of Complaint on Commission's Web site*], and to related documents can be found at [*hypertexted Web address of docket in this matter on Commission's Web site*].

If you are a customer of TALX and you have questions about whether, and to what extent, you are eligible to terminate any long term contracts for unemployment compensation management services, you may contact the following independent Monitor/Administrator appointed by the Federal Trade Commission in this matter:

[name of the Monitor/Administrator]
[address of the Monitor/Administrator]
[telephone number of the Monitor/Administrator]

Neither the fact that you have consulted with the Monitor/Administrator nor the content of those consultations will be disclosed to TALX without your permission.

Pursuant to the second proviso to Paragraph III. of the Decision and Order, the Monitor/Administrator has **not** certified to the Commission that the Total Of Relevant Values Of Terminated Long Term Contracts exceeds ten million dollars (\$10,000,000).

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Version 2 of Appendix E

Three years after the date that all Long Term Contract Customers have been given notice in accordance with Paragraph VI.B. of the Order, or after the date on which the Monitor/Administrator has certified that the Total Of Relevant Values Of Terminated Long Term Contracts exceeds ten million dollars, whichever is earlier, the Appendix E Web Page shall appear as follows:

[“TALX” trademark]

Pursuant to a consent agreement between TALX Corporation (“TALX”) and the Federal Trade Commission, TALX had agreed, under certain conditions, to allow many of its customers to terminate certain long term contracts for unemployment compensation management services. However, the obligation of TALX to terminate such contracts has now expired because [“three years have passed since the long term contract customers were given notice of their right to terminate” or “the Monitor/Administrator has certified to the Commission that the Total Of Relevant Values Of Terminated Long Term Contracts exceeds ten million dollars (\$10,000,000)”].

Links to the Decision and Order issued by the Federal Trade Commission in this matter [hypertext “Decision and Order” to copy of Decision and Order on Commission’s Web site], to the Complaint issued by the Federal Trade Commission in this matter [hypertext “Complaint” to copy of Complaint on Commission’s Web site], and to related documents can be found at [hypertexted Web address of docket in this matter on Commission’s Web site].

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Appendix F
(Appendix F Employee List)

Account Managers

Corbin Bergmann
Jeanne Brawn
Mark Broeker
Thomas Butera
Benjamin Carlson
Julie Conrad
Melissa Cook
Matthew Falk
Anna Gonzalez
Carey Griffin
Catherine Harvey
Connie Hatfield
James Jablonski
Kathleen James
Esther Kritz
Chung Lee
Polly Manus
Peter Moore
Penny O'Fallon
Amy Pasqualetto
Anna Patron
David Peterson
David Phillips
Edna Pita
Julie Rezes
Meghan Ryder
Meghan Schrupf
Sheila Taylor
Cynthia Witt

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Client Relationship Managers

Landon Armbruster
Jessica Avila
Michael Baer
Marci Beatty
Robert Beck
L. Mark Bickers
Michael Bradley
Russell Braverman
Kelly Brechman
Bruce Burgess
Ashly Caserotti
Jerome Christiani
Carol Cook
Rebecca Copley
Steven Dainard
Denise Doney
Ronna Dubro
John Fiorelli
William Florence
Paul Fountain
Beth Frauhiger
Melanie Frazier
Jennifer Gerhardt
Judith Glazer
Jane Grubnich
Angela Hansen
Berenice Hardin
Scott Hert
Woodrow Hilliard
Jonathan Hilton
John Holihan
Jeffrey Houser
Barbara Hoyos
Charleen Jackson
Bonnie Keady
Mark Koley
Leigh Krohe
Ami LaBarbera
Joshua Landman
Angela Lojacono
Alison Marks

Cynthia McReynolds
Karen Miller
Kim Miller
Rose Mizak
Lisa Moenigmann
Stephanie Morello
Christa Mosser
David O'Connell
Eric Oscarson
Linda Paez
Brandon Palmer
Michael Pennanen
Donald Phillips
Daniel Pongonis
John Ras
Thomas Ribich
Julia Rice
Amanda Romanelli
Jeffrey Royer
Cynthia Schroeder
Susan Sheehan
Carol Shular
Kristin Shuler
John Sullivan
Emily Svoboda
Kristin Torrillo
James Tripodi
Aaron Unell
John Valenti
Susan Vaters
Cassandra Vauls
Scott Verhey
Tiffany Wood
Darrell Woodward
Sandra Wynne

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Hearing Representatives

Pixie-Ann Allan	Donna Klauza
Gloria Ambler	Thomas Kuiper
Gregory Anello	Beverly Lamb
Manija Basherey	Francis Landolphi
Kelly Battista	Kathleen Lauritzen
Kimberly Beaver	Thomas Lindquist
Mara Benjamin	Malia Maples
Klaren Bentley	Ralph McGlothlen
Jonathan Beretta	Keith Mokler
Karen Brewin	Robin Moore
Lesley Buhler	Dennis Mullens
Tanis Burrell	Paul Murphy
Joshua Burrows	Edward O'Brien
Kimberly Buttelwerth	Eugene Parsons
Joseph Canfield	Susan Perry
Richard Carter	Diana Perry-Lehr
Peter Cipriano	Gordon Peterson
Jennifer Coe	Kevin Rafferty
Tammy Conrad	Carol Reading
Lynn Corbeil	Todd Richardson
Craig Cree	Cheryl Rodermund
Charlene Crocker	Cheryl Roethemeier
Robert Cygan	Roxanne Rose
Frank Eckert	Kevin Salmon
Jeanne Edwards	Janice San Souci
Diane Elkins	Gerald Sander
Michael Fedor	Cris Scheibe
Sandra Fitch	Jeffrey Scher
Amelia Gallagher	Scott Schnebbe
Judith Gentry	Marcy Schneider
Shelby Grau	Deborah Shelburne
Linda Green	Dena Shelton
Barbara Hamilton	Elizabeth Sillars
Lisa Harroff	Alyce Smolsky
Michelle Hawkins	Jerry Snow
John Henson	William Stasek
Catherine Hess	Elaine Steele
Constance Hickerson	Kelly Tackett
Lisa Jennings	Michael Thiele
Jacqueline Jones	Barbara Toney
Melissa Keys	Richard Vanderford

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Hearing Representatives (continued)

Gavin Walker
Carol Weidinger
Jacqueline Wiegand
Teresa Wiley
Henry Williams
Robert Winn
Raul Ybanez
Martha Young
Susen Zevin

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Tax Consultants

Gauri Anand	Kathy Jones
Jennifer Arteaga	Sheryl Kingrea
Sharon Ashcraft	Kelley Knickmeyer
Marcie Barber	Katherine Koehler
Kimberly Barnhill	Paul Lappert
Ryan Bartley	Laura Lewis
Deborah Bell	Danielle Looker
Steven Blair	Martha Ludwig
Nancy Boggs	James Mantoan
Carleen Boggs	Caroline Martin
Joanne Bolderson	Bonnie Moncelli
Starline Buchanan-Bowman	Robert Myers
Nicholas Buehler	Mattie Newtall
Stacey Bunch	Debra Ortman
Carol Burrer	Christopher Oscarson
James Cannady	Lauren Owca
Patricia Carpenter	Keith Pender
Cynthia Carr	Brian Perry
Karen Colman	Nathan Phipps
Nicholas Cowan	Cassandra Rhymes
Marcia Daniels	Caitlin Riviere
A David	Stephanie Robinson
Stephen Eckhard	Victoria Roslawski
Robert Eickmeyer	Elizabeth Scott
Mary Elbert	David Snavely
Fern Flacke	Robert Stanze
Abathia Franklin	Gregory Stone
Bonnie Freck	Connie Story
Patrick Ganey	Gretchen Strebeck
Lori Gaskell	Todd Strunk
Cheryl Guice	Sandra Timson
Gloria Hadley	Gabrielle Vining
Cameron-David Hartman	Michele Walters
Vivian Helman	Deborah Wierzbicki
Crystal Hemmer	Nancy Williams
David Hernandez	Tiffany Wood
Natalie Hickman	James Zimmerly
Lindy Hogan	
Joann Hughes	
Richard Johnson	
Rosa Jones	

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Unemployment Insurance Consultants

Rebecca Abbott	Deloris Brown
Brenda Adams	Carolyn Brown
April Allen	Lashae Brown
Jaclyn Allison	Karen Bruce
Justin Alpert	Heather Buchan
Jennifer Amnott	Tammy Burgard
Michelle Andrew	Aaron Burgwald
Jennifer Andrews	Bianca Bustillos
Janet Asay	Goldie Caldwell
Monica Asher	Rhonda Caloia
Hope Aubrey	Kathleen Campbell
Marian Avery	Dawn Casey
Margaret Bach	Nikki Casey
Alice Backus	Paul Cefali
Katie Bailey	Sharron Cernik
Metta Bailey	Lori Ceselski
Patricia Ball	Justin Chandler
Brenda Banks	Sidney Chatfield
Krista Barela	Maria Chen
Nicole Barker	Chamon Childress
Heather Barker	Valerie Chitty
Marjorie Barksdale	Nicole Cleveland
Karen Barrientos	Valerie Clinton
Carrie Bauwens	Susan Coffin
Tamara Beason	Jennifer Coleman
Jeremy Beck	Shelley Coleman
James Been	Rozalyn Collins
Sherilyn Bemben	Walter Comisiak
Kimberly Bieri	Tracy Conner
Audria Bird	Katherine Conway
Alexis Bishop	Timothy Cook
Leslie Blakney	Mary Corvo
Diane Blancett	Yanery Crain
Reneé Blanco	Matthew Crain
Betty Blevins	Jennifer Crawford
Rhonda Boner	Randal Crocker
Linda Boone	Christin Crowder
Natalie Bowling	Jada Curry
Leoung Boyd	Annette Dailey
Viola Briggeman	Amy Darboe
Tamatha Brock	Richard Davenport

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Unemployment Insurance Consultants (continued)

Kristina David	Corinne Flusche
Constance Davis	Felicia Forbes
Terri Davis	Lisa Fouras
Trina Davis-Petty	Lars Fox
Jeff DeLorenzo	Julie Fox
Demeria Dent	Sandra Francois
Laurie Dent	Kristen Frazier
Stephanie Deyampert	Deborah Fulte
Kari Diaz	Nancy Gahagen
Trish Diehl	Rochelle Garcia
Yalonda Dillon	Greggory Garman
Patrick Dotson	Cheryl Garrett
Terry Dotson	Frances Geddis
Brandon Drake	Elizabeth Givens
Christine Draper	Cynthia Grant
Jennifer Driskell	Darlene Gray
Kelly Drumheller	Jan Green
April Dawn Duerbusch-Dorsett	Yolanda Green
Debra Duffin	Lori Gregg
Alison Duncan	Bradley Gregory
Lisa Dunn	Mary Gremo
Lisa Durnell	Tabitha Grennell
Christine Durrant	Abigail Grillo
Tamara Dyer	Deborah Grillo
Kevin Dyer	R. Gross
Kristiene Dyer	Karen Grotzinger
Debbera Eggers	Megan Grube
Deborah Eggleton	Lisa Gulosh
Regina Eldridge	Kristi Gumbel
Annie Erb	Sarina Hall
Jodi Estep	Susan Halls
April Ethridge	Reneé Hamilton
Christina Fankhauser	Kimberly Hampton
Phyllis Farrell	Leslie Hanck
Christine Fastnaught	Christina Hanson
Tamera Febes	Chris Harper
Lois Ferguson	Tamara Harris
Stephanie Festog	Carolyn Harshman
Melissa Fetherolf	Maria Hayes
Debra Fischer	Amy Heckler
Nancy Flaiz	Amy Helfrich
Ryan Flanery	Sharon Helgenberg

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Unemployment Insurance Consultants (continued)

Ellen Henderson	Tracy Jones
Lawanda Henderson	Mary Jones
Laura Hendry	Bernice Jones
Brandi Henry	Annitra Jones
Jennifer Henry	Mark Jones
Gloria Herman	Andrea Junk
Aaron Heyer	Claire Karalekas
Elizabeth Heywood	Samantha Karnes
Karon Hibbler	Lois Kary
Tamara Hibbler	Benjamin Kehoe
Terry Hicks	Lee Kehoe
Carolyn Higgins	Ryan Kehoe
Patricia Hight	Kimberly Keifer
Tracy Hoffman	Betty Keller
Darlene Hogan	Brian Kennedy
Rebecca Hollen	Christopher Kennedy
Sharon Holly	Jessica Kenney
Amy Horn	Bradly Kerr
Kendra Horn	Megan Keys
Lori Horne	Robert Kincaid
Maiesha Houser	Sarah King
Kristin Huff	Amber Kniep
Samantha Hughes	Michele Knoten
Margery Humphrey	Ruth Koch
Rosalind Hurst-McCain	Rachelle Konst
Cynthia Hussmann	Jane Konst
Danielle Irving	Barbara Kumm
Latoya Jackson	Jonathan Lacy
Natalie Jackson	Debra Laplante
Stephanie Jackson	Kathleen Lawler
Kandance James	Shonda Lawton
Katherine Janzen	Kelly Lay
Rochelle Jenkins	Catherine Lee
Amy Jester	Brandy Lee
Jennifer Johansen-Pettit	Allyson Leitner
Gregory Johner	Douglas Lentes
Lindsey Johnson	Jolai Leonti
Samantha Johnson	Charity Lewis
Wanda Johnson	Janice Linzie
Deborah Johnson	Lena Little
Jenavieve Jones	Anna Lively
Kathleen Jones	Andrea Loggins

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Unemployment Insurance Consultants (continued)

Carolyn Loomis	Judith Nagorski
Danila Loquiao	Karla Nalls
Emily Lorton	Jessica Nance
Litisha Loveless	Kent Nardin
Natalie Mantilla	Angela Nelson-Frimpong
Maya Marsek	Tabitha Nichols
Sabrina Marshall	Dorothea Nicholson
Christine Martin	Amber Niles
Krista Martin	Alice Noble
Ruth Martinez	Emily Norton
Raziah Massey	Francesca Nutini
Joann Matthes	Jeffrey O'Connor
Kevin May	Kimberly Oertel
Jill Mayer	Kathleen O'Leary
Christa Mayercin	Elizabeth O'Mara
Christina Maynard	Robert Ouellette
Anita Mayo	Kristin Owen
Zontel McCann	Erica Pace
Brandi McCarty	John Paden
Phyllis McClaskey	Anna Palasciano
Heather McConnell	Michelle Parker
Kendra McDonald	Liza Parodi
Eileen McFarland	Serina Patrustie
Cheri McFarland	Matthew Pearson
Cecelia McGrew	Laura Peltier
Marclene McKee	Daniela Perez
Kimberly McLucas	Lucille Petty
Shatia McPherson	Bonita Pevey
Tamara Medley	Jean Pfeiffer
Lauren Meeks	Cassandra Phelps
Kirsten Miller	Alice Phillips
Steven Mintz	Agnes Phipps
Sarina Mitchell	Kelly Pitts
Nickolas Mitsialis	Deborah Pizzi
David Moehle	Carol Plemons
Gregory Montjoy	Johnny Poehler
Nancy Moore	Christopher Polito
Sherry Moore	Radhika Poreddy
Laura Morgan	Steven Pottmeyer
Julie Mosley	Alesia Pullins
Jaime Myers	April Pusateri
Joy Myers	Barbara Quigley

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Unemployment Insurance Consultants (continued)

Terra Rainey	Dawn Spencer
Jose Ramos	Scott Spriggs
Tequila Rausch	Mom Srey
Abigail Reedstrom	Leslee Staton
Yolanda Reeves	Elizabeth Stonebarger
Laura Reiss	Karen Stonebraker
Ruth Renner	Cynthia Stout
Melissa Repici	Angela Stubbs-Woods
Ebony Richardson	Rachel Stuber
Amanda Rivera	Jennifer Stump
Kimberly Roberson	Anna Sullivan
Mara Robertson	Laura Suter
Marvin Robinson	Joyce Suttles
Tara Robles	Peter Svendsen
Amber Rodebaugh	Cynthia Syme
Glennice Rodgers	Yvonne Tabb
Nancy Rollison	Alisha Talley
Martha Rosenberger	Michelle Taylor
Jacqueline Roulette	Angela Thomas
Josie Ryan	David Thompson
Patricia Sager	Richard Thompson
Melissa Sahrhage	Megan Thomsen
Cynthia Salas	Tina Thomure
Maile Salas	Jamey Tobin
Julie Satory	Donna Toliver
Cynthia Schaaf	Tamala Tramble
David Schaye	Stephanie Trice
Jennifer Schlaffman	Danielle Troiano
Karen Schmitt	Bochen Uang
Ann Schrodt	Ronald Underwood
Janie Sedlacek	Ashley Vaden
Theresa Sherman	Jennifer Venable
Jenifer Shultz	Judi Vilaylak
Ramzie Siebuhr	Jeaneth Villasenor
Jerri Simmons	Michele Violet
Louisa Sitala	Steven Vogel
Ryan Smith	Charon Wade
Patrice Snider	David Wade
Berry Snyder	Nicole Wallace
Sheri Sonko	Heather Walter
Ginger Sowle	Irene Wang
Janet Spence	Andrew Warren

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Unemployment Insurance Consultants (continued)

Julie Warwick
Letisha Washington
Suzanne Weatherby
Tricia Webb
Holly Webb
Lyneigh Welzen-Jones
Stefanie Wenzel
Wallene Werner
Katie Whelan
Melissa White
Misty White
Bethany Whitehair
Nicolette Whitfield
Jacqueline Wilcox-Williams
Amy Willard
Joshua Williams
Debra Williams
Jennifer Wilson
Bobbi Winczewski
Wanda Wipfler
Lisa Woodard
Sherrie Woods
Benjamin Woods
Shirley Woods
Elaine Woolaver
Amy Woolsey
Sherri Wotring
Homer Wren
Roberta Wright
Sharon Wucher
Sharon Yarbrough
Jaclyn Young

Decision and Order

Other

Jay Rooney

Analysis to Aid Public Comment

ANALYSIS OF THE CONSENT ORDER TO AID PUBLIC COMMENT**I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“Agreement”) from TALX Corporation (“Proposed Respondent”). The Consent Agreement settles allegations that TALX has violated Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition in connection with the provision of outsourced UCM services and employer verification services nationwide through a series of consummated acquisitions. Pursuant to the Agreement, TALX has provisionally agreed to be bound by a proposed consent order (“Proposed Consent Order”).

The Proposed Consent Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement’s Proposed Consent Order.

The purpose of the Agreement is to remedy anticompetitive effects, alleged in the Commission’s Complaint in this matter, that will likely result from the acquisitions by Proposed Respondent of James E. Frick Inc., Johnson & Associates, L.L.C., and certain assets and businesses of Gates McDonald & Company, Sheakley-Uniservice, Inc., UI Advantage, Jon-Jay Associates, Inc., and Employers Unity, Inc.

The Proposed Consent Order provides for relief in two markets where the Commission finds reason to believe that these acquisitions likely will have anticompetitive effects: the national

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market for outsourced unemployment compensation management (“UCM”) services, and the national market for outsourced employer verification services, also known as the market for verification of income and employment (“VOIE”) services.

The Proposed Consent Order is aimed at expediting the entry and expansion of competitors by, among other things, freeing past, as well as various current, TALX employees to take jobs with competitors and by granting the majority of TALX’s present long term contract customers the unilateral right to get out of those contracts and switch to another UCM provider. While the Commission usually typically prefers divestitures that immediately reset market shares (the sale of a plant in the manufacturing context, for example), unique circumstances combine in this matter to make it appropriate for the Commission to accept relief aimed at encouraging the movement of market share to competitors though self-selection by TALX’s customers, as opposed to mandating the transfer of arbitrary set of these service contracts. These circumstances include, but are not necessarily limited to, the personal service nature of the product, divergent customer preferences and needs, and the existence of several very small, but nevertheless viable, competitors. The proposed remedy seeks to ensure that the entry and expansion necessary to ensure a competitive market can occur much more quickly than it would absent relief. More specifically, the Proposed Consent Order requires TALX to (a) allow many of its customers with long-term UCM contracts to terminate those contracts at the customers’ option, (b) free many of its past and current employees from restrictions that would hamper their ability to be employed by UCM competitors, (c) provide, if requested, to certain former UCM customers of TALX, certain information related to UCM claims work retained by TALX, (d) give notice to certain customers of their right to cancel UCM contracts that are automatically renewed if not cancelled, and (e) not prevent or discourage any entity from supplying goods or services to a UCM competitor of TALX.

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The Order also requires TALX to give to the Commission prior notice of future acquisitions in markets for UCM services and VOIE services.

II. The Respondent

TALX is a Missouri corporation that, in May 2007, became a wholly-owned subsidiary of Equifax, Inc. TALX's primary businesses are the provision of UCM services under the name "UC eXpress," and the provision of VOIE services under the name "The Work Number."

III. The Complaint

As alleged in the Commission's Complaint, TALX competes in markets for UCM services and VOIE services. UCM services consist, in part, of the managing, administering, and/or processing, on behalf of an employer, of unemployment compensation claims filed with a state or territory. VOIE services consist, in part, of the provision of employment and income verifications including, but not limited to, the collection, maintenance, or dissemination of information concerning the employment status and income of those employees. In order to provide such VOIE services, a VOIE provider must collect and maintain payroll data and other data relating to employment.

The Complaint alleges that the March 2002 acquisitions by TALX of James E. Frick, Inc. and of the UCM services division of Gates McDonald eliminated competition between the two acquired companies in the national market for UCM services. James E. Frick, Inc. and Gates McDonald were the two largest providers of UCM services prior to TALX's acquisition of both companies the same day. The Complaint also alleges that TALX's acquisitions of Johnson and Associates, L.L.C., the UCM assets of Sheakley-Uniservice, Inc., Jon-Jay Associates, and the unemployment tax management business, which includes UCM

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services, of Employers Unity, Inc. substantially reduced competition in the national market for UCM services.

The Complaint further alleges that TALX substantially reduced competition in the nationwide provision of VOIE services through the acquisitions of James E. Frick, Inc., and the VOIE businesses of Sheakley-Uniservice, Inc. and Employers Unity, Inc.

The Complaint notes that some firms, known as “alliance partners,” outsource to TALX some of the UCM services they sell to others. The largest amount of such outsourcing is done by ADP, Inc.

The Complaint alleges that each of the relevant markets is highly concentrated, and the consummated acquisitions increased concentration substantially, whether concentration is measured by the Herfindahl-Hirschman Index (“HHI”), or the number of competitively significant firms remaining in the market.

The Complaint further alleges that entry would not be timely, likely, or sufficient to prevent anticompetitive effects in either of the relevant markets. As alleged in the Complaint, entry into the market for the provision of outsourced UCM services to large multi-state employers is difficult and slow. According to the Complaint, among the factors that make entry into this market difficult and slow are the length of time it normally takes to make a sale, the maturity of the market, and the lengthy period necessary to establish a track record for successfully managing large volumes of unemployment compensation claims. The Complaint also alleges that entry and expansion in the provision of outsourced UCM services to large multi-state employers is made more difficult by the large number of customers that are tied to long-term contracts with terms as long as five-years. Prior to TALX’s acquisition of its leading competitors who can serve large employers with multi-state claims, the vast majority of industry contracts were renewable one year relationships. In

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recent years, TALX has successfully and vigorously pursued three and five year deals with its clients. The prevalence of long-term contracts and non-compete and non-solicitation agreements between TALX and its employees, which substantially reduce the number of experienced and talented employees available to be hired by TALX's competitors and potential competitors, has made entry and expansion more difficult and slow.

The Complaint also alleges that entry into the market for VOIE services is difficult and slow. Among the factors that make entry into this market difficult and slow are, according to the Complaint, the need to acquire a sufficient scale and scope of payroll and employment data to attract and service a sufficient customer base, the difficulty of developing software to automate the VOIE process, and the need to build a reputation for reliability and security.

The Complaint alleges that the consummated acquisitions eliminated competition between TALX, and each of its competitors in the provision of outsourced UCM services and employer verification services nationwide. The Complaint further alleges that the consummated acquisitions enhance opportunities for TALX to increase prices unilaterally and to decrease the quality of services provided in each of the relevant markets. The acquisitions by TALX eliminated the closest competitors able to serve large employers with claims in many states or nationwide.

The Complaint alleges that the consummated acquisitions violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by substantially lessening competition in connection with the provision of outsourced UCM services and employer verification services nationwide. The Complaint further alleges that the Acquisitions described have eliminated direct and actual competition in the provision of both UCM and employer verification services. The acquisitions by TALX of its competitors have enhanced its ability to increase prices unilaterally and

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enhanced its ability to decrease the quality of services provided in each of the relevant lines of commerce, according to the Commission's Complaint.

IV. The Proposed Consent Order

As noted above, the Proposed Consent Order provides for relief in markets for UCM services and VOIE services.

Paragraph II. of the Proposed Consent Order prohibits TALX from enforcing against certain current and former employees who accept employment with certain UCM competitors of TALX certain types of covenants not to compete, not to solicit, and not to disclose trade secrets. Paragraph I.P.1. of the Proposed Consent Order lists some of those UCM competitors by name, and Paragraph I.P.2. lists criteria for identifying other such UCM competitors. Paragraphs I.DD., I.FF., and I.TT. of the Proposed Consent Order describe the types of restrictions on competition, solicitation, and trade secret disclosure that TALX would not be able to enforce in situations where Paragraph II. of the Proposed Consent Order is applicable.

Paragraph II. of the Proposed Consent Order divides the past and current employees subject to this paragraph into three categories: "Relevant Current Persons," "Relevant Past Persons," and "Other Relevant Current Persons." Appendix F to the Proposed Consent Order lists all of such Relevant Current Persons and divides them into five categories: Customer Relationship Managers, Account Managers, Unemployment Insurance Consultants, Hearing Representatives, and Tax Consultants. The third proviso to Paragraph II. of the Proposed Consent Order limits the number of Relevant Current Persons that are subject to Paragraph II. of the Proposed Consent Order to ten Customer Relationship Managers, four Account Managers, twenty-three Unemployment Insurance Consultants, five Hearing Representatives, and four Tax Consultants. In addition, the applicability of Paragraph II. of the Proposed Consent Order to a

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Relevant Current Person will end two years after such person's receipt of the notice that TALX is required to send such person pursuant to Paragraph VI.A. of the Proposed Consent Order.

The other two categories of past and current employees, "Relevant Past Persons," and "Other Relevant Current Persons," are defined in Paragraphs I.HH. and I.MM. of the Proposed Consent Order. There is no limit on the number of Relevant Past Persons and Other Relevant Current Persons who are subject to Paragraph II. of the Proposed Consent Order; and that paragraph will apply to those persons for the full ten-year term of the Proposed Consent Order.

Paragraph III. of the Proposed Consent Order provides that TALX must allow certain customers with contracts for UCM services with a term longer than one year to terminate their contracts on 90 days notice if those customers outsource their UCM services to a competitor of TALX. Paragraph I.X. of the Proposed Consent Order specifies the customers covered by Paragraph III. of the Proposed Consent Order. The third proviso to Paragraph III. places an upper limit of \$10 million on the "Total Of Relevant Values Of Terminated Long Term Contracts," within the meaning of Paragraph I.XX. of the Proposed Consent Order. In addition, the applicability of Paragraph III. of the Proposed Consent Order to a customer will end three years after such customer's receipt of the notice that TALX is required to send such customer pursuant to Paragraph VI.B. of the Proposed Consent Order.

Paragraph IV. of the Proposed Consent Order provides, that at the request of a "Former UCM Customer," within the meaning of Paragraph I.TT of the Proposed Consent Order. TALX must transfer certain specified customer file information to such customer. The information to be transferred would include data relating to open unemployment compensation claims and to state unemployment tax rates, and include documents generated in

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preparation for unemployment compensation hearings and appeals.

Paragraph V. of the Proposed Consent Order prevents TALX from entering into agreements that would prevent or discourage any entity from supplying goods or services to a UCM competitor of TALX. This paragraph does not apply to employment agreements.

Paragraphs VI.A., VI.B., and VI.C. of the Proposed Consent Order require TALX to give notice to certain current and former employees and to certain long-term contract customers of their rights under Paragraphs II. and III. of the Order.

Paragraph VI.D. of the Proposed Consent Order requires that TALX notify certain customers of their right to cancel UCM contracts that would otherwise be renewed automatically.

Paragraph VI.E. of the Proposed Consent Order requires the posting on Web sites of specified information concerning the rights of certain current and former employees of TALX and of certain UCM customers of TALX under Paragraphs II. and III. of the Order,

Paragraph VII.A. of the Proposed Consent Order prohibits TALX from entering into, or attempting to enter into, agreements to divide or allocate markets for UCM services.

Paragraph VII.B. of the Proposed Consent Order prohibits TALX from entering into, or attempting to enter into, any agreement requiring ADP, Inc. to subcontract to TALX the rendering of UCM services to a customer if such agreement precedes, rather than follows, ADP, Inc.'s agreement with such customer to provide UCM services. The purpose of Paragraph VII.B. is to increase the ability of TALX's current and future competitors to compete against TALX for the business of providing UCM services to customers of ADP.

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Paragraph VIII. of the Proposed Consent Order requires that, for ten (10) years, TALX give the Commission thirty (30) days advance notice before acquiring, or entering into a management contract with, a provider of UCM services or VOIE services.

Paragraph IX. of the Proposed Consent Order appoints Erwin O. Switzer to the position of Monitor/Administrator. The Monitor/Administrator will assist the Commission in monitoring TALX's compliance with the Proposed Consent Order, and will assist certain past and present employees of TALX and certain customers of TALX in exercising their rights under Paragraphs II. and III. of the Order.

Paragraphs X., XI. and XII. of the Proposed Consent Order require TALX to comply with certain reporting requirements to the Commission.

Paragraph XIII. provides that the Proposed Consent Order will terminate ten years after it goes into effect.