

A Biweekly  
Newsletter of  
Federal Securities,  
Corporate &  
Banking Law  
Developments

## Fair Credit Reporting Act Extended in Identity Theft Legislation

The President is expected tomorrow to sign legislation permanently extending the Fair Credit Reporting Act, which is otherwise set to expire at the end of this year. The Fair Credit Reporting Act sets national credit application, authorization and reporting standards and is intended to make it easier for consumers to have access to credit and to create efficiency in the process of granting credit.

The renewal of the Fair Credit Reporting Act is included in this year's Fair and Accurate Credit Transactions Act ("FACT") (<http://thomas.loc.gov>), which also seeks to combat the widespread problem of identity theft. Under FACT, consumers can receive one free copy of their credit report annually and companies must black out social security numbers and credit card numbers on receipts. In addition to consumer protection, the banking industry will also gain protection from multiple state rules, because FACT blocks states from individually setting tougher restrictions on marketing by affiliates, risk-based pricing notices, identity theft prevention, and disclosure of credit reports and scores.

**Companies should prepare to comply with many new obligations under FACT, including:**

- **Notifying consumers when negative information will be reported to credit bureaus;**
- **Taking steps designed to prevent predatory lending practices prior to extending credit to certain consumers;**
- **Developing procedures to identify potential identity theft;**
- **Reconciling potentially fraudulent consumer address information; and**
- **Disclosing their contact information on consumer reports.**

### IN THIS ISSUE:

- Fair Credit Reporting Act Renewed by Congress
- SEC Adopts Director Nomination Disclosure Rules
- New Requirements for Privacy Notices Possible
- SEC Proposes Mutual Fund Trading Regulation

*If you would like more information on these topics or have any questions, please e-mail us at [CorporateNotes@KutakRock.com](mailto:CorporateNotes@KutakRock.com).*

### ■ SEC ADOPTS NEW DIRECTOR NOMINATION RULES — PART I

On November 19, 2003, the SEC decided to require more disclosure by companies of procedures for director nominations and shareholder communications with directors. (<http://www.sec.gov/rules/final/33-8340.htm>) These disclosures must be made beginning with the 2004 proxy statement, and any material changes between annual meetings must be reported in a Form 10-K or Form 10-Q.

In connection with the nominating process, new proxy statement disclosures include the following:

- The independence of nominating committee members;
- The process for identifying and evaluating nominees;
- The identification of persons who nominate new directors;
- The policy regarding the consideration of shareholder recommendations and the procedures that shareholders must follow to submit such recommendations; and
- The existence of the nominating committee's charter, if any.

These rules are in addition to the recent NYSE and Nasdaq rules issued earlier this year. The

ATLANTA  
CHICAGO  
DENVER  
DES MOINES  
FAYETTEVILLE  
IRVINE  
KANSAS CITY  
LINCOLN  
LITTLE ROCK  
NEW YORK  
OKLAHOMA CITY  
OMAHA  
PASADENA  
RICHMOND  
SCOTTSDALE  
WASHINGTON  
WICHITA

new rules also require disclosure of the process, if any, for shareholders to communicate with directors, or an explanation of the absence of such a process.

**These new disclosure requirements represent the first of a two-part implementation of the rules proposed this past August. The second part, expected to be effective sometime next year, would give shareholders a limited right to nominate directors directly and be listed in the company's proxy statement.**

### ■ NEW REQUIREMENTS FOR PRIVACY ACT NOTICES TO BE PROPOSED

The eight federal agencies responsible for regulating the privacy notices sent to consumers are considering a new requirement—that the notices take one of four specified formats intended to make the notices more readable and consumer friendly. Under the Gramm-Leach-Bliley Act of 1999, financial service companies must send these notices advising consumers of their right to “opt out” of having their financial information shared with affiliates and other entities.

Yesterday, the FDIC approved the proposal, joining the OCC, Federal Reserve and FTC. The proposal is still subject to approval by the remaining agencies—the SEC, the OTS, the NCUA and the CFTC—and then it would be published in the Federal Register for public comment.

**Because of the pending proposal, financial service companies should consider avoiding any significant stockpiling of notices due to the potential for changes.**

### ■ SEC PROPOSES NEW REGULATION TO RESTRICT LATE TRADES OF MUTUAL FUNDS

The SEC today proposed a rule imposing a strict cutoff time for mutual fund trading of 4 pm Eastern time. (<http://www.sec.gov/news/press/2003-168.htm>) This is in response to

recent abuses in the mutual fund industry, with some investors being allowed to trade after 4 pm and yet retain the 4 pm price. The SEC also adopted a rule requiring mutual funds to implement compliance policies, appoint a chief compliance officer, and provide greater disclosure about how they value securities they trade and their market-timing policies.

Additional rule proposals are being considered for adoption early next year. On January 14, 2004, the SEC will consider a proposal to require portfolio managers to report any personal trading they do in the mutual funds they manage. In February, the SEC will consider additional proposals to combat market-timing abuses, including a rule to require mutual funds to impose a fee on investors who quickly trade in and out of a fund. **While these new standards are not yet finalized, investors should expect further mutual fund regulations within the next few months.**

Kutak Rock LLP is a national law firm with more than 325 attorneys located in 16 offices throughout the United States practicing in the areas of corporate, banking and securities law, mergers and acquisitions and stock offerings, federal government contracts, and complex commercial litigation matters.

You can request more information by sending an e-mail to [CorporateNotes@KutakRock.com](mailto:CorporateNotes@KutakRock.com), or contact any of us directly:

**Paul D. Borja**..... 202-828-2310  
[paul.borja@kutakrock.com](mailto:paul.borja@kutakrock.com)  
**Stephen P. Candelmo** ..... 202-828-2413  
[stephen.candelmo@kutakrock.com](mailto:stephen.candelmo@kutakrock.com)  
**Jeremy T. Johnson** ..... 202-828-2463  
[jeremy.johnson@kutakrock.com](mailto:jeremy.johnson@kutakrock.com)

#### Editor

**Kathleen M. Cochran** ..... 202-828-2308  
Administrative Assistant  
[kathleen.cochrane@kutakrock.com](mailto:kathleen.cochrane@kutakrock.com)

This newsletter is a publication of Kutak Rock LLP and is intended for general information only. It may be considered advertising under applicable court rules. It is not intended and should not be construed as legal advice. With regard to specific circumstances, each person should seek the advice of his or her attorney. The material in this publication may only be reproduced, in whole or in part, with acknowledgement of its source and copyright.

Copyright © 2003 Kutak Rock LLP. All rights reserved.