

INTERNATIONAL CONSUMER PROTECTION ACT

JULY 22, 2004.—Ordered to be printed

Mr. BARTON of Texas, from the Committee on Energy and
Commerce, submitted the following

R E P O R T

[To accompany H.R. 3143]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3143) to enhance Federal Trade Commission enforcement against cross-border fraud and deception, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 3143 empowers the Federal Trade Commission to combat transnational fraudulent and deceptive commercial practices.

BACKGROUND AND NEED FOR LEGISLATION

Cross-border fraud is a growing international problem that affects American consumers and businesses. The Internet and improvements in telecommunications technologies have brought sig-

nificant benefits to consumers. At the same time, they have also provided unprecedented opportunities for those engaged in fraud and deception to establish operations in one country and victimize a large number of consumers in other countries.

An increasing number of consumer complaints collected in the Consumer Sentinel database maintained by the Federal Trade Commission ("FTC"), and an increasing number of cases brought by the Commission, involve foreign consumers, foreign businesses or individuals, or assets or evidence located outside the United States. In 2002, 14% of the complaints in the Consumer Sentinel database (excluding identity theft complaints) were cross-border complaints, up from 11% in 2000. The 2002 complaints include over 24,000 complaints by U.S. consumers against foreign businesses. Increasingly, the FTC's fraud-related cases have some cross-border component. The Commission has had foreign targets in over 60 cases, pursued assets offshore in more than ten foreign countries, and provided redress to thousands of foreign as well as U.S. consumers.

The Commission has legal authority to remedy violations of law involving domestic and foreign wrongdoers, pursuant to the Federal Trade Commission Act. Yet, the Commission's ability to obtain effective relief using this authority faces practical impediments when wrongdoers, victims, other witnesses, documents, money, and third parties involved in the transaction are widely dispersed in many different countries and jurisdictions. Such circumstances make it difficult for the Commission to gather all the information necessary to detect injurious practices, recover offshore assets for consumer redress, and reach conduct occurring outside the United States that affects U.S. consumers. Improving the ability of the Commission and its foreign counterparts to share information about cross-border fraud and deception, to conduct joint and parallel investigations, and assist each other, is critical to achieve more timely and effective enforcement in cross-border cases.

HEARINGS

The Subcommittee on Commerce, Trade, and Consumer Protection held a hearing on September 17, 2003. The Subcommittee received testimony from: The Honorable Timothy Muris, Chairman, the Federal Trade Commission; Mark MacCarthy, Senior Vice President, Public Policy, Visa USA; Marc Rotenberg, Executive Director, Electronic Privacy Information Center; and Ari Schwartz, Associate Director, Center for Democracy and Technology.

COMMITTEE CONSIDERATION

On September 24, 2003, the Subcommittee on Commerce, Trade, and Consumer Protection met in open markup session and approved H.R. 3143 for Full Committee consideration, by a voice vote. On October 1, 2003, the Full Committee on Energy and Commerce met in open markup session and ordered H.R. 3143 favorably reported to the House by a voice vote, a quorum being present. Subsequent to Committee consideration of H.R. 3143, negotiations among agencies including the Federal Trade Commission, the Department of Justice, and the Office of the Comptroller of the Currency yielded significant change sought the information sharing

provisions of the bill. Representatives Stearns and Schakowsky will introduce a bill reflecting these agreed to changes.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3143 reported. A motion by Mr. Tauzin to order H.R. 3143 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing and made findings that are reflected in this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The goal of H.R. 3143 is to protect consumers from fraudulent and deceptive commercial practices perpetrated by persons in foreign jurisdictions and/or where the evidence of such fraud or illicit gains of such fraud is found overseas.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3143, the International Consumer Protection Act of 2003, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 8, 2003.

Hon. W.J. "BILLY" TAUZIN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3143, the International Consumer Protection Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Melissa E. Zimmer-

man (for federal costs), Sarah Puro (for the impact on state and local governments), and Selena Caldera (for the private-sector impact).

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 3143—International Consumer Protection Act of 2003

H.R. 3143 would expand the authority of the Federal Trade Commission (FTC) to work with foreign law enforcement agencies to enforce laws prohibiting fraudulent and deceptive commercial practices. The bill would allow temporary staff exchanges between foreign government agencies and the FTC and would authorize the agency to accept payment in-kind or reimbursement for costs associated with such exchanges. It also would authorize the appropriation of up to \$100,000 a year for the FTC to support activities of certain international law enforcement groups.

Assuming appropriation of the amounts specified in H.R. 3143, CBO estimates that implementing the bill would cost less than \$500,000 over the 2004–2008 period. Enacting the bill would not affect direct spending or revenues.

H.R. 3143 would preempt state and local laws that require notice to third parties when certain information relating to them is disclosed to the FTC. Such preemptions are mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs of the mandates would not exceed the threshold established in UMRA (\$59 million in 2003, adjusted for inflation).

H.R. 3143 would authorize the FTC to request that a judge order the recipient of a summons, subpoena, or other compulsory process to delay giving notice to anyone that they have been required to appear as a witness before, or to produce documents in, an FTC proceeding. The order could be issued, notwithstanding any state or local laws or regulations, if there is reason to believe that notification would cause certain identified adverse results. Further, the recipient would not be liable under any state or local laws or regulations for disclosing information or for failure to provide notice. The title also would protect certain entities that voluntarily provide specified material to the FTC from liability under any state or local law or regulation that precludes disclosure of information or requires notification to the interested third party.

To the extent that state and local governments have laws that contradict these provisions in the bill, the legislation would preempt those laws and thereby impose mandates under UMRA. CBO estimates that the cost of these mandates would be minimal and would not exceed the threshold established in UMRA (\$59 million in 2003, adjusted for inflation).

H.R. 3143 would exempt from liability those entities providing certain information on third parties to the FTC. This exemption would limit the ability of a third party to sue and, thus, impose a private-sector mandate under UMRA. CBO estimates that the cost to the private sector would be minimal and would fall below the annual threshold for private-sector mandates established in UMRA (\$117 million in 2003, adjusted annually for inflation).

Section 21B of the Federal Trade Commission Act, as amended by H.R. 3143, would protect from liability entities voluntarily providing information to the FTC about possible unfair or deceptive acts or practices of third parties. By exempting these entities from liability, H.R. 3143 would limit the ability of third parties to sue for disclosure or failure to provide notice of disclosure; such a limit constitutes a private-sector mandate under UMRA. The direct cost of the mandate would be the amount awarded in settlements and judgments (net of costs) to third parties under current law that would be precluded under H.R. 3143. Due to the exposure to liability under current law, entities do not voluntarily provide information on third parties to the FTC. CBO estimates that the costs to the private sector would be minimal, since few, if any, third-party lawsuits are filed.

On July 9, 2003, CBO transmitted a cost estimate for S. 1234, the Federal Trade Commission Reauthorization Act of 2003 as ordered reported by the Senate Committee on Commerce, Science, and Transportation on June 19, 2003. H.R. 3143 contains similar provisions to those in title II of S. 1234. In addition, S. 1234 would authorize funding for all operations of the FTC, but H.R. 3143 would authorize funding only for support to certain international law enforcement groups. Both bills also would preempt state and local law in the same way and would impose the same private-sector mandate.

The CBO staff contacts for this estimate are Melissa E. Zimmerman (for federal costs), Sara Puro (for the impact on state and local governments), and Selena Caldera (for the private-sector impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SECTION 1. SHORT TITLE

Section 1 establishes the short title of the Act as the “International Consumer Protection Act of 2003.”

SECTION 2. FOREIGN LAW ENFORCEMENT AGENCY DEFINED

Section 2 amends section 4 of the Federal Trade Commission Act by adding a definition for “foreign law enforcement agency.” It is defined as: (1) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; or, (2) any multinational multi-agency organization to the extent that it is acting on behalf of an entity described in subparagraph (A).

SECTION 3. AVAILABILITY OF REMEDIES

Section 3 amends section 5(a) of the Federal Trade Commission Act explicitly affirming that “unfair and deceptive acts or practices” under the FTC Act include acts or practices involving foreign commerce that: (1) cause or are likely to cause reasonably foreseeable injury within the United States; or (2) involve material conduct occurring within the United States. In particular, this section clarifies that the FTC has authority to obtain all remedies in cases alleging such unfair acts or practices involving foreign commerce, including consumer redress.

SECTION 4. POWERS OF THE COMMISSION

Section 4(a) amends section 6(f) of the Federal Trade Commission Act authorizing the sharing of material and information by the FTC with a foreign law enforcement agency under the same requirements and circumstances permitted under section 6(a) of the Act.

Section 4(b) further amends section 6 of the Federal Trade Commission Act by inserting a new subsection (j) permitting the FTC, upon a written request from a foreign law enforcement agency, to provide assistance, and to provide such assistance, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices or other practices, substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), without requiring that the conduct identified in the request violate the laws of the United States. However, the FTC shall not provide such assistance to the requesting agency where the activity the person is engaged in is protected under the Constitution of the United States.

Under section (j)(2), the Commission may, in its discretion, conduct such investigations as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by the Act. The Commission may also seek and accept appointment by a United

States district court of Commission attorneys to provide assistance to foreign and international tribunals, and to litigants before such tribunals on behalf of a foreign law enforcement agency, when a foreign agency is investigating or enforcing civil laws or when the Attorney General refers a request to the Commission from an agency investigating or pursuing the enforcement of criminal laws. In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including: (1) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission; (2) whether compliance with the request would prejudice the interests of consumers in the United States; and, (3) whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

Section (j)(4) states that if a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, after consultation with the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, and with final approval of the agreement by the Secretary of State, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such international agreement to (1) provide assistance using the powers set forth in this subsection; (2) disclose materials and information in accordance with subsection (f) and section 21(b)(6) of the Act; and, (3) protect materials and information received from disclosure, as authorized by the Act.

Under a new section (k) amending section 6 of the FTC Act, whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Commission shall transmit such evidence to the Attorney General who may, in his discretion, institute criminal proceedings under appropriate statutes. Moreover, this section requires that the Commission endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies investigating or pursuing enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

The Commission is further authorized to expend appropriated funds for (1) operating expenses and other costs of bilateral and multilateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates and (2) expenses for consultations and meetings hosted by the Commission with foreign government agency officials to exchange views relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes. Such expenses may include necessary administrative and logistic expenses, and the expenses of Commission staff and foreign invitees. The Commission is authorized to expend appropriated funds not to exceed \$100,000 per fiscal year for purposes of this section.

SECTION 5. REPRESENTATION IN FOREIGN LITIGATION

Section 5 amends section 16 of the Federal Trade Commission Act by adding that the Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts in which the Commission has an interest, pursuant to the terms of a memorandum of understanding to be negotiated by the Commission and the Attorney General. Moreover, the Commission is authorized to expend appropriated funds for the retention of foreign counsel for both consultation and litigation in foreign courts.

SECTION 6. SHARING INFORMATION WITH FOREIGN LAW ENFORCEMENT AGENCIES

Section 6(a) amends section 21(b)(6) of the Federal Trade Commission Act adding that the Commission may make material obtained pursuant to compulsory process available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes. Moreover, the foreign law enforcement agency must also set forth a bona fide legal basis for its authority to maintain the material in confidence. The materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of (1) foreign laws prohibiting fraudulent or deceptive commercial practices or other practices, substantially similar to practices prohibited by any law administered by the Commission; (2) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or, (3) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined or covered by a criminal mutual legal assistance treaty in force between the United States and the foreign law enforcement authority's state. However, the FTC shall not make available such material to a foreign law enforcement agency where the activity the person is engaged in is protected under the Constitution of the United States.

Section 6(b) exempts from public disclosure under section 552 of title 5 of the United States Code (Freedom of Information Act) materials and information received from a foreign government agency and consumer complaint information received from non-governmental foreign sources where the agency or foreign source requests confidentiality as a condition of providing the material or consumer complaint information submitted to a reporting mechanism jointly sponsored by the FTC and its foreign counterparts. However, this subsection does not authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court in an action commenced by the Commission or the United States.

SECTION 7. CONFIDENTIALITY, DELAYED NOTICE OF PROCESS

Section 7 amends the FTC Act by inserting section 21(A) making the Right to Financial Privacy Act ("RFPA") and the Electronic

Communications Privacy Act (“ECPA”) applicable to the Commission. It further amends the Right to Financial Privacy Act to remove impediments to sharing appropriate information between the FTC and other financial and market regulators. In general, the procedures for delay or prohibition of notice under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and the Electronic Communications Privacy Act (18 U.S.C. 2701 et seq.) are also made available to the Commission. In the case of the RFPA, the procedures are available to the Commission upon a finding by the presiding judge or magistrate judge pursuant to an ex parte application by the Commission that there is reason to believe that notification may cause an adverse result. Under ECPA, the notification is delayed pursuant to section 2705(a)(1)(B) of title 18, upon a finding by the Commission that there is reason to believe that notification may cause an adverse result.

If the procedures for delay or prohibition of notice under the Right to Financial Privacy Act and the Electronic Communications Privacy Act do not apply, under section 21(A)(c) the Commission may apply ex parte to a presiding judge or magistrate judge for an order commanding the recipient of compulsory process issued by the Commission not to notify any other person of the existence of the process, notwithstanding any other law. The presiding judge or magistrate judge may, in turn, enter such an order granting the requested delay for a period not to exceed 60 days, if there is reason to believe that notification may cause an adverse result. The presiding judge or magistrate judge may grant extensions of this delay of notice of up to 30 days each in accordance with this subsection, provided that in no event the notice shall be delayed for more than a total of nine months.

The recipient of compulsory process issued by the Commission under this section 21(A)(d) shall not be liable under any law or under any contract or other legally enforceable agreement, for failure to provide notice that such process has been issued or that the recipient has provided information in response to such process. In doing so, the recipient is not provided with any exemption from liability for (1) the underlying conduct reported; (2) noncompliance with the record retention requirements under section 3404 of title 12; or, (3) noncompliance with any requirement of a federal government agency to disclose information to that agency.

All judicial proceedings initiated by the Commission under the RFPA and ECPA or section 21(A) may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. Moreover, upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit. However, this section shall not apply to an investigation or proceeding related to the administration of federal antitrust laws or foreign antitrust laws.

For purposes of this section, the term adverse result is defined as (1) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved to such practices; (2) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the

source or disposition of funds related to such practices; (3) endangering the life or physical safety of an individual; (4) flight from prosecution; (5) the destruction of, or tampering with, evidence; (6) the intimidation of potential witnesses; (7) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission; or, (8) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices.

SECTION 8. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION

Section 8 amends the FTC Act protecting a limited category of entities from liability under law for the voluntary provision of material or for any failure to provide notice of such provision of material to the FTC, if the entity reasonably believes that such disclosures are relevant to possible unfair or deceptive practices, or assets subject to recovery by the Commission, including assets located in overseas. The section does not provide any exemption from liability for the underlying conduct.

This section applies to the following entities, whether foreign or domestic: (1) a financial institution as defined in section 5312 of title 31, United States Code; (2) to the extent not included in paragraph (1), bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments; (3) a courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry, and a provider of alternative dispute resolution services; and, (4) an Internet service provider or provider of telephone services.

SECTION 9. STAFF EXCHANGES

Section 9 provides for foreign staff exchange arrangements between the FTC and foreign government authorities, and permits the FTC to make and accept full or partial reimbursements in such circumstances. The provision gives the FTC explicit authority to accept reimbursement for providing investigation, litigation, or other program assistance to its counterparts abroad. The Commission is given a general reimbursement provision to permit the Commission to accept reimbursement from domestic or foreign law enforcement authorities for expenses incurred by the FTC in carrying out any activity pursuant to a statute administered by the Commission.

SECTION 10. INFORMATION SHARING WITH FINANCIAL REGULATORS

Section 10 amends section 1112(e) of the Right to Financial Privacy Act (12 U.S.C. 3412(e)) by adding the Federal Trade Commission after the Securities and Exchange Commission. This includes the FTC in an exemption that allows Federal financial and market regulators, including the SEC, to share financial records, examination reports, or other appropriate information.

SECTION 11. REPORT

Section 11 requires the FTC to provide a report to Congress within three years after the enactment of any legislation describing the FTC's use of its new authority and reporting on (1) the number and types of requests for information-sharing and investigative assistance; (2) the disposition of such requests; (3) the foreign law enforcement agencies involved; and, (4) the nature of the information provided and received. This section provides for the report to include recommendations for additional legislation in the cross-border area as appropriate. Notwithstanding this report requirement, the Committee may exercise its oversight authority with respect to the implementation of this Act at any time after enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FEDERAL TRADE COMMISSION ACT

SEC. 4. The words defined in this section shall have the following meaning when found in this Act, to wit:

"Commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

* * * * *

"Foreign law enforcement agency" means—

(A) *any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; or*

(B) *any multinational or multiagency organization to the extent that it is acting on behalf of an entity described in subparagraph (A).*

SEC. 5. (a)(1) * * *

* * * * *

(4)(A) *Unfair or deceptive acts or practices for purposes of this subsection shall include such acts or practices involving foreign commerce that—*

(i) *cause or are likely to cause reasonably foreseeable injury within the United States; or*

(ii) *involve material conduct occurring within the United States.*

(B) *All remedies available to the Commission with respect to unfair and deceptive acts or practices shall be available for acts and*

practices described in this paragraph, including restitution to domestic or foreign victims.

* * * * *

SEC. 6. That the commission shall also have power—

(a) * * *

* * * * *

(f) To make public from time to time such portions of the information obtained by it hereunder as are in the public interest; and to make annual and special reports to the Congress and to submit therewith recommendations for additional legislation; and to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use: *Provided*, That the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information (1) to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement [purposes.] purposes, and (2) to any officer or employee of any foreign law enforcement agency under the same circumstances that making material available to foreign law enforcement agencies is permitted under section 21(b)(6).

* * * * *

(j) *INVESTIGATIVE ASSISTANCE FOR FOREIGN LAW ENFORCEMENT AGENCIES.—*

(1) *IN GENERAL.—*Upon a written request from a foreign law enforcement agency to provide assistance in accordance with this subsection, if the requesting agency states that it is investigating, or engaging in enforcement proceedings against, possible violations of laws prohibiting fraudulent or deceptive commercial practices or other practices, substantially similar to practices prohibited by any provision of the laws administered by the Commission, other than Federal antitrust laws (as defined in section 12(5) of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211(5))), the Commission may provide the assistance described in paragraph (2) without requiring that the conduct identified in the request constitute a violation of the laws of the United States.

(2) *TYPE OF ASSISTANCE.—*In providing assistance to a foreign law enforcement agency under this subsection, the Commission may—

(A) conduct such investigation as the Commission deems necessary to collect information and evidence pertinent to the request for assistance, using all investigative powers authorized by this Act; and

(B) when the request is from an agency acting to investigate or pursue the enforcement of civil laws, or when the Attorney General refers a request to the Commission from an agency acting to investigate or pursue the enforcement of criminal laws, seek and accept appointment by a United

States district court of Commission attorneys to provide assistance to foreign and international tribunals and to litigants before such tribunals on behalf of a foreign law enforcement agency pursuant to section 1782 of title 28, United States Code.

(3) *CRITERIA FOR DETERMINATION.—In deciding whether to provide such assistance, the Commission shall consider all relevant factors, including—*

(A) whether the requesting agency has agreed to provide or will provide reciprocal assistance to the Commission;

(B) whether compliance with the request would prejudice the interest of consumers in the United States; and

(C) whether the requesting agency's investigation or enforcement proceeding concerns acts or practices that cause or are likely to cause injury to a significant number of persons.

(4) *INTERNATIONAL AGREEMENTS.—If a foreign law enforcement agency has set forth a legal basis for requiring execution of an international agreement as a condition for reciprocal assistance, or as a condition for provision of materials or information to the Commission, the Commission, after consultation with the Secretary of State, may negotiate and conclude an international agreement, in the name of either the United States or the Commission, and with final approval of the agreement by the Secretary of State, for the purpose of obtaining such assistance, materials, or information. The Commission may undertake in such an international agreement to—*

(A) provide assistance using the powers set forth in this subsection;

(B) disclose materials and information in accordance with subsection (f) and section 21(b)(6); and

(C) engage in further cooperation, and protect materials and information received from disclosure, as authorized by this Act.

(5) The authority in this subsection is in addition to, and not in lieu of, any other authority vested in the Commission or any other officer of the United States.

(k) *REFERRAL OF EVIDENCE FOR CRIMINAL PROCEEDINGS.—*

(1) IN GENERAL.—Whenever the Commission obtains evidence that any person, partnership, or corporation, either domestic or foreign, has engaged in conduct that may constitute a violation of Federal criminal law, the Commission may transmit such evidence to the Attorney General, who may institute criminal proceedings under appropriate statutes. Nothing in this paragraph affects any other authority of the Commission to disclose information.

(2) INTERNATIONAL INFORMATION.—The Commission shall endeavor to ensure, with respect to memoranda of understanding and international agreements it may conclude, that material it has obtained from foreign law enforcement agencies acting to investigate or pursue the enforcement of foreign criminal laws may be used for the purpose of investigation, prosecution, or prevention of violations of United States criminal laws.

(l) EXPENDITURES FOR COOPERATIVE ARRANGEMENTS.—The Commission may expend appropriated funds for—

(1) *operating expenses and other costs of bilateral and multi-lateral cooperative law enforcement groups conducting activities of interest to the Commission and in which the Commission participates; and*

(2) *expenses for consultations and meetings hosted by the Commission with foreign government agency officials, members of their delegations, appropriate representatives and staff to exchange views concerning developments relating to the Commission's mission, development and implementation of cooperation agreements, and provision of technical assistance for the development of foreign consumer protection or competition regimes, such expenses to include necessary administrative and logistic expenses and the expenses of Commission staff and foreign invitees in attendance at such consultations and meetings including—*

(A) *such incidental expenses as meals taken in the course of such attendance;*

(B) *any travel and transportation to or from such meetings; and*

(C) *any other related lodging or subsistence.*

* * * * *

SEC. 16. (a)(1) * * *

* * * * *

(2) Except as otherwise provided in paragraph (3), in any civil action—

(A) * * *

* * * * *

(C) *to obtain judicial review of a rule prescribed by the Commission, or a cease and desist order issued under section 5 of this Act[; or];*

(D) *under the second paragraph of section 9 of this Act (relating to enforcement of a subpoena) and under the fourth paragraph of such section (relating to compliance with section 6 of this Act); and*

(E) *under section 21A of this Act;*

* * * * *

(c) *FOREIGN LITIGATION.—*

(1) *COMMISSION ATTORNEYS.—The Commission may designate Commission attorneys to assist the Attorney General in connection with litigation in foreign courts in which the Commission has an interest, pursuant to the terms of a memorandum of understanding to be negotiated by the Commission and the Attorney General. The preceding sentence is in addition to, and not in lieu of any other authority vested in the Commission.*

(2) *FOREIGN COUNSEL.—The Commission is authorized to expend appropriated funds for the retention of foreign counsel for consultation and for litigation in foreign courts, and for expenses related to consultation and litigation in foreign courts in which the Commission has an interest.*

(3) *PAYMENT OF CLAIMS.—Nothing in this section authorizes the payment of claims or judgments from any source other than*

the permanent and indefinite appropriation authorized by section 1304 of title 31, United States Code.

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SEC. 21. (a) * * *

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(b)(1) * * *

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(6) The custodian of any documentary material, written reports or answers to questions, and transcripts of oral testimony may deliver to any officers or employees of appropriate Federal law enforcement agencies, in response to a written request, copies of such material for use in connection with an investigation or proceeding under the jurisdiction of any such agency. The custodian of any tangible things may make such things available for inspection to such persons on the same basis. Such materials shall not be made available to any such agency until the custodian receives certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. Such documentary material, results of inspections of tangible things, written reports or answers to questions, and transcripts of oral testimony may be used by any officer or employee of such agency only in such manner and subject to such conditions as apply to the Commission under this section. The custodian may make such materials available to any State law enforcement agency upon the prior certification of any officer of such agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. *The custodian may make such material available to any foreign law enforcement agency upon the prior certification of an appropriate official of any such foreign law enforcement agency, either by a prior agreement or memorandum of understanding with the Commission or by other written certification, that such material will be maintained in confidence and will be used only for official law enforcement purposes, if—*

(A) the foreign law enforcement agency has set forth a bona fide legal basis for its authority to maintain the material in confidence; and

(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

(i) foreign laws prohibiting fraudulent or deceptive commercial practices or other practices substantially similar to practices prohibited by any law administered by the Commission;

(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

(iii) with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United States and the foreign law enforcement authority's government.

Nothing in the preceding sentence authorizes the disclosure of material obtained in connection with the administration of the Federal antitrust laws or foreign antitrust laws (as defined in paragraphs (5) and (7), respectively, of section 12 of the International Antitrust Enforcement Assistance Act of 1994 (15 U.S.C. 6211)) to any officer or employee of a foreign law enforcement agency.

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[(f) Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5, United States Code.]

(f) *EXEMPTION FROM DISCLOSURE.*—

(1) *IN GENERAL.*—Any material which is received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process under this Act or which is provided voluntarily in place of such compulsory process shall be exempt from disclosure under section 552 of title 5, United States Code.

(2) *MATERIAL OBTAINED FROM A FOREIGN SOURCE.*—

(A) *Except as provided in subparagraph (C) of this paragraph, the Commission shall not be compelled to disclose—*

(i) *material obtained from a foreign law enforcement agency or other foreign government agency, if the foreign law enforcement agency or other foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;*

(ii) *material reflecting consumer complaints obtained from any other foreign source, if that foreign source supplying the material has requested confidential treatment as a condition of providing the material; or*

(iii) *material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign law enforcement agencies or other foreign government agencies.*

(B) *For purposes of section 552 of title 5, United States Code, this subsection shall be considered a statute described in subsection (b)(3)(B) of such section.*

(C) *Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.*

SEC. 21A. CONFIDENTIALITY AND DELAYED NOTICE OF COMPULSORY PROCESS FOR CERTAIN THIRD PARTIES.

(a) *INTERSECTION WITH OTHER STATUTES.*—The Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and the Electronic Communications Privacy Act (18 U.S.C. 2701 et seq.) shall apply with re-

spect to the Commission, except as otherwise provided in this section.

(b) *IN GENERAL.*—The procedures for delay or prohibition of notice under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.) and the Electronic Communications Privacy Act (18 U.S.C. 2701 et seq.) shall be available to the Commission—

(1) where notification is delayed pursuant to section 1109(a) of the Right to Financial Privacy Act (12 U.S.C. 3409(a)) pursuant to an ex parte application by the Commission that there is reason to believe that notification may cause an adverse result; or

(2) where notification is delayed pursuant to section 2705(a)(1)(B) of title 18, upon a finding by the Commission that there is reason to believe that notification may cause an adverse result.

(c) *EX PARTE APPLICATION BY COMMISSION.*—If the procedures for delay or prohibition of notice described in subsection (b) do not apply, the Commission may apply ex parte to a presiding judge or magistrate judge for an order commanding the recipient of compulsory process issued by the Commission not to notify any other person of the existence of the process, notwithstanding any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia. The presiding judge or magistrate judge may enter such an order granting the requested delay for a period not to exceed 60 days if there is reason to believe that notification may cause an adverse result. The presiding judge or magistrate judge may grant extensions of this delay of notice of up to 30 days each in accordance with this subsection, provided that in no event shall notice be delayed for more than a total of 9 months.

(d) *NO LIABILITY FOR FAILURE TO NOTIFY.*—The recipient of compulsory process issued by the Commission under this Act shall not be liable under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, or under any contract or other legally enforceable agreement, for failure to provide notice that such process has been issued or that the recipient has provided information in response to such process. The preceding sentence does not provide any exemption from liability for—

(1) the underlying conduct reported;

(2) noncompliance with the record retention requirements under section 1104(c) of the Right to Financial Privacy Act (12 U.S.C. 3404), where applicable; or

(3) noncompliance with any requirement of a Federal agency to disclose information to that agency.

(e) *VENUE AND PROCEDURE.*—

(1) *IN GENERAL.*—All judicial proceedings initiated by the Commission under the Right to Financial Privacy Act (12 U.S.C. 3401 et seq.), the Electronic Communications Privacy Act (18 U.S.C. 2701 et seq.), or this section may be brought in the United States District Court for the District of Columbia or any other appropriate United States District Court. All ex parte

applications by the Commission under this section related to a single investigation may be brought in a single proceeding.

(2) *IN CAMERA PROCEEDINGS.*—Upon application by the Commission, all judicial proceedings pursuant to this section shall be held in camera and the records thereof sealed until expiration of the period of delay or such other date as the presiding judge or magistrate judge may permit.

(f) *SECTION NOT TO APPLY TO ANTITRUST INVESTIGATIONS OR PROCEEDINGS.*—This section shall not apply to an investigation or proceeding related to the administration of Federal antitrust laws or foreign antitrust laws (within the meaning of section 6211 of this title).

(g) *ADVERSE RESULT DEFINED.*—For purposes of this section the term “adverse result” means—

(1) the transfer outside the territorial limits of the United States of assets or records related to fraudulent or deceptive commercial practices or related to persons involved in such practices;

(2) impeding the ability of the Commission to identify persons involved in fraudulent or deceptive commercial practices, or to trace the source or disposition of funds related to such practices;

(3) endangering the life or physical safety of an individual;

(4) flight from prosecution;

(5) the destruction of, or tampering with, evidence;

(6) the intimidation of potential witnesses;

(7) the dissipation, fraudulent transfer, or concealment of assets subject to recovery by the Commission; or

(8) otherwise seriously jeopardizing an investigation or proceeding related to fraudulent or deceptive commercial practices or persons involved in such practices, or unduly delaying a trial related to such practices or persons involved in such practices.

SEC. 21B. PROTECTION FOR VOLUNTARY PROVISION OF INFORMATION.

(a) *IN GENERAL.*—An entity described in paragraphs (2) or (3) of subsection (d) that voluntarily provides material to the Commission that such entity reasonably believes is relevant to—

(1) a possible unfair or deceptive act or practice, as defined in section 5(a) of this Act; or

(2) assets subject to recovery by the Commission, including assets located in foreign jurisdictions;

shall not be liable to any person under any law or regulation of the United States, or under the Constitution, or any law or regulation of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material. Nothing in this subsection shall be construed to provide any exemption from liability for the underlying conduct reported.

(b) *CERTAIN FINANCIAL INSTITUTIONS.*—An entity described in subsection (d)(1) that voluntarily provides to the Commission material relevant to the subjects described in paragraphs (1) or (2) of subsection (a) shall be exempt from liability in accordance with the provisions of section 5318(g)(3) of title 31, United States Code.

(c) *CONSUMER COMPLAINTS.*—Any entity described in subsection (d) that voluntarily provides consumer complaints sent to it, or information contained therein, to the Commission shall not be liable

to any person under any law or regulation of the United States, or under the constitution, or any law or regulation, of any State, political subdivision of a State, territory of the United States, or the District of Columbia, for such provision of material or for any failure to provide notice of such provision of material. The preceding sentence does not provide any exemption from liability for the underlying conduct.

(d) *APPLICATION.*—This section applies to the following entities, whether foreign or domestic:

(1) A financial institution as defined in section 5312 of title 31, United States Code.

(2) To the extent not included in paragraph (1) a bank or thrift institution, a commercial bank or trust company, an investment company, a credit card issuer, an operator of a credit card system, and an issuer, redeemer, or cashier of travelers' checks, money orders, or similar instruments.

(3) A courier service, a commercial mail receiving agency, an industry membership organization, a payment system provider, a consumer reporting agency, a domain name registrar or registry, and a provider of alternative dispute resolution services.

(4) An Internet service provider or provider of telephone services.

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SEC. 25A. STAFF EXCHANGES.

(a) *IN GENERAL.*—The Commission may—

(1) retain or employ officers or employees of foreign government agencies on a temporary basis pursuant to section 2 of this Act, section 3109 of title 5, or section 202 of title 18, United States Code; and

(2) detail officers or employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

(b) *RECIPROCITY AND REIMBURSEMENT.*—The staff arrangements described in subsections (a) need not be reciprocal. The Commission may accept payment or reimbursement, in cash or in kind, from a foreign government agency to which this section is applicable, or payment or reimbursement made on behalf of such agency, for expenses incurred by the Commission, its members, and employees in carrying out such arrangements.

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SECTION 1112 OF THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978

USE OF INFORMATION

SEC. 1112. (a) * * *

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(e) Notwithstanding section 1101(6) or any other provision of law, the exchange of financial records, examination reports or other information with respect to a financial institution, holding company, or a subsidiary of a depository institution or holding company, among and between the five member supervisory agencies of the Federal Financial Institutions Examination Council, the Securi-

ties and Exchange Commission, *the Federal Trade Commission*,
and the Commodity Futures Trading Commission is permitted.

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