

## MEMORANDUM

To: Our Valued Customers  
From: A.S. Pratt & Sons  
Subject: Highlights

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Enclosed is the spring 2008 update to The *Law of Financial Privacy*. Privacy has been an active issue for many years, and 2008 is no exception. In fact, 2008 is starting off like it will be one of the most challenging years to date for privacy practitioners. This update attempts to capture important recent developments in the rapidly expanding world of privacy.

On the federal level, the bank regulatory agencies, and the Federal Trade Commission, continue to promulgate regulations to implement the Fair and Accurate Credit Transactions Act of 2003. For example, these agencies have issued the much anticipated affiliate marketing rule, mandating that an entity that receives eligibility information from an affiliate may not use that information to make marketing solicitations about its own products or services, unless the affected consumers first receive notice that information about them received from affiliates may be used for marketing purposes, those consumers are given an opportunity to opt out of that information use and the consumers have not opted out. In addition, the agencies adopted a “red flags” rule and related guidelines, which require financial institutions, defined as “depository institutions,” and creditors to establish an identity theft prevention program to detect, prevent and mitigate identity theft in connection with accounts covered under the red flags rule. The agencies also promulgated rules imposing new requirements on card issuers concerning changes of address, and imposing new address verification and confirmation requirements on users of consumer reports that receive a notice of address discrepancy from a consumer reporting agency.

Privacy also has been an explosive topic at the state level during the past year. In California, for example, extensive privacy legislation that goes well beyond the privacy requirements of the federal Gramm-Leach-Bliley Act, became effective even though challenges to this statute on preemption grounds continue in the courts. In addition, additional states have enacted laws requiring companies to notify consumers of a breach of security through which sensitive personal information is believed to have been acquired by an unauthorized person in a manner that compromises that information. Also, additional states have enacted laws permitting consumers to place security freezes on their consumer report files. And, additional states have enacted laws restricting the use and disclosure of Social Security numbers.

Information security continues to be an active topic at the federal level, particularly at the FTC. More specifically, the FTC has brought significant enforcement actions against high-profile companies regarding the security of customer information, including actions against mortgage companies for the improper disposal of credit report information and actions against companies for their failure to secure consumer information collected during transactions with these consumers.

Revisions through this update address all of these developments and more, including the following:

*Chapter 1 — Fair Credit Reporting Act.* Additions to the chapter discuss:

- Affiliate marketing rule restrictions on the use of information from affiliates for marketing purposes.
- Requirements imposed by the red flags rule and guidelines for protecting consumer and business accounts against identity theft and other fraud.
- Duties of card issuers that receive a change of address, together with a request for a replacement or additional card.
- Requirements imposed by the address discrepancy rule on users of consumer reports.

*Chapter 3 — Third Party Summons Provision of the Internal Revenue Code.* Additions to the chapter address:

- Limitations on the jurisdiction of courts over parties outside their judicial district.
- Authority of IRS agent to issue summons under particular circumstances.
- Clarification on what must be stated in an IRS summons.

*Chapter 5 — State Financial Privacy Law.* Additions to the chapter review:

- Additional state statutes on notification in connection with security breach incidents.
- Additional state statutes permitting security freezes on consumer report files.
- Additional state statutes restricting the disclosure and use of Social Security numbers.

*Chapter 8 — Financial Institutions and the Freedom of Information Act.* Additions to the chapter discuss:

- Amendments to FOIA disclosure requirements.

*Chapter 9 — Federal Financial Institution Privacy Law.* Additions discuss, in relation to other chapter topics:

- Fair Credit Reporting Act affiliate marketing restrictions.
- Fair Credit Reporting Act red flags requirements.
- Securities and Exchange Commission proposals on privacy notices and data security requirements.
- Federal Trade Commission enforcement actions relating to the privacy and security of customer information.