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DEFINITIONS FROM
REGULATION B

- ▶ Adverse Action means:
 - ▶ refusal to grant credit in substantially the amount or on substantially the terms requested in an application
 - ▶ an unfavorable change in the terms of an account that does not affect all or substantially all of a class of the creditor's accounts
 - ▶ a refusal to increase the amount of credit available to an applicant who has asked for an increase
 - ▶ a denial or revocation of credit

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WHAT IS **NOT** AN ADVERSE ACTION

- ▶ Adverse Action DOES NOT INCLUDE:
 - ▶ a change in terms of an account expressly agreed to by an applicant
 - ▶ action or forbearance relating to an account taken in connection with inactivity, default, or *current* delinquency as to that account
 - ▶ a refusal because creditor does not offer the type of credit or credit plan requested
 - ▶ A change that is made throughout the creditor's company across the Board to each customer

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REGULATION B EXPANSION OF
DEFINITIONS

- ▶ Regulation B, elaborates on the definition of "creditor" providing more detailed guidelines and clarifications on how the term "creditor" should be interpreted and applied in various contexts.
- ▶ Regulation B expanded the definition of "applicant" in 2022 to "express more succinctly the fact that the term includes both a person who requests credit and a debtor"

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REGULATION B
DEFINITION

- Business Credit refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excludes extensions of credit in certain types of transactions, such as public utilities, securities and government credit.

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TRADE CREDIT
DEFINITION

- Trade Credit is NOT defined in the ECOA OR in Regulation B
 - Staff Commentary states that "the term 'trade credit' generally is limited to a financing arrangement that involves a buyer and a seller - such as a supplier who finances the sale of equipment, supplies, or inventory; it does not apply to an extension of credit by a bank or other financial institution for the financing of such terms."

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THE ABILITY TO SAY "NO" AND
REMAIN LEGAL

- ▶ Yes: You can Say "No"
- ▶ In the event that a trade creditor takes an adverse action, that creditor **MUST** take certain steps
 - ▶ Provide the Applicant with the requisite ECOA Notice (see slide below)
 - ▶ Notify the applicant within a reasonable time
 - ▶ Orally or in writing
 - ▶ That credit has been denied, terminated, or reduced
- ▶ Tell the applicant that it has the right to know the reasons for the credit denial (see sample Notification on slide below Notice slide)

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EQUAL CREDIT OPPORTUNITY ACT NOTICE

► Required ECOA Notice

- The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue NW, Washington, DC 20580. *

**Note: Creditors subject to Packers and Stockyards Act will have to note provide the address of the nearest Packers and Stockyards Division Regional Office*

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EQUAL CREDIT OPPORTUNITY ACT NOTIFICATION OF RIGHTS TO REASONS

If your application for business credit is denied, you have the right to a written statement of the specific reasons for the denial. To obtain the statement, please contact {name, address and telephone number of the person or office from which the statement of reasons can be obtained} within 60 days from the date you are notified of our decision. We will send you a written statement of reasons for the denial within 30 days of receiving your request for the statement.

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WHAT DETERMINES "REASONABLE" NOTICE PERIOD

- Notification of the Adverse Action occurs when it is given
 - Within 30 days after
 - receiving a completed application
 - taking adverse action on existing account
 - receiving an incomplete application
- Notification of an Adverse Action on an existing account must also be made within 30 days after such action is taken

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NOTIFICATION IN THE EVENT OF A COUNTEROFFER

- If a counteroffer has been made by a creditor and the applicant does not expressly accept or use the credit offered, then notification of the creditor's adverse action must be within 90 days of notifying the applicant of a counteroffer
- Notifications may be in Electronic Format, provided the Applicant agrees to receiving electronic notifications
 - Electronic Notification must comply with the Electronic Signatures in Global and ational Commerce Act (E-Sign Act)
- If the original Application is submitted electronically then electronic notifications may be given electronically without further consent.

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ELECTRONIC NOTIFICATION OKAY

- 12 CFR §202.4(d) provides:
- The disclosures required by this part that are required to be given in writing may be provided to the applicant in electronic form, subject to compliance with the consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act)
 - Both sides need to consent to Electronic format
- Where an application has been submitted in electronic form, then the disclosures may be given in electronic form without obtaining prior consent

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CREDITOR MUST REMAIN ECOA COMPLIANT THROUGHOUT THE CREDIT RELATIONSHIP

- Advisory Opinion by the CFPB on May 18, 2022 stated, in pertinent part"
 - Some creditors fail to acknowledge that ECOA and Regulation B plainly applies to circumstances that take place after an extension of credit has been granted including a revocation of credit or an unfavorable change in the terms of a credit arrangement;"
 - "Some creditors fail to provide applicants with required notifications that include a statement of the specific reasons for the adverse action taken or disclose an applicant's right to such a statement."
 - Creditors must comply with all aspects of the ECOA and Regulation B when credit is extended and at all future times if there is a refusal to further extend credit or where credit is terminated completely

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REASONS REQUIREMENT AND SPECIFICITY

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REASONS MUST BE PROVIDED

▶ When a request, in writing is received from the Applicant within 60 days of the Adverse Action notification a creditor must provide the reasons for the Adverse Action within 30 days from the date of the written request

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EQUAL CREDIT OPPORTUNITY ACT CHECKLIST OF REASONS

▶ Provided by Regulation B

▶ Insufficient number of credit references provided

▶ Unacceptable type of credit references provided

▶ Unable to verify credit references

▶ Poor credit performance with us

▶ Delinquent past or present credit obligations with others

▶ Garnishment, attachment, foreclosure, collection action, or judgment

▶ Bankruptcy

▶ Value or type of collateral not sufficient

▶ Lack of established earnings record

▶ Slow or past due in trade or loan payments

▶ Other, specify____

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CFPB POLICY STATEMENT ON ACCURACY AND SPECIFICITY OF REASONS

▶ Creditors may not rely on the checklist of reasons to satisfy their obligations under ECOA if those reasons do not specifically and accurately indicate the principal reason(s) for the adverse action.

▶ Reliance on the checklist of reasons provided in the sample forms will satisfy a creditor's adverse action notification requirements only if the reasons disclosed are specific and indicate the principal reason(s) for the adverse action taken.

▶ Nor, as a general matter, may creditors rely on overly broad or vague reasons to the extent that they obscure the specific and accurate reasons relied upon

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ESPECIALLY IMPORTANT WITH TECHNOLOGY

▶ CFPB has also made clear that adverse action notice requirements apply equally to all credit decisions, regardless of whether the technology used to make them involves complex or quote black box End Quote algorithmic models, or other technology that creditors may not understand sufficiently to meet their legal obligations

▶ As data use and credit models continue to evolve, creditors have an obligation to ensure that these models comply with existing consumer protection laws

* CFPB Circular 2023-03

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DODD-FRANK ACT AMENDMENT IMPACTS ECOA COMPLIANCE

▶ Creditors that make adverse decisions based on information in an applicant's consumer report must also disclose

▶ Name, address & telephone number of the consumer reporting agency or other person or entity that provided the credit score or the credit file upon which the credit score was created

▶ Statement explaining credit scores

▶ Statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide specific reasons for the adverse action

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DODD-FRANK ACT AMENDMENT IMPACTS ECOA COMPLIANCE

SAMPLE Statement explaining credit score

A credit score is a number that takes into account information in a consumer report and that a credit score can change over time to reflect changes in the consumer's credit history

YOU ARE NOT REQUIRED TO DISCLOSE A CREDIT SCORE AND RELATED INFORMATION IF A CREDIT SCORE IS NOT USED IN TAKING THE ADVERSE ACTION

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DODD-FRANK ACT CHANGES TO ECOA NOTICE

IF YOU HAVE USED A CONSUMER CREDIT REPORT TO MAKE YOUR DECISION THEN THE FOLLOWING ADDITIONAL LANGUAGE MUST BE ADDED:

Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

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ALLOWABLE AND UNALLOWABLE GUARANTIES

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FROM WHOM IS A GUARANTY OBTAINABLE

- ▶ A trade credit grantor may request a guaranty from:
 - ▶ The Owner(s) or Principal(s) of the Debtor: If the debtor is a business entity, the creditor may ask the owners, shareholders, or principals to provide a personal guaranty.
 - ▶ Parent Company or Affiliated Companies: If the debtor is a subsidiary, the creditor might seek a guaranty from the parent company or any related entities that have a financial interest in the debtor's business.
 - ▶ Third-Party Guarantors: This could be an individual or another business that agrees to assume responsibility for the debtor's obligations if they default.

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FROM WHOM IS A GUARANTEE FORBIDDEN TO BE REQUESTED UNDER THE ECOA

- ▶ SIGNATURE OF SPOUSE PROHIBITED
 - ▶ Original purpose of the ECOA prohibition was to stop creditors' practice of requiring a husband to co-sign the credit application of a married woman as a condition of approving her application
 - ▶ A creditor shall NOT require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditors' standards of creditworthiness for the amount and terms of the credit requested. [12 C.F.R. §1002.7(d)(1)]

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A SPOUSE IS NOT AUTOMATICALLY AN APPLICANT

- ▶ A creditor shall not deem the submission of a joint financial statement or other evidence of jointly held assets as an application for joint credit. [12 C.F.R. §1002.7(d)(1)]

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AUTHORITY TO REQUEST
A SIGNATURE BY JOINT-OWNER OF PROPERTY
IN AN UNSECURED CREDIT TRANSACTION

▶ Property Jointly Owned by Applicant and Non-Applicant

▶ If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant. 12 C.F.R. §1002.7(d)(2)

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AUTHORITY TO REQUEST
A SIGNATURE BY JOINT-OWNER OF PROPERTY
IN A SECURED CREDIT TRANSACTION

▶ Property Jointly Owned by Applicant and Non-Applicant

▶ If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights, or assign earnings.

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COMMUNITY PROPERTY RULE

▶ If a married applicant requests unsecured credit and resides in a community property state, or if the applicant is relying on property located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default **IF:**

▶ Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the credit requested under the creditor's standards of creditworthiness; **and**

▶ The applicant does not have sufficient separate property to qualify for the credit requested without regard to community property.

12 C.F.R. §1002.7(d)(3)

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GUARANTOR DOES NOT EQUAL
APPLICANT

▶ A spousal guarantor may NOT sue for an ECOA and Regulation B violation based on discrimination since that person is NOT an "applicant"

▶ The term "applicant" refers to the person who applies directly for the extension of credit

▶ A recent 10th Circuit case of *Miller v. First United Bank and Trust Company* [2024 WL676857]

▶ Regulation B's definition of "applicant" includes a guarantor but only for purposes of the signature rules

▶ A spousal guarantor may sue for an ECOA and Regulation B violation based on the fact that a guaranty signature was required by the creditor

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EQUAL CREDIT OPPORTUNITY ACT
RECORDS TO MAINTAIN

▶ Any application together with written or recorded information obtained and used to evaluate application unless information is returned to applicant

▶ Copy of written notification of action taken and statement of specific reasons for adverse action

▶ Written statement submitted by applicant alleging a violation of ECOA or Regulation B

▶ Records to be maintained for 12 months

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THE STATUTES AND
WHAT THEY MEAN TO
TRADE CREDIT GRANTORS

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ANTITRUST STATUTES

- ▶ Sherman Antitrust Act of 1890
- ▶ Clayton Act of 1914
- ▶ The Federal Trade Commission Act of 1914
- ▶ Robinson-Patman Act of 1936
- ▶ Lanham “Trademark” Act of 1946
- ▶ The Antitrust Procedure & Penalties Act of 1976
- ▶ State Antitrust Statutes

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The Sherman Antitrust Act of 1890

- ▶ Prohibits contracts, combination and conspiracies in **restraint of trade** in interstate commerce or with foreign nations.
- ▶ Felony to *conspire to restrain trade*; or to *monopolize* (or attempt to monopolize).

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The Sherman Antitrust Act of 1890

- ▶ Sherman Antitrust Act defines Price Fixing
 - ▶ An agreement, written, verbal or implied (express or implied) among competitors that raises, lowers, or stabilizes prices or competitive terms
- ▶ The Federal Trade Commission defines Price fixing as an agreement among competitors to raise, fix, or otherwise maintain the price at which their goods or services are sold.

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RESTRAINT OF TRADE

- ▶ “Conspiracy” = unity of purpose, common design, meeting of minds re: unlawful purpose

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RESTRAINT OF TRADE (CONT.)

- ▶ “Combination / Conspiracy”--4 elements:
 1. Knowledge: All members must know that the purpose is to restrain trade
 2. Common purpose: At least two members must benefit from the restraint of trade and share a common purpose to restrain trade

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RESTRAINT OF TRADE (CONT.)

- ▶ “Combination / Conspiracy”--4 elements:
 3. Actual restraint: The agreement among at least two of the members must actually restrain trade as opposed to merely facilitating restraint
 4. Intent to restrain trade: At least two members of the combination must intend to restrain trade

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PRICE-FIXING INCLUDES
CREDIT TERMS

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PRICE FIXING ISSUES

- Discussion *beyond* a “mere announcement”
- Agreement to *maintain prices*, with an enforcement mechanism (mfr./distrs.)
- Agreement to fix or set *payment terms*

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PRICE-FIXING
[Examples provided by US Dept. of Justice]

- ▶ Establish or adhere to price discounts
- ▶ Hold prices firm
- ▶ **Eliminate or reduce discount**
- ▶ Adopt a standard formula for computing prices
- ▶ Maintain certain price differentials between different types, sizes, or quantities of products
- ▶ Adhere to a minimum fee or price schedule
- ▶ **Fix credit terms**

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FEDERAL TRADE COMMISSION

- The mission of the Federal Trade Commission (FTC) concerning antitrust is to promote and protect competition in the marketplace in order to benefit consumers and prevent anticompetitive behavior.
 - The Federal Trade Commission Act, enacted in 1914, established the FTC and granted it the authority to prevent unfair methods of competition and unfair or deceptive acts or practices in commerce.
 - The FTC enforces antitrust laws in the United States, primarily
 - Sherman Antitrust Act
 - Federal Trade Commission Act
 - Robinson Patman Act

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RECENT ACTIVITY BY
U.S. DEPT. OF JUSTICE &
FEDERAL TRADE COMMISSION

- Stopped Mergers that would have been injurious to consumers
- Ongoing Litigation against Google
- Litigation against Amazon
- Litigation against generic drug companies and a cancer treatment center
- Price Fixing suit against one of the nation's largest chicken producers

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LEGAL ACTIONS WITHIN A
SINGLE MANUFACTURERS' SECTOR

- In Re: Musical Instruments and Equipment Antitrust Litigation against NAMM, Guitar Center Inc & Stores, Fender, Yamaha, Gibson, Hoshino, & Kaman
- Alleged that Defendants shared a common motive to conspire, acted against their self- interest, simultaneously adopted substantially similar policies, all causing retail prices for guitars and guitar amplifiers to rise
- Court had to decide whether it was plausible that manufacturers agreed simultaneously without collusion
- 9th Circuit found no common motive but merely conscious parallelism

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9th Circuit Ruling

- Mere participation in trade-organization meetings where information is exchanged and strategies are advocated does not suggest an illegal agreement
 - SCOTUS ruling: Trade Associations often serve legitimate functions, such as providing information to industry members, conducting research to further the goals of the industry and promoting demand for products and services

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PRICE DISCRIMINATION ISSUES

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ROBINSON PATMAN ACT (1936)

- The Robinson-Patman Act was designed to prevent discriminatory practices adversely affecting free competitive enterprise, to preserve competition generally, and to protect small businesses which are usually unable to buy in quantity against large competitors.
- Equally unlawful for any person engaged in commerce to “knowingly induce or receive a discrimination in price”

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ROBINSON PATMAN ACT (1936)

- The Robinson-Patman Act of 1936 makes it
 - Unlawful to “discriminate in price between different purchasers of commodities of like grade and quality”... where the
 - Effect of such discrimination may be substantially
 - to lessen competition - or
 - Tend to create a monopoly - or
 - To injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with the customers of either of them

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ROBINSON PATMAN PRICE DISCRIMINATION

- No necessity for agreement, combination, association or conspiracy - only needs one entity
- At least two transactions must have occurred
- Price Discrimination includes:
 - different price to different purchasers of physical goods
 - inequitable discounts or rebates
 - differences in terms and conditions of sale
 - preferential credit terms [Credit Terms Equals Price]
- Simply speaking - makes it illegal to sell the same or similar products at different prices to competing purchasers when competition will be impacted

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PRICE DISCRIMINATION UNDER THE ROBINSON-PATMAN ACT

- Only applicable to sale of tangible goods
- Not applicable to services or other intangible items
 - NOT applicable to transportation or broadcast since neither transportation nor broadcast services involve tangible goods

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NOT PRICE DISCRIMINATION

▶ Price differences resulting from cost of manufacture, sale or delivery

▶ Price differences resulting from quantities being sold

▶ Choosing who will be your customer/**Refusing to sell to a particular potential customer**

▶ Price changes from time to time resulting from

▶ Changing conditions affecting the market or marketability of the goods

▶ E.g. perishable goods, obsolescence of seasonal goods

▶ Global Pandemic

▶ Sales in good faith in discontinuance of business in the goods concerned

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EXCHANGE OF CUSTOMER INFORMATION AND THE ANTITRUST LAWS
[NOT JUST FOR CREDIT GROUP MEETINGS BUT AT ALL TIMES]

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CREDIT TERMS = PRICE

▶ Catalano Inc. v Target Sales (Supreme Court 1980)

“Extending interest-free credit for a period of time is equivalent to giving a discount equal to the value of the use of the purchase price for that period of time. Thus, credit terms must be characterized as an inseparable part of the price”

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TABOO DISCUSSIONS FAR BEYOND THE SHARING OF INFORMATION

▶ Discussions about whether to sell or not to sell to a financially troubled company

▶ Discussions about letters which vendors receive asking them to forebear actions or extend credit terms

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ANTITRUST COMPLIANCE AT ALL TIMES

▶ Credit information exchanged by email (or fax) is under the same rules as that exchanged at credit group meetings

▶ A trade creditor should be cognizant that any credit information exchanged must be done in accordance with Federal Antitrust guidelines.

▶ Telephone exchange of information is **NOT RECOMMENDED**

▶ There can be no discussions of any prices, terms, company policies or credit lines.

▶ Remarks must be confined to present and completed transactions only, with no mention of any future plans of action.

▶ All information exchanged is strictly confidential and not to be disclosed to anyone else

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Independent Exchange of Information Format

▶ If by email or fax, keep a copy of the request and the response

▶ Provide only the information requested

▶ Do not volunteer additional information

▶ Do **NOT** give credit limit information

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PERMISSIBLE DISCUSSIONS

- ▶ Delinquent account information -NO discussion of *future* (i.e., intent).
- ▶ Exchange of factual credit information
 - ▶ Do **NOT** give credit limit information
- ▶ Reports of placement for collection
 - ▶ ONLY if you have actually placed the account
- ▶ Reports of initiation/continuation of lawsuit
 - ▶ ONLY if the lawsuit is actually commenced and/or continuing

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PERMISSIBLE DISCUSSIONS

- ▶ Reports of judgment obtained
- ▶ Reports of other factual information provided by customer
 - ▶ Bankruptcy information, ONLY if confirmed
 - ▶ Sale of all or a portion of the business ONLY if confirmed
- ▶ Exchange of contact information
 - ▶ Accounts payable personnel
 - ▶ Corporate officers
 - ▶ New buyer

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NON-PERMISSIBLE DISCUSSIONS

- ▶ Credit terms.
- ▶ Production limits or Pricing
- ▶ Group Boycott
 - ▶ Whether or not to do business with a particular customer
- ▶ Involuntary Petition in Bankruptcy
- ▶ Price fixing (key phrases could be misconstrued)
- ▶ Market or Territory Allocation
- ▶ Future Intention

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ELECTRONIC CREDIT EXCHANGE

- ▶ More common than ever before
 - ▶ Antitrust Rules still apply Request for references
- ▶ Giving references
- ▶ Electronic data lasts forever

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ELECTRONIC CREDIT EXCHANGE

RECOMMENDED LANGUAGE ON ELECTRONIC TRANSMISSIONS

This Credit Reference is provided at the request of _____ and is based upon information maintained in my file as a result of my company's experience with _____.

No judgment or recommendation concerning credit decisions is given or implied by this information. The recipient must determine its own credit decision. The data contained in this report is for information purposes only.

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ELECTRONIC CREDIT EXCHANGE

REQUIRE AFFIRMATION IN ADVANCE

The credit information you are about to view electronically is accurate information contained in my records and you are requesting same in order to determine the creditworthiness of _____.

You may make **one** printed copy of this Electronic Information for your own use. You may not distribute, transmit or otherwise circulate the Electronic Information to anyone else.

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ELECTRONIC CREDIT EXCHANGE

CREATE MANDATORY CONSENT

- ▶ I have read and understand this Use Agreement and Agreement to be bound by its terms
- ▶ Lock mechanism to disable anyone from proceeding without accepting restriction

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PERMISSIBLE ACTIVITIES (Back in the Office)

- ▶ Credit Term Changes
- ▶ Price Changes to Meet Competition, etc.
 - ▶ See slides above
 - ▶ Must be in good faith
 - ▶ Must follow guidelines
 - ▶ Must be well-documented
- ▶ Placement of account for collection or suit - if internal records merit this (NOT because others are doing so)

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PERMISSIBLE ACTIVITIES

- ▶ Any Decision to Refuse to sell to/deal with a particular customer
 - ▶ Must be unilateral
 - ▶ Must be an independent decision

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PROTECT YOUR COMPANY

- ▶ Implement Guidelines
- ▶ Create Protocols
- ▶ Document Communications and decisions
- ▶ Document the justification for pricing/terms differences

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MEETING COMPETITION DEFENSE

- ▶ A Seller can rebut an allegation of price discrimination by
 - ▶ Showing that his lower price to any purchaser or purchasers
 - ▶ Was made in good faith
 - ▶ To meet an equally low price of a competitor

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GUIDELINES FOR SETTING UP THE MEETING FOR COMPETITION DEFENSE

- ▶ Reasonably believe the situation is of competitive necessity
- ▶ Believe that granting a lower price will meet the lower price of a competitor
- ▶ Make substantial effort to verify actual price or credit terms
 - ▶ DO NOT CONTACT COMPETITOR

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“GOOD FAITH” CRITERIA

- Seller must prove that it had good reason to believe in good faith that it was meeting a lower, different or better price (or credit term)
- Standard of proof is that of a prudent business person responding simply and fairly to what is reasonably believable

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WHEN ALL ELSE FAILS: CREATE AN INTERNAL RECORD

- The date of competitor's offer
- Name of competitor making offer
- Name of the Customer
- Terms and conditions of the offer
- Source of the Information
- A statement as to why you believe your source
- Details as to what investigation was conducted

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INTERNAL RECORD cont'd.

- Website or other medium where offer is stated
- Terms and conditions of the offer
- Investigation into customer to determine that it meets requirements for offer

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SUMMARY

- Compete vigorously
- Consider your market power
- Consult with counsel when specific problems occur
- Maintain your records

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