THE FINANCIAL SERVICES ROUNDTABLE

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January 12, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551
Attention: Docket No. R-1171

Federal Trade Commission/Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Interim final rules and proposed rules to establish effective dates for certain provisions of the Fair and Accurate Transactions Act of 2003 (FACT Act)

Dear Sir or Madam:

The Financial Services Roundtable ("the Roundtable") is a national association that represents 100 of the largest integrated financial services companies providing banking, insurance, investment products, and other financial services. The member companies of the Roundtable appreciate the opportunity to comment to the Board of Governors of the Federal Reserve System (the "Board") on the interim final rules and proposed rules to establish effectives for certain provisions of the Fair and Accurate Transactions Act of 2003 ("FACT Act"), including provisions that preempt state laws that regulate areas governed by the Fair Credit Reporting Act ("FCRA").

Background

The recently enacted FACT Act amends the FCRA and requires the Board and the Federal Trade Commission ("FTC"), within sixty days of enactment, to adopt final rules establishing the effective dates for provisions of the FACT Act that do not have a statutorily prescribed effective date. The jointly adopted interim final rules establish December 31, 2003 as the effective date for the preemption provisions of the FACT Act, as well as authorize the agencies to adopt rules or take other actions to implement the FACT Act.

The proposed rules establish a schedule of effective dates for other provisions of the FACT Act that do not contain effective dates. The joint proposed rules would establish March 31, 2004 as the effective date for provisions of the FACT Act that do not require significant changes to business procedures. With respect to other provisions that likely entail significant changes to business procedures, the joint proposed rules would make these provisions effective on December 1, 2004, to allow industry a reasonable time to establish systems to comply with the statute.

The Roundtable Supports the Interim Final Rules

Roundtable member companies support the FTC and Board's action to adopt interim final rules establishing December 31, 2003 as the effective date for section 711(3) of the FACT Act. Section 711(3) of the FACT Act permanently reauthorizes the existing FCRA preemption provisions scheduled to sunset on January 1, 2004. This action is necessary since the FACT Act does not explicitly set an effective date for the renewal. Instead, the FACT Act mandates that the regulators set the date to preserve the preemptions, which prevent states from establishing their own rules on how financial firms use consumer credit data and exchange information with affiliated companies. The Board and FTC's interim rules effectively preserve the current state of the law and give the agencies the ability to efficiently create a schedule of effective dates. It also gives the agencies time to solicit comments on this matter.

A Uniform National Standard for Preemption Provisions is Important

The interim final rules establish December 31, 2003 as the effective date for the provisions of the FACT Act designed to prevent or mitigate the effects of identity theft, as set forth in section 711(2), and for the additional preemption provisions in sections 151(a)(2), 212(e), 214( c) and 311(b) of the Act. The Roundtable member companies believe that the potential uncertainty that could arise concerning when existing state laws, and states laws that will soon become effective, are preempted underscores the importance of establishing a clear effective date for these provisions.

Additional state statutes have (or shortly will) become effective and regulate subject matters covered, and conduct required, by the FACT Act. These state statutes will impose a significant compliance burden on institutions if the institutions must prepare and implement compliance procedures to comply with the state statutes, and at the same time establishing business procedures to bring their procedures into compliance with the uniform national standards established by the FACT Act.

For example, effective January 1, 2004, California Senate Bill 602 requires a credit card issuer who receives a request for a replacement card that is associated in time with a change of address to send a notification of this change of address to the cardholder's previous address. This state law requirement addresses conduct that will be governed in detail by section 114 of the FACT Act concerning "red flag" guidelines. Furthermore, California Senate Bill 25, operative on July 1, 2004, will impose obligations on any user

of a consumer report that contains a security alert to verify the consumer's identity before engaging in certain transactions. This state law requirement addresses conduct governed by section 112 of the FACT Act concerning fraud alerts. Moreover, effective January 1, 2005, California Senate Bill 27 will require a business that discloses customer-related information to an affiliate for direct marketing purposes to provide the customer, upon request, with detailed information regarding the affiliate and the information disclosed. This state law requirement addresses subject matter covered by both the existing FCRA affiliate sharing provision and section 214(c) of the FACT Act concerning the use of information from affiliates for marketing solicitation purposes. Also, effective January 1, 2004, Illinois House Bill 2188 requires credit card issuers to take steps to verify an applicant's change of address request if the card issuer receives an application with an address different from the address in the consumer report obtained in connection with that application. This state law requirement addresses conduct required under the FACT Act's "red flag" guidelines.

These state statutes will unnecessarily create substantial compliance burdens for institutions. While institutions prepare to comply with the FACT Act's uniform national standards, they also will be required to prepare and implement procedures to comply with the varied state standards. Furthermore, other states may enact additional statutory requirements that could impose an even greater compliance burden on institutions. Thus, the date on which the FACT Act preemptions will begin to preempt state laws is critical to financial institutions that must prepare their business procedures to comply with federal and/or state laws.

Also, an institution confronted with different state requirements before the federal law comes into effect may, in some instances, attempt to implement the most stringent state standard in order to minimize compliance costs and errors through the application of a single compliance program and to provide uniform procedures for all customers. This approach may be particularly attractive where the most stringent state encompasses a substantial customer base. In effect, the state standard would then become the *de facto* national standard until federal preemption takes effect. This result clearly would be inconsistent with the intent of Congress in passing the FACT Act to establish the identity theft requirements of the FACT Act as a uniform national standard for specific subject matters covered, and conduct required, by the FACT Act.

<u>An Effective Date of December 1, 2004 is Too Little Time for Companies to Comply with Section 214</u>

Roundtable member companies generally support the schedule of effective dates outlined in the proposed rules which include March 31, 2004 as the effective date for the provisions that do not entail major changes to business procedures and December 1, 2004 as the date for those provisions that would require substantial changes to financial institutions' operations. However, as the rulemaking under the FACT Act progresses, we ask that the agencies continue to provide financial institutions and others sufficient time to comply with the new FACT Act requirements. Depending on the complexity of the

numerous rules to be issued, and the timeframe under which they are issued, varying compliance dates will need to be provided in order to avoid operational difficulties.

Roundtable member companies believe that the agencies have acted prematurely in establishing December 1, 2004 as the effective date for Section 214 of the FACT Act. This effective date is highly likely to impose unnecessary and unreasonable burdens on financial institutions.

The FTC and the bank regulators have acknowledged in their release, reflective of various provisions of the FACT Act itself and of comments in the legislative history, that compliance with Section 214(a) requires changes in systems, disclosure forms or corporate practices in order to be administered effectively.

Quite a few financial institutions are not currently required to enable their customers or other consumers to opt out from disclosures of their information to either unaffiliated third parties or to affiliates. These institutions do not sell customer lists to other companies or make other disclosures to unaffiliated third parties under circumstances that would require giving an "opt out" election. In effect, they have opted out on behalf of our customers and other consumers as to such unaffiliated third party disclosures. Moreover, until Section 214 becomes effective, they may share customer information among their affiliates for marketing purposes without implementing an opt out process.

For these institutions, giving an opt out notice will require:

- Intensive planning to assure that their target dates are met with understandable and actionable communications to their consumers, a cost-effective means for receiving and recording opt out elections and an effective, controlled process to assure compliance with those elections.

- Extensive systems changes for the operations that are responsible for giving privacy notices.

- A new notice given to large numbers of customers in time for them to make their election, if they are so inclined, and for the institution to receive and act on their opt outs by the effective dates of the regulations, without any undue disruption in their marketing activities.

If the regulatory agencies decide to set an effective date now, there is no reason for the date to be earlier than 2005. This additional time would not disadvantage consumers in any way, and it would enable the companies to do the job right.

<u>It is Premature to Set an Effective Date for Section 214 of the Act</u>

Roundtable member companies believe that it is premature for regulators to select an effective date for Section 214(a). Section 214(b)(4) requires that any implementing

regulations issued under Section 214 be issued in final form within nine months after the date of enactment of the FACT Act (December 4, 2003), and that such regulations become effective not later than six months after they are issued in final form.

The timeframes prescribed in Section 214(b)(1) reflect a realization by Congress that the issues relating to the simple privacy notices mandated by the FACT Act deserve careful deliberation, exposure for comment and thoughtful decision-making by the regulatory agencies. Additionally, businesses will need time to make the systems and procedural changes necessary to satisfy the final requirements. The regulations in question will determine, among other things, the content and format of notices that would have to be sent to consumers in order to comply with Section 214(a)(1), what (if any) enclosures must accompany that notice, and other requirements that pertain to the notice and the process by which consumers may make elections pursuant to Section 214(a)(1)(B).

There is no better proof of this point than the Advance Notice of Proposed Rulemaking on December 23, 2003 (the "ANPR") to amend the regulations that implement Section 502 and 503 of the Gramm-Leach-Bliley Act with respect to possible alternative types of privacy notices. The questions posed by the ANPR reveal the many considerations that must be taken into account in deciding the elements of a privacy notice should be and how the notices given.

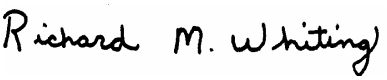
Until the regulations to be promulgated under Section 214 are in final form, companies will not know what the final requirements are, and the federal regulators will not be in a position to determine how much time should be allowed for compliance. Given the language in Section 214(b)(1), Congress could not have intended that the FTC and the bank regulators guess about timing before proposing those regulations.

Conclusion

Roundtable member companies applaud the efforts of the Board/FTC to implement the FACT Act. For the most part, the schedule of effective dates outlined in the interim final rules and proposed rules will give financial institutions enough time to comply with the provisions of the Act and provide an adequate period for comments on these rules. However, we believe that in the case of Section 214 (affiliate sharing) an effective date should not be set until regulations to be promulgated under Section 214 are in final form and companies truly understand all of its requirements. Setting an effective date of December 1, 2004 is not only premature, but is also impractical. This date offers too little time for companies to change their systems, forms and procedures. The end result would be an undue burden on financial institutions.

If you have any further questions or comments on this matter, please do not hesitate to contact me or John Beccia at (202) 289-4322.

Sincerely,



Richard M. Whiting
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