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BY ELECTRONIC DELIVERY

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Board of Governors of the Federal Reserve System
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Washington, DC 20551
Attention: Docket No. R-1203

Robert E. Feldman
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Washington, DC 20429
Attention: RIN 3064-AC73

Office of the Comptroller of the Currency
250 E. Street, SW
Mail Stop 1-5
Washington, DC 20219
Attention: Docket No. 04-16

Re: FACT Act Affiliate Marketing Rule

To Whom It May Concern

JPMorgan Chase Bank and Bank One, N.A. and their affiliated companies, including, but not limited to, Chase Bank USA, N.A., Chase Manhattan Mortgage Corporation, Chase Manhattan Automotive Finance Corporation, Bank One Trust Company, N.A., and Banc One Acceptance Corporation (collectively referred to as "JPMC") welcome the opportunity to comment on the above referenced notice of proposed rule making published in 69 Fed. Reg. 42,502 on July 15, 2004 (the "Proposal") by the above referenced agencies (the Agencies").

J.P. Morgan Chase & Co. is a leading global financial services firm with assets of $1.1 trillion and operations in more than 50 countries. The firm is a leader in investment banking, financial services for consumers and businesses, financial transaction processing, asset and wealth management, and private equity. The U.S. consumer and commercial banking businesses currently operate under the Chase and Bank One brands. These businesses include retail banking, credit card, home and auto finance, small business, middle market and mid-corporate banking. Once the merger of the Chase and Bank One businesses are complete, the Chase brand will be used to serve 850,000 small businesses and 31,000 commercial businesses through 2,300 branches in 17 states. It also will service 87 million credit cards.

Background

The FACT Act Section 214 added a new Section 624 to the Fair Credit Reporting Act ("FCRA"). In general, any person that receives (the "Receiving Affiliate") from an affiliate information that would be a "consumer report" but for the exceptions to that definition in Section 603(d)(2)(A) ("Eligibility Information") may not use the information to make a solicitation for marketing purposes to a consumer about its products or services unless it is clearly and conspicuously disclosed to the consumer that the information may be shared for purposes of making solicitations and the consumer is provided an opportunity and simple method to opt out of receiving such solicitations. Section 624 governs the use of information by an affiliate, not the sharing of information with or among affiliates. Section 624 also provides several instances in which Section 624 will not apply, for example in circumstances referred to as "pre-existing business relationship", services providers, communications initiated by the consumer and solicitations authorized or requested by the consumer.

In General

JPMC believes the Proposal includes many provisions that properly reflect the statutory requirements and the congressional intent and we commend the Agencies in this regard. In particular, Section 624 of the FCRA is relatively specific and precise with respect to the obligations it imposes. The clarity provided in the statute was the result of careful deliberation by Congress, and the statutory language reflects a clear congressional intent in most instances. JPMC believes that a final rule ("Final Rule") that adheres closely to the statutory language will, in most instances, provide clear guidance to those subject to the Final Rule and provide the necessary protection to consumers. Accordingly, JPMC respectfully suggest that the Proposal should be modified to reflect more accurately the plain language of the statute as detailed in our comments below.

Use of Examples

The Proposal states that "[t]he examples in [the Proposal] are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with [the Proposal]." JPMC commends the Agencies for providing guidance in the Proposal in the form of examples. JPMC believes that the use of examples can be illustrative for persons seeking to comply with the Final Rule, and we urge the Agencies to retain the use of examples in the Final Rule. JPMC also

believes that it is appropriate to provide that compliance with an example, to the extent appropriate, constitutes compliance with the requirements. If the examples are to be useful, the Agencies must allow reliance on them for purposes of compliance. Therefore, JPMC urges the Agencies to retain this section without revision.

Definitions

"Affiliate"

The definition of an "affiliate" under the Proposal is "any person that is related by common ownership or common corporate control with another person." The Supplementary Information notes that the FCRA has several variations of how an affiliate is described in the statute, and that the FACT Act and the GLBA also have varying approaches. The Supplementary Information also describes the Agencies' intent to "harmonize the various treatments of 'affiliate' and construe them to mean the same thing" and the Agencies' desire for comment on "whether there is any meaningful difference between the FCRA, FACT Act, and GLB Act definitions."

JPMC urges the Agencies to adopt the definition of "affiliate" as it has in its regulation implementing Title V, Subtitle A of the GLBA ("GLBA Rule"). The GLBA Rule defines "affiliate" to mean "any company that controls, is controlled by, or is under common control with another company." Although it would appear that this definition is generally consistent with the definition provided in the Proposal, JPMC believes it is important to eliminate any ambiguity with respect to how the Agencies defines "affiliate" across its regulations, and therefore the Final Rule should include a definition identical to the definition in the GLBA Rule.

"Clear and Conspicuous"

JPMC believes that the Agencies have based its definition of "clear and conspicuous," at least in part, on the definition provided under the GLBA Rule and the Board's proposal (subsequently rejected) to redefine "clear and conspicuous" in other contexts. JPMC does not believe that these definitions provide an appropriate model for the Proposal. An important difference between the proposal and the GLB Rule is that the GLBA Rule is predicated on enforcement solely through administrative action—not private rights of action. However, in providing a similar definition to "clear and conspicuous" in the Proposal and the Supplementary Information, the Agencies will have created significant liability concerns for entities subject to Section 624, including class action liability. The practical reality is that, if adopted, the Proposal will result in claims from the plaintiffs' bar, which will view the Agencies' definition and extensive official guidance as required elements of a "clear and conspicuous" disclosure. Entities seeking to avoid class action liability with respect to this requirement will feel pressured to treat the Supplementary Information as substantive requirements. JPMC also notes that the Board has officially withdrawn its proposal with respect to redefining "clear and conspicuous" in the context of other regulations. The Board withdrew the proposal in response to concerns about the compliance burdens and litigation risks generated by its proposal.

JPMC requests that the Agencies delete the definition of "clear and conspicuous" in its Final Rule. Not only would this mitigate the compliance and litigation concerns described above, but JPMC does not believe a definition is necessary to ensure that consumers receive a clear and conspicuous notice as required under Section 624 of the FCRA. In this regard, a similar "clear and conspicuous" affiliate sharing notice and opt-out requirement has operated in the FCRA for several years without a regulatory definition of "clear and conspicuous." The Agencies have not provided any evidence that entities have not properly complied with this requirement, nor has it been the subject of significant litigation.

"Eligibility Information"

Section 624 of the FCRA pertains to the use of "information that would be a consumer report, but for clauses (i), (ii), and (iii) of Section 603(d) (2) (A)" of the FCRA. Therefore, in order to be covered under the statute, the information would need to meet the "baseline" definition of a consumer report, *i.e.*, bear on certain qualities such as credit worthiness *and* be collected, used, or expected to be used for certain eligibility determinations. Information that does not meet *both* of these criteria would not be covered by the statute. JPMC is pleased that the Agencies have reflected this concept in the Supplementary Information.

The Agencies, in their Proposal, intend to use the term "eligibility information" to describe information that would be a consumer report but for the exceptions in Section 603(d) (2) (A) of the FCRA. JPMC believes the Agencies should retain a relatively simple term, such as "eligibility information," to describe the information covered by the Final Rule so long as this term does not to change the scope of information covered by Section 624(a) (1) of the FCRA, including the fact that the information would need to meet the baseline definition of a consumer report. With the above caveat, JPMC believes that a simpler approach is appropriate for purposes of understanding the Final Rule, and that using the more complicated language of the statute is not necessary.

"Solicitation"

JPMC believes that the Proposal has inadvertently misstated the types of marketing that would not be a "solicitation." In this regard, the Proposal states that it would "not include communications that are directed at the general public *and* distributed without the use of eligibility information communicated by an affiliate." (Emphasis added.) In short, JPMC believes marketing should be excluded if it is directed at the general public *or* if it is distributed without the use of Eligibility Information. The statute defines a "solicitation" as marketing "to a particular consumer that is based on an exchange of [Eligibility Information from one affiliate to another]." In other words, if the marketing is not "to a particular consumer" *or* if it is not based on use of Eligibility Information, it would not be a solicitation. JPMC asks the Agencies to amend the Proposal accordingly.

Duties of the Disclosing Affiliate

In General

Congress amended the FCRA to prohibit a Receiving Affiliate from using Eligibility Information to make a solicitation unless the consumer has received a notice and opportunity to opt out. The FCRA, however, does not impose any direct obligation on a specific party to provide the consumer with a notice and opportunity to opt out. Rather, the statute imposes liability only on the Receiving Affiliate if it uses Eligibility Information to make a solicitation without the consumer having received a notice and opportunity to opt out. Therefore, under the plain language of the statute, the party disclosing the information (the "Disclosing Affiliate"), the Receiving Affiliate, or any other party could provide the consumer with such notice and opportunity to opt out. This construction makes it more likely that the consumer will receive a notice and provides flexibility to diversified entities to determine how best to provide the consumer with a notice and opportunity to opt out.

In contrast to the statutory language, the Proposal imposes a requirement on a specific entity to provide the consumer with a notice and opportunity to opt out. In particular, the Proposal requires the Disclosing Affiliate to provide a consumer with a notice and a reasonable opportunity to opt out before the Receiving Affiliate can use Eligibility Information to make a solicitation. The Agencies explain that "[t]he statute is ambiguous because it does not specify which affiliate must provide the opt-out notice to the consumer. The [Proposal] would resolve this ambiguity by imposing certain duties on the person that communicates the eligibility information and certain duties on the affiliate that receives the information with the intent to use that information to make or send solicitations to consumers."

JPMC respectfully suggests that the Agencies have mistaken the Congressional intent to provide flexibility with respect to the notice and opt-out process, and the statute's focus on the Receiving Affiliate's duties, as "ambiguity." The statute is not ambiguous. In fact, the plain language of the statute imposes duties and liabilities solely on the Receiving Affiliate. The statute does not impose a duty on a specific party to provide the notice, nor does it need to do so in order to operate as intended. JPMC strongly believes that the Final Rule should reflect the obligations imposed under the statute, and therefore we ask that the Agencies delete any obligation on a specific party to provide the notice and opportunity to opt out to the consumer. There is simply no statutory authority to impose liability on the Disclosing Affiliate. However, it is apparent from the "rules of construction" contained in the Supplementary Information that the Agencies recognize the value of allowing notice to be provided by different parties and in different ways. JPMC urges the Agencies to retain the flexibility set forth in their "rules of construction".

Form of Notice

Section 624 of the FCRA requires simply that "it is clearly and conspicuously disclosed to the consumer that [Eligibility Information] may be communicated among [affiliates]". According to the Supplementary Information, the Proposal "contemplates that the opt-out notice will be provided to the consumer in writing or, if the consumer agrees, electronically." The Agencies, however, seek comment on whether "there are

circumstances in which it is necessary and appropriate to *allow* an oral notice." (Emphasis added.)

JPMC respectfully notes nothing in Section 624 of the FCRA requires that the notice be provided in writing. Furthermore, Congress modeled the notice requirement in Section 624 of the FCRA on the notice requirement in Section 603(d) (2) (A) (iii) of the FCRA that excludes certain information from the definition of a "consumer report" "if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among [affiliates]". In using this language in the FACT Act, Congress recognized that companies have complied with Section 603(d)(2)(A)(iii) by providing oral notices and intended for the same result when it enacted the same language in Section 624 of the FCRA.

The Agencies appear to express some concern with respect to oral notices by asking whether "there exists any practical method for meeting the 'clear and conspicuous' standard in oral notices." JPMC believes that, like with written notices, compliance with a "clear and conspicuous" requirement is a fact-based inquiry and establishes a goal that can be attained through oral notices.

"Constructive Sharing"

In the Supplementary Information the Agencies explain situations in which Section 624 of the FCRA, and therefore the Proposal, would not be implicated. For example, the Agencies state that "[s]ome organizations may choose to share eligibility information among affiliates but not allow the affiliates that receive that information to use it to make or send marketing solicitations. In that case, [the Proposal] would not apply and an opt-out notice would not be required if none of the affiliates that receive eligibility information use it to make or send solicitations to consumers." JPMC agrees with this interpretation, and we hope the Agencies will retain it in the Final Rule.

The Agencies ask for comment on what they term "constructive sharing." The Supplementary Information explains that the Proposal "would not apply if, for example, an insurance company asks its affiliated bank to include insurance company marketing material in periodic statements sent to consumers by the bank without regard to eligibility information." JPMC agrees with this conclusion.

The Agencies also invite comment on a different scenario ("Scenario #2") involving a bank and its affiliated insurance company. JPMC believes that the plain language of the statute, which also clearly defines the Congressional policy objectives, dictates that Scenario #2 described by the Agencies would not be subject to Section 624 of the FCRA for the following reasons.

As a primary matter, there is no exchange of Eligibility Information among affiliates in Scenario #2. In fact, it is *the consumer* who provides information to an affiliate that may reveal that the consumer has deposit balances. Furthermore, information provided by a consumer about the consumer does not meet the "baseline"

definition of a consumer report, and therefore the information provided to the insurance company in the Agencies' example is not Eligibility Information.

Assuming, strictly *arguendo*, that a communication of information from the consumer to the insurance company should be deemed to be a communication of Eligibility Information from the bank to the insurance company, the Proposal would still not apply. In order for Section 624 of the FCRA to apply, the Receiving Affiliate must use Eligibility Information obtained from the Disclosing Affiliate to make a solicitation for its own products or services to the consumer. However, in Scenario #2, the Receiving Affiliate (the insurance company) did not use Eligibility Information to make the solicitation. The insurance company did not receive the Eligibility Information, to the extent it does at all, *until after the solicitation has been made and the consumer has responded.*

JPMC also notes that the example provided by the Agencies would be expressly exempt from coverage under the statute. First of all, the party making the solicitation (the Bank) has a pre-existing business relationship with the consumer. Second, the use of Eligibility Information by the insurance company is in response to a communication initiated by the consumer. In Scenario #2, there is no exchange of Eligibility Information between affiliates. To the extent there is any exchange of information, it does not take place until the consumer initiates a communication with the insurance company in response to the marketing material. Said differently, if the consumer does not respond, there is simply no conceivable argument to suggest that the insurance company receives Eligibility Information.

Exceptions and Examples of Exceptions

Section 624 of the FCRA includes several circumstances in which Section 624 does not apply. The Proposal includes variations on these exceptions, a few of which are addressed below.

General

The Proposal lists several exceptions to the notice and opt-out requirement that generally track the statutory exceptions in Section 624(a) (4) of the FCRA. Importantly, these proposed exceptions are listed in the disjunctive in both section 624 and the Proposal. Nevertheless, JPMC believes that the Agencies should state specifically that if any one exception applies then Section 624 and the Final Rule do not apply.

Pre-existing Business Relationship

Section 624(d) (1) states that "The term pre-existing business relationship means a relationship between a person, *or a person's licensed agent*, and a consumer, based on-". For some reason the Proposal fails to include the italicized phrase above. JPMC requests that the Agencies revise the Proposal to mirror the language of the statute.

The Proposal provides examples of situations that would qualify and would not qualify as a pre-existing business relationship. One such example provides that if a consumer inquires about an affiliate's products or services and provides contact information for receipt of this information, the affiliate can use Eligibility Information to make the consumer a solicitation within three months. Although providing contact information may indicate that a consumer reasonably expects to receive solicitations this exception should not hinge on providing contact information or on the consumer's expectation. For example, in the context of an e-mail request, the contact information may be self-evident and the consumer may view it as unnecessary to provide that information a second time. Similarly, the return address on an envelope or the captured telephone number of a consumer requesting information about products or services should be sufficient even if the consumer neglects to provide his or her address or telephone number.

Finally, the Agencies specifically request comment on whether there are additional circumstances that should be included within the definition of pre-existing business relationship. JPMC believes that the term pre-existing business relationship should be defined to include relationships arising out of the ownership of servicing rights, a participation interest in lending and other similar relationships.

Communications Initiated by the Consumer

Although the language of the Proposal itself appears to implement the statutory exception, the Agencies' discussion of this exception in the Supplementary Information and the examples used in the Proposal suggests otherwise. In particular, the Agencies state that "[t]o be covered by the proposed exception, use of eligibility information must be responsive to the communication initiated by the consumer. For example, if a consumer calls an affiliate to ask about retail locations and hours, the affiliate may not then use eligibility information to make solicitations to the consumer about specific products because those solicitations would not be responsive to the consumer's communication." The Agencies further opine that "[t]he time period during which solicitations remain responsive to the consumer's communication will depend on the facts and circumstances."

JPMC strongly urges the Agencies to reject this interpretation in the Final Rule. First, JPMC does not believe that the Agencies' interpretation implements the statutory language or the congressional intent of the law. As noted above, the exception applies to the use of information in response to a communication initiated by a consumer. Congress did not impose an additional qualifier, such as the Agencies have proposed, because the exception recognized that responses to consumer inquiries are not interruptions or intrusions into the consumer's routine and, therefore, not the type of communications regulated under Section 624 of the FCRA. The end result of such an interpretation will not be a reduction of interruptions in the consumer's life, but a reduction in opportunities to learn of better products or lower costs.

In addition, JPMC is also concerned that the Agencies' interpretation creates a vague standard that will subject companies to inappropriate compliance risk. The Agencies do not provide a clear definition of what will be "responsive" to the consumer,

nor can they. The determination will vary by the facts and circumstances. However, a company can never be certain that it will be in compliance with the law. Furthermore, the standard proposed by the Agencies will not necessarily lend itself to customer service scripts and other methods of employee training. Therefore, companies may be discouraged from making use of the exception granted by Congress for fear that customer service representatives do not know how to comply with the Agencies' interpretation.

The Supplementary Information also includes the Agencies' view that if an affiliate calls the consumer and leaves a message for the consumer to call back, and the consumer calls the affiliate back, the consumer's call would not constitute a communication initiated by the consumer. JPMC disagrees. If the consumer decides to initiate contact with a company, the exception should apply. A call by a consumer is a communication initiated by the consumer, regardless of whether the consumer is responding to a television advertisement to "Call now!" or whether he or she is responding to a voice mail urging the same action. The fact that the consumer has decided to call the affiliate is sufficient for purposes of the statute. It would seem the consumer has ample opportunity to "opt out" of any solicitation from the affiliate by not picking up the telephone and calling the affiliate.

Solicitations Authorized or Requested by the Consumer

Congress provided an exception to the notice and opt-out requirements of Section 624 of the FCRA if the Receiving Affiliate uses Eligibility Information for "solicitations authorized or requested by the consumer." In other words, Congress stated that if a consumer authorizes or requests the solicitations, a Receiving Affiliate's use of Eligibility Information to make such solicitations would not be governed by Section 624.

Although the statute provides only that the solicitations be "authorized" or "requested" by the consumer for the exception to apply, the Proposal requires that there be "an affirmative authorization or request by the consumer orally, electronically, or in writing to receive a solicitation." The Agencies further explain in the Supplementary Information and the examples used in the Proposal that "a pre-selected check box or boilerplate language in a disclosure or contract would not constitute an affirmative authorization or request."

JPMC believes that the Proposal has inappropriately limited the scope of the exception provided in the plain language of the statute. In this regard, Congress specified that the consumer need only authorize or request the solicitations. Had Congress intended to create a more limited exception, such as requiring that the authorization or request be provided in a specific manner, it could have done so. In fact, by declining to specify how the authorization or request should be presented by the consumer, Congress did not intend to narrow the scope of the exception. JPMC does not believe it is appropriate for the Agencies to do so arbitrarily.

Prospective Application

Congress provided that the requirements of Section 624 would not apply with respect to "information…received prior to the date on which persons are required to comply with" the Final Rule. The prospective application of the law is necessary in light of the practical realities associated with complying with the new requirement. In particular, it could be difficult for a family of companies to deconstruct its existing databases to determine the exact origin of information so that the statute could be applied appropriately to all information in the family's possession. It would be more reasonable to expect a family of companies to develop a compliance program on a prospective basis for information received by the entities within the corporate family after the mandatory compliance date. Therefore, Congress intended to exempt information that had been received by the family of companies prior to the compliance deadline.

The Proposal provides that it "shall not prohibit your affiliate from using eligibility information communicated by you to make or send solicitations to a consumer if such information was received *by your affiliate* prior to" the mandatory compliance date provided in the Final Rule. (Emphasis added.) JPMC urges the Agencies to revise the Proposal to provide a prospective application of the Final Rule to information received by any entity within the corporate family prior to the mandatory compliance date. JPMC believes that such an approach more faithfully reflects the statutory language and legislative intent. If the Agencies retain the notion that the information must be received by the Receiving Affiliate prior to the mandatory compliance deadline, JPMC asks the Agencies to clarify that any information provided to a centralized database or repository that can be accessed by an affiliate, such as may be provided by a service provider, be deemed to have been provided to such affiliate for purposes of the prospective application of the Proposal. Without this clarification it would be unclear whether companies would need to deconstruct their databases in a manner intended to be avoided by Congress.

Reasonable and Simple Methods of Opting Out

Congress required that any opportunity provided to the consumer to opt out be "simple." The Proposal has implemented this requirement by requiring the opt-out method to be "reasonable and simple." The Proposal then states that a company provides a "reasonable and simple method" to opt out if it does one of four things. The Proposal also provides that a company does not provide a "reasonable and simple method" if it does one of three things.

The Agencies were directed by Congress to provide "specific guidance regarding how to" provide a simple method of opting out. In so doing, JPMC urges the Agencies to clarify that the Final Rule is providing *examples* of compliance. As drafted, the plain language of the Proposal could be read to mean that the four methods listed for complying with the requirement are exclusive. JPMC does not believe this was the

Agencies' intent. Furthermore, JPMC strongly urges the Agencies to use the same examples for purposes of the Final Rule as are provided in the GLBA Rule. It does not make sense that Congress would intend to allow coordinated and consolidated notices with respect to the Final Rule and the GLBA Rule but require different methods of opting out. For example, the Agencies should delete the requirement to provide a self-addressed envelope under the Final Rule, since there is no similar requirement under the GLBA Rule.

JPMC also requests that the Agencies clarify that if a reasonable and simple method of opting out is designated, a company is not required to honor opt out requests provided through other mechanisms. For example, the GLBA Rule specifically states that a financial institution "may require each consumer to opt out through a specific means, as long as the means is reasonable for that consumer." For the reasons why the Agencies adopted this provision in the GLBA Rule, JPMC believes a similar provision is appropriate for the Final Rule.

Duration and Effect of the Opt Out

JPMC is also concerned with the Agencies' interpretation of the statute in the context of relationships that terminate. The Proposal states that if the consumer's relationship terminates with the Disclosing Affiliate while the consumer's opt out is in force, the opt out will continue to apply indefinitely unless revoked by the consumer. JPMC does not believe that such an approach is consistent with the statute, nor is it appropriate. In this regard, Congress provided that a consumer's opt out be honored for "at least 5 years." JPMC is unaware of any authority for the Agencies to extend, by regulation, the duration of the opt-out period so long as it lasts for "at least 5 years." JPMC also does not believe it is necessary to make the opt-out period permanent after the Disclosing Affiliate no longer has a relationship with the consumer. In particular, the statute provides sufficient assurances that the consumer must receive another notice and opportunity to opt out if the Receiving Affiliate wishes to use Eligibility Information to make a solicitation once the opt out expires.

JPMC also believes that it is worth clarifying the application of the Proposal to circumstances when a consumer's relationship is terminated but subsequently re-established. In those circumstances, a new relationship is established that should not be dependent upon or subject to a prior opt out by the consumers. This approach is consistent with the GLBA Rule that provides "If the individual subsequently establishes a new relationship with the bank, the opt out direction that applied to the former relationship does not apply to the new relationship" (see GLBA Rule 40.7(g) (2)).

Consolidated and Equivalent Notices

The Proposal states that a notice required by the Final Rule may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law, including notices provided pursuant to the GLBA Rule. The Proposal also provides that a notice or other disclosure that is equivalent to the notice required by

the Final Rule and that is provided to a consumer with disclosures required by any other provision of law satisfies the Final Rule. These provisions are consistent with the statute, and JPMC urges that they be retained in the Final Rule.

Effective Date

The FCRA requires that the Final Rule be issued by September 4, 2004 and that it become effective no later than six months after it is issued. The Agencies request comment on "whether there is any need to delay the compliance date beyond the effective date, to permit financial institutions to incorporate the affiliate marketing notice in their next annual GLB Act notice."

JPMC believes that companies will need more than six months to review the Final Rule, determine how it will affect their business model, implement the necessary systems changes, and provide notices to consumers (as needed). Therefore, although the Final Rule may become "effective" six months after it is issued, JPMC asks that compliance not be required for at least an additional six months, and longer if necessary to incorporate the affiliate marketing notice in the next GLBA notice provided after that time. JPMC believes such an approach will provide a more appropriate time period for companies to comply with the Final Rule. JPMC also believes that Congress recognized that an effective date is not necessarily the same as a mandatory compliance date. In this regard, it is not uncommon for banking regulations to have effective dates and mandatory compliance dates that differ. Congress enacted the FACT Act will full knowledge of this practice. Furthermore, the statute explicitly recognizes that the effective date may not necessarily be the date on which compliance is required (compare Section 624(a)(5) of the FCRA to Section 214(b)(4)(B) of the FACT Act).

JPMC appreciates the opportunity to comment on this FACT Act Proposal regarding affiliate marketing. If you have any questions or comments on this matter, please do not hesitate to contact the undersigned (212-552-1721) or Lynn Goldstein (312-732-5130).

Sincerely,

Jay N. Soloway

cc: Federal Trade Commission
Matter No. R411006