



September 18, 2006

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VIA E-MAIL ONLY

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Implementation of Sections 114 and 315 of the FACT Act
Identity Theft Red Flags and Address Discrepancies
Docket No. R-1255
71 FR 40786, July 18, 2006

Dear Ms. Johnson:

Metavante Corporation ("Metavante") is pleased to offer the following comments on the Identity Theft Red Flags and Address Discrepancies Under the FACT Act Proposed Rule (the "Proposed Rule") issued by the Board of Governors of the Federal Reserve System, the other federal financial institution regulators, and the Federal Trade Commission (the "Agencies").

Metavante is a wholly owned subsidiary of Marshall & Ilsley Corporation, a \$54 billion financial holding company with a principal office located in Milwaukee, Wisconsin. Metavante delivers banking and payments technologies to financial services firms and businesses worldwide. Metavante products and services drive account processing for deposit, loan, and trust systems, image-based and conventional check processing, electronic funds transfer, consumer healthcare payments, and electronic presentment and payment.

In this letter, we will comment on proposed § ___.90(d)(4): the requirement to oversee service provider relationships. Capitalized terms that are used but not defined in this letter have the meanings given to those terms in the Proposed Rule.

First, we strongly agree with the Agencies that a service provider should not be required to apply the particular Program of each financial institution for which it is providing services. We believe that the final rule should state this explicitly. The example of Metavante illustrates how this clarification will benefit service providers while meeting the objectives of the Red Flag Regulations.

Metavante provides a wide variety of services to literally thousands of financial institutions. (This is also true of each of our major competitors.) It is simply not feasible or cost-effective for a service provider of the size of Metavante to attempt to implement each customer's separate Program. Nor is it necessary for the final rule to include that requirement in order to fulfill the objectives of the Red Flag Regulations. Metavante can establish and maintain its own policies and procedures that fulfill those objectives, even if the policies and procedures may differ in some details from the specific Program of a particular financial institution customer.

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It is important to remember that service providers are regularly examined under 12 USC 1867 by their customers' federal financial institution regulators, acting through the Federal Financial Institutions Examination Council. Through that examination process, those regulators can ensure that the service provider's policies and procedures are consistent with the requirements of the Red Flag Regulations.

In addition, we recommend that the Agencies explicitly adopt the approach taken in the Agencies' Information Security Standards. That is, the Agencies should specify that financial institutions must require their service providers by contract to establish and maintain policies and procedures which fulfill the objectives of the Red Flag Regulations. This will provide clarity, yet allow flexibility.

As currently proposed, § ____.90(d)(4) requires a service provider to conduct its activities "in compliance with a Program that meets the requirements" of § ____.90(c) and (d). This language could be interpreted to require a service provider to comply with the Red Flag Regulations in every detail, even though the scope provisions of the Red Flag Regulations state that they apply to financial institutions. This ambiguous language is likely to produce continuing disagreements among service providers and their financial institution customers. It may never be beyond dispute how many specific requirements of the Red Flag Regulations must be adopted by a service provider in order to be "in compliance." Moreover, a mechanical checklist of requirements to be satisfied, exalting form over substance, may be the result.

In contrast, we have found the approach taken in the Information Security Standards to be beneficial to both Metavante and its financial institution customers. It requires action to be taken but leaves the details up to our customers and us. It has provided us with the flexibility to design and implement effective and nimble information security policies and procedures. This approach will be no less effective in the case of the Red Flag Regulations.

Thank you for your consideration of these comments. We hope that they will be useful to you.

Very truly yours,

Michael G. Dombrowski

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cc: Randall J. Erickson
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