BMO Financial Group

August 16, 2004

Office of the Comptroller of the Currency
250 E Street. S.W.
Public Information Room
Mail stop 1-5
Washington, D.C. 20219
Attention: Docket No. 04-16

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Ave., N.W.
Washington, D.C. 20551
Docket No. R-1203

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Executive
Secretary Section
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
RIN 3064-AC73

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549-0609
S.E.C. File Number: S7-29-04

Ladies and Gentlemen:

BMO Financial Group appreciates the opportunity to comment to the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC") and the Securities and Exchange Commission ("SEC") on the proposed regulations to implement section 624 of the Fair and Accurate Credit Transactions Act of 2003("FACT Act").

BMO Financial Group is a Canadian organization operating in the United States with three foreign banking offices, and under Harris Financial Corp., a financial holding company with assets of more than $38 billion (U.S.) at year-end 2003, 29 banks including Harris Trust and Savings Bank and several non-bank entities, two of which, Harris*direct* LLC and Harris Nesbitt Corp., are registered broker dealers. We offer a wide range of financial services including trust, retail and private banking, and investment services.

We appreciate the Agencies soliciting comments on the proposed regulations. We generally support the comments submitted by the Financial Services Roundtable of which we are a member institution. We also offer the following additional comments. We offer the following additional comments for consideration in developing the final regulations.

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Mandatory Compliance Date of Regulations

The Agencies requested comment on what the mandatory compliance date should be and whether it should be different from the effective date of the final rules in order to permit institutions to incorporate the affiliate marketing notice into their next annual Gramm-Leach-Bliley Act ("GLBA") privacy notice. We support a mandatory compliance date that is different from the effective date of the regulations. It is recommended that the mandatory compliance date be no later than the first annual GLBA privacy notice mailing that is scheduled to occur after a six month period following the effective date of the regulations. It is important that financial institutions have flexibility during 2005 to incorporate the new notice and opt-out requirements into the GLBA notices which will then be provided to the consumer as part of the scheduled annual GLBA notice mailing. This will minimize consumer confusion as the consumer would not receive multiple privacy notices in 2005. Further, it minimizes financial institutions' expenses and ensures adequate time for development of appropriate compliance procedures.

Exceptions to Affiliate Use of Eligibility Information for Marketing (Section .20)

The Agencies invited comment on whether, given the policy objectives of the FACT Act, proposed paragraph .20(a) should apply if affiliated companies seek to avoid providing notice and opt-out by engaging in the "constructive sharing" of eligibility information to conduct marketing. We believe that the issue of "constructive sharing" should not trigger the notice and opt-out required under these proposed rules simply because a financial institution requests that an affiliate provide a marketing solicitation to the affiliate's customers. For example, if Affiliate B requests Affiliate A to provide a marketing solicitation describing a product or service offered by Affiliate B to a certain portion of Affiliate A's customer base (as determined by use of eligibility information) Affiliate B has not received eligibility information about the customers for purposes of making the marketing solicitation. The eligibility information has remained with the affiliate that has the relationship with the customer. The rationale that the responses to the marketing solicitation would provide Affiliate B with eligibility information does not take into account the fact that by responding, the customer is indicating an interest in the product or service and would reasonably expect Affiliate B to obtain information about the customer. The customer would likely expect that Affiliate B would contact the customer to follow-up on the response. Further, the customer would reasonably expect that he/she may be required to provide Affiliate B with additional personal information in order to apply for and obtain the product or service.

The Agencies should give consideration to creating an additional exception under subsection .20(c) that permits the sharing of eligibility information among affiliates that are aligned under one line of business within their organization provided those affiliates share common management, branding, and are regulated entities (i.e., banking, securities, and insurance companies). Some institutions have their banking, brokerage, and financial planning operations organized as separate legal entities operating under one line of business in order to provide seamless service to their customers. In this approach, a customer's private banking relationship manager may discuss the customer's financial situation (including eligibility information) with "team" members that are employees of affiliated entities, but still service the customer's total relationship with the institution. The "team" can then recommend various products and possibly changes to the customer's financial plan based upon this information. A customer expects this type of service from the institution they trust to manage their financial matters. However, the proposed regulations may be interpreted to prohibit the customer's relationship manager from discussing eligibility information with other "team" members.

We support the Agencies proposal that the provisions do not prohibit an affiliate from using eligibility information it has received from an affiliate to make or send marketing solicitation to a consumer if the information was received by the affiliate prior to the mandatory compliance date of these regulations.

Reasonable Opportunity to Opt Out (Section .22)

The Agencies should clarify that the requirement to give a consumer 30 days from the date the consumer is provided with the affiliate marketing notice to respond to the notice is only triggered once and that is when the initial notice is provided to the consumer. A new 30 day period should not be triggered for each required annual mailing of the notice. If a new 30 day period is required with each mailing, there would be a significant operations impact to ensure compliance with this provision.

Definition of Eligibility Information (Section .3(j)

The Agencies should consider clarifying the definition of "eligibility information" to state that it excludes "identifying" information such as name, address, phone number, email address, Social Security Number and date of birth. For example, it should be permissible for a bank to give its brokerage company a list containing the names, addresses and phone numbers of all customers for a particular location without consideration for the consumers' opt-out of affiliate marketing preference provided that list does not contain eligibility information about the consumers. It is recognized that in a situation where the brokerage company requests a list of consumers from an affiliate that meet a minimum balance requirement would require that consumers' opt-out of affiliate marketing preference be honored in preparing the requested list.

Definition of Solicitation (Section .3(n))

The Agencies should clarify the definition of "solicitation" to exclude specific types of communications with a consumer that are not intended to encourage a consumer to purchase or obtain a particular product or service. The types of events that would be excluded would include educational seminars, customer appreciation events, surveys, focus group invitations, newsletters and other communications that are educational in nature. Financial institutions that have a significant wealth management business frequently have events for purposes of educating their customers. Consumers would not necessarily view these types of communications as marketing solicitations even if provided by the affiliate. Based on our experience with applying do-not-mail preferences to these types of mailings, we have experienced complaints because the consumers want the invitations to these types of events but want to limit other forms of marketing solicitations.

Definition of Consumer

In creating the proposed regulations, the Agencies used the definition of "consumer" that follows the statutory definition in section 603(c) of the Fair Credit Reporting Act. ("FCRA"). In finalizing these regulations, the Agencies should consider clarifying the definition of "consumer" to exclude individuals who are doing business with a financial institution for purposes other than personal, family or household purposes. This would make the definition consistent with GLBA and the intent of the FCRA.

We thank you for allowing us the opportunity to provide you with comments on the proposed regulations. If you have any questions concerning this comment letter, or if we may otherwise be of assistance, please do no hesitate to contact us.

Respectfully submitted,

Paul V. Reagan
Senior Vice President and U.S. General Counsel