August 16, 2004

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

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

Re: Fair Credit Reporting Affiliate Marketing Regulations

To Whom in May Concern:

As a leader in the financial services industry ("the industry"), Fifth Third Bancorp[1] ("Fifth Third") welcomes the opportunity to comment on the Proposed Rule ("Proposal") issued by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and other regulatory agencies (collectively the "Agencies") regarding the affiliate marketing provisions included in Section 624 of Fair Credit Reporting Act ("FCRA") as amended by the Fair and Accurate Credit Transactions Act ("FACT Act").

Fifth Third appreciates the Agencies' goal of providing additional choices for consumers to opt-out of certain information use and sharing, however, we are concerned that some of the proposed changes and additional notice requirements would unnecessarily restrict marketing that may benefit consumers. Further, unless certain provisions are modified, they could impose additional costs on the industry resulting from necessitated changes in systems and procedures.

Consumer Benefits From Affiliate Sharing

We believe consumers benefit from affiliate sharing of information. Through information sharing, affiliates are able to leverage existing relationships and delivery mechanisms to offer consumers new or improved products in a more targeted and efficient manner than would otherwise be available. In considering the Proposal, we urge the Agencies to consider the benefits that sharing brings the consumer.

[1] Fifth Third Bancorp provides banking, investment and electronic payment processing services to 5.7 million customers through 17 affiliates in Ohio, Kentucky, Indiana, Michigan, Illinois, West Virginia, Tennessee and Florida. With $94 billion in assets, Fifth Third is among the top 15 largest bank holding companies in the nation and among the ten largest in market capitalization.

Provision of Notice To Opt-Out
We believe the Final Rule should not require any specific entity to provide the opt-out notice, but should only require that the consumer receive an opt-out notice that covers an affiliate's use of eligibility information for marketing purposes before a solicitation is made to the consumer. This approach would promote flexibility by allowing any affiliate to provide the notice. As intended by Congress, we agree that the requirements included in Section 624 should be consistent with other disclosure requirements so that these notices may be coordinated and combined with GLBA disclosures.

Further, in response to the Agencies request for comments regarding adequate amount of time for a consumer to opt out, we do not believe it is necessary or appropriate for the notice to define a specific period of time that the consumer has to exercise their opt-out right.

Duration of the Opt-Out
The Proposal requires that the consumer's opt out must last for five years "beginning on the date on which the Receiving Affiliate receives the election of the consumer," unless the consumer revokes the opt out. We believe the final regulation should be consistent with GLBA privacy regulations and clearly indicate that customers may revoke their opt-out at any time and that institutions can honor opt-out for an indefinite time period, not less than five years.

"Reasonable and Simple" Opt-Out Methods
Section ___.23(a)(2) suggests that it would be reasonable to include a "self-addressed envelope" together with the opt out notice. We do not believe the final rule should include any examples of "reasonable and simple" methods or discuss methods that do not conform to this standard. The Agencies should rely on the plain language of the statute and not provide examples that are likely to be used in litigation to argue that a financial institution has not complied with the standard.

Definition of Affiliate
We believe the definition of affiliate should be consistent between FCRA and GLBA. The GLBA 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, we believe it is important to eliminate any ambiguity with respect to how the Agencies define "affiliate" across its regulations, and therefore the Final Rule should include a definition identical to the definition in the GLBA Rule.

Definition of "Clear and Conspicuous"
The Proposal requires that the consumer receive a "clear and conspicuous" notice of certain information. We note that the Federal Reserve Board officially withdrew its proposal to apply this standard to other regulations, in part due to concerns over plaintiff litigation. We do not believe this standard is appropriate and should be replaced with "reasonably understandable" or "readily understandable."

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. We believe 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, we recommend that compliance not be required for at least an additional six months in order that financial institutions may incorporate the affiliate marketing notice in the next GLBA notice provided after that time.

We appreciate the opportunity to comment on this Proposal. Should you wish to discuss any elements of this letter further, please call me at (513) 534-7323.

Sincerely

Michael Matossian
Chief Compliance Officer
Fifth Third Bank

Cc: Malcolm Griggs, Chief Risk Officer
Paul Reynolds, Chief Counsel