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June 15, 2004

Federal Trade Commission
Office of the Secretary
Room 159-H (Annex H)
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: The FACT Act Disposal Rule, R-411007

Ladies and Gentlemen:

Bank of America Corporation (“Bank of America”) welcomes the opportunity to comment on the notice of proposed rulemaking (“Proposed Rule”) and request for public comment by the Federal Trade Commission (“FTC”), published in the Federal Register on April 20, 2004 in regard to the appropriate disposal of consumer report information. Bank of America is one of the world's largest financial institutions, serving individual consumers, small businesses and large corporations with a full range of banking, investing, asset management and other financial and risk-management products and services. The company provides unmatched convenience in the United States, serving 33 million consumer relationships with 5,700 retail banking offices, more than 16,000 ATMs and award-winning online banking with more than ten million active users.

Section 628 of the Fair Credit Reporting Act (“FCRA”), as added by section 216 of the Fair and Accurate Credit Transactions Act of 2003, requires the FTC, the federal banking agencies, the National Credit Union Administration and the Securities and Exchange Commission to prescribe regulations that require “any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose” to properly dispose of the information or compilation.¹ Section 628 also directs the agencies to ensure that these regulations are

¹ FCRA §§ 628(a)(1)-(2).

consistent with the requirements and regulations issued under the Gramm-Leach Bliley Act (“GLBA”) and other federal law.² The Proposed Rule clarifies that the purpose of the disposal requirement is “to reduce the risk of consumer fraud and related harms, including identity theft, created by improper disposal of consumer information.”³

The Proposed Rule defines “consumer information” broadly to include any record about an individual, regardless of the medium, that is a consumer report or is derived from a consumer report. The Supplementary Information states that a record that does not identify a particular consumer would not qualify as “consumer information” because it would not be a “record about an individual.”⁴ Bank of America supports the FTC’s interpretation, but urges the FTC to include language in the definition of “consumer information” in the final rule to clarify that only information that identifies an individual consumer would be covered.

The Proposed Rule would require any entity under FTC jurisdiction that maintains or possesses consumer information or any compilation of consumer information for a business purpose to “properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.”⁵ Bank of America supports the FTC’s use of the “reasonable measures” standard. This standard allows covered entities to use risk assessment measures and to employ appropriate, but differing, measures as applicable to the entity’s circumstances. This standard is also consistent with the current standard and procedures employed by financial institutions under section 501(b) of the GLBA “Safeguards Rule.” As a result, this approach complies with the statutory directive that the regulations issued be consistent with those issued under GLBA.

The Supplementary Information to the Proposed Rule also sets forth the criteria covered entities should use to determine what is “reasonable.” These include the sensitivity of the consumer information, the nature and size of the entity’s operations, the costs and benefits of different disposal methods, and relevant technological changes. Bank of America believes these criteria are appropriate and agrees that this is also consistent with the risk-based approach they currently use under the Safeguards Rule. We recommend that the final rule expressly state that, for an entity covered by both rules, the disposal requirement would be part of the entity’s larger information security program.

² We understand that the Banking Agencies and NCUA will issue their disposal rules as an amendment to their rules issued under section 501(b) of GLBA (the “Safeguards Rule”).

³ 69 Fed. Reg. 21,388, 21,392 (Apr. 20, 2004).

⁴ 69 Fed. Reg. at 21,389.

⁵ 69 Fed. Reg. at 21,392.

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Bank of America appreciates the opportunity to comment on the Agency's proposal. If you have any questions regarding our comments, please contact Kathryn D. Kohler, Assistant General Counsel, at (704) 386-9644.

Very truly yours,

Kathryn D. Kohler

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Assistant General Counsel