



(716) 841-4341

March 28, 2002

Office of the Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

**RE: TELEMARKETING RULEMAKING-COMMENT
FTC FILE NO. R411001**

Gentlemen:

HSBC Bank USA appreciates the opportunity to comment on the proposed amendment to the Federal Trade Commission's ("FTC") Telemarketing Sales Rule ("TSR"). HSBC Bank USA has more than 415 branches in New York State, giving it the most extensive branch network in New York. The bank also has eight branches in Florida, two in Pennsylvania, three in California and seventeen in Panama. A full range of financial services are offered through the Bank and its Mortgage, Insurance and Brokerage subsidiaries. HSBC Bank USA is the principal subsidiary of HSBC USA Inc., which is the eleventh largest US holding company in the US in total assets, and an indirectly-held, wholly-owned subsidiary of HSBC Holdings plc (NYSE: HBC). Headquartered in London, and with over 7,000 offices in 81 countries and territories, the HSBC Group is one of the world's leading banking and financial services organizations. While the TSR does not directly apply to banks, it applies to telemarketing activities performed on behalf of banks by third parties (including subsidiaries and affiliates of a bank) and thereby indirectly regulates the bank's telemarketing activities.

HSBC supports the idea of a national do-not-call list ("DNC List"). However, the Proposal's approach would complicate, rather than centralize, the do-not-call process. The Proposal adds yet another layer to the already complex process for determining which individuals have opted out of telemarketing. In this regard, telemarketers currently are subject to at least two federal do-not-call requirements (*i.e.*, under the existing TSR and the Federal Communications Commission's rule implementing the Telephone Consumer Protection Act of 1991) and must comply with several state laws, some of which establish state-by-state DNC Lists. This means that telemarketers already are required to examine multiple databases, with different information and inconsistent formats, just to determine whether a marketing call may be placed to an individual. The Proposal should not add another DNC List without addressing this problem. The costs of compliance are ultimately passed on to the consumer. If the FTC decides to adopt the DNC List approach, state do-not-call requirements should be preempted.

The Proposal would create a centralized DNC List that would be maintained by the FTC. Companies would be prohibited from calling any individual on the DNC List unless the individual has provided "express verifiable authorization" that he or she wishes to receive calls

HSBC Bank USA
One HSBC Center, Buffalo, NY 14203
Fax: (716) 841-5087

from a specific company. The Proposal makes no exception for companies wishing to telemarket individuals with whom they have established customer relationships. As a result, a company would not be permitted to telemarket its own customers if those customers add themselves to the DNC List. For example, if a bank directs its service provider to call existing borrowers to market refinancing alternatives, the service provider would be required to ensure that it does not call any customers included on the DNC List.

If the FTC adopts the centralized DNC List approach, it should make it clear that companies are not prohibited from contacting individuals with whom they have an established customer relationship. For example, consumers can often benefit from special offers or discounts such as a higher yield CD, overdraft protection or free checking. We urge the FTC to adopt an exemption based on the FCC definition of pre-established business relationship.

In addition, the FTC should make it clear that any member of a corporate family should be permitted to call an individual on the DNC List so long as the individual has an established customer relationship with any member of that corporate family. This change is important in order to preserve the benefits that the financial modernization provisions of the Gram-Leach-Bliley Act (“GLBA”) were intended to provide.

The Proposal contemplates that telemarketers reconcile their data with a DNC List obtained not more than 30 days before a call is made. This time frame may be too short for some companies in view of the complex processes used to prepare at least some types of telemarketing lists. For example, the list may be prepared with the help of multiple parties and may involve a series of screens. Also, a particular telemarketing campaign may last for some time and a 30-day time period could mean that telemarketing lists may “expire” before all the consumers on the list have been called. HSBC recommends that the national DNC List provide for quarterly updates and prohibit telemarketers from making unsolicited sales calls to any consumer more than 30 days after the consumer’s name appears on the then current registry.

Telephone calls initiated by a customer that are not the result of any solicitation by a seller or telemarketer are exempt from the current TSR. The Proposal, however, modifies the definition of an “outbound telephone call” in a manner that creates ambiguity with respect to this exemption. Specifically, the Proposal suggests that when a call initiated by a consumer is transferred to a telemarketer, the transferred call is a separate “outbound telephone call” and not exempt from the requirements and prohibitions in the Proposal.

The definition of “outbound telephone call” should be clarified to ensure that it does not cover an inbound call or inquiry from an individual. For example, it should be made clear that a telephone call from a cardholder who calls his or her bank to raise a customer service inquiry should not be covered under the Proposal, even if at some point the call is transferred to a second individual in order to discuss possible product offerings that may be available to the cardholder.

The Proposal would prohibit disclosing consumer billing information to any person for use in telemarketing. It would also prohibit receiving consumer billing information for use in telemarketing, unless the information is provided by the consumer. This issue is already addressed under the GLBA, which provides that a financial institution may not disclose a customer's account number for use in telemarketing, among other types of marketing. The GLBA fully addresses this issue as it pertains to account number information provided by or obtained from financial institutions. The Proposal should not cover this information to the extent it is already covered by the GLBA.

Thank you for considering the view of HSBC. If you have any questions regarding these comments, please do not hesitate to contact me at (716) 841-4341.

Very Truly Yours,



Carol A. Setter
Privacy Director