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January 12, 2004

Ms. Jennifer J. Johnson  
Secretary, Board of Governors  
of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551  
Attention: Docket Nos. R-1171, R-1175

Federal Trade Commission/Office of the Secretary  
Room 159-H  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Attention: Project No. P044804

Re: Interim final rules to establish effective dates for certain provisions of the Fair and Accurate Transactions Act of 2003 (“FACT Act”)

Ladies and Gentlemen:

This comment letter is submitted on behalf of Bank One Corporation (“Bank One”) in response to the request for comment issued by the Federal Reserve Board and the Federal Trade Commission (the “Agencies”) regarding the joint interim final rules published in the December 15, 2003 *Federal Register*. Bank One appreciates the opportunity to comment on this important issue.

Bank One is the nation’s sixth-largest bank holding company, with assets of more than \$275 billion. Bank One conducts its banking business through Bank One, N.A., Bank One, Delaware, N.A., and other affiliated national banks and operating subsidiaries. Bank One currently serves 53 million credit card customers and over 7 million retail households. Bank One also operates numerous non-bank subsidiaries that engage in credit card and merchant processing, consumer finance, mortgage banking, insurance, trust and investment management, brokerage, investment and merchant banking, venture capital, equipment leasing and data processing.

## **Bank One Supports the Interim Final Rules on Preemption**

We support the Agencies' action to adopt interim final rules establishing December 31, 2003 as the effective date for the federal preemption provisions of the FACT Act. Congress clearly intended for the new federal preemption provisions of the Act to apply before the existing federal preemption provisions expired on January 1, 2004, in order to ensure the continued efficient operation of the nation's credit and credit reporting system.

### **Clarify Effect of December 1, 2004 Effective Date**

In the preamble to the Interim Final Rules for 12 CFR 222.1(c)(2) and (3), the Agencies stated:

“As explained in the preamble to the Interim Final Rules published concurrently with this Notice (and set forth in section (1)(B) of the applicable interim final rule), with respect to any provision of the Act that provides for a rulemaking proceeding or other agency action, the proposed rules establishing effective dates do not affect the substantive provisions of the FACT Act implemented by agency rule. The substantive provisions of the Act become effective as provided in the Act, as provided in the Agencies' joint effective date rules, or as provided by the substantive rules promulgated by the various agencies, as appropriate.”

We suggest that the Interim Final Rule set forth in 12 CFR 222.1(c)(3) should be amended to incorporate the views of the Agencies set forth above. The rule should state that the substantive provisions of the FACT Act which require implementing regulations will not become effective on December 1, 2004, but will become effective according to the date set forth in the corresponding regulations. Such language is already included in 12 CFR 222.1(c)(1)(B), but is missing from (c)(3).

Section 214(a) of the FACT Act is one of the provisions that would benefit from this clarification. Section 214(b)(4) of the Act requires that any implementing regulations issued under Section 214 be issued in final form within nine months after the date of enactment of the FACT Act (December 4, 2003), and that such regulations will become effective not later than six months after they are issued in final form. Therefore, the regulations must become effective no later than March 2005. These timeframes no doubt reflect a realization by Congress that the issues raised by Section 214 will require careful consideration, adequate time for comment and that businesses will need adequate time to implement the new regulations. The current form of the Interim Final Rules introduces some uncertainty about whether businesses will need to comply with the implementing regulations by December 1, 2004, even if a different date is set forth in the implementing regulations.

We appreciate the opportunity to comment on these interim rules. If you have any questions or comments on this matter, please do not hesitate to contact the undersigned (312-732-5345) or Lynn Goldstein (302-282-3012).

Sincerely,

Andrea J. Beggs  
Senior Associate General Counsel