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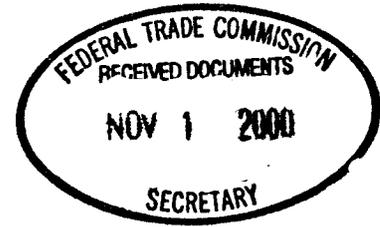
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October 24, 2000

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave., N.W.
Washington, DC 20580

Gramm-Leach-Bliley Act
Privacy Safeguards Rule
16 CFR Part 313
Comment

Dear Mr. Secretary:

The following comments are submitted on behalf of the New York State Bar Association's Commercial and Federal Litigation Section (the "Section"), in response to the Federal Trade Commission's (the "FTC" or "Commission") request for written comments concerning the development of an administrative, technical and physical Safeguards Rule pursuant to Section 501(b) of the Gramm-Leach-Bliley Act (the "Act"), 15 U.S.C. § 6801 *et seq.*, for financial institutions under its jurisdiction. As requested, the Section is submitting its comments to the FTC's designated e-mail address for this purpose: GLB501Rule@ftc.gov. As requested, the Section will confirm receipt by consulting the postings on the Commission's website at www.ftc.gov. The Section is also submitting an original plus five copies, together with a 3½ inch computer disk.

The Section, which consists of 2,000 of New York State's top commercial litigators, studies and comments upon

the impact of federal, state and foreign laws and treaties, develops and recommends policy and improvements in the law, and serves as a resource to business, civic and governmental organizations, among other activities. Members of the Section are lawyers who represent financial institutions and customers of these institutions. We do not seek to address each specific question asked, but provide the following comments.

The Section lauds the salutary policy set forth by Congress in Section 501(a) of the Act, to impose on each financial institution an "affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." Such an obligation is in the interests both of customers and of financial institutions, as the customers seek to avoid unwanted invasions of their privacy and the institutions seek to avoid liability-creating conditions within them.

As a general matter, we note the FTC's jurisdiction is limited with respect to Section 501(b) to those functions set forth in Section 505(a). Section 505(a)(7) restricts the FTC's jurisdiction to those "financial institution[s] or other person[s] that [are] not subject to the jurisdiction of" the OCC, the Fed, FDIC, the OTS, the NCUA, the SEC, or State insurance authorities. Such other financial institutions ("Other Financial Institutions") might include, *inter alia*, mortgage lenders, "pay day" lenders, finance companies, mortgage brokers, account servicers, check cashers, wire transferors, travel agencies operated in connection with financial services, collection agencies, credit counselors and other financial advisors, tax preparation firms, non-federally insured credit unions, and investment advisors that are not required to register with the Securities and Exchange Commission. "Other Financial Institutions" do not include banks, savings associations, federally insured credit unions, securities brokers or dealers, investment companies, or investment advisers registered with the SEC, and we are confident the FTC does not intend to propose regulations that would purport to apply to any institution other than an Other Financial Institution.

The Section urges the Commission to be as flexible as possible in establishing administrative, technical and physical

safeguards for the Other Financial Institutions. We believe that a flexible approach will increase efficiency, promote economic growth, avoid unnecessary regulation and enforcement, and promote harmony in the regulatory scheme.

To that end, we commend to the Commission a Safeguards Rule that restates the objectives of section 501(b) and passes along to Other Financial Institutions the requirement to develop policies and procedures that are reasonably designed to meet those goals. Beyond that, the FTC's proposed Safeguards Rule should not require that an Other Financial Institution take specific steps to provide administrative, technical or physical safeguards with regard to privacy.

While Other Financial Institutions should have procedures in place to protect confidentiality, security, integrity, and access, the manner in which they successfully may do so can be as myriad as the variety of entities subject to the Commission's jurisdiction. For example, the needs and resources of a neighborhood check-cashing service may be quite different from an online service that permits consumers to aggregate their accounts there. Giving the covered financial institutions maximum flexibility in complying with the statutory requirements will serve the needs of consumers while avoiding the imposition of burdensome and possibly inappropriate requirements on financial institutions. Thus, each institution should be permitted to take into account those aspects of their respective businesses in achieving the Act's goals.

Flexibility is also key in keeping the regulations current with emerging technologies. For example, an institution might wish to try out a new information management protocol, or different levels of staffing, or some successor technology to compress and store information. Imposing any specific measures could well impede the development of such new approaches.

Moreover, imposing a specific regulatory regime for administrative, technical and physical safeguards could be counterproductive. Some institutions may already have systems in place that either achieve greater protection than the safeguards the FTC might impose, or that adequately safeguard privacy but that are administratively, technically, or physically incompatible with

new FTC regulations. Specific new regulations would require such institutions to retool to no greater effect.

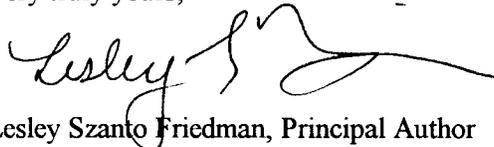
Although we recognize that the FTC is not required to coordinate with other agencies in developing a Safeguards Rule, in the interest of regulatory harmony, the Section strongly urges the FTC to follow the SEC's rulemaking in this case. With respect to the types of financial institutions under the SEC's jurisdiction, *i.e.*, brokers, dealers, investment companies, and investment advisers registered with the SEC, that agency has set forth the very rule that we recommend here, *i.e.*, a Safeguards Rule that restates the objectives of Section 501(b) and passes along to those institutions the requirement to develop policies and procedures that are reasonably designed to meet those goals. 17 CFR 248.30 (2000), 65 FR 40334 40371 (June 22, 2000). Harmonizing the FTC's Safeguards Rule with that of the SEC would permit corporate compliance officers or outside contractors who may have jurisdiction over a number of affiliates within one corporate entity, some of which may be regulated by the FTC and some of which may be regulated by the SEC, to hew to a unified set of internal protocols with respect to administrative, technical and physical safeguards. The resulting increased transparency and reduced time devoted to audit activities increases efficiencies and promotes economic growth. In addition, as time goes on, we anticipate that each agency responsible for promulgating and enforcing a Safeguards Rule regarding its respective regulated institutions will have to interpret and apply those rules in varying circumstances. If the rules are harmonious, then the FTC and the SEC will have the benefit of each other's learning and experience as they seek to interpret and apply a uniform set of Safeguards Rules. Similarly, with a harmonious set of Safeguards Rules, the regulated community can more accurately predict which kinds of systems will keep them in compliance and which are likely to lead to enforcement actions.

To the extent feasible, bearing in mind the salutary intent of the law to establish appropriate standards for Other Financial Institutions to insure the security and confidentiality of customer records and information, protect against any anticipated threats or hazards to the security or integrity of such records, and protect against unauthorized access to or use of such records or information which could result in substantial harm or

inconvenience to any customer, 15 U.S.C. § 6801(b), the Section encourages the FTC to propose a Safeguards Rule that restates the objectives of section 501(b) and passes along to Other Financial Institutions the requirement to develop policies and procedures that are reasonably designed to meet those goals.

The Section thanks you for the opportunity to comment on this important topic. If you have any questions, please contact me at (212) 373-3092.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lesley Szanto Friedman", with a long, sweeping flourish extending to the right.

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