



September 18, 2006

Federal Trade Commission
Office of Secretary
Room H-135 (Annex M)
600 Pennsylvania Avenue
Washington, DC 20580

RE: The Red Flags Rule, Project No. R611019

Dear Madame,

On behalf of the telecommunications company members of the Telecommunications Risk Management Association (TRMA)¹, we provide the following comments in response to a request by the Federal Trade Commission (Commission) and other federal bank regulatory agencies (Agencies) for comment proposed rule that would implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

TRMA members are businesses that are creditors, as that term is defined for purposes of the Equal Credit Opportunity Act and the Fair Credit Reporting Act² (FCRA) and users of consumer reports obtained from consumer reporting agencies in accordance with the FCRA. The members are not considered to be financial institutions subject to Title V of the Gramm-Leach-Bliley Act (GLBA)³ and, therefore, are not required to have an information security program under the GLBA. Further, TRMA members are not subject to section 326 of the USA PATRIOT Act⁴, which requires a “financial institution”, as defined under the Bank Secrecy Act, to verify the identity of persons opening new accounts. Nevertheless, TRMA members are firmly committed to mitigating and, hopefully preventing identity theft and its resultant impact on consumers, identity theft victims, and the TRMA member companies. We appreciate the opportunity to comment.

¹ TRMA is an international trade association representing approximately 27 wireless and wireline telecommunications companies. TRMA was formed in September of 1997 when telecommunications industry executives, faced with the threat of increasing bad debt, formed the association to explore cooperative efforts to reduce consumer and small-business uncollectible debt. TRMA was created as an industry forum to bring Telecom Risk Management professionals together to understand and cooperate to prepare its members to deal with the industry's uncollectible issues.

² 15 U. S.C. 1681 *et seq.*

³ 15 U.S.C. 6801

⁴ 31 U.S.C. 5318(1)

Overall, TRMA believes the proposed rule provides a good general framework for implementing FACT Act sections 114 and 315. However, TRMA's specific comments on particular provisions of the proposed rule are attached hereto as "Exhibit A".

The proposed rule affords a creditor flexibility in developing its Identity Theft Prevention Program (Program), based on its assessment of the potential risks that identity theft poses for its customers and for its own safety and soundness. Nevertheless, the implementation and administration of a Program by a business that is a creditor but is not a financial institution will create significant additional burdens for that business. TRMA recognizes that identity theft victims deserve protection and that the Commission and other Agencies have a duty to implement sections 114 and 315 of the FACT Act. However, TRMA questions the need for a formal Program among members of the telecommunications industry because, as businesses operating in a competitive environment, TRMA members have already implemented mitigation measures to reduce their risk of losses due to bad debt, fraud and identity theft as part of their normal business practices. Therefore, we recommend that the proposed rule be revised to allow large corporations to include the Program as part of a financial policy approved by designated senior management, rather than the Board of Directors. Further, monitoring and annual reporting regarding the Program are overly burdensome and will not contribute to maintaining an effective mitigation Program.

Thank you again for the opportunity to comment on this important topic. The comments set out within and on attached Exhibit A reflect the response of TRMA and do not necessarily represent the views of TRMA's individual companies.

Sincerely,

Kellie Berndt
TRMA President

Exhibit A

Specific Comments: §681.2

1. *The Agencies request comment on the scope of the proposed definition of “account.” In particular, the Agencies solicit comment on whether reference to “financial products and services that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act” is appropriate to describe the relationships that an account holder or customer may have with a financial institution or creditor that should be covered by the Red Flag Regulations. The Agencies also request comment on whether the definition of “account” should include relationships that are not “continuing” that a person may have with a financial institution or creditor. In addition, the Agencies request comment on whether additional or different examples of accounts should be added to the Regulations.*

TRMA suggests that a simple definition of “account” is appropriate and, furthermore, that a distinction should be made between an open, continuing relationship and one that is closed or in suspended status. The proposed expansion of the definition of “account” to include both consumer- and business-purpose loans and deposit accounts will make compliance with the Regulations more burdensome. Admittedly, the Regulation gives a creditor the flexibility to limit its Identity Theft Program (Program) to those types of accounts that present potential risks to it and its customers. However, any decision by a creditor to exercise this discretion by excluding certain types of accounts from its Program is likely to attract regulatory scrutiny, and the creditor’s defense of its risk analysis procedures and results could be time-consuming. TRMA believes the scope of the Regulation should be limited to track that of the FCRA and that only consumer-purpose loans and deposits should be “accounts” that are eligible for the Regulation’s protections.

2. *The Agencies solicit comment on the scope of the proposed definition of “customer.”*

TRMA notes that extending the definition of “customer” to include all persons and not just consumers creates complexity and makes compliance with the Regulations more burdensome. FCRA Section 615, which was amended to reflect the requirements of FACT Act section 114, applies to “Users of Consumer Reports.” By definition, the term “consumer reports” relates only to individuals. The Agencies’ use of “persons” in the proposed definition of “customer” for purposes of the Regulation’s expands the potential applicability of the proposed rule to all businesses, trusts and corporations. The Regulation would give a creditor the flexibility to limit the applicability of its Program to those types of customers who create risk for the creditor and its customers.

However, the exercise of this discretion to exclude certain types of customers will likely create an additional burden for the creditor in defending its decision. “Customers” should be limited to individuals.

3. *The Agencies request comment on the scope of the definition of “Red Flags” and, specifically, whether the definition of “Red Flags” should include precursors to identity theft.*

TRMA is concerned that expanding the definition of “Red Flag” to include precursors to identity theft would unnecessarily complicate the definition. If a behavior or attribute is found to significantly correlate and predict the possibility of identity theft, the creditor should have the flexibility to designate this attribute, based on its business model, as a Red Flag and use it in combination with other Red Flags to increase the predictability of identity theft. It is not necessary to expand the definition to achieve this result.

4. *The Agencies have proposed to require a creditor that uses a third party’s computer-based programs to detect fraud and identity theft to independently determine whether those programs meet the requirements of the Red Flag Regulations and Guidelines, rather than relying solely on the third party’s representations.*

The Agencies request comment on the anticipated impact of the proposed paragraph on the policies and procedures that financial institutions and creditors currently have to detect, prevent, and mitigate identity theft, including the likely impact on third party computer-based products that are currently being used to detect identity theft.

TRMA believes that requiring a creditor to supervise the policies and procedures of its third party vendors supplying computer-based identity theft risk scores will be a significant burden for creditors. As an alternative, TRMA suggests modifying the rule to allow the third-party vendor to certify to creditors by contract that it is in compliance with the rule. The FTC adopted this type of approach in implementing the GLBA information safeguards rule (*see* 16 CFR §314.4(a)) to give smaller financial institutions flexibility in complying with the requirements of that rule.

5. *The Agencies invite comment on whether permitting a service provider to implement a Program, including policies and procedures to identify and detect Red Flags, that differs from the programs of the individual financial institution or creditor to whom it is providing services would fulfill the objectives of the Red Flag Regulations.*

TRMA believes that the creditor, and not the service provider, should be ultimately responsible for implementing a compliant Program; however, the

service provider should be able to certify by contract to the creditor that its policies and procedures meet the creditor's requirements. Furthermore, it seems reasonable that, as long as a service provider doing business with financial institutions and creditors follows the Regulations and Guidelines in developing its Program, that Program need not mirror the Programs of the financial institutions or creditors with which the service provider does business.

6. *The Agencies also invite comment on whether it is necessary to address service provider arrangements in the Red Flag Regulations, or whether it is self-evident that a financial institution or creditor remains responsible for complying with the standards set forth in the Regulations, including when it contracts with a third party to perform an activity on its behalf.*

TRMA believes that clarification is not required.

7. *The Agencies request comment regarding the frequency with which reports regarding a creditor's compliance with the Red Flag Regulations should be prepared for its board, a board committee, or senior management. The Agencies also request comment on whether this proposal properly allocates the responsibility for oversight and implementation of the creditor's Program between the board and senior management.*

TRMA believes that requiring a formal written Program, approved by the board of directors of the corporation and subject to review by a committee of the board or senior management, is too prescriptive. Our members question the need for a formal Program because it is already incumbent upon them, as businesses, to take steps to reduce their risk of losses due to bad debt, fraud, and identity theft in order to succeed in a competitive environment. TRMA members have already implemented mitigation measures as part of their normal business practices. Therefore, we recommend revising the rule to allow large corporations to include the Program as part of a financial policy approved by senior management, rather than the Board of Directors. Furthermore, the proposed requirements for monitoring and annual reporting regarding the Program are overly burdensome, do not contribute to maintaining an effective mitigation Program and should be eliminated as requirements.

Specific Comments: Appendix A

Since the TRMA members' processes vary in size and complexity, the following comments regarding some of the proposed Red Flag Guidelines are intended to be general in scope, addressing the potential concern at a high level.

3. *A consumer report indicates a pattern of activity that is inconsistent with the history and usual pattern of activity of an applicant or customer, such as:*
 - a. *A recent and significant increase in the volume of inquiries.*

- b. An unusual number of recently established credit relationships.*
- c. A material change in the use of credit, especially with respect to recently established credit relationships*
- d. An account was closed for cause or identified for abuse of account privileges by a financial institution or creditor.*

Not all types of creditors undertake the same level of review when evaluating a credit application and the applicant's credit report. TRMA members must often provide "instant credit" to a high volume of applicants in order to remain competitive in the telecommunications industry. In order to be cost effective, the credit application evaluation process is highly automated, and manual reviews of consumer reports only occur in the event of discrepancies. Therefore, in order for a TRMA member to implement Red Flag 3, it would probably be necessary for the member to contract with the consumer reporting agency to review the full consumer report and report unusual activity, at an additional expense.

- 15. The person opening the account or the customer cannot provide authenticating information beyond that which generally would be available from a wallet or consumer report.***

TRMA believes that this Red Flag should only be an issue if it occurs in conjunction with another Red Flag that would prompt a creditor to pursue enhanced ID verification. Typically, a customer's identification is not validated with authenticating information beyond that which is generally available from a wallet or consumer report unless the customer's identification is suspect or application information has triggered another Red Flag. This Red Flag should be revised to clarify that enhanced identification verification utilizing "out of wallet/consumer report" questions is not expected for all applicants.

Specific Comments: §681.3

- A. The Agencies request comment on whether, for ease of use, the Regulations implementing section 315 should define additional terms, such as "card issuer," "credit card," and "debit card," that are already defined in the FCRA.*

TRMA requests inclusion of these definitions to clarify that a telephone calling card (e.g., a calling card and/or prepaid stored value card with an account number used to charge long distance calls on a particular provider's network) is not subject to these regulations.