

DENISE VOIGT CRAWFORD
SECURITIES COMMISSIONER



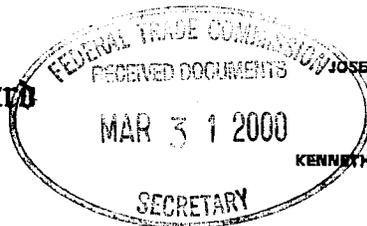
NICHOLAS C. TAYLOR
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JOSE ADAN TREVIÑO
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KENNETH W. ANDERSON, JR.
MEMBER

FACSIMILE COVER SHEET

Date: March 31, 2000

To: Name: Mr. Secretary

Organization: Federal Trade Commission

Address: _____

Fax No.: 202-326-2496 Voice No.: _____

From: Name: Denise Voigt Crawford

There are AS pages including the cover sheet.

Comments: Comment letter on 16 CFR 313; Privacy of Consumer Financial Information

Triplicate originals to follow in mail.

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KENNETH W. ANDERSON, JR.
MEMBER

March 31, 2000

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: Gramm-Leach-Bliley Act Privacy Rule, 16 CFR Part 313 - Comment

Dear Secretary:

This letter is submitted in response to the above-referenced rule, which contains proposals to implement the privacy provisions under the Gramm-Leach-Bliley Act ("GLBA"). The Federal Trade Commission ("FTC") is to be commended for developing these rule proposals ("Proposals") within the short timeframe allowed under GLBA and for the consistency with which they were drafted among the designated regulators.

Since the FTC was designated as the "omnibus" federal agency to develop privacy rules for financial institutions not otherwise specifically assigned to any of the other federal agencies, the FTC is responsible for developing rules for two categories of businesses also regulated by this Agency: (1) investment advisers with under \$25 million in assets under management and (2) intrastate securities dealers. It is principally for this reason that we comment on the privacy rules proposed by the FTC.

We support the Proposals in general and have specific comments regarding §313.4, Initial notice to consumers of privacy policies and practices required, and §313.7, Limitation on disclosure of nonpublic personal information about consumers to nonaffiliated third parties.

§313.4 provides that notice must be provided to a consumer prior to the time that the financial institution discloses nonpublic personal information about the consumer to any nonaffiliated third party. The section-by-section analysis states that if the financial institution does not intend to disclose the information, the institution is not required to provide the initial notice. However, if the institution decides at a later date to disclose to a nonaffiliated third party, a notice is required.

Secretary
March 31, 2000
Page 2

We question whether an institution will know how or where to contact a consumer at this latter, post-transaction date. Since the very nature of a "consumer" is one who has not become an institution's customer, how likely is it that a consumer can be located to receive the notice and exercise the right to opt out?

In a transaction where the financial institution obtains nonpublic personal information and intends at some point to disclose such information, we suggest that the notice of the opt out option be provided to consumers, just as it is to customers, and at a time when it is most reasonable to provide notice for a given financial transaction. The notice could be incorporated into the receipt document and orally explained by a representative of the institution. If the institution intends to disclose nonpublic personal information to a nonaffiliated third party, the consumer should be advised of it immediately and given that opportunity to declare "no."

In contrast, notice may be provided within a reasonable time after the transaction when, for example, a property owner makes an oral contract with a title company to perform a title search on the owner's property, the institution gives an oral notice of the privacy policy, and the customer agrees to receive written or electronic notice later. We suggest that a standard number of days be set out in §313.4 for the institution to send the notice, such as three to five business days.

We support the limitation on disclosure set forth in §313.7. A restriction should be placed on the minimal amount of time within which a financial institution should be allowed to disclose nonpublic personal information and in no instance should an institution be able to disclose nonpublic personal information before the consumer or customer has received full notice required under GLBA and has been given a reasonable opportunity to opt out. The proposed 30 days for an institution to issue notice of its privacy policies, and allow a consumer to respond and opt out, should impose no hardship on financial institutions. In the case of an institution that does not intend to establish a customer relationship, as evidenced by the failure to ever obtain nonpublic personal information, there would be no cost associated with compliance.

In contrast to the "isolated transaction" described in §313.7(a)(3)(ii), where the financial institution intends to obtain nonpublic personal information and simultaneously give the consumer proper notice, if a consumer is clearly a one-time purchaser where the financial institution has no intention of providing the structure to establish a customer relationship (and certainly there are such "financial institutions" within the broadly defined Section 4(k) of the Bank Holding Company Act), and likewise has no intention to ever obtain nonpublic personal information from the consumer, notice should not be required at all. It should be unobjectionable for a financial institution that does not intend to establish a customer relationship to be prohibited from ever acquiring nonpublic personal information. It is clear to see that by never obtaining nonpublic personal information, an institution would never have the regulatory burden and cost associated in complying with the privacy requirements of GLBA.

Secretary
March 31, 2000
Page 3

The vast majority of financial institutions regulated by a state securities regulator routinely enter into customer relationships. Those that do not, such as isolated securities transactions, can either refrain from obtaining nonpublic personal information or immediately and simultaneously with the transaction inform the consumer of its privacy policies and practice, and provide an equally immediate opportunity for the consumer to opt out. Those institutions that do intend to disclose nonpublic personal information, after consent of the customer, should not be able to disclose or disseminate the nonpublic personal information until the customer has been able to receive written notice and exercise his or her rights, as required by §313.7.

In response to the request for comment on giving notice to multi-party accounts, we suggest that notice be provided to all customer-parties, in the manner most reasonable for the particular transaction. We also suggest that the exercise of opt out by any customer-party is sufficient to opt out the entire account. A financial institution should not be required to continue the notice process to the other customer-parties where any one party has exercised its privacy rights to opt out.

We have commented on the initial notice and limitations on use of nonpublic personal information provisions in the Proposals to emphasize the importance of a consumer's or customer's ability to opt out upon early warning of an institution's plans to disclose nonpublic personal information. This appears to be the most critical component of the privacy provisions.

In addition, we refer to the comment letter submitted by the North American Securities Administrators Association (NASAA) on the proposals for further suggestions. In particular, the discussion of using the Proposal's examples as guidance, not safe harbors, should be strongly considered by the FTC and by other regulators under GLBA that have not clearly articulated a distinction. We agree with NASAA on a fundamental premise of legitimate privacy regulation: "individual financial institutions should be regulated by their specific actions and specific privacy-sharing plans rather than on general safe harbors based on an unknown landscape."

Finally, we suggest that the §313.3(j) definition of "financial institution" include individuals, not just business entities. In Texas there are many investment advisers who are sole proprietors. Likewise, an individual who provides investment advice is in many cases an investment adviser agent, but also may be the investment adviser, depending upon the particular business structure, which can vary greatly. They usually enter into contractual relationships with their clients, thus establishing the "customer relationship" under the Proposals. For these reasons, such individuals should be fully subject to the notice and disclosure requirements.

Secretary
March 31, 2000
Page 4

Thank you very much for the opportunity to comment on the Proposals. If we may be of assistance in clarifying items discussed in this letter, please do not hesitate to contact David Weaver, General Counsel, at 512-305-8303.

Very truly yours,

A handwritten signature in black ink that reads "Denise Voigt Crawford". The signature is written in a cursive, flowing style.

DENISE VOIGT CRAWFORD
Securities Commissioner

DVC/dw

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