

**ALLIANCE**  
DATA SYSTEMS

March 31, 2000

Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

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

Communications Division  
Office of the Comptroller of the Currency  
250 E Street, SW  
Washington, DC 20219

Docket No. 00-05

Re: Comments on Privacy Proposal Under Gramm-Leach-Bliley Act

Ladies and Gentlemen:

This comment letter is provided by Alliance Data Systems Corporation ("ADS") in response to the Notices of Proposed Rule Making ("Proposals") published by the Federal Trade Commission (the "FTC") and the Office of the Comptroller of the Currency (the "OCC") (collectively, the "Agencies"), with regard to the financial privacy provisions contained in Title V of the Gramm-Leach-Bliley Act (the "GLB Act").

ADS is the parent company of World Financial Network National Bank ("WFN Bank"), which is a national bank engaged in the business of providing private label credit card accounts to consumers. Another subsidiary of ADS, ADS Alliance Data Systems, Inc., provides, among other things, credit card processing services for WFN Bank and other creditors issuing credit cards, and merchant processing services to retailers in connection with the acceptance of credit and debit cards issued under the VISA, MasterCard, and other general purpose credit card programs. As the result of our extensive involvement in the payment card business, ADS has a broad understanding of the manner in which the Proposals may impact the payment card industry and we appreciate the opportunity to present our views.

800 Techcenter Drive  
Gahanna, Ohio 43230

T 614 729 4000  
[www.alliancedatasystems.com](http://www.alliancedatasystems.com)

ADS applauds the Agencies for the enormous effort required to produce the Proposals over a short time period, and believes that the Proposals provide a good starting point for discussion of the very difficult issues presented in implementing the new financial privacy requirements of the GLB Act. However, ADS also is extremely concerned that a number of important changes to the Proposals are imperative to prevent the Agencies' final regulations (the "Final Rules") from imposing undue burdens on financial institutions and otherwise having unintended consequences on the consumer credit industry that has played an important role in our country's economic expansion.

In this regard, given the extraordinary efforts from both the Agencies and the industry that will be required to implement the financial privacy requirements of the GLB Act, we urge the Agencies to carefully follow the statutory provisions at this initial stage of development in the regulation of financial privacy. There are innumerable difficult issues in implementing merely the statutory provisions that Congress adopted. Any regulatory expansion of the privacy protections beyond what was expressly provided by Congress should occur, if ever, only after both the Agencies and the industry have had a chance to work through the initial issues in implementing the GLB Act and only on the basis of that important experience.

In this letter, ADS has limited its comments to several broad issues raised by the Proposals that we believe will have the most significant impact on our businesses. We join with our trade associations, including the National Retail Federation, which are providing more extensive and detailed comments that have been made on behalf of the general industry.

**I. Definition of Nonpublic Personal Information**

The term "nonpublic personal information" (or "NPI"), which largely determines the scope of the relevant privacy provisions, is defined generally under Section 509(4) of the GLB Act to be "personally identifiable financial information" obtained by a financial institution in enumerated ways. The statute also expressly states that the term does not include "publicly available information." The GLB Act does not define the term "personally identifiable financial information."

ADS is very concerned about the breadth of the definition of NPI in the Proposals. We believe that this critical definition must be revised in several important respects to implement faithfully the purposes of the GLB Act and to prevent unintended consequences and undue burdens on financial institutions. Our specific thoughts on this issue are as follows.

**A. NPI Must Be “Financial” Information**

First, and foremost, ADS submits that the Proposals do not properly reflect the statutory language and intent behind the GLB Act that the new privacy provisions protect a consumer’s financial privacy. The Agencies have proposed that “any personally identifiable information is financial if it is obtained by a financial institution in connection with providing a financial product or service to a consumer,” even recognizing that this will result in “certain information being covered by the rules that may not be intrinsically financial, such as health status . . .” We believe that any definition of NPI must reflect that information is covered by the GLB Act only if the character of the information is financial and that information that itself is not financial cannot be covered by the GLB Act merely because a financial institution may acquire it.

The approach suggested by the Proposals interprets the GLB Act as if the word “financial” were not even present, even though Section 509(4)(A) specifically refers to “personally identifiable financial information” in defining NPI. (Emphasis added.) That the Agencies’ approach of merely focusing on whether the information is obtained by a financial institution is misplaced is shown by the fact that clauses (i) through (iii) of Section 509(4)(A) already separately address the role that the manner in which information is obtained plays in determining whether the information is covered. Moreover, the legislative history to the GLB Act makes clear that NPI was intended to be “information that describes an individual’s financial condition.” See 145 Cong. Rec. S13902 (daily ed., November 4, 1999) (statement of Sen. Allard).

ADS believes that the Agencies’ Proposals will have unintended and unjustified consequences if the requirement of “financial” is not included in the definition of NPI. Virtually any item of personally identifiable information would appear to be covered by the GLB Act if obtained by a financial institution about a consumer. Given the disclosure requirements of Section \_\_\_\_6, this essentially would require a financial institution to develop a disclosure form that categorizes and describes virtually every item of personally identifiable information about a customer with which a financial institution might come into contact. Such an enormous effort, and the consequent costs, were not contemplated by Congress and is not called for by the statutory language. Indeed, the breadth of NPI covered by the Proposal is beyond what consumers reasonably could be expected to consider within their financial privacy rights.

**B. Publicly Available Information**

ADS further submits that the Proposals improperly limit the exclusion in the GLB Act for personally identifiable financial information that is “publicly available.” Alternative A in the Proposals is plainly inconsistent with the statutory language and the purpose of

the exemption insofar as it would limit the exemption to information that is actually obtained from a public source. This is inconsistent with the statutory language because Section 509(4) refers to information that is available to the public and not merely information that is obtained from public sources. It also is at odds with the obvious justification for not covering publicly available information in the GLB Act in the first place – namely, such information is inherently not “private” if it already is in the public domain. In sum, ADS contends that the Final Rule would not be consistent with the requirements of the GLB Act if it limits the public information exception based on whether a financial institution actually obtains it from a public source.

Even with regard to Alternative B, we are still concerned with the Agencies’ attempt to narrowly define the exception in terms of specific sources from which publicly available information might be obtained (i.e. certain government records, “widely distributed media” and disclosures to the general public required by law). The source from which “public information” might be obtained should not be the key to whether it is “private” information protected by the GLB Act. Instead, the important question is whether the information is lawfully available in the public domain and thus not private information protected by the Proposals. Moreover, any attempt to define publicly available information in reference to the source will need to be constantly updated and revised as the sources of public information evolve. ADS suggests that the Agencies adopt a broader approach to describing public information that does not limit permissible sources of such information.

Finally, ADS also submits that the Proposal seems overly limiting in essentially defining all information obtained over the Internet as “private” unless it can be obtained without a password. At a minimum, we urge that this provision be modified to make it clear that logon identifiers or passwords that individuals generally use to access an Internet service or web site do not constitute a password for purposes of the Final Rule. Such logon codes are not “passwords” in the true sense since they do not limit a person’s access to private information.

**C. Name, Address, and Telephone Number Information Does Not Constitute NPI**

ADS also believes that the overly broad definition of NPI may improperly apply to name, address, telephone number and similar information. The fact that such information by itself cannot reasonably be considered to be “financial” should conclusively establish that it is not covered by the Proposals. However, closer examination of the issue illustrates why exclusion of such information from the Proposals is sound policy. While the GLB Act applies to nonpublic information about a consumer’s financial transactions with a financial institution, the statute was not intended to apply to information provided by a financial institution that merely allows

another party to contact a consumer. There are numerous important reasons why the flow of such information should not be impeded. For example, such information may be needed to facilitate law enforcement efforts, to identify parents who are delinquent in child support obligations, or to provide tax or other refunds to individuals that cannot be located.

The Agencies are likely to be considering another, probably more common, reason that name and address information might be released by a financial institution – namely, to allow third parties to offer other goods and services to the consumer. ADS appreciates the sensitive nature of this topic. In fact, as a member of the Direct Marketing Association, we are proud of the DMA's voluntary guidelines which recommend that member companies should provide notice to their customers about whether they intend to make offers of goods or services from third parties available to them and, importantly, provide them the right to be excluded from any such offers. Nonetheless, ADS submits that the Agencies' Proposals go far beyond the appropriate protection of the "financial privacy" of consumers and attempt to limit cross-marketing efforts that cannot be fairly said to involve private financial information about consumers. ADS thus requests that the Agencies clarify that NPI does not include mere name, address, telephone or similar information that does not describe the consumer's financial condition.

Furthermore, the Agencies have suggested that certain types of lists will be included in the definition of NPI, even if the list contained only items like name, address, and telephone information. We would urge the Agencies to note the distinction contained in the plain language of the GLB Act. Specifically, Section 509(4)(C)(ii) states that NPI does "not include any list, description or other grouping of consumers (and any publicly available information pertaining to them) that is derived without using any nonpublic personal information." This language is clear in that it would allow a financial institution to release customer lists without the information being deemed to be NPI unless the list itself was derived using NPI. ADS believes the Proposals should be modified to reflect this language in the GLB Act.

#### **D. Information Without Personal Identifiers**

The Agencies have specifically requested comment on whether information that cannot be personally identified with an individual could still be considered NPI. ADS feels strongly that general information about characteristics of a credit card portfolio should not be NPI, nor should any information in which the individual consumers' identities are masked or coded. Such information does not reveal anything about specific individuals and therefore should not be treated as NPI.

## **II. Application of Proposals to Credit Card Programs**

ADS believes that there are three aspects of the potential application of the Proposals to credit card programs that are critically important and thus need to be clarified in final regulations adopted by the Agencies. The first is that a retailer is not a financial institution merely because it accepts a credit or debit card, or otherwise provides incidental or accommodation services to consumers in connection with credit card programs. The second is that the exception for private label credit card programs permits a financial institution to share NPI with a retailer for which the program is provided without regard to the notice and opt-out provisions of the GLB Act. And the third is that a company that services credit card accounts under a commercial arrangement with a financial institution is not a financial institution covered by the GLB Act where servicing is undertaken in the name of the card issuer.

### **A. Acceptance of Credit Cards and Accommodation Services**

ADS commends the FTC for the portion of its proposed definition of "financial institution" which recognizes that an entity is covered by the GLB Act only if the business of the institution is engaging in activities that are financial in nature. At a minimum, ADS believes that this "engaged in the business" requirement mandates that an entity would be a financial institution "only if it is significantly engaged in a financial activity." Moreover, ADS supports the concept in the Proposal that there should be an example in the final regulation that makes absolutely clear that a retailer is not a financial institution by virtue of acceptance of a payment device that is provided by a financial institution. However, given the critical role of financial services in retail sales, ADS believes that several clarifications on this point in the Final Rules are appropriate.

First, the "payment exception" in the proposal would apply to a "business that only accepts payment by check or cash, or though credit cards issued by others. . ." ADS suggests that this example be revised to state more directly that acceptance of a credit card, including a private label card, does not result in the retailer being a financial institution. For example, the provision might state that "A retailer is not a 'financial institution' because it accepts a check, debit card, credit card, or other payment device, including a private label card." In this regard, we note that this example would not exempt a retailer that itself issues a credit card from being a financial institution. In that case the definition would apply to the extent the retailer extends credit and thereby provides a financial service but would not apply with respect to the activity of accepting the card.

Second, we recommend that the OCC's Final Rule complement the portion of the FTC's Proposal that recognizes acceptance of a credit card by a retailer does not make it a financial institution. In particular, this point should be clarified by the OCC's Final Rule expressly providing that, for purposes of the GLB Act, a consumer using a credit card to make a purchase at a retailer is the customer of the financial institution issuing the card and not a customer or consumer with regard to the retailer in connection with the credit card transaction.

Third, it is relatively common for a retailer to provide limited incidental customer accommodations to the store's customers in connection with private label credit card accounts provided by a third party financial institution. For example, applications for the third party's cards may be available at take-one displays in the store and the retailer's customer service desk may forward a consumer's application to the third party financial institution to speed up the application process. Likewise, the retailer's customer service desk may from time to time, as an accommodation to consumers, forward payments on the private label accounts to a third-party financial institution.

In situations such as these, the retailer cannot be said to be "significantly engaged" in providing financial services. It is beyond dispute that these incidental accommodations do not affect the conclusion that the retailer's business is selling goods and services and that the only party providing financial services in this instance is the third party financial institution that issues the private label credit card. To make this perfectly clear, ADS suggests adding another sentence in the "acceptance of payment" example that states: "A retailer does not become a financial institution because it provides assistance to individuals in connection with private label credit card accounts provided by a third-party financial institution."

## **B. Exemption for Private Label Credit Card Programs**

The Proposals contain an exemption to the notice and opt-out requirements for the disclosure of NPI as part of a private label credit card program. The proposed regulatory language substantially tracks the statutory language in the GLB Act. However, ADS urges the Agencies to implement the Congressional intent that private label card issuers be able to share information with the retailers for which such programs are operated without having to comply with the notice and opt-out provisions of the regulation.

Private label card programs are intended to ensure that the retailer's customers have a readily available source of credit to finance purchases from that particular retailer. Furthermore, since the credit program is designed for a specific retailer, the financial institution providing the credit can design the features of the credit product specifically to facilitate the sale of the retailer's goods and services. Thus, the retailer

works closely with the financial institution providing the accounts on such matters as special promotional financing terms for specific types of merchandise and special rewards programs for certain purchases. Moreover, as the name "private label" indicates, the credit product and related promotional efforts are branded with the retailer's name and thus consumers expect the retailer and the financial institution to both be involved with any information associated with the account.

Congress clearly recognized that the special relationship between a retailer and financial institution in connection with a private label credit card program required special treatment under the privacy rules. More specifically, the statutory exemption recognizes that disclosure of the fact that information will be shared between the two parties is not necessary because consumers naturally expect such sharing as a result of the very nature of a private label card. Moreover, allowing a consumer to opt-out of such information sharing is not appropriate because it would be fundamentally inconsistent with the ability to offer a private label account.

With all deference to the statutory language drafted by Congress, ADS submits that the exemption for private label credit card programs needs to be stated more clearly to effectuate the purpose of the exemption. Thus, ADS requests that the exemption be stated as follows: "To a retailer for which the financial institution provides a private label credit card account to the extent that the nonpublic personal financial information relates to the private label credit card program."

### **C. Treatment of Credit Card Servicers under Proposals**

ADS requests that the Proposals be modified to make clear that a company which merely services credit card accounts in the name of the card issuer is not a financial institution covered by the GLB Act. Although such companies arguably might fall within the literal language of the statute because bank holding companies have authority to service credit card accounts for others, it is not appropriate to regulate such companies as "financial institutions" for a number of reasons.

To start with, the manner in which such servicing companies actually participate in credit card programs should be recognized. They are hired by the credit card issuer to provide services on behalf of the credit card issuer in the issuer's name. These commercial service providers do not, as the FTC's Proposal recognizes, have any direct relationship with consumers and thus the disclosure requirements do not have any relevance. Indeed, these entities simply provide services to the card issuers in such matters as preparing periodic billing statements and processing payments. As such, the credit card issuer rather than the servicing company should be viewed as the provider of financial services.

Nor is it necessary to conclude that service providers are financial institutions to effectuate the privacy protections established by the GLB Act. These entities receive information about consumers to carry out servicing functions in the issuers' name, but do not participate in the related financial services transactions in any independent manner. In this way, credit card servicers differ from other loan servicers where the primary relationship may be between the consumer and the servicer (e.g. checks may be made payable to the servicer). In contrast, the credit card issuer plainly is a financial institution that maintains the customer relationship and the privacy provisions of the GLB Act are properly applied to that entity. It simply is not appropriate to treat a credit card servicer as a financial institution for purposes of the Proposals since it has no independent role in the transactions and no direct customer relationship with consumers.

More generally, there are likely to be other servicing arrangements in the financial services industry, like the credit card servicers noted above, where the servicer acts in the name of a financial institution and does not have any independent relationship with the consumer. For example, it is relatively common for a servicer to provide lock box services in which the servicer receives mail at a post office box and processes checks made out to the financial institution that hired the servicer. ADS submits that the GLB Act is properly applied to the financial institution with the customer relationship in those instances and not the servicer that conducts an entirely back office operation.

In sum, ADS strongly urges that Agencies expressly recognize that a company providing services to a financial institution is not itself a financial institution where the services are performed in the financial institution's name and the servicer does not have any independent relationship with the consumer.

### **III. Content and Timing of Initial Privacy Disclosures**

#### **A. Content of Disclosures**

ADS is concerned about the practical difficulty of preparing the privacy disclosures required under Section \_\_\_\_6. As noted above, the definition of NPI under the Proposals would appear to cover virtually any personally identifiable information about a customer that receives a private label credit card. Thus, unless the scope of NPI covered by the Final Rules is modified, private label card issuers will be faced with attempting to categorize each and every type of personally identifiable information that the institution may acquire and the categories of nonaffiliated third parties to which such information might be distributed. Although that might be possible if the Proposal was limited to truly private financial information, ADS believes that it would be a significant challenge if the Proposals are adopted as proposed.

In addition, ADS suggests that the Agencies consider ways in which the disclosures required to be provided to consumers are meaningful, yet not unduly burdensome on financial institutions. In this regard, ADS is concerned about the requirement in the Proposal that financial institutions not only disclose the categories of non-affiliated third parties that may receive NPI, but also give examples within each category. This level of specificity is likely to be burdensome on financial institutions and probably of little benefit to consumers. Furthermore, it is not required by the statute. For example, with regard to disclosure of NPI in connection with cross-marketing programs, the important part of the initial privacy disclosure for consumers will be that information may be used for marketing and not the examples of types of goods or service that a consumer may be offered. Should the Agencies require detailed disclosures such as those suggested in the Proposals, it is unlikely consumers will read or understand them due to their length. The difficulty of over-extensive disclosures is compounded when consumers receive these documents from all the financial institutions with which they do business. We would urge the Agencies to limit the length of the disclosures to make it more likely that they are meaningful to the consumer.

#### **B. Timing of Disclosures**

The Proposals note that financial institutions must provide initial notice of its privacy policies to its customers "prior to" entering into a customer relationship. It is important that the Agencies provide financial institutions flexibility as to when the disclosures are made to customers. We therefore applaud the Agencies for their desire to "strike a balance" between ensuring customers receive notices at an appropriate time while minimizing burdens on financial institutions. Specifically, we are pleased the Agencies have indicated that the initial customer notice may be made "at the same time a financial institution is required to give other notices, such as those required by the...regulations implementing" the Truth In Lending Act ("TILA"). This provides helpful clarification and we urge the Agencies to retain it.

However, ADS urges the Agencies to provide additional flexibility that does not detract from consumers' privacy rights. Specifically, financial institutions should have the ability to provide the initial notice to customers at some reasonable point after establishing the customer relationship provided the financial institution does not disclose NPI to a nonaffiliated third party (other than as permitted by law) until the notice is made and opportunity to opt out is given. This is the rule in the Proposals for disclosures to consumers, and ADS submits that it should also apply to customers. For example, the notice could be included in a customer's "welcome package" from the financial institution. This gives financial institutions added flexibility while still ensuring that customers' privacy rights are protected.

#### **IV. Annual Privacy Disclosures**

In finalizing the provisions of the Proposals regarding the annual privacy disclosures, ADS requests that the Agencies give special consideration to adopting rules that carry out the mandate of the GLB Act but do so without imposing unnecessary and excessive costs on financial institutions. In this regard, the annual privacy disclosures have the potential to impose extraordinary new operational costs on financial institutions. Unlike the initial disclosure which can be provided with initial documentation for a credit card account, financial institutions face difficult issues in implementing the annual disclosure requirement. Although credit card issuers provide accounts with periodic statements when accounts have balances or activity, providing a notice to an entire credit card portfolio (a so-called "full file mailing") can be extraordinarily expensive.

The Proposals provide that a credit card issuer no longer has a continuing relationship with a customer (and thus does not need to provide an annual disclosure) if the financial institution no longer provides any statements or notices to the consumer concerning the relationship. The concept that a credit card issuer "no longer provides any statements" will be useful where the issuer actually closes an account for inactivity. However, this provision may be of limited usefulness to many private label issuers that allow inactive accounts to maintain charging privileges. For example, some card issuers do not close an account even if it has not been used for two years or longer. In those instances, it is not clear that the card issuer no "longer provides statements or notices" because the account can still be used and, if it is, the issuer would then be required by the federal Truth in Lending Act to provide a statement.

To address this concern, ADS requests that the Agencies make clear that credit card issuers may take advantage of the general rule that annual disclosures are not required if the financial institution has not communicated with the consumer about the account for a period of 12 months. This could be accomplished by merely deleting the phrase "For other types of relationships" from Section \_\_.5(c)(2)(iv) of the Proposals. ADS further recommends that the Agencies make clear that, in applying this 12-month test, merely sending marketing materials to the consumer does not trigger the requirement to send an annual privacy disclosure.

ADS also recommends that the Proposals be modified to include an independent and alternative rule for credit card issuers. Specifically, ADS urges the Agencies to allow credit card issuers to follow the rules in the Truth in Lending Act and Regulation Z regarding the provision of annual billing rights notices for the annual disclosures under the GLB Act. Under the TILA, a card issuer can pick a single month of the year and provide the annual disclosure to each account that statements that month. See Regulation Z, Comment 9(a)(1)-1. This approach to providing annual disclosures has proven effective to address operational issues faced by credit card issuers in providing

annual notices on a cost effective basis and should be available to provide annual notices under the GLB Act.

#### **V. Method of Opt Out**

The Proposals require that financial institutions provide consumers with a "reasonable means" of opting out. We appreciate the examples provided by the Agencies to clarify what may be considered a "reasonable means." We specifically commend the FTC for including clarification that a toll-free number is reasonable. We would urge the OCC to adopt this example, as well.

However, we would urge the Agencies to delete the provision suggesting that it is not "reasonable" to require a consumer to write his or her own letter to the financial institution in order to opt out. There is nothing in the GLB Act which supports this guidance, nor is it consistent with similar provisions in TILA where it is expressly acknowledged that a consumer may be required to write a financial institution to preserve his or her rights with regard to billing errors.

Finally, it is very important that the Agencies maintain the level of flexibility in the Proposals with regard to allowing financial institutions to specify their own individual "reasonable methods" of opting out. Therefore, we thus recommend that the Agencies clarify that a financial institution is permitted to establish procedures for consumers to opt out and that they are not responsible for opt out requests submitted in another manner not specified by the institution, even if that material might be "reasonable." Financial institutions should not be expected to effectuate consumers' opt outs submitted in any one of countless ways that does not conform to the policies outlined by a financial institution.

#### **VI. Limits on Sharing Account Numbers for Marketing Purposes**

Under the Proposals, a financial institution is prohibited from disclosing, directly or through an affiliate, an account number for credit card, deposit or transaction accounts to any nonaffiliated third party for marketing purposes. There is an exception for disclosure of such information to a consumer reporting agency.

We commend the Agencies for maintaining the consumer reporting agency exception as written in the GLB Act. We would also recommend that the Agencies permit disclosure of account numbers to nonaffiliated third parties if such account numbers are encrypted or otherwise coded. The legislative history certainly supports this exception and it should be adopted. Finally, the Agencies should also permit

financial institutions to disclose account number information to third party service providers who are acting on behalf of the financial institution itself. Congress did not intend to prevent such servicing arrangements and we urge the Agencies to make this modification.

## **VII. Effective Dates of New Requirements**

ADS urges the Agencies to consider delaying the effective date of complying with the provisions of the Final Rules until September 1, 2001. Congress plainly contemplated that the Agencies should consider delaying the mandatory compliance date by recognizing that possibility in the statute. Moreover, based on our review of the extraordinary amount of work that will be required to comply with the Final Rules, we anticipate that it will be extraordinarily difficult to meet a compliance date before that time. Indeed, a time frame of December 2000 is especially troublesome for ADS and others involved in the private label business because the holiday season is the busiest time of the year for retailers and the financial institutions that provide private label credit accounts.

Regardless of whether the Agencies provide until September 1, 2001 as a general compliance date, it is imperative that additional time be given to provide initial disclosures to existing private label credit accounts. This will be a massive undertaking given the size of private label card programs today. Thus, the additional 30 days that the Agencies have proposed is not likely to provide financial institutions with sufficient flexibility to comply with these requirements in a cost effective manner. Moreover, ADS urges that the Agencies make clear that financial institutions do not need to provide an initial privacy disclosure to those portions of the customer base that are inactive and would not be entitled to receive an annual notice on the effective date of the Final Rules.

Finally, ADS urges the Agencies to republish revised proposals for additional public comment before adopting Final Rules. A similar approach has been taken in the past with respect to new regulations that, like these, are extraordinarily complicated and have far-reaching implications. Given the novelty of the issues presented by the Proposals, and the potentially extraordinary impact on existing business practices, ADS believes it is imperative to republish revised proposals based on the Agencies' evaluation of comments they receive in response to these Proposals.

## **VIII. Comments on Specific Issues as Requested by the Agencies**

### **A. Applicability to Foreign Institutions**

The OCC requested specific comment as to whether the Proposals should apply to "foreign financial institutions that solicit business in the United States but that do not have an office in the United States." ADS believes that the Agencies should apply the Final Rules to all financial products or services solicited to U.S. consumers. This is simply an issue of fairness to both U.S. consumers as well as to financial institutions that have an office in the United States. U.S. consumers' privacy interests do not diminish just because a product may be sold by a foreign institution with no U.S. office. Furthermore, to apply the Final Rules only to some transactions in the U.S. and not others creates an uneven playing field considering the significant compliance costs associated with the Proposals. We would urge the Agencies to clarify that the Final Rules will apply to foreign financial institutions that solicit business in the United States but that do not have an office in the United States.

### **B. Joint Accounts**

The Agencies have requested guidance as to how to apply the Final Rules when there may be more than one party to an account. We urge the Agencies to note that a financial institution is required to provide its privacy and opt out notices to only one party to a joint account. This is consistent with the application of the Consumer Credit Protection Act. If the Final Rules required a different method for joint accounts, many financial institutions would have to make significant systems adjustments in order to comply.

### **C. Policies and Procedures to Ensure Third Party Compliance**

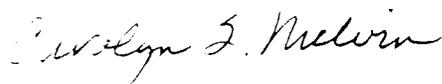
The Agencies invited comment on whether a financial institution that discloses NPI to a nonaffiliated third party should be required to develop "policies and procedures" to ensure the third party complies with the limits on redisclosure of that information. We do not believe that financial institutions should be forced to examine or audit third parties to whom they disclose NPI. The third party is also covered by the Proposals and the Agencies will have enforcement power in the event of a violation. We believe that it is unreasonable to mandate such a burden on financial institutions, especially in light of the additional compliance burdens and the fact that the Agencies will be able to enforce the Final Rules themselves.

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Federal Trade Commission  
Office of the Comptroller of the Currency  
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Once again, ADS appreciates the opportunity to comment on the Proposals. Please contact the undersigned if you have any questions about our views or if we can otherwise be of assistance in regards to this important matter.

Sincerely,



Carolyn S. Melvin  
Vice President and General Counsel

cc: Karen A. Morauski