

**First Union Corporation  
Legal Division**

One First Union Center (0630)  
Charlotte, North Carolina 28288  
704 374-3248  
FAX: 704 374-3105

170 North Hogan Street (FL0585)  
Jacksonville, Florida 32202-0585  
904 361-2909  
FAX: 904 361-2914

**L. Wayne Sams**  
Senior Vice President and  
Assistant General Counsel

1339 Chestnut Street (PA4840)  
Philadelphia, Pennsylvania 19101  
215 973-3810  
FAX: 215 973-8576

200 Berkeley Street (MA9000)  
Boston, Massachusetts 02116  
617 210-3200  
FAX: 617 210-3468

Reply to Charlotte Office

March 30, 2000

Secretary  
Federal Trade Commission  
Room H-159  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
E-mail: [GLBRule@ftc.gov](mailto:GLBRule@ftc.gov)



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

Ladies and Gentlemen:

This comment letter is submitted to address a specific issue on behalf of First Union Corporation and is made in addition to a comment letter to the Banking Agencies. It is in response to the proposed rule ("Rule") implement Title V ("Title V") of the Gramm-Leach-Bliley Act (the "Act") published for comment by the Federal Trade Commission ("FTC") on March 1, 2000.

First Union Corporation, a financial holding company with \$253 billion in assets, is a leading provider of financial services to 16 million retail and corporate customers throughout the East Coast and the nation. The company operates full-service banking offices in 12 East Coast states and the District of Columbia and full-service brokerage offices in 41 states. Online banking products and services can be accessed through [www.firstunion.com](http://www.firstunion.com).

The purpose of this comment letter is to address the technology employed by nonbank aggregators and the potential impact to financial institution's compliance with the proposed Rule to implement Title V of the Act.

Customers of financial institutions have indicated through surveys that they want to have their account information consolidated in one location. This process of consolidation is called "aggregation." Nonbank aggregators are using software technology, and account numbers and passwords the customer has provided, to allow them to access and consolidate the customer's account information with other companies and financial institutions via the Internet. The technology which pulls account information from financial institution's Internet websites is referred to as, "screen scraping". Screen scraping is performed by nonbank aggregators without adequate notice of the privacy and security risks to the financial institution's customers or any notice to the financial institutions because the nonbank aggregators are using the customer's password to access the financial institution's websites. The customer's financial information obtained by screen scraping may be stored by nonbank aggregators without appropriate security controls. There are no security and privacy requirements for nonbank aggregators.

Financial institutions are subject to confidentiality, security and privacy laws and regulations; however, there are no technologies available to proactively identify, track or control screen scraping activities by nonbank aggregators. Screen scraping is solely under the control of the nonbank aggregators and financial institutions do not have knowledge of when it occurs at their websites.

We will initially address the applicable definitions and later address other issues which may involve the Act and the proposed Rule.

#### 1. Definitions.

"Financial Institution." The FTC proposes to include in the definition of a financial institution an entity "the business of which is engaging in financial activities" and only if it is significantly engaged in a financial activity. We recommend the definition of financial institution include entities or businesses who use a technology or process to access personally identifiable financial information of customers of another financial institution. A broad definition should be used in recognition that other technologies may be employed in the future that may result in the purpose of the Act and Rule being circumvented. A current example is nonbank aggregators, who use the password of customers of financial institutions together with screen scraping software, to access, remove and transfer financial information from financial institution's websites for the purpose of aggregating the information and reformatting with other financial information. Access to financial information from the financial institution's website for the purpose of aggregation is a financial activity because it would include financial information such as, account numbers, account balance information, transaction history for deposit and credit products, available cash and credit balance information, payment dates, and the amount of interest and fees charged for consumers. All of this information is part of the financial activity conducted by financial institutions. The nonbank aggregators are significantly engaged in a financial activity because they can use and obtain the same financial information that is maintained by financial institutions on their websites at any time and on a regular basis. Therefore, nonbank aggregators are accessing, maintaining and storing other financial institution's customers' financial information and should be included with the definition of a financial institution.

"Personally identifiable financial information." The FTC proposed Rule treats any personally identifiable information as financial if it is obtained by a financial institution in connection with providing a financial product or service to a consumer. The proposed Rule defines "personally identifiable information" to include three categories of information. The information described in the second category as "any information resulting from any transaction between the consumer's financial institution involving a financial product or service" is the type of information screen scraped from financial institutions websites by nonbank aggregators. Therefore, nonbank aggregators are accessing, maintaining and storing other financial institution's customers' financial information which is within the proposed definition of personally identifiable financial information.

#### 2. Enforcement of the Act and Rule.

Access of nonbank aggregators to financial information of a financial institution's customers may complicate compliance with the Act and the Rule. For example, if a customer of a financial institution opts out of information sharing and subsequently signs up with nonbank aggregator for aggregation services, the act of signing up for nonbank aggregator services would appear to be within the general exception to non-disclosure of nonpublic personal information of Section 502(e)(2) because it is at the direction of the

consumer. The problem is that the authorization was provided to a different entity than the financial institution which holds the consumer's account. Nonbank aggregators would at the direction of the financial institution's consumers access financial information without the knowledge or consent of the financial institution. If nonbank aggregators are not within the definition of a financial institution, the nonbank aggregators will be under no obligation to provide the protects of the Act and Rule. The effect of nonbank aggregators not being subject to the Act and Rule is that consumers would be unaware of the gap in privacy protection and under mistaken impression that the privacy of his or her financial information is fully protected.

### 3. Privacy Disclosure.

If the FTC determines that nonbank aggregators are included within the definition of financial institution, we recommend that a privacy disclosure be provided by nonbank aggregators to their customers before the financial institution's password is entered. The disclosure should clearly inform the nonbank aggregator's customers: (1) what is the purpose of a password, (2) under what conditions should a password be shared, (3) security and privacy provisions may differ at nonbank aggregator and financial institution websites, (4) access to the nonbank aggregator service does not mean the financial institution either endorses or sponsors it, and (5) more information about security and privacy is provided in the nonbank aggregator's and financial institution's websites. The reason for the disclosure is to clearly advise financial institution's customers of the privacy risks involved with sharing their password and personally identifiable financial information.

Based on the intent of Congress in enacting the Act and the unrestricted access the screen scrapers have to financial institution's consumer financial information, we recommend that you adopt the above definition for financial institution which would include this and other technology used by nonbank entities to access financial information created and maintained by financial institutions.

We commend the FTC's efforts to protect the privacy of consumer financial information; however, expanding the definition of financial institution to include nonbank aggregators will put all institutions on a level playing field and protect the privacy interests of consumers. If we can be of assistance, please do not hesitate to contact me at (704) 374-3248.

Sincerely,



L. Wayne Sams

cc: Office of the Comptroller of the Currency  
Board of Governors of the Federal Reserve System  
Securities and Exchange Commission  
Federal Deposit Insurance Corporation