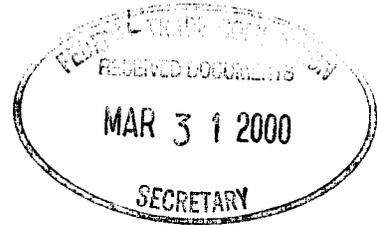


ZALE CORPORATION



March 30, 2000

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

Attention: Docket No. 00-05

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

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

Ladies and Gentlemen:

This comment letter is filed in response to the Notices of Proposed Rulemaking ("Proposal") published by the Federal Trade Commission and the Office of the Comptroller of the Currency ("Agencies"), to implement Subtitle A and Title V of the Gramm-Leach-Bliley Act (the "GLB ACT"). I am submitting this letter on behalf of Zale Corporation and its affiliate Jewelers National Bank. Zale Corporation is the largest retail jeweler in the United States, where it owns and operates approximately 1200 retail stores and employs over 11,000 people, with annual sales in excess of \$1.4 billion dollars. Jewelers National Bank is a credit card bank which provides proprietary open-end credit accounts to customers of the Zale Corporation stores, with a portfolio of 805,563 active accounts. I am writing in my capacity as Executive Vice President and Chief Operating Officer of Zale Corporation and Chairman of the Board of Jewelers National Bank.

Zale Corporation and Jewelers National Bank appreciate the opportunity to comment on the Proposal. We are deeply concerned that the Proposal may unnecessarily increase the cost of complying with the GLB Act and could have significant, unintended consequences for retail credit card banks who extend credit to customers of their retail parent. Complying with the most basic component of the Proposal – mailing the initial notice to existing customers – will cost our organization in excess of \$1.5 million dollars. The full cost of complying with the Proposal will greatly exceed that amount.

The objective of developing a Final Rule that implements the Congressional intent of protecting consumer privacy while controlling the cost and burdens of compliance (and their resultant economic impact on consumers) could be better accomplished if the Agencies were to adopt a Final Rule that adheres closely to the plain language and intent of the GLB Act. We are

providing several comments and suggestions regarding the Proposal with the goal of assisting the Agencies in that objective.

In addition to adhering to the plain language of the GLB Act, we urge the Agencies to provide reasonable flexibility to retail credit card banks in their efforts to facilitate cost effective compliance with the provisions of the GLB Act. For example, it is unrealistic to expect credit card banks to implement new procedures and the accompanying technology fixes and training within six months of the issuance of the Final Rule. Moreover, it will be extremely disruptive to require retail credit card banks to comply with the Final Rule in the timeframe specified in the Proposal because it falls in the middle of the holiday shopping season, by far the busiest time of the year for retailers and their credit card banks. Approximately 40 percent of all Zale Corporation and Jewelers National Bank's business is conducted in the last two months of the year. The demands on our management and employees are enormous in the months leading up to and during this time period.

We suggest that a better effective date of the Final Rule would be July 1, 2001. The issues related to this proposal are extremely complex. Six months is not sufficient time to ensure adequate compliance with minimal error, especially since most retail credit card banks do not make any technology system changes after August due to the demands of the holiday season. Requiring retailers to mail hundreds of millions of notices in addition to the holiday mailings that are a normal part of the holiday shopping season is an *exceptionally* heavy burden. Multiply that burden by the number of entities who will be required to comply, and the result is likely to be billions of notices sent within a 30-day timeframe. The U.S. Postal Service as well as third party mail vendors are already extremely busy during November and December and would likely not welcome the additional mailings. Consumers themselves often receive an extremely high volume of mail during the holiday season and may be less likely to take note of privacy disclosures mailed during this time period

We believe the timeframe is unrealistic and not in the best interests of consumers or retailers.

Definitions (§--.3)

We are also concerned about several specific issues related to the Definitions. The disclosures required under the GLB Act must be made "clearly and conspicuously." The Proposal states that a disclosure will be deemed to be "clear and conspicuous" if it is "reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice." The proposed definition could have a number of unintended consequences. It fails to take into account that the phrase "clear and conspicuous" has traditionally been used as a standard for complying with many other federal consumer protection statutes. For example, the "clear and conspicuous" standard governs disclosures made under the Truth in Lending Act, Truth in Saving Act and the Expedited Funds Availability Act. The FRB, pursuant to its rulemaking authority under these statutes, has promulgated interpretations of the standard, and those interpretations have been relied upon by thousands of financial institutions. When Congress enacted the GLB Act, it did so with knowledge of these interpretations, and there is no indication that Congress intended to give the phrase any meaning other than its traditional one. We believe that any proposed definition of "clear and conspicuous" that varies

from prior FRB interpretation of that same term is inconsistent with the GLB Act and the intent of Congress. We urge the Agencies to modify the definition of “clear and conspicuous” to state that compliance with the standard as previously articulated by the FRB will be deemed to comply with the standard set forth in the GLB Act.

The word “collect” is defined in the Proposal to mean “obtain[ing] information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information.” We are concerned that this definition could be inappropriately construed to cover an entity that briefly obtains information but passes it on to another without actually storing or capturing the information for its own use. For example, the definition could have the apparently unintended effect of covering a retailer who obtains from a consumer a credit card application which is then passed along to the card issuing bank for disposition. In order to address this issue, we urge the Agencies to clarify that an entity will not be deemed to “collect” information unless it both obtains the information and “records it for its own use to deliver a financial product or service.”

A number of the examples provided to assist in the definition of “consumer” indicate that the individual who provides information to a financial institution in connection with applying for credit or another financial product or service will be deemed to be a “consumer” “regardless of whether the credit is extended” or another financial service is granted to the consumer. Any such interpretation conflicts with the plain language of the GLB Act, which states that a “consumer” is “an individual who *obtains*” certain financial products or services from a financial institution. Accordingly, we believe the Proposal is inconsistent with the plain language of the statute and should be revised to make clear that an individual does not become a consumer when the individual applies for, but does not obtain, a financial product or service. Under the Proposal, the definition of “customer relationship” determines whether a “consumer” has become a “customer”. As a result, it is important that the definition of “customer relationship” establish a clear differentiation from the definition of “consumer.” We are concerned that the approach taken in the Proposal does not provide a clear differentiation.

The Proposal states that “customer relationship” means “a continuing relationship between a consumer and a financial institution under which the financial institution provides one or more financial products or services to the consumer that are to be used primarily for personal, family or household purposes.” This definition is extremely important because, as the Supplementary Information to the Proposal notes, the obligations of a financial institution vary depending upon whether an individual is a consumer or a customer. We are concerned, however, that the definition creates ambiguity as the circumstances under which a “continuing relationship” will be deemed to exist. The Proposed and Supplementary Information appear to distinguish between “consumer” and “customer” based on the amount of “contact about the transaction” between the financial institution and the individual.

The Final Rule should establish that it is not repeated contact with the financial institution that establishes a customer relationship; rather, it is an agreement between the consumer and the financial institution that creates that relationship. Although this concept is not articulated in the definition of “customer relationship,” it appears to be embodied in the examples set forth in the Proposal. In this regard, every one of the examples of a “customer” or “customer relationship”

involves an arrangement in which the individual and the financial institution necessarily have entered into a mutual agreement. In order to address this issue, we urge that the definition be modified to clarify that a customer relationship will be deemed to exist only where the financial institution and the consumer mutually agree to enter into the relationship.

The Proposal states that a “financial institution” is any institution “the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act.” We request that the Agencies clarify that a retailer who accepts a payment from a consumer on behalf of the bank does not thereby become a financial institution. This clarification is needed to address circumstances where, as an accommodation, a retailer will allow a consumer to present a check to personnel at the retail location as payment for amounts owed to the affiliated creditor. Some consumers prefer to make their payments in this fashion because it allows them to present the check to an individual in a face-to-face interaction rather than sending the payment by mail. Retailers would like to continue to provide this accommodation, but would be unlikely to do so if it were to result in the retailer being deemed a “financial institution” subject to the full range of GLB Act burdens.

The Agencies should exclude from the Final Rule the interpretation set forth in paragraph (k)(2) of the Proposal. That interpretation provides that a “financial service” includes the “evaluation...or distribution of information that you collect in connection with a request or an application from a consumer for a financial product or service.”

This interpretation is not supported by the plain language of the GLB Act and would create significant, unintended consequences impacting virtually any type of business that facilitates the transmission of applications for financial products or services. For example, under this interpretation a retailer apparently could become a financial institution by routinely taking credit card applications from consumers and transmitting them to an affiliated credit card bank. Under that scenario, even the smallest retailer could become a “financial institution” despite the fact that the retailer itself never made a single loan or otherwise provided any financial product or service of any kind to a consumer. We are not aware of anything in the legislative history of the GLB Act that suggests that Congress intended the meaning of “financial services” to be so broad.

As a final clarification on this issue, we ask the Agencies to acknowledge that products such as gift cards and gift certificates are not “financial products or services” as defined within the Proposal. Such items are simply a type of retail product (not financial in nature) and plainly not what Congress envisioned when it enacted the GLB Act.

The Proposal defines “nonaffiliated third party” as any entity other than an affiliate or a joint employee. The definition should be modified to exclude any entity who receives information from a financial institution solely for the purpose of acting as agent for or on behalf of the financial institution. Under such circumstances, the recipient of the information may not use or disclose the information to any greater extent than could the financial institution. In particular, the recipient of the information may not use it for its independent interests. Any acts carried out by the recipient would be done so solely on behalf of the financial institution. As a

result, the disclosure of information between a financial institution and a party acting on behalf of the financial institution simply does not raise the type of privacy concerns intended to be addressed by the GLB Act. This concept has long been recognized in relevant precedent found under the Fair Credit Reporting Act (“FCRA”) which provides that communications between a principal and its agent are not treated as communications to a third party. We urge the Agencies to incorporate guidance into the Final Rule consistent with the FCRA precedent on this point.

The definition of “nonpublic personal information” largely determines the scope of the GLB Act provisions. Congress set forth a fairly explicit definition of “nonpublic personal information,” but the Proposal takes a different approach and defines “nonpublic personal information” and “personally identifiable information” much more expansively than was apparently intended by the drafters of the GLB Act.

Congress’ definition of “nonpublic personal information” is found in Section 509(4) of the GLB Act, which provides as follows:

- (A) The term “nonpublic personal information” means personally identifiable financial information –
 - (i) provided by a consumer to a financial institution;
 - (ii) resulting from any transaction with the consumer or any service performed for the consumer, or
 - (iii) otherwise obtained by the financial institution.
- (B) Such term does not include publicly available information, as such term is defined by the regulations prescribed under Section 504.

Based on this language there are three distinct elements of the definition. First, the information must be “personally identifiable.” Second, the information must be “financial.” Third, the information must have been obtained in one of the ways specified in the statute. The GLB Act also makes it clear that information will not be deemed to be “nonpublic personal information” if it is “publicly available” as defined by the Agencies. In our view, the definitions included in the Proposal would not accurately implement the definitions set forth by Congress in the GLB Act.

First, the Final Rule should make clear that information will not be considered “nonpublic personal information” unless it meets the definition of that term as enacted by Congress. The Final Rule should define “nonpublic personal information” as “information that is personally identifiable, financial, [obtained by a financial institution as described in the statute,] and not otherwise publicly available.” In addition, the Agencies should provide guidance on each of the specific elements of the definition of “nonpublic personal information” and the meaning of the term “publicly available.”

In addition, the Agencies should confirm that “personally identifiable” information does not include any information about an individual if the identity of the individual is not associated with the information. If information is disclosed in a manner that excludes, codes or encrypts an

individual's identity, it does not reveal any sensitive information about a consumer and its not "personally identifiable."

That the coverage of "nonpublic personal information" is limited to information that is "financial" seems obvious since the GLB Act is intended to address "financial," not general, privacy issues. Nonetheless, the Proposal eliminates this limitation and would include nonfinancial information in the definition. This approach is not supported by the plain language of the GLB Act which requires that information must be "financial information" to be covered. The intent of Congress could not be clearer. We urge the Agencies to adhere to Congressional intent and make clear in the Final Rule that in order to be "nonpublic personal information," the information itself must "describe an individual's financial condition" and that items such as names, addresses and telephone numbers are not covered by the definition.

The GLB Act excluded personally identifiable financial information from the definition of "nonpublic personal information" if such information is "publicly available." The Proposal should be modified to reflect this exclusion. Specifically, "Alternative A" should be rejected since it would require financial institutions to actually *obtain* the information from a public source. Congress excluded information "available" to the public, and we believe the Agencies should do so as well. We recommend adopting a modified version of Alternative B. "Publicly available information" should be defined as "any type of information that is generally made available to the general public." Such language accurately defines the meaning of "publicly available." The language which would limit the definition to information available only through specified sources should be deleted. We urge the Agencies to make clear in the Final Rule that information will be treated as publicly available if it is lawfully available to the general public.

Initial Notice (§.-- 4.)

The Proposal expressly provides clarification that, with respect to a "consumer," an initial notice is not required if the financial institution does not disclose information about the consumer to a nonaffiliated third party. The Agencies should expand this concept to permit financial institutions to delay initial notices to their "customers" as long as the financial institution does not disclose any nonpublic personal information about the customers until after the initial notice is furnished. Customer privacy interests would be protected since nonpublic personal information about the customers would not be disclosed unless the customers receive the initial notice and opportunity to opt out. This approach would provide flexibility to financial institutions allowing them to time the disclosures to coincide with other mailings or to otherwise arrange for more efficient delivery of the disclosures.

For purposes of determining when the initial notices must be provided to "customers," the Proposal states that a financial institution will be deemed to establish a customer relationship "at the time the [financial institution] and the consumer enter into a continuing relationship." As discussed above, it is important that the Agencies establish precise guidelines for determining when a "consumer" has become a "customer." This goal can be achieved by confirming in the Final Rule that a customer relationship will begin to exist when there is a mutual agreement between the consumer and the financial institution that obligates the financial institution to provide financial products or services.

The Proposal states that a financial institution must provide the initial notice so that “each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, in electronic form.” The GLB Act, however, simply requires that a financial institution “provide” disclosures to its consumers and customers. The Proposal suggests that a financial institution must determine whether, for a particular consumer, the disclosures have been delivered in such a way that the particular consumer “can reasonably be expected to receive actual notice.” It appears to suggest that something beyond merely “providing” disclosures is required. In our view, the intent of the GLB Act would most clearly be implemented if the Final Rule simply stated that the required notices must be “provided” or “delivered” to consumers. This approach would be more consistent with the standards typically found under other similar federal statutes.

The Agencies request specific comment as to how notice should be provided in connection with joint accounts. We suggest that the Agencies adopt a Final Rule which provides that a financial institution will satisfy its notice obligation on joint accounts if the notice is sent to the individual to whom other required correspondence about the account, such as the periodic statement, is addressed.

The Proposal allows a financial institution to delay the initial notice to a customer for “a reasonable time” after the customer relationship is established if the [financial institution] and the consumer orally agree to enter into a customer relationship “and the consumer agrees to receive the notice thereafter.” Requiring the consumer to “agree” to subsequent disclosures appears to be unnecessary for purposes of protecting the consumer’s privacy since information may not be disclosed to nonaffiliated third parties unless and until the disclosures are delivered. The financial institution may have no choice but to refuse to establish the customer relationship despite the consumer’s express wishes if a consumer orally agrees to establish the customer relationship but refuses to agree to subsequent disclosures.

Annual Notice to Customers Required (§-.5)

The Proposal states that a financial institution must provide a privacy notice to its customers “not less than annually” during the continuation of the customer relationship. The annual notice requirement accounts for a substantial portion of the enormous costs of complying with the new GLB Act provisions, and is appallingly wasteful from both an economic and environmental standpoint. The Agencies could reduce this wastefulness and the staggering costs while still protecting the privacy interests of financial institution customers by making minor revisions to the Proposal.

We urge the Agencies to exempt from the annual notice requirement those financial institutions that do not share nonpublic personal information with nonaffiliated third parties. Under such an approach, once the financial institution has furnished the initial privacy notice, it would not be required to furnish an annual notice unless the information disclosed in the initial notice changes. Customers would be protected because they would have been informed of the financial institution’s practices in the initial notice and no nonpublic personal information about the customers could be furnished to third parties unless the financial institution provides to those

customers a new notice and an opportunity to opt out. This suggestion would avoid the senseless deluge of annual notice mailings to customers by financial institutions who have no information sharing practices that trigger an opt out disclosure.

Financial institutions should also be permitted to forego providing annual notices unless there has been a change in privacy practices resulting in a change from the original notice. This adjustment would ensure that customers are informed of relevant privacy practices without requiring financial institutions to wastefully provide identical information to customers year after year. Of course, under this approach, customers could always obtain a copy of the privacy policies upon request and opt-out at any time.

The Proposal states that a financial institution is not required to provide an annual notice to a customer with whom the financial institution no longer has a “continuing relationship.” We urge the Agencies to clarify that an open-ended credit “continuing relationship” will not exist if the customer’s account is deemed to be “inactive” under the financial institution’s policies. This would provide certainty to a financial institution with respect to when a continuing relationship for an open-end credit account has ceased to exist.

The Proposal states that for certain types of relationships (not including open-end credit) a “continuing relationship” will no longer be deemed to exist where the financial institution “has not communicated with the consumer about the relationship for a period of 12 consecutive months, other than to provide annual notices of privacy policies and practices.” This helpful clarification should be expanded to cover open-end credit relationships. In addition, the example should be modified to make it clear that any marketing materials sent to a customer during the 12-month period would not cause the relationship with that customer to be deemed to be a “continuing relationship.” Marketing materials may be sent to customers as well as non-customers, and the fact that marketing materials are delivered to an individual is not relevant to the determination of whether there is a continuing relationship.

Information to Be Included in Initial and Annual Notices (§--.6)

The Proposal provides that the initial and annual notices must include several items of information, including the categories of nonpublic personal information collected, the categories of nonpublic information disclosed, the categories of affiliates and nonaffiliated third parties to whom the financial institution discloses nonpublic personal information, an explanation of the right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, FCRA disclosures (if any), and the financial institution’s policies and practices with respect to protecting the “confidentiality, security, and integrity of nonpublic personal information.”

It will be difficult to implement this requirement in a manner which is helpful and informative to consumers. Disclosures that are lengthy and detailed are not read by consumers. We urge the Agencies to articulate standards for the disclosures included in the initial and annual notices that will enable financial institutions to make those disclosures clearly and concisely. With respect to the disclosure of categories of nonpublic personal information collected, the Proposal makes clear that such information may be categorized by sources such as application information, information relating to the consumer’s transactions with the financial institution and

consumer reports. However, in some instances, a financial institution may not be able to determine the precise source of particular pieces of information. For example, portfolio acquisitions, mergers and other business combinations can make it difficult to determine the sources of information, particularly since financial institutions were not required to record those sources up until now. To address this issue, the Agencies should permit financial institutions to list examples of sources that they are aware of, and include in that list an indication that the information is obtained “from other sources” as well.

The Agencies should use a similar approach with respect to describing the categories of information that may be disclosed. The initial and annual notices can be substantially shortened if the financial institution is permitted to categorize identifiable sources without giving examples.

The Proposal states that the “categories of affiliates” to whom the financial institution discloses nonpublic personal information must be described in the initial and annual notices. This requirement is not found in the language of the GLB Act and should not be a required component of the proposed initial and annual notices. Section 503(a) provides a general description of the contents of the initial and annual disclosures. Section 503(a)(1) states that a financial institution must disclose its policies and practices with respect to “disclosing nonpublic personal information to affiliates and nonaffiliated third parties.” The GLB Act does not, at any point, state that the initial and/or annual disclosure must include any description of the categories of *affiliates* with whom a financial institution may share nonpublic personal information.

The proposal suggests that the initial and annual disclosures must describe information disclosed to all nonaffiliated third parties and must describe the categories of such third parties. The plain language of the GLB Act, however, makes it clear that the initial and annual disclosures cover only those nonaffiliated third parties “other than agents of the [financial] institution.” As a result, the Final Rule should clarify that information disclosed to third parties who are agents of the financial institution need not be described in the “categories of nonaffiliated third parties” to whom information is disclosed.

Limitation of Disclosure to Nonaffiliated Third Parties (§--.7)

The Proposal states that a financial institution may not, “directly or through an affiliate,” disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless the financial institution has provided an initial privacy notice, provided an opt out notice, given the consumer a reasonable opportunity before disclosing any nonpublic personal information to opt out, and the consumer has not opted out.

The Agencies requested comment on how the right to opt out should apply in the case of joint accounts. The Final Rule should make it clear that a financial institution has the flexibility to either treat an opt-out request from one party to the joint account to apply to all information with respect to that account or to allow each party to a joint account to exercise his or her own choice with respect to the opt-out. Either approach would appropriately implement the intent of the GLB Act provisions.

The Proposal also provides examples of what would be deemed a “reasonable opportunity” to opt out. One example states that it is a reasonable approach for a financial institution to mail the initial notice and the opt-out notice to the consumer and allow the consumer a “reasonable period of time, such as 30 days,” to opt out. We urge the Agencies to avoid suggesting that a financial institution must wait 30 days for a consumer to respond. Such a waiting period would not be appropriate if a financial institution has furnished to a consumer an offer for a product or service which must be accepted within a shorter time frame (e.g., 15 day). The financial institution also should be permitted to specify that if the consumer wishes to opt out, the consumer must do so in the time frame established for responding to the offer.

Form and Method of Providing Opt Out Notice (§--.8)

The Proposal sets forth several examples of how a financial institution may provide consumers and customers a “reasonable means” of opting out. These include designated check-off boxes, a reply form, and an electronic means “if the consumer agrees to the electronic delivery of information.” As a general matter, we believe that the examples provide helpful guidance for implementation of the opt out requirement. We disagree with the statement in the Proposal that a financial institution does not provide a reasonable method of opting out if the consumer must write a letter to do so. There is nothing in the plain language of the GLB Act or its legislative history that suggests that this is not a reasonable means of communicating with a financial institution. Moreover, in other contexts, such as the billing error provisions under the federal TILA, it is expressly acknowledged that a consumer may be required to write in order to preserve his or her rights. Accordingly, we urge that the Agencies specifically make it clear that requesting that a consumer write a letter is a reasonable means of opting out. In addition to permitting financial institutions to require a written opt out, the Agencies should also specify that a financial institution could provide a toll-free number for consumers to use in order to opt out. This is an important option for financial institutions and would provide a convenient method for consumers.

To enable financial institutions to adequately control their legal risks, they must be permitted to establish reasonable procedures for allowing a consumer to opt out and should not be responsible for administering opt out requests that do not comply with those procedures. For example, this is a particularly important issue for those retailers who have thousands of locations throughout the country and could not effectively implement opt out requests if consumers were permitted to submit them at any of those locations. Furthermore, a financial institution should be permitted to require consumers to specify their account numbers when making their opt out requests. In many systems the account number is the most reliable unique identifier (as opposed to names, which are often duplicated, and addresses, which may change) and financial institutions must have the flexibility to use those numbers to ensure that a person’s opt out is implemented correctly. Accordingly, we urge the Agencies to utilize the precedent established under the TILA and FCRA which permits financial institutions to specify reasonable procedures consumers must follow to exercise an option.

The Proposal provides that a financial institution may not disclose nonpublic personal information to a nonaffiliated third party other than as described in the initial notice unless the financial institution has provided the consumer a revised privacy notice, a new opt out notice and

a reasonable opportunity to opt out. We urge the Agencies to modify this provision to make it clear that a change in terms notice need not be furnished to customers. In this regard, the GLB Act imposes two types of notice obligations – the initial notice which must be provided at the time of establishing a customer relationship and the annual notice which must be furnished to customers every year. Thus, customers already must receive a new notice every year. Any changes in information practices that have occurred since the prior annual notice can more than adequately be conveyed through the new annual notice. In the alternative, an annual notice should be required only when a change occurs, as discussed previously. Either alternative would assist in minimizing wasteful, redundant mailings.

The Proposal expressly states that a consumer may opt out at any time and a financial institution receiving a consumer's opt out must comply with that direction "as soon as reasonably practicable." It is important that the Agencies adopt specific language in the Proposal which clarifies that the customer's opt out applies to information sharing which occurs after the opt out is communicated to the financial institution. Marketing programs which are "in progress" when the opt-out is received should not be affected.

Limits on Redisdisclosure and Reuse of Information (§-.12)

The Agencies invite comment as to whether the Final Rule should "require a financial institution that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the party complies with the limits on redisclosure of that information." Typically, financial institutions already bind third parties to contractual provisions limiting the third party's disclosure of nonpublic personal information. Nonaffiliated third parties who disclose information for impermissible purposes will have committed a violation of the GLB Act and will be subject to enforcement actions on that basis. Financial institutions should not have the obligation of policing third parties regarding compliance with the federal law. In particular, financial institutions should not be responsible for examining or auditing a third party's compliance with the GLB Act provisions. It simply would not be feasible for financial institutions to do so with respect to every third party to whom information is furnished.

Effective Date (§-.16)

The Agencies intend to publish the Final Rule by May 13, 2000. The Agencies have proposed an effective date for the Final Rule of November 13, 2000. Financial institutions would have 30 days to provide initial notices to consumers who were customers as of November 13, 2000. The Agencies have specifically requested comment as to whether six months is an appropriate amount of time to allow financial institutions to come into compliance with the Final Rule.

We would urge the Agencies to release an amended Proposal for additional public comment. Short of this, the Agencies may wish to consider releasing a Temporary Rule, the compliance with which would be voluntary until July 1, 2001. The Temporary Rule would allow the Agencies to meet their statutory deadline while also allowing them to solicit and review additional public comment we believe is essential to crafting a carefully considered Final Rule. If the Agencies ultimately decide against issuing an amended Proposal, or even a Temporary Rule,

the Agencies should at least make use of their statutory issue authority to delay the effective date of the Final Rule until July 1, 2001. Six months is not sufficient to ensure adequate compliance with minimal error, especially since most retail credit card banks do not make any system changes after August due to the demands of the holiday season. The Agencies current Proposal would require financial institutions to mail each of their customers an initial privacy notice by December 13, 2000. As discussed previously, requiring retailers to mail hundreds of millions of customers in addition to the holiday mailings that are part of the holiday shopping season is an *exceptionally* heavy burden. To repeat, this mailing becomes even more problematic when the millions and millions of notices are being sent within a 30-day timeframe. We cannot over emphasize the importance and seriousness of this issue.

Again, we appreciate the opportunity to comment on the Proposal. Please do not hesitate to call me if you have any questions or comments.

Yours truly,



Alan P. Shor
Executive Vice President
Chief Operations Officer
Zale Corporation

and

Chairman of the Board
Jewelers National Bank