FEDERAL RESERVE BANK of ATLANTA

MARIE C. GOODING
FIRST VICE PRESIDENT

1000 Peachtree Street, NE
Atlanta, GA 30309-4470
404-498-8373
fax 404-498-8073
marie.gooding@atl.frb.org

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Donald S. Clark
Secretary of the Commission
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

Re: Telemarketing Sales Rule, 16 CFR Part 310, Project No. R411001

On August 7, 2013, the Federal Reserve Bank of Atlanta submitted a comment letter in response to the Federal Trade Commission's ("Commission") proposed amendments to the Telemarketing Sales Rule, 16 CFR Part 310. The purpose of this letter is to expand on two ideas that we expressed in our original letter.

As the Commission's staff is aware, representatives of law enforcement agencies, consumer protection advocates, and Federal Reserve Bank staff with expertise in retail payments have been engaged in a series of conversations about the relationship between the check clearing system and consumer fraud. The voices of staffers from law enforcement and consumer protection agencies have become nearly unanimous in calling for a prohibition on remotely created checks. Staffers from the Federal Reserve Bank have been concerned that the definition of a remotely created check as set forth in Regulation CC may provide too narrow a basis for an effective prohibition. A remotely created check, as defined in section 229.2(fff) of Regulation CC is "a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn." That definition works well for the purpose for which Regulation CC addresses remotely created checks, i.e. to shift the liability for an unauthorized remotely created check from the paying bank to the bank of first deposit. But we fear that this narrow, technical definition of a remotely created check may not adequately serve the Commission's purposes. In our original comment letter on the Commission's proposed rulemaking, we pointed out that a ban on telemarketers' use of remotely created checks might be easy for fraudsters to circumvent. What we had in mind was a scenario in which a telemarketer that is engaged in fraud might respond to the proposed prohibition on using remotely created checks by the simple artifice of inserting a graphical image of a signature into the signature block of each check or electronic payment order that the telemarketer created. The result might be a payment order in the form of a check or an electronic payment order that bears a signature that purports to have been applied by a consumer on whose account the order was drawn.

Assuming that a prohibition on the use of remotely created payment orders is going to become part of the effort by public agencies to combat consumer fraud, we believe that the Commission's purposes are likely to be better served if the final rule prohibits telemarketers or their agents from issuing or creating, or transferring for value, any form of paper or electronic payment order that is drawn on a consumer's account and is deposited into a bank account for collection or presented to a bank. This prohibition is broader than the proposed ban on the use of remotely created checks and remotely created payment orders, and we believe that this broader prohibition will better serve the Commission's purposes because it addresses all payment orders that would be created by telemarketers and that would "ride the check rails." We think this form of prohibition would be more difficult for fraudsters to circumvent.

We support the efforts by the Commission and other agencies to combat consumer fraud by prohibiting the use of checks or electronic payments orders issued by payees. Nevertheless, we continue to believe that the most effective way to make the check collection system less attractive to fraudsters would be for the responsible public authorities to establish a requirement that banks of first deposit file with federal regulators periodic reports disclosing high return rates that indicate a likelihood of fraud.

We appreciate the opportunity to expand on our original comment letter and the willingness on the part of the Commission's staff to engage in thoughtful conversations with members of our staff. We look forward to the Commission's final rule, and we hope that the Commission's staff will join us in future interagency discussions aimed at reducing fraud risks in retail payments.

Very truly yours,

Marie Gooding

Marie Gooding
First Vice President, Chief Operating Officer,
Retail Payments Product Director