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May 1, 2002

The Honorable Sheila C. Bair
Assistant Secretary of the Treasury
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
ATTN: Study on GLBA Information Sharing

RE: Comments on the GLBA Information Sharing Study

Dear Assistant Secretary Bair,

FleetBoston Corporation ("FleetBoston") is pleased to offer the following comments with respect to the above-referenced GLBA Information Sharing Study on behalf of itself and its primary banking subsidiary, Fleet National Bank ("FNB"). FleetBoston is the seventh largest financial holding company in the United States as of March 31, 2002, based on total assets. FleetBoston's principal businesses include: consumer financial services, including domestic retail banking and credit cards; wholesale banking, including commercial finance, corporate banking and small business services; wealth management and brokerage, including asset management and retail brokerage and securities clearing; international banking including full service banking in key Latin American markets; and capital markets, including investment banking, brokerage market-making and principal investing.

FleetBoston, hereby, respectfully submits comments in response to the notice and request for comments for the Study on Information Sharing Practices Among Financial Institutions and Their Affiliates. At the onset, we wish to express appreciation to the Department of the Treasury, in conjunction with the federal functional regulatory agencies and the Federal Trade Commission, for conducting this study as required by the Gramm-Leach-Bliley Act ("GLBA") of 1999.

For the purposes of the questions and comments below, we understand the terms "information" and "confidential customer information" mean "nonpublic personal information" as defined in the privacy provisions of Title V of the GLBA. We further understand that the term "customer" means any individual and includes any individual who applies for or obtains a financial service or product.

1. Purposes for the sharing of confidential customer information with affiliates or with non-affiliated third parties:

a. What types of information do financial institutions share with affiliates?

FleetBoston and its affiliates may share all of the categories of information we gather about a customer, including application information (such as income or credit references), credit reports (such as credit history), or other credit-related information from third parties (such as employment history), as well as account transactions and experiences with FleetBoston, identification information and other non-credit related information.

FleetBoston may also share "other information" such as demographic or public record information, so long as that "other information" was not collected or used by FleetBoston itself for any eligibility purposes and that the information is only used by its affiliates for purposes, such as marketing, and not for eligibility purposes.

Under the protection of the Fair Credit Reporting Act ("FCRA"), a customer is given the opportunity to notify FleetBoston and elect to "opt out" of affiliate sharing practices. Customers' instructions given to one affiliate are applicable to all affiliates within the Fleet corporate family. Before any non-experience information is shared, consideration is also given to other state, federal and contractual restrictions.

b. What types of information do financial institutions share with non-affiliated third parties? FleetBoston does not provide information about our customers to any non-Fleet company whose products and services are being marketed unless the customer authorizes us to do so. Should the customer provide authorization, information such as name, address and phone number could be shared. Depending upon the product offer, information such as account balance or account type may be shared if required to complete the transaction. These non-Fleet companies are not allowed to use this information for purposes beyond the customer's specific authorization.

If required, we may provide information about the customer to third parties without the customer's consent, as permitted by law, such as:

- Responding to a subpoena or court order, judicial process, regulatory authorities or law enforcement agencies;
- To consumer reporting agencies;
- In connection with a proposed or actual sale, merger, or transfer of all or a portion of a business or an operating unit;
- To protect against fraud.

In addition, we may provide information about our customers to our service providers to help us process applications or service the account. Our service providers may include statement and billing service providers, mail and telephone service companies, insurers and attorneys.

We may also provide information about the customer to our service providers to help us perform marketing services.

- c. **Do financial institutions share different types of information with affiliates than with non-affiliated third parties? If so, please explain the differences in the type of information shared with affiliates and with non-affiliated third parties.** FleetBoston does not share information with non-affiliated third parties for marketing purposes without the customers' consent unless as described in the response to 1b above. Information may be shared with service providers in the course of servicing the account and providing routine banking functions. Information shared with service providers may include account numbers, balances and payment history.

Information shared with affiliates may include application information, credit reports or other credit-related information, as well as account transactions and experience with FleetBoston unless the information is protected by the customer's instructions to opt out under FCRA.

- d. **For what purposes do financial institutions share information with affiliates?** The quality of all decisions improves with the quality and quantity of information available to make those decisions. In retail financial services, this proposition leads to the conclusion that the more information about customers that can be collected and used to provide financial services to those customers, the better the decisions will be and the higher the quality of those financial services: providing the right product for the right customer at the right time and at the right price. It follows then that information sharing between affiliates is critical to the operations of holding companies providing financial services. We also believe that to ensure a positive customer experience, the benefits of improved decision making must be balanced with a customer's privacy interest, and that the more that customers understand the benefits of information sharing, the more amenable they are to allowing that flow of information to continue.

Other statutory provisions have expressly recognized the benefits of the synergies between providers of financial services that arise from sharing of customer information (e.g. the 1996 amendments to FCRA). The benefit of affiliate sharing has also been recognized by the Board of Governors of the Federal Reserve System in its rules concerning the tying of products and services offered by banks and their affiliates. For example, the combined balance discount exception in Regulation Y permits a bank to vary the price of a loan or other financial product based on the customers' maintenance of a combined minimum balance in certain products and services designated by the bank and that are offered by the bank and its affiliates. The administration of the combined balance discount presupposes the ability to share information with affiliates in order to implement the program and recognizes the benefits of this type of cross marketing.

- e. **For what purposes do financial institutions share information with non-affiliated third parties?** FleetBoston does not share information with non-affiliated third parties without the customer's consent, unless as described in the response to 1b above. From time to time we may offer the customer the opportunity to obtain a product or service from a non-affiliated third party. Before making that offer to the customer, the non-affiliated third party is closely scrutinized through a due diligence process and appropriate confidentiality and reuse and redisclosure provisions are documented within the contractual agreement. FleetBoston's current risk management practices are being reviewed and revised based upon the guidance provided by the Office of the Comptroller of the Currency ("OCC") as stated in OCC Bulletin – OCC 2001-47 – which extensively describes the risk management principles applicable to third-party relationships.

FleetBoston provides a non-affiliated third party with information only with customer authorization. In addition, FleetBoston only provides information that has been authorized by its customer.

- f. **What, if any, limits do financial institutions voluntarily place on the sharing of information with their affiliates and non-affiliated third parties? Please explain.** In regard to sharing with non-affiliated third parties for marketing purposes, FleetBoston does not share any information without customer consent. When customer consent is obtained, the information shared is the minimum amount of information required by the third party to provide the customer with product information and effect a sale. That information may include name, address and telephone number, and type of account. No account numbers or credit-related information would be shared in these types of product and service offers.

If account numbers or other identifiers are required in the transaction, those numbers are encrypted at FleetBoston before "leaving" FleetBoston's systems. It should be further noted that before any customer list is shared, appropriate suppressions are conducted to follow customer instructions regarding "Do not share," "Do not call," "Do not mail" or "Do not e-mail."

- g. **What, if any, operational limitations prevent or inhibit financial institutions from sharing information with affiliates and non-affiliated third parties? Please explain.** Operationally, data sharing can be achieved with relative ease, but for security purposes FleetBoston has installed a number of checks and balances to protect customers information and instructions regarding the sharing of information. Within our Data Warehouse, the system of record, customer instructions regarding solicitation and sharing preferences are systemically marked. Requests for customer lists between the affiliates are processed through the Data Warehouse and the file layouts are reviewed and approved by Database Marketing, the line of business attorney and the Corporate Compliance Manager. Customers requesting "Do not share", "Do not call", "Do not mail" or "Do not e-mail" are suppressed from all lists.

Should account information or other non-public identifiers be required for the transaction, those numbers are encrypted prior to the transmission. Additionally, security infrastructure limits access to authorized personal only.

- h. **For what purposes would financial institutions like to share information but currently do not? What benefits would financial institutions derive from sharing information for those purposes? What currently prevents or inhibits such sharing of information.** Limitations to affiliate sharing and sharing with non-affiliated third parties prevent financial institutions from realizing, and consumers from benefiting from, the commercial value of this information. Cross marketing of financial products and services within a financial institution and its affiliates allows for more effective target marketing to meet customer needs and preferences. It allows for cost efficiencies which can be passed on to the customer and provide the customer with "one-stop shopping" for financial service needs.

FCRA limits a financial institution's ability to share "non-experience" customer information. Under FCRA, consumers are given the opportunity to opt out of this sharing arrangement before an institution can share with its affiliates. State laws are increasingly becoming more restrictive, such as evidenced by the recent rules adopted by the Vermont Department of Banking, Insurance, Securities and Health Care Administration, which restricts an institution's ability to share information with affiliates and non-affiliates by requiring that customers "opt in" to these disclosures of information.

Customers rarely exercise such "opt in" rights and many financial service companies have discontinued marketing efforts in the state of Vermont because of the costs associated with administering such a program. In this case, information about Vermont customers is used less effectively, leading to increased costs and lower quality of services.

2. The extent and adequacy of security protections for such information:

- a. **Describe the kinds of safeguards that financial institutions have in place to protect the security of information. Please consider administrative, technical, and physical protections, as well as the protections that financial institutions impose on their third party service providers.** FleetBoston has always maintained safeguards to protect its customer information from both an asset and privacy perspective. We maintain physical, electronic and procedural protections in accordance with applicable banking and other standards to protect personal information, and are regularly examined on these efforts. Access to customer personal information is restricted to employees and service providers for legitimate business purposes only.

For example, security protections for our telephone-banking channel include:

Administrative. All associates must pass new-hire training which reviews GLBA and all privacy regulations to ensure knowledge by the associate before moving into a sales or service position. In addition, ongoing privacy testing and communications reinforce the bank's policy on information security. All calls are monitored on a regular basis to ensure compliance with the privacy and authentication practices.

Technical. All systems require individual sign-ons and passwords as well as time outs after a brief period of inactivity. Associates do not have access to customers PINs at any time.

Physical. Physical partitions, along with "white" noise, are used to protect customer information from being overheard or seen by others within the department. Access is limited to the areas where any service and sales activities are being conducted and limited to channel staff and authorized visitors only.

Additionally, information security infrastructure and risk management controls as well as data destruction processes are designed to safeguard customer and bank information. Such controls are subjected to ongoing monitoring and validation testing by FleetBoston's risk management control functions.

- b. **To what extent are the safeguards described above required under existing law, such as GLBA?** FleetBoston is required to maintain safeguards that are consistent with the rules and guidelines adopted under GLBA, as well as prudent safety and soundness requirements.
- c. **Do existing statutory and regulatory requirements protect information adequately? Please explain why or why not.** FleetBoston has historically managed its customer information with the utmost security and safeguards to ensure confidentiality and proper use of such information. FleetBoston believes that the existing statutory and regulatory requirements are adequate and build upon the information security standards that we have traditionally upheld. We further believe that the guidelines adopted by the federal banking agencies establish a sufficient "process" that assists us in designing and implementing our security program, without attempting to specify how we should structure the security program. This flexibility allows us to build our programs based on our needs and resources. Furthermore, we are examined periodically on our compliance with the security guidelines.
- d. **What, if any, new or revised statutory or regulatory protections would be useful? Please explain.** FleetBoston believes that there is no need for additional statutory or regulatory requirements. The Banking Agency Guidelines provide sufficient guidance and protections. We would, however, support uniform guidelines for all agencies and states to provide consistency in the issuance of customer identification.

3. **The potential risks for customer privacy of such sharing of information:**
- a. **What, if any, potential privacy risks does a customer face when a financial institution shares the customers' information with an affiliate?** There is minimal risk since the affiliates adopt and follow the same data security practices and privacy measures. This "risk" is one of customer experience if the customer's preference not to be solicited is not honored.
 - b. **What, if any, potential privacy risks does a customer face when a financial institution shares the customers' information with a non-affiliated third party?** FleetBoston does not share customer information with non-affiliated third parties for marketing purposes without first receiving customer consent. However, the risk exponentially increases depending upon the financial institution's data security and vendor management practices and procedures. If the financial institution has implemented appropriate security systems and vendor due diligence process, the non-affiliated third parties are held to the same standards as the financial institution itself. Continued monitoring and review of the non-affiliated third party becomes essential.
 - c. **What, if any, potential risk to privacy does a customer face when an affiliate shares information obtained from another affiliate with a non-affiliated third party?** The potential risk lies in the inadvertent reuse or redisclosure of customer information. The ability of such an affiliate to share customer information with a non-affiliated third party is specifically restricted under existing Title V of GLBA. A financial institution affiliate can only share customer information with non-affiliated third parties either under an exception under Title V, or in a manner consistent with notice and opt out requirements of Title V.
4. **The potential benefits for financial institutions and affiliates of such sharing of information (specific examples, means of assessment, or evidence of benefits would be useful):**
- a. **In what ways do financial institutions benefit from sharing information with affiliates?** From a purely financial perspective, marketing to existing customers is more cost effective for the financial institution and results in its ability to offer products and services at a better value to the customer. The ability to use data obtained within the corporate family allows the institutions to select products and services that best suit the customer's needs. Affiliate sharing allows us to muster the full strength of the franchise to provide the customer with opportunities to improve financial management and financial literacy. The economies of scale that are realized from information sharing among affiliates produce cost reduction and improve the quality of the services provided.

While cross-marketing activities have been in use for decades, the benefits of effective information use are becoming increasingly more evident. Advances in technology coupled with decades of learning experiences have resulted in the increased ability of financial institutions to effectively and efficiently meet customer product needs and preferences. The benefits of affiliate sharing also provide the ability to eliminate redundancy and over-marketing of our customer base.

Additionally, affiliate sharing permits institutions to reduce cost and improve the quality of services provided. In addition to lower prices, consumers can enjoy one-stop shopping for a full range of financial services. In order to maximize these benefits, it is critical that institutions be able to fully share information about customers within the holding company structure, including information that identifies the customer, information about each affiliate's transactions and experiences with the customer, information from the customers' applications, information from consumer applications and information from third parties, such as credit bureaus.

- b. **In what ways does a customer benefit from the sharing of such information by a financial institution with non-affiliated third parties?** Customers benefit by having their requests or authorized transaction completed as instructed. They enjoy more efficient access to a greater variety of financial products and services. The customers also realize cost savings from economies of scale obtained by the financial institution.
 - c. **In what ways does a customer benefit when affiliates share information they obtained from other affiliates with non-affiliated third parties?** The customer benefits from broadening their choices for products and services.
 - d. **What, if any, alternatives are there to achieve the same or similar benefits for customers without such sharing of such information?** The expense to replicate customer data systemically within each affiliate would not be cost justified. Without the ability to share, the customer would be limited in product choices and would be subject to increased administrative processes each time he or she selects a new financial product or service.
 - e. **What effects, positive or negative, would further limitations on the sharing of such information have on customers?** FleetBoston sees no positive effects from further limitations because consumers are already adequately protected. As discussed above, the negative effects of further limitations include diminished product choice and increased cost to consumers.
6. **The adequacy of existing laws to protect customer privacy:**
- a. **Do existing privacy laws, such as GLBA privacy regulations and the Fair Credit Reporting Act (FCRA) adequately protect the privacy of a customer's information? Please explain, why or why not.** Yes. The existing GLBA and the FCRA adequately protect the privacy of customer information. Institutions are required to notify customers of how information will be collected and shared and must provide the customer with the opportunity to limit that sharing. FleetBoston believes the existing regulations meet the customers' expectations of privacy.
 - b. **What, if any, new or revised statutory or regulatory protections would be useful to protect customer privacy? Please explain.** FleetBoston believes that a uniform national standard be set, in compliance with GLBA, thereby, pre-empting differing state requirements.

Increased limits on sharing consumer information with affiliates and non-affiliated third parties would reduce the many benefits as discussed above. It is important to note that more states are increasingly adopting different requirements and different levels of protection than provided by GLBA. While GLBA provides the states with this ability, the increase of state laws confuse customers and increases costs to the financial institutions in order for them to meet their compliance responsibilities.

7. The adequacy of financial institution privacy policy and privacy rights disclosure under existing law?

- a. **Have financial institutions privacy notices been adequate in light of existing requirements? Please explain why or why not.** Yes, the existing requirements adequately protect the privacy of consumer information. The process provided by GLBA through annual noticing of an institution's privacy policy allows the customers to choose to do business with a financial institution that uses information in accordance with their expectations.
- b. **What, if any, new or revised requirements would improve how financial institutions describe their privacy policies and practices and inform customers about their privacy rights? Please explain how any of these new or revised requirements would improve financial institution notices.** FleetBoston believes that additional privacy restrictions should not be considered at this time. We believe that the GLBA, coupled with FCRA, provides consumers with adequate protections.

As stated above, we urge the Secretary to consider federal preemption of state privacy laws. It is important to establish national standards for the sharing of information with preemption of state laws relating to privacy. The importance of federal preemption was recognized in the 1996 FCRA amendments that preempted any state law or regulation governing information sharing among affiliated companies, with the exception of one Vermont law. Absent federal preemption, it will be operationally and cost prohibitive to conduct national programs.

8. The feasibility of different approaches, including opt out and opt in, to permit customers to direct that such information not be shared with affiliates and non-affiliated third parties:

- a. **Is it feasible to require financial institutions to obtain customers' consent (opt in) before sharing information with affiliates in some or all circumstances? With non-affiliated third parties? Please explain what effect, both positive and negative, such a requirement would have on financial institutions and on consumers.** Opt in is the functional equivalent of "not sharing". While FleetBoston does not share with non-affiliated third parties without customer consent (except for service providers as described in our privacy notice), sharing of information among our affiliates is primary to our business goals. It is our vision to provide "one-stop financial services shopping" to our customer base. The inability to share information among our affiliates would have severe financial impact to our business.

An opt in requirement would have the same effect as prohibiting any information sharing at all. Requiring the customer to take affirmative action is a disservice because it would preclude us from advising them about potentially desirable product offerings that they may otherwise never have been aware of.

- b. **Under what circumstances would it be appropriate to permit, but not require, financial institutions to obtain customers' consent (opt in) before sharing information with affiliates as an alternative to a required opt out in some or all circumstances? With non-affiliated third parties? What effects, both positive and negative, would such a voluntary opt in have on customers and on financial institutions? (Please describe any experience of this approach that you may have had, including customer acceptance.)** FleetBoston has already taken the position to provide a voluntary opt in for its customers relative to information sharing among non-affiliated third parties. A mandatory opt in for affiliate sharing would have an adverse impact on our business as previously described.
- c. **Is it feasible to require financial institutions to permit customers to opt out generally of having their information shared with affiliates? Please explain what effects, both positive and negative, such a requirement would have on consumers and on financial institutions.** It is not feasible to require institutions to allow customers to opt out of having information about them shared with affiliates. Such a requirement would negate many of the benefits of affiliation. These were benefits Congress sought to promote in the GLBA. Within the parameters of the financial activities that are permissible for the holding company, financial service providers can establish affiliate relationships wherever they judge these benefits to provide them an advantage in providing financial services to their customers. In addition to better services and lower prices, consumers can enjoy one-stop shopping for a full range of financial services. This is one of the principal benefits of affiliate information sharing.
- d. **What, if any, other methods would permit customers to direct that information not be shared with affiliates or non-affiliated third parties? Please explain their benefits and drawbacks for customers and for financial institutions of each method identified.** Currently FleetBoston (and its systems) are able to retain customer instructions relative to marketing preferences. We can systemically mark a customer file to indicate "opt out" of affiliate sharing as provided under FCRA. We can also retain instructions for "Do not call," "Do not mail" or "Do not e-mail", thereby, appropriately removing their names from any specified marketing campaign. Any further restrictions would unreasonably tax our data systems through cost and maintenance.

- 9. The feasibility of restricting sharing of such information for specific uses or of permitting customers to direct the uses for which such information may be shared:**
- a. **Describe the circumstances under which or the extent to which customers may be able to restrict the sharing of information by financial institutions for specific uses or to direct the uses for which such information may be shared?** FleetBoston believes that our existing systems, as described previously, provides our customers with the ability to provide general instructions regarding the use of their personal information. Further granularity of information uses based on circumstances would prove operationally inefficient and too costly.
 - b. **What effects, both positive and negative, would such a policy have on financial institutions and on consumers?** As stated above, further restrictions relative to specific use of information would add significant cost to the system maintenance and impair the services and products being offered by the financial institutions.
 - c. **Please describe any experiences you may have had of this approach?** Other than the customer-directed restrictions we have described above, we have no other meaningful experience with this approach.

We appreciate the opportunity to participate in this study and wishes to reiterate the importance of affiliate sharing to both the financial institution and to our customers. While the benefits of affiliate sharing of customer information have been apparent for decades, the evolution of financial products and services that has occurred over the past few years has increased the importance of affiliate sharing. Through the use of this information, FleetBoston, at the holding company level, can assist the consumer in selecting the most appropriate and beneficial financial products and services to meet the consumer's needs. The more information that is available to both the consumer and the financial institution in the selection process, the higher the quality of the product and services. The selection criteria used to offer products and services is based upon the consumer's expectations; expectations that we have learned through customer information and sharing among our affiliates.

We would like to reiterate that we believe that restricting affiliate sharing may be viewed to a certain extent as "form over substance," because we are all FleetBoston entities. The creation of affiliates (subsidiaries) is a decision based on tax and financial reasons. For example, our credit card affiliate was once a division of Fleet National Bank and the mortgage division of Fleet National Bank was once a subsidiary. We are placing restrictions on sharing practices between entities that are essentially "one." As discussed above, additional limitations will only serve to unwind some of the principal purposes of GLBA.

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Providing service and consultation to our customer base is the cornerstone of our existence. We can not do this with further restrictions on affiliate sharing.

Respectfully submitted,

Agnes Bundy Scanlan, Esq.
Managing Director and Chief Privacy Officer
FleetBoston Financial