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VISA
WORLDWIDE PARTNER

Regulations and Legislation Division
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
ATTN: Study on GLBA Information Sharing

Re: Comments on the Gramm-Leach-Bliley Information Sharing Study

To whom it may concern:

This comment letter is submitted on behalf of Visa U.S.A., Inc. in response to the request for comments pursuant to section 508 of the Gramm-Leach-Bliley Act (the "GLB Act"), which requires the Secretary of the Treasury ("Secretary"), in conjunction with the federal banking agencies, the Securities and Exchange Commission ("SEC")and the Federal Trade Commission ("FTC"), to conduct a study of information sharing practices among financial institutions and their affiliates ("Study"). To assist in the preparation of the Study, the Secretary issued a request for comments on a number of issues relating to information sharing. We appreciate this opportunity to comment on the information sharing practices of financial institutions.

The Visa Payment System, of which Visa U.S.A.[1] is a part, is the largest consumer payment system in the world, with more volume than all other major payment cards combined. There are more than one billion Visa-branded cards and they are accepted at more than 24 million physical locations in more than 130 countries. Visa plays a pivotal role in advancing new payment products and technologies, including information security initiatives, to benefit its 21,000 member financial institutions and their millions of cardholders worldwide.

Visa also is the leading consumer e-commerce payment system in the world. Payment cards presently account for nearly 95 percent of online consumer transactions and Visa card transactions account for 53 percent of that payment card portion.

[1] Visa U.S.A. is a membership organization comprised of U.S. financial institutions licensed to use the Visa service marks in connection with payment systems.

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THE CURRENT LAW OF AFFILIATE SHARING

Currently, the privacy provisions of Title V of the GLB Act and the Fair Credit Reporting Act ("FCRA") both govern the sharing of customer information by financial institutions. Under the FCRA, financial institutions (as well as other entities) are free to share information about their customers with their affiliates with only limited restrictions. This sharing includes four categories of information: (1) identification information; (2) experience information; (3) eligibility information; and (4) other information. Under the FCRA, institutions are permitted to share identification information (such as name, address, social security number) and experience information (such as information about payments, account balances) freely with their affiliates. An institution also is permitted to share "other information," such as demographic or public record information, so long as that "other information" was not collected or used by the entity itself for any eligibility purposes and that information only is used by its affiliates for purposes, such as marketing, and not for eligibility purposes.

Under the FCRA, financial institutions also may share eligibility information with affiliates without regard to the FCRA's limitations on the uses of consumer reports provided that the consumer has been notified of this possibility and has not opted out of the sharing of this information. Eligibility information includes information from consumer applications and information from third parties, such as credit bureaus, that is used to evaluate a consumer's eligibility for certain products or services, such as loans or insurance ("Eligibility Information"). A financial institution is required to give consumers notice of their right to opt out of the sharing of Eligibility Information with affiliates prior to the sharing of such information.

Title V, in contrast, limits the sharing of nonpublic personal information about customers with non-affiliated third parties, including information that could be shared freely under the FCRA, such as identification and experience information. However, Title V does not limit the sharing of nonpublic personal information among affiliates.

TITLE V SHOULD CONTINUE TO PERMIT AFFILIATE SHARING

The quality of all decisions improves with the quality and quantity of information available to make those decisions. In the context of retail financial services, this basic proposition leads to the inevitable 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. At the same time, benefits of improved decision making must be balanced against privacy interests. As Federal Reserve Governor Gramlich put it in testifying on privacy during the consideration of the GLB Act:

> Information about individual's needs and preferences is the cornerstone of any system that allocates goods and services within an economy. The more information about needs and preferences that is available, the more accurately and efficiently will the economy meet these needs and preferences. But, though the availability of information promotes economic efficiency, there is also a long-recognized value in permitting individuals to maintain a zone of privacy. This value must be weighed against the benefits of economic efficiency that accrue from a broad dissemination of information.

For this simple reason, affiliate sharing is critical to the operations of holding companies providing financial services. The financial services holding company structure has evolved, in large part, due to regulatory requirements. The importance of this structure was reaffirmed by Congress in enacting the GLB Act. Accordingly, the GLB Act and other laws should continue to permit affiliate sharing as a necessary incident to the regulatory structure designed by Congress and others for providing financial services.

Regulatory Structures Recognize The Benefits Of Sharing Customer Information With Affiliates

While federal and state regulatory structures call for the provision of financial services through different legal entities, these regulatory structures also have long recognized that there are important synergies between highly regulated financial institutions and other companies providing related products or services. The financial services industry is heavily regulated for two primary reasons. First, the financial services industry provides financial intermediation functions that are critical for the economy as a whole. Second, in order to protect investors, it is necessary to oversee the financial responsibility of providers of financial services to reduce the likelihood of their failure. Oversight of financial responsibility generally requires that the regulated financial institution be legally separate from other affiliated entities so that capital levels can be measured, activities limited, and assets distributed appropriately on liquidation.

Accordingly, the federal and state bank regulatory rules encourage, and often require, that certain financial services be conducted in entities that are legally separate from other entities in order to limit the operations and risks of the regulated entities. In addition, this separation serves to contain the effect of federal subsidies of regulated entities, and foster the more efficient supervision of regulated entities. For example, bank deposits are insured by the Federal Deposit Insurance Corporation to reduce the likelihood of bank runs and to protect the savings of bank customers, but deposit insurance subsidizes to some extent banks' cost of funds. The limitations on the activities that can be conducted in banks -- limitations that were reinforced by the passage of the GLB Ac -- limit both the spread of the deposit insurance subsidy and

the risks that the performance of higher risk non-banking activities will lead to the failure of the bank, and thereby threaten the federally-backed deposit insurance fund. In addition, some still believe that it is important to maintain a separation between commercial and banking activities. Under this view, even affiliation between banks and commercial companies leads to conflicts of interest in the exercise of banks' lending functions, increasing risks and impairing the efficiency of the credit intermediation function that banks perform.

Outside the area of banking, other regulatory regimes also mandate or encourage activities to be conducted in separate corporate entities. For example, investment companies, subject to supervision and regulation by the SEC, must be established as entities that can be liquidated separately in order to reflect appropriately investors' risks and rewards. Capital requirements for securities brokers and dealers discourage placing general lending activities in these entities. Furthermore, the liquidation scheme for brokers and dealers is incompatible with the liquidation scheme for banks so that, in practice, the same corporate entity cannot be both a registered broker or dealer and a bank. Similarly, insurance laws encourage providing different insurance functions through different entities.

Although regulatory structures may require that certain functions be performed in separate entities, these structures also recognize the benefits of affiliations with other companies. For example, most regulated financial institutions are permitted to affiliate freely with other companies. Even where such affiliations have been limited, as in the case of commercial banks, the Bank Holding Company Act ("BHCA") has long recognized the synergies that result from affiliations between banks and other companies. Historically, the BHCA has permitted banks to affiliate with companies engaged in activities that are related closely to banking. These synergies were recognized further in the GLB Act, which tore down the barriers that limited a bank holding company's ability to provide securities and insurance services. These synergies include economies of scale in delivering financial services, including economies in the processing of customer information, more efficient management structures and, most importantly from the standpoint of the Treasury Study, the ability to cross-market financial products and services. The cross-marketing of financial products and services allows financial institutions to tailor their offerings more effectively to the needs of individual customers.

While Congressional recognition of the benefits of affiliation, including affiliate sharing of customer information, is reflected in the GLB Act's expansion of the activities that can be conducted by affiliates of banks, the potential benefits of affiliate sharing of customer information even may be greater in the case of non-bank financial institutions where companies are free to craft affiliate relationships to maximize the synergies between affiliated companies free of regulatory constraints. For example, credit card banks, which are not considered "banks" for the purposes of the BHCA because they do not accept demand deposits or deposits under $100,000

and only engage in credit card operations, are free to affiliate with a wide range of financial, as well as non-financial companies. Accordingly, these affiliated companies can use the information about customer choices from transactions with all of those companies to tailor both financial and non-financial products to meet the needs of their customers as well as to forecast the needs of potential customers.

Other statutory provisions that have expressly or implicitly recognized the benefits of the synergies between providers of financial services that arise from the sharing of customer information include the 1996 amendments to the FCRA. These amendments exempted the sharing of information among affiliates from the definition of consumer report where the consumer has had an opportunity to opt out of the disclosure of such information. The benefits of affiliate sharing of customer information also have been recognized by the Board of Governors of the Federal Reserve System ("Board") in its rules concerning the tying of products and services offered by banks and their affiliates. For example, the combined balance discount exception in section 225.7(b)(2) of the Board's Regulation Y permits a bank to vary the price of a loan or other financial product based on the customer's maintenance of a combined minimum balance in certain products and services designated by the bank 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 is grounded on the recognition of the benefits of this type of cross-marketing.

Within the parameters of the financial activities that Congress has determined are permissible for holding companies that include providers of financial services, financial institutions establish affiliate relationships wherever they judge these benefits to provide them an advantage in providing financial services to their customers. This flexibility ultimately inures to the benefit of customers who can choose the most attractive and cost effective provider, or combination of providers, from an array of competing companies.

Affiliate Sharing Is Fundamentally Different Than Sharing With Non-Affiliated Third Parties

The sharing of customer information among affiliates is inherently different from the sharing of information with non-affiliated third parties, and tends to create greater efficiencies than sharing information with non-affiliated third parties. Consequently, as Title V recognized, the balance of the economic efficiencies against privacy interests tips further in favor of affiliate sharing than sharing with non-affiliated third parties.

In addition, customer information has substantial competitive value. As a result, customer information generally is provided only to non-affiliated third parties under limited circumstances, where the benefits of disclosing the information outweigh any competitive harm that may result from sharing the information. For this reason, when customer information is shared with non-affiliated third parties, it typically is subject to requirements that the information only be used for specific purposes and that it not be disclosed further. In contrast, when information is shared with affiliates within a holding company structure, usually the information can be shared free of competitive concerns. This freedom enables holding company affiliates to share information in order to determine whether there are new, or potential, opportunities to serve customers better, instead of sharing information only after potential opportunities are identified.

For example, when a financial institution provides customer information to non-affiliated third parties outside of the ordinary course of business, such as under the exceptions in Title V, the customer information is disclosed because the financial institution has determined that the institution and its customers will benefit from the terms of the particular disclosure. Both under Title V and in practice, such disclosures are made, for example, under contracts that may take the form of joint marketing agreements under which financial institutions, often too small to support specialized affiliates, enter into partnerships that are designed to provide the synergies of affiliates. In addition, customer information may be disclosed under more discrete and limited contracts under which a financial institution may provide more limited information about customers, such as lists of customer names and addresses, to third parties for the marketing of specific products and services. Both joint marketing agreements and more discrete contracts typically limit the use of information to the specific purposes that are the subject of the contract. These disclosures also are designed to benefit the financial institution's customers, and to provide them with opportunities to access additional products or services or enjoy lower prices or higher returns for their financial services.

The disclosures that take place between affiliates in a holding company often are broader and more frequent than the disclosures between a financial institution and a non-affiliated third party. Information about holding company customers and their choices can be collected and analyzed without the constraining effects of competitive concerns and the attendant needs to balance the benefits of each disclosure against the potential that the information will be used by others for competitive purposes. Thus, the regular sharing of customer information is one of the key components that enables the affiliates within the holding company to work with one another to identify and meet the needs of their collective customers in the most efficient and economical way possible. Also, because the needs of their customers inevitably will reflect the needs of other consumers, the ability to use customer information to meet the needs of existing customers also helps financial institutions and their affiliates attract new customers.

The advantages of such affiliate information sharing efforts range from improved product offerings -- such as identifying the investments that are most suitable for a particular customer, and providing the most attractive rates and terms for these investments -- to improved levels of services -- such as avoiding the need for the customer to re-provide information on applications for additional products and services, and for the various affiliates to avoid having to pay for, and ultimately charge customers additional fees to obtain, additional credit reports about those customers. In order to maximize these benefits, it is critical that entities within the holding company structure be able to share all of the information about the entities' customers, including information that identifies the customer, information about each affiliate's transactions and experiences with the customer, information from the customer's applications, and information from consumer reports about the customer.

The range of affiliations within which this sharing takes place represents both a judgment by the Congress, such as in enacting the GLB Act, and a judgment by the individual companies within the holding company, that these affiliations will improve the ability of the individual institutions to provide products and services to their customers.

Affiliate Sharing Is Increasingly Important To Financial Institutions And Their Customers

Although 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. For example, banks and their affiliates increasingly are addressing customers on a holding company-wide basis, identifying customers on the basis of their overall financial needs, rather than the individual institution or institutions with which those customers already have established relationships. The sharing of information among affiliates enables those affiliates to identify products or services that may meet the customers' needs and in which the customers may be interested, and allows customers to access these products and services through a single point of contact. While these programs are most advanced at the higher end of the economic spectrum, they are increasingly being offered to all customers.

Limiting Affiliate Sharing Would Adversely Affect The Corporate Separateness Of Regulated Financial Institutions

Any limits on affiliate sharing not only would frustrate the efficiencies of affiliations, but also would encourage banks to restructure in ways that are contrary to the intent of the GLB Act. Restrictions on the sharing of information between affiliates will cause financial institutions and their affiliates to consolidate and transfer as many activities as possible inside a single institution, generally the bank, so that information needed to identify and meet consumer needs will remain available

to the maximum extent possible. For example, in a financial holding company, the holding company may seek to locate as many activities as possible in the bank to avoid the inefficiencies that would result from any limits on affiliate sharing. This restructuring will, in turn, increase pressure for the expansion of the activities that can be conducted in the bank itself, contrary to one of the fundamental purposes of the GLB Act—to preserve the separation of banks from affiliates through the use of separate corporate entities.

Affiliate Sharing Is Consistent With Customer Expectations

Moreover, the sharing of customer information among the affiliates in a holding company family is fully consistent with customer expectations. Holding companies often brand their products and services so that consumers will understand that the holding company stands behind those products and services. In selecting a bank or financial firm to do business with, consumers do not understand that the various holding company activities actually are conducted in affiliated companies, instead of in a single company. Typically, consumers expect that the branded entities are part of a single entity or, to the extent that they are separate, they are operating jointly. Accordingly, consumers expect that the information about them will be available for use and will be used throughout their "bank" or their "financial institution," without regard to a legally required holding company structure. This is confirmed by the low opt-out rates for affiliate sharing of consumer report information under the 1996 amendments to the FCRA. For these reasons, it is critical that the GLB Act continue to permit the sharing of customer information among affiliates.

AFFILIATE SHARING UNDER THE FCRA

Financial institutions and their affiliates have increasingly relied upon the exclusions from the definition of a consumer report for the sharing of Eligibility Information with affiliates provided under the 1996 FCRA amendments. These amendments have paved the way for streamlined customer information practices among members of the same corporate family. Prior to the 1996 FCRA amendments, information sharing restrictions limited the effective delivery of financial services by affiliated companies and significantly disadvantaged consumers by making it unnecessarily difficult for affiliated companies to share information to identify product offerings most beneficial for particular consumers, and to qualify consumers for those product offerings.

In addition, the 1996 amendments to the FCRA preempted completely any state law or regulation governing information sharing among affiliated companies, with the exception of one Vermont law. Thus, the preemptive effect extends beyond state fair credit reporting statutes to other state laws that purport to restrict information sharing among affiliated entities. The federal preemption provisions sunset on January 1, 2004. Importantly, none of the preempted state laws will

automatically be reinstated. Rather, a state must enact new legislation after the sunset date. Nevertheless, because this means that inconsistent state FCRA statutes could be re-enacted after January 1, 2004, it is critical that the current provisions of the FCRA that preempt state laws that limit affiliate sharing be made permanent.

The Federal Preemption On Affiliate Sharing Under The FCRA Should Be Permanent

Without federal preemption, institutions will find it increasingly costly and inefficient to operate national programs because of the operational problems institutions would face through inconsistent state requirements. Not only are more restrictive affiliate sharing rules with respect to Eligibility Information inefficient in themselves, but also the requirements to adhere to different rules on a state-by-state basis imposes additional costs and burdens. For example, the State of Vermont prohibits institutions from sharing Eligibility Information about Vermont customers, unless the customer has consented to the disclosure of information. Rather than seek to obtain consent, a process that is difficult in practice, most financial institutions doing business in Vermont have simply opted their Vermont customers out of affiliate sharing, thereby necessarily denying Vermont customers opportunities available to consumers in other states. The problems presented by a relatively small state such as Vermont would be aggravated further if more states adopted different rules addressing affiliate sharing.

These state-specific laws impact not only residents of the affected states, but also residents of other states. For example, a bank may have only a limited customer base in a state so that fixed compliance costs, to the extent that they are identifiable, must be spread over a small group at relatively high cost per customer. A more common response is to recover those costs from the general customer base. Absent federal preemption, this problem is likely to get worse if additional states are permitted to adopt state-specific requirements.

Accordingly, Visa strongly urges the Secretary to recommend that, *at a minimum*, the Congress make permanent the preemption provisions contained in the current FCRA.

Response to the individual questions posed in the request for comments follows.

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?

b. What types of information do financial institutions share with non-affiliated third parties?

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 types of information shared with affiliates and with non-affiliated third parties?

d. For what purposes do financial institutions share information with affiliates?

e. For what purposes do financial institutions share information with non-affiliated third parties?

Depending on the application of various Title V exceptions and particular servicing, cross-marketing or other purposes intended, financial institutions may share a broad variety of information about their customers with affiliates and non-affiliated third parties, all within the limits of current law. Currently, Title V limits the sharing of nonpublic personal information about customers by financial institutions with non-affiliated third parties, but does not limit the sharing of information about customers with affiliates within a holding company. The FCRA permits financial institutions (as well as other entities) to share information about their customers with their affiliates subject to more limited restrictions.

Under the current FCRA, information shared among holding company affiliates can be classified into the following types of information: (1) identification information; (2) experience information; (3) information from consumer applications and from third parities, such as credit bureaus, that is used to evaluate a consumer's eligibility for credit or insurance ("Eligibility Information"); and (4) other information. The FCRA permits institutions to share identification information (such as name, address, social security number) and experience information (such as information about payments, account balances) freely with their affiliates. Identification information does not contain or convey information regarding a consumer's creditworthiness or any of the other factors set forth in the definition of consumer report, and thus, is not deemed to be a consumer report. Therefore, the FCRA does not apply to the sharing of identification information with affiliates. Similarly, under the experience information exception to the definition of consumer report, an institution is permitted to share experience information with its affiliates, regardless of whether a consumer has opted out of affiliate sharing. An institution also is permitted to share "other information" (such as demographic information or

public record information) with its affiliates, regardless of whether a consumer has opted out of affiliate sharing, so long as that "other information" was not collected or used by the entity itself for any eligibility purposes and that information is only used by its affiliates for marketing and other non-eligibility purposes. Finally, an institution can share Eligibility Information with its affiliates to the extent that the individual to whom the information relates has been provided with an opportunity to opt out of the sharing of the information with affiliates and the individual has not opted out.

Title V, on the other hand, limits the sharing of nonpublic personal information about customers with non-affiliated third parties, including information that could be shared freely under the FCRA, such as identification and experience information. Outside of the Title V exceptions, the sharing of customer information among affiliates inherently differs from the sharing of customer information with non-affiliated third parties. Customer information has substantial competitive value. Customer information generally is provided only to non-affiliated third parties under limited circumstances where the benefits of disclosing the information outweigh any competitive harm from releasing the information. Institutions other than consumer reporting agencies provide Eligibility Information to non-affiliated third parties only in the very limited circumstances permitted under the FCRA, such as under the joint user exception. Further, in the case of non-affiliated third parties, customer information generally is released subject to requirements that information only be used for specific purposes and that it not be further disclosed to any other entity for any purpose. In contrast, when information is shared within a holding company structure, it can be shared free of competitive concerns. This freedom enables holding company affiliates to share information in order to determine whether there are new or potential opportunities to serve customers better, instead of sharing information only after potential opportunities are identified.

For example, when a financial institution provides customer information to non-affiliated third parties, the disclosure of customer information is done as the financial institution has determined that the institution and its customers will benefit from the terms of the particular disclosure. Both under Title V and in practice, contracts often take the form of joint marketing agreements under which financial institutions, usually too small to support specialized affiliates, enter into partnerships that are designed to provide the synergies of affiliates. These contracts also may take the form of more discrete and limited contracts under which a financial institution may provide limited information about customers, such as customer lists, to third parties for the marketing of specific products and services. Both joint marketing agreements and more discrete contracts typically limit the use of information to the specific purposes that are the subject of the contract and prohibit the further disclosure of information. These disclosures often benefit the financial institution's customers as well, by providing them with opportunities to obtain additional products or services or enjoy lower prices or higher returns for their financial services.

In contrast, the disclosures that take place between affiliates in a holding company often are broader and more comprehensive. Information about holding company customers and their choices can be collected and analyzed without the constraining effects of competitive concerns and the attendant need to balance the benefits of each disclosure against the potential that the information will be used by others for competitive purposes. Thus, the regular multilateral sharing of customer information is one of the key components that enables the affiliates within the holding company to collaborate to identify and meet the needs of their customers in the most efficient and economical way possible. Also, because their customer needs will inevitably reflect the needs of other consumers, the ability to use customer information effectively helps financial institutions attract new customers as well.

The advantages of this information sharing range from improved product offerings, such as identifying the investments that are most suitable for a particular customer, and providing the most attractive rates and terms for these investments, to improved levels of services, such as avoiding the need for the customer to re-provide information on applications for additional products and services, and for the various affiliates to avoid having to pay for, and ultimately charge customers additional fees to obtain, additional credit reports on the customer. In order to maximize these benefits, it is critical that entities within the holding company structure be able to freely share information about customers of financial institutions, including information that identifies the customer, information about each affiliate's transactions and experiences with the customer, information from the customer's applications, and information from consumer reports about the customer.

The range of affiliations within which this sharing takes place represents both a judgment by the Congress, such as in enacting the GLB Act, and a judgment by the individual companies that are in the holding company, that these affiliations will improve their ability to provide financial products and services to their customers.

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.

Virtually all financial institutions have long limited the information that they share with non-affiliated third parties, because of the concerns for customer privacy and because the information has competitive value to the financial institution. In addition, many institutions voluntarily have adopted limitations on the sharing of information with affiliates and non-affiliated parties depending upon the nature of the business, current data base design, the services or products being offered to consumers, and because they believe that their customers would prefer that information not be shared. In addition, after the enactment of the GLB Act, many institutions made further business judgments weighing possible consumer concerns against the efficiencies and consumer benefits of disclosing information. Some financial institutions substantially curtailed the flow of information and restructured

business relationships to limit the disclosures of information about consumers, particularly to non-affiliated third parties. In almost all cases, the process led to increased controls over both the use and disclosure of information about consumers.

g. What, if any, operational limitations prevent or inhibit financial institutions from sharing information with affiliates and non-affiliated third parties? Please explain.

All information sharing is affected by the architecture and design of the data bases that store information about customers, as well as by the resulting costs of sharing the information. In this regard, data base architecture affects the cost and efficiency of sharing information with both affiliates and non-affiliates. Over time, data base architecture will evolve in the direction of the most efficient uses of information. To the extent that the sharing of information continues to be permitted among holding company affiliates, holding companies will tend to develop highly efficient, centralized data bases that will provide the highest quality of financial services to their customers, as well as aiding institutions in identifying money launderers and terrorists.

h. For what other purpose 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?

Currently, the FCRA limits an institution's ability to share Eligibility Information, such as certain application information, consumer reports from credit bureaus, and other Eligibility Information. Under the FCRA, consumers must be given the opportunity to opt out of this sharing arrangement before an institution or company may share Eligibility Information with its affiliated companies. The GLB Act gives consumers the right to opt out of the sharing of such information with non-affiliated third parties outside of certain exceptions.

Furthermore, state laws, such as the rules recently adopted by the Vermont Department of Banking, Insurance, Securities and Health Care Administration restrict financial institutions' ability to share information with both 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 institutions have not even attempted to obtain opt ins from Vermont customers because of the costs of administering an opt-in system. Accordingly, information about Vermont customers is used less effectively leading to increased costs and a lower quality of services.

Rules that limit affiliate sharing and sharing with non-affiliated third parties prevent institutions from realizing, and consumers from benefiting from, the commercial value of this information. In the context of affiliates, the cross-marketing of financial products and services allows financial institutions to tailor their offerings

more effectively to the needs of individual customers. This information sharing permits institutions to reduce both the cost and to improve the quality of the products and services provided. At the same time, in addition to lower prices, consumers can enjoy one-stop shopping for a full range of financial services, including banking, securities and insurance products.

In the context of non-affiliated third parties, financial institutions can obtain additional revenue through the sharing of customer lists and related information. Sharing of this information will help third parties identify those consumers that may be interested in the third parties' products and services, as well as permitting the financial institution to offer its own products and services at a lower price.

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.

Financial institutions have always maintained safeguards to protect the information they have about their customers because that information is both a valuable commercial asset and because of concerns about customer privacy. Specifically, institutions maintain physical, electronic, and procedural protections in accordance with applicable banking and other standards to protect personal information, and are regularly examined on their efforts to do so. In addition, access to personal information is restricted to employees and service providers for legitimate business purposes to assist in providing products or services to customers.

b. To what extent are the safeguards described above required under existing law, such as the GLB Act (*see, e.g., 12 CFR 30, Appendix B*)?

Financial institutions subject to Title V are required to maintain safeguards that are consistent with the rules and guidelines adopted under section 501 of the GLB Act. For the most part, the safeguards described above are consistent with the requirements of section 501 of Title V, and the federal banking agencies' final guidelines under section 501 ("Banking Agency Guidelines").

c. Do existing statutory and regulatory requirements protect information adequately? Please explain why or why not.

Financial institutions have historically recognized that personal information about consumers should be protected, both because of its commercial value and because of privacy concerns, and consequently have developed strong, internal

safeguards to ensure the confidentiality and proper use of customer information. Visa believes that the existing statutory and regulatory requirements are adequate and build upon the information security standards long maintained by institutions. In addition, the guidelines adopted by the federal banking agencies establish a framework focusing on the "process" that financial institutions should follow in designing and implementing an information security program, without attempting to specify in detail how a financial institution should structure its information security program. This approach provides appropriate guidance to financial institutions, without curtailing the flexibility of financial institutions in developing and implementing information security programs that best fit their particular needs. And, institutions are examined on their compliance with these security guidelines.

d. What, if any, new or revised statutory or regulatory protections would be useful? Please explain.

Visa believes that no additional statutory or regulatory requirements are necessary. However, certain provisions included in the FTC's proposed rule should be revised. On August 8, 2001, the FTC released a proposed rule on standards for safeguarding information in relation to the section 501 security requirements of Title V ("FTC Proposed Rule"). The FTC Proposed Rule sets forth standards relating to administrative, technical, and physical safeguards for financial institutions subject to the FTC's jurisdiction. The standards are intended to insure the security and confidentiality of customer records and information; protect against any anticipated threats or hazards to the security or integrity of such records; and protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

The FTC Proposed Rule differs, however, from the guidance set forth in the Banking Agency Guidelines. The Banking Agency Guidelines apply directly to information in the possession of a financial institution only if that information pertains to individuals with whom that institution has a customer relationship. The FTC Proposed Rule appears to apply directly to all customer information in the possession of a financial institution over which the FTC has jurisdiction, regardless of whether such information pertains to individuals with whom that institution has a customer relationship. This approach expands the coverage of the FTC Proposed Rule to many financial institutions that do not themselves have customer relationships. These institutions already protect their information because of its importance and because of contractual requirements imposed on the financial institutions from whom they obtain the information. Placing these institutions under the FTC will provide other financial institutions providing information to them with a false sense of security that the government is effectively protecting the confidentiality of their information, thereby diminishing the effect of financial institutions' oversight of those institutions through their contractual relationships.

Visa believes it is important that the FTC security standards apply to a financial institution's handling of information about its own customers. Visa recommends that, at a minimum, the FTC revise the scope of the FTC Proposed Rule to provide that the FTC security standards do not apply to financial institutions under the jurisdiction of the FTC to the extent that the institutions are acting as service providers or subservicers to financial institutions that are subject to the Banking Agency Guidelines.

Furthermore, the FTC should revise the FTC Proposed Rule to provide a transitional period, similar to that provided in the Banking Agency Guidelines, to allow the continuation of existing contracts with service providers, even if the contracts do not fully satisfy the requirements. It would be virtually impossible for financial institutions to reevaluate and renegotiate immediately all of their existing contracts with service providers to incorporate contractual provisions dealing with security.

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 customer's information with an affiliate?

A consumer's privacy is at risk if institutions fail to use customer-specific information in a manner consistent with the institutions' privacy notices and their Web site notices, and fail to adopt safeguards that reasonably provide for the security of personal data. Generally, a consumer's privacy expectations are met when a consumer chooses to do business with a financial institution, and the institution maintains customer information in a manner consistent with its disclosed privacy policy. The consumer generally expects to be able to access the full range of financial services offered, and thus expects entities to share information within the holding company. In addition, entities within a holding company have a common interest—to protect customer information—and the institution will be subject to section 501(b) of the GLB Act, which requires it to safeguard customer information. Thus, the potential consumer privacy risk is minimal when a financial institution shares information with an affiliate. In this respect, it is important to note that many holding companies have established company-wide privacy offices, in part, to ensure consistent treatment of consumer information across the holding company.

b. What, if any, potential privacy risks does a customer face when a financial institution shares the customer's information with a non-affiliated third party?

A consumer's privacy risk depends upon the extent to which his or her expectations have been met and the institution meets its obligation to safeguard its customer information. A consumer's privacy expectations are met when a financial

institution shares customer information with non-affiliated third parties in a manner consistent with its privacy policy notice. The notice will inform consumers on how information will be shared with non-affiliated third parties, and the opportunity to opt out provided under Title V allows consumers the ability to control the extent of information sharing. With respect to the security, most sharing is done under confidentiality agreements, which often are mandated by agency security guidelines. The disclosure of consumer information outside of a holding company structure can create somewhat higher privacy risks to consumers than disclosures within the structure because the recipients may have less incentive to maintain the customer relationship, and the use of contracts to control reuse and redisclosure may be somewhat less effective than the common management structure of the holding company. Nevertheless, effective enforcement of the existing requirements of Title V and industry confidentiality agreements can adequately address such concerns.

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 ability of such an affiliate to share customer information with a non-affiliated third party is specifically restricted under existing Title V. In this regard, 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. The notice will inform consumers on how information might be shared with non-affiliated third parties and the opportunity to opt out gives consumers the ability to control any such information sharing. Because under Title V affiliates only can disclose customer information that they received from an affiliated financial institution where the financial institution itself could disclose that same information, the notice will be accurate for the affiliate as well as for the financial institution itself. With respect to security, the disclosure of consumer information outside of a holding company structure could create a somewhat higher privacy risk to consumers than disclosures within the structure because the recipients may have less incentive to maintain the customer relationship and the use of contracts to control reuse and redisclosure may be somewhat less effective than the common management structure of the holding company. Nevertheless, effective enforcement of existing Title V reuse and redisclosure requirements and applicable security agreements should adequately address such risks.

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?

The ways in which financial institutions benefit from sharing information with affiliates include economies of scale in the handling of information and the ability to cross-market financial products and services to existing customers. Affiliate sharing permits institutions to research customer choices and to use that information to both reduce the cost and to improve the quality of the services provided. In addition, the cross-marketing of financial products and services allows financial institutions to tailor their product and service offerings more effectively to the specific needs of individual customers. At the same time, in addition to better services and lower prices, consumers can enjoy one-stop shopping for a full range of financial services, including banking, securities and insurance products. Within the parameters of the financial activities that are permissible for the holding company, financial services providers can establish affiliate relationships wherever they judge these benefits to provide them an advantage in offering financial services to their customers.

Although cross-marketing activities have been engaged in for decades, the benefits of effective information use are increasingly being realized by banks and their affiliates. For example, banks and their affiliates are increasingly addressing customers on a holding company-wide basis, identifying customers on the basis of their overall financial profiles, rather than the individual institution or institutions within the holding company with which the customer relationship is established. The sharing of information among affiliates enables the various affiliates to identify products or services that may meet the customer's needs and in which the customer may be interested, and allow the customer to access these products and services through a single point of contact. While these programs are most advanced at the higher end of the economic spectrum, they are increasingly being offered to all customers.

The advantages to customers of information sharing in these circumstances range from improving the products and services offered to customers, such as identifying the investments that are most suitable for a particular customer, and providing the most attractive rates and terms for these investments, to improved levels of services, such as avoiding the need for the customer to re-provide information on applications for additional products and services; and for the various affiliates to avoid having to pay, and ultimately charge the customer for, additional fees to obtain additional credit reports and other information regarding the customer.

In order to maximize these benefits, it is critical that all information about customers of financial institutions be fully available within the holding company structure, including information that identifies the customer, information about each affiliate's transactions and experiences with customer information from the customer's applications, and Eligibility Information about the customer.

b. In what ways do financial institutions benefit from sharing information with non-affiliated third parties?

Financial institutions share information with non-affiliated third parties in order to deliver their own products and services to customers and to make additional products and services available to customers, all in the ordinary course of business. For example, financial institutions share information under the exceptions included in the GLB Act. Information sharing permits financial institutions to outsource many basic business operations to third parties, who perform these operations on behalf of financial institutions, typically at lower cost. In addition, the sharing of information with third parties allows a financial institution to better control risk and combat fraud. In this regard, federal authorities have long understood the potential benefits of information sharing with regard to fraud and other law enforcement activities.

Financial institutions also share information with non-affiliated third parties in order to provide products and services to their customers that the financial institutions cannot provide themselves or that they cannot provide efficiently themselves. For example, a financial institution may partner with another company to offer consumers improved and varied products and services such as "affinity" or "co-brand" credit card accounts. Such programs provide frequent flyer miles, or grocery or gasoline rebates. In addition, financial institutions provide information to non-affiliated third parties to generate revenue, thereby enabling them to provide financial products and services to their customers at more competitive prices.

c. In what ways do affiliates benefit when financial institutions share information with them?

The ways in which affiliates benefit when financial institutions share information with them include all of the benefits of the sharing of information among affiliates discussed above.

d. In what ways do affiliates benefit from sharing information that they obtain from other affiliates with non-affiliated third parties?

Affiliates benefit from sharing information that they obtain from other affiliates with non-affiliated third parties by making additional products and services available to their customers and by generating revenues that enable them to provide products and services to their customers at more competitive prices.

e. What effects would further limitations on such sharing of information have on financial institutions and affiliates?

Further limitations on the sharing of information would reduce all of the efficiencies and other benefits identified above. In addition, limitations on affiliate sharing would encourage banks to restructure in ways that are contrary to the intent of the GLB Act. Restrictions on the sharing of information between affiliates will cause financial services holding companies—which are in many cases required or encouraged by legal, tax, economic and geographical considerations to operate through separate legal entities—to consolidate and transfer as many activities as possible inside a single institution, generally the bank. This restructuring will, in turn, increase pressure for the expansion of the activities that can be conducted in the bank itself contrary to one of the fundamental purposes of the GLB Act—the separation of banks from affiliates through the use of separate corporate entities.

5. THE POTENTIAL BENEFITS FOR CUSTOMERS OF SUCH SHARING OF INFORMATION (SPECIFIC EXAMPLES, MEANS OF ASSESSMENT, OR EVIDENCE OF BENEFITS WOULD BE USEFUL):

a. In what ways does a customer benefit from the sharing of such information by a financial institution with its affiliates?

Customers benefit by having more efficient access to a greater variety of financial products and by having these products and services more precisely tailored to their needs. In addition, affiliate sharing permits institutions to both reduce the cost and improve the quality of the services provided. At the same time, in addition to lower prices, consumers can enjoy one-stop shopping for a full range of financial services, including banking, securities and insurance products.

For example, banks and their affiliates are increasingly addressing customers on a holding company-wide basis, identifying customers on the basis of their overall financial profiles, rather than the institution or institutions within the holding company with which the customer relationships are established. In this context, the sharing of information among affiliates enables the various affiliates to identify products or services that may meet the customer's needs and in which the customer may be interested and allow the customer to access these products and services through a single point of contact. While these programs are most advanced at the higher end of the economic spectrum, they are increasingly being offered to customers and various economic levels.

The advantages of information sharing in these circumstances range from improving the product offerings, such as identifying the investments that are most suitable for a particular customer and providing the most attractive rates and terms for these investments; to improved levels of services, such as avoiding the need for the customer to reprovide information on applications for additional products and

services and for the various affiliates to avoid having to pay, and ultimately charge the customers for, additional fees to obtain additional reports about the customer already in the hands of affiliated companies.

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 customers, information from the customer's applications, information from consumer applications, and information from third parties, such as credit bureaus that is used to evaluate consumer's eligibility for credit or insurance.

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 the transactions that they request or authorize completed as requested, from more efficient access to a greater variety of financial products and services, and from lower cost products and services.

Financial institutions regularly share information with non-affiliated third parties in order to provide their own financial products and services in the ordinary course of business. For example, financial institutions share information under the exceptions included in the GLB Act to employ service corporations and outsource many of their operating activities. Information sharing permits financial institutions to lower their own costs and therefore to provide products and services to their customers at more competitive prices. For example, outsourcing many basic business operations to third parties typically leads to lower costs. In addition, the sharing of information with third parties allows a financial institution to lower costs by better controlling risk and combating fraud.

Financial institutions also share information with non-affiliated third parties in order to provide products and services to their customers that the financial institutions cannot provide themselves or that they cannot provide as efficiently. For example, a financial institution may partner with another company to offer its customers improved and varied products and services such as "affinity" or "co-brand" credit card accounts. Such programs provide frequent flyer miles, or grocery or gasoline rebates. In addition, providing information to non-affiliated third parties generates revenue for financial institutions thereby enabling them to provide financial products and services to their customers at more competitive prices.

c. In what ways does a customer benefit when affiliates share information they obtained from other affiliates with non-affiliated third parties?

Individual financial institution customers benefit when affiliates of the institution share information with non-affiliated third parties by the general improvements in products and services and the efficiency that results from the sharing of information about individual consumer choices.

d. What, if any, alternatives are there to achieve the same or similar benefits for customers without such sharing of information?

In the context of affiliate sharing, it is simply impossible to replicate the benefits that are derived from the multilateral flow of information among affiliates. Financial institutions can provide some of the benefits that otherwise are achieved by sharing customer information with affiliated and non-affiliated third parties if the financial institution brings the marketing of third-party products within the bank. However, the benefits of this alternative are limited because, while the consumer might benefit from receiving a particular product or service, the financial institution will not be able to provide these products or services as efficiently as if the products were provided directly by third parties. Such inefficiencies are likely to drive up the cost of products and services. In addition, a financial institution's ability to act as a finder to market the products of third parties is limited under both the Office of the Comptroller of the Currency ("OCC") and Board Rules. Such limitations, including the inability to negotiate and consummate transactions. These limitations lead to cumbersome two step procedures that are less efficient than providing products and services directly.

e. What effects, positive or negative, would further limitations on the sharing of such information have on customers?

Increased limits on sharing consumer information with affiliates and non-affiliated third parties would reduce the many benefits of sharing with these parties discussed above.

In addition, limitations on affiliate sharing would encourage banks to restructure in ways that are contrary to the intent of the GLB Act. Restrictions on the sharing of information between affiliates will cause financial services holding companies—which are in many cases required or encouraged by legal, tax, economic and geographical considerations to operate through separate legal entities —to consolidate and transfer as many activities as possible inside a single institution, generally the bank. This restructuring will, in turn, increase pressure for the expansion of the activities that can be conducted in the bank itself contrary to one of the fundamental purposes of the GLB Act—the separation of banks from affiliates through the use of separate corporate entities.

6. THE ADEQUACY OF EXISTING LAWS TO PROTECT CUSTOMER PRIVACY:

a. Do existing privacy laws, such as GLB Act privacy regulations and the Fair Credit Reporting Act (FCRA), adequately protect the privacy of a customer's information?

Yes, the existing GLB Act and the FCRA adequately protect the privacy of customer information. As part of the GLB Act and the FCRA, institutions are required to notify customers of how information will be shared and to provide customers the opportunity to opt out of the sharing of information beyond the limited exceptions established in these laws. This process allows customers to choose to do business with a financial institution that uses information in accordance with the consumers' expectations. Also, the GLB Act and resulting Banking Agency Guidelines require institutions to establish procedures to protect the security and confidentiality of customer information, both at the institution itself and at servicing entities utilized by the institution.

b. What, if any, new or revised statutory or regulatory protections would be useful to protect customer privacy? Please explain.

Visa strongly believes that the Secretary should not recommend that existing privacy laws be revised to provide additional limitations on the disclosure of information at this time. We believe that the GLB Act, coupled with the FCRA, provides consumers with adequate protections. We have no evidence to the contrary.

Furthermore, although we believe that the existing privacy laws are adequate, we also believe that the statute and the implementing rules actually could be amended to provide a comparable or even an improved level of protection for consumers at significantly lower costs for financial institutions and their customers alike. In particular, this could be accomplished by simplifying the notice requirements under the GLB Act and by providing for 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 the subject. The importance of federal preemption was recognized in the 1996 FCRA amendments that preempted completely any state law or regulation governing information sharing among affiliated companies, with the exception of one Vermont law. Thus, the preemptive effect of the FCRA extends beyond state fair credit reporting statutes to other state laws that purport to restrict information sharing among affiliated entities. The federal preemption provisions are scheduled to sunset on January 1, 2004. Importantly, none of the preempted state laws will automatically be reinstated. Rather, a state must enact new legislation after the sunset date. Nevertheless, this means that inconsistent state FCRA statutes could be re-enacted after January 1, 2004.

Without federal preemption, it will be difficult to operate national programs due to the operational problems institutions will face in light of inconsistent state requirements. For example, the State of Vermont recently adopted final regulations concerning the privacy of consumer financial information. Although these Vermont rules in many respects track the regulations implemented under the GLB Act, there are differences that have created significant operational problems for many institutions. For instance, Vermont prohibits institutions from sharing information about Vermont customers, with some exceptions, unless the customer has opted in to the disclosure of information.

The difficulties created by Vermont would be further aggravated if more states adopted different rules addressing information sharing. State-specific laws involve substantial compliance burdens. For example, a bank may have only a limited customer base in a state so that fixed compliance costs must be spread over a small group at relatively high cost per customer, or must be covered from other customers outside that state.

Absent federal preemption, this problem is likely to get worse as additional states adopt state-specific requirements. Accordingly, Visa strongly urges the Secretary to recommend that at a minimum the Congress: 1) retain the FCRA affiliate provisions contained in the current law; and 2) extend the preemption provisions contained in the current FCRA to the GLB Act.

7. THE ADEQUACY OF FINANCIAL INSTITUTION PRIVACY POLICY AND PRIVACY RIGHTS DISCLOSURE UNDER EXISTING LAW:

a. Have financial institution privacy notices been adequate in light of existing requirements? Please explain why or why not.

The rules adopted by the federal regulatory agencies ("Rules") under Title V provided examples and sample clauses in an effort to circumscribe the information and level of detail included in financial institution privacy notices. Many institutions provided privacy policies that utilized these sample clauses, and while such policies were fully consistent with the regulatory requirements, many of these policies have been criticized as excessively detailed and confusing to consumers. Unfortunately, it is not possible to comply with the existing law without using such detailed privacy notices.

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 institutions' notices.

Simplified notice requirements would improve consumers' understanding of financial institution practices with respect to customer information. For example, a simple notice, where applicable, that a financial institution shares information with non-affiliated third parties for marketing purposes and that provides a consumer a reasonable opportunity to opt out, would be both simpler than the Title V notices and, thus, more understandable to consumers. Shorter notices also would be less costly to financial institutions. In addition, due to its brevity, such a notice actually would prove more informative to the consumer. These notices could be supplemented with more complete privacy policies available on request from financial institutions.

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:

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 effects, both positive and negative, such a requirement would have on financial institutions and on consumers.

An opt in is the functional equivalent of a prohibition on information sharing. That is, for those consumers that do not respond, institutions must treat the lack of response as though the consumer does not want his or her information shared. Many consumers simply do not read information that is sent to them unless it is readily apparent that some action is necessary to continue existing services. Furthermore, the benefits that flow from the sharing of customer information often are indirect and difficult to explain to consumers. Accordingly, it is unlikely that a sufficient number of consumers will affirmatively opt in to affiliate sharing or sharing with non-affiliated third parties to warrant attempting to obtain opt ins or to make the resulting information useful. For example, Vermont prohibits institutions from sharing information about Vermont customers, with some exceptions, unless the customer has opted in to the disclosure of information. As a result, most institutions that were confronted with the Vermont opt-in rule, decided to opt out everyone of the sharing of information, thereby denying all Vermont customers product and service opportunities available to consumers in other states.

a. 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 consumer acceptance.)

As Visa understands the existing federal privacy laws, financial institutions already are permitted, but not required, to obtain a customer's consent before sharing information with affiliates as an alternative to a required opt out.

b. 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 financial institutions to allow consumers to opt out of having information about them shared with affiliates. Such a requirement would negate many of the benefits of affiliation—benefits that Congress sought to promote in the GLB Act. The ways in which financial institutions benefit from sharing information with affiliates include economies of scale in the handling of information and the ability to cross-market financial products and services. The cross-marketing of financial products and services allows financial institutions to tailor their product and service offerings more effectively to the specific needs of individual customers. In addition, affiliate sharing permits institutions to research customer choices and to use that information both to reduce the cost and to improve the quality of the services provided. Within the parameters of the financial activities that are permissible for the holding company, financial services providers can establish affiliate relationships wherever they judge these benefits to provide them an advantage in providing financial services to their customers. At the same time, in addition to better services and lower prices, consumers can enjoy one-stop shopping for a full range of financial services, including banking, securities and insurance products. All these benefits depend on affiliate sharing.

These benefits increasingly are being realized by banks and their affiliates. Banks and their affiliates increasingly are addressing customers on a holding company-wide basis, identifying customers on the basis of their overall financial profiles, rather than the institution or institutions within the holding company family with which the customer relationships are established. The sharing of information among affiliates enables the various affiliates to identify products or services that may meet the customers' needs and in which the customers may be interested and allows

the customers to access these products and services through a single point of contact. While these programs are most advanced at the higher end of the economic spectrum, they increasingly are being offered to customers at all economic levels. The advantages to the customer of information sharing in these circumstances range from improving the product offerings such as identifying the investments that are most suitable for a particular customer and providing the most attractive rates and terms for these investments, to improved levels of services, such as avoiding the need for the customer to re-provide information on applications for additional products and services and for the various affiliates to avoid having to pay, and ultimately charge the customers for, additional fees to obtain additional credit reports and other information about the customer.

In order to maximize these benefits, it is critical that all information about customers of financial institutions be fully available within the holding company structure, including information that identifies the customer, information about each affiliate's transactions and experiences with customer, information from customer applications and information from third parties, such as credit bureaus, that is used to evaluate a consumer's eligibility for credit, insurance or other financial products.

c. 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.

It is not feasible to permit individual customers to specifically direct how their financial institutions share information about them. At best, implementing such directions would be costly and inefficient because each individual's information would have to be separately handled in accordance with that individual's instructions. At worst, it would so Balkanize data bases as to preclude the use of customer information to develop new products and services and to improve existing products and services. Balkanization of data bases also could impair law enforcement efforts to identify and track money launderers and terrorists.

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.

In some instances, financial institutions have provided specific options for opting out of the sharing of information. As a general matter, however, it is not practical to tailor information sharing practices to the direction of individual customers.

b. What effects, both positive and negative, would such a policy have on financial institutions and on consumers?

Restricting the sharing of information for specific uses or permitting customers to direct the uses for which such information may be shared would add significant cost, and would greatly impair the services and products being offered by financial institutions altogether.

c. Please describe any experience you may have had of this approach.

Visa has no meaningful experience with this approach.

* * *

Once again, we appreciate this opportunity to comment on this important matter. If you have any questions concerning these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at (415) 932-2178.

Sincerely,

Russell Schrader

Russell W. Schrader
Senior Vice President
and Assistant General Counsel