THE FINANCIAL SERVICES ROUNDTABLE

April 15, 2002

Office of the Secretary
Federal Trade Commission
Room 159
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Telemarketing Rulemaking – Comment. FTC File No. R411001

Dear Sir or Madam:

The Financial Services Roundtable ("Roundtable") appreciates the opportunity to comment to the Federal Trade Commission ("FTC") on its proposal to amend the Telemarketing Sales Rule ("TSR") issued under the Telemarketing and Consumer Fraud and Abuse Prevention Act[1] (the "Telemarketing Act"). The Roundtable is a national association representing 100 of the largest integrated financial services companies providing banking, insurance, securities, and investment products and services to American consumers.

The Roundtable commends the FTC for its ongoing efforts to provide consumers with increased protection against deceptive, fraudulent, and abusive telemarketing sales practices and greater control over their privacy. The Roundtable supports the concept of having one centralized "Do Not Call" registry that consumers can use to prevent calls from unwanted telemarketers, provided that a prescribed regulatory list establishes a uniform national standard and provided that any such list does not impede the ability of companies to communicate with their customers.

It is important that the FTC recognize that consumer fraud and telemarketing are not synonymous terms. There are many legitimate firms that solicit their products and services by telemarketing and do so in a very straightforward and trustworthy manner. Financial services firms use the telephone both to inform consumers about new products and other opportunities available to them that they might not otherwise learn of, and to allow consumers direct access on demand to product information, account information,

[1] 15 U.S.C. §6101-6108.

and customer service. The telephone has come to occupy an important place in the business plans of financial services companies because it is so well-adapted to multiple purposes: it is easy to use, flexible, fast, and inexpensive for businesses and consumers alike.

The Roundtable has strong concerns that the FTC's proposed amendments to the TSR would burden business-to-consumer communications without securing commensurate benefits to consumers. In particular, the Roundtable is concerned about the broad scope of the rule and the lack of a federal preemption. The rule contains no exception for contacting existing customers, applies to some incoming calls, and creates a federal "Do Not Call" list on top of existing state lists.

While neither the TSR nor the proposal directly apply to federally regulated financial institutions, the proposal in its current form clearly would apply to telemarketing activities performed on behalf of such institutions by third parties (including subsidiaries and affiliates of a financial institution). This proposal would therefore hinder the manner in which most Roundtable member companies telemarket their products and services and serve their customers.

Any privacy issues of concern to the FTC are adequately addressed in Title V of the Gramm-Leach-Bliley Act[2] ("the GLB Act"), the FTC's implementing Privacy Regulation, and other federal statutes. The TSR was not enacted to address privacy, and the Roundtable believes that the FTC is exceeding the scope of its delegated legislative authority to the extent it seeks to regulate privacy pursuant to the TSR.

The Roundtable respectfully requests that the FTC revise the proposal appropriately, keeping in mind the comments offered below, as well as the substantial concerns voiced by businesses impacted by the proposal. The FTC should reissue the revised proposal for notice and comment to develop requirements that strike a more equitable balance between the interests of protecting consumers from fraudulent marketing activities and allowing consumers to get timely and beneficial information from companies.

I. THE PROPOSAL SHOULD PROVIDE FOR CLEAR FEDERAL PREEMPTION FOR THE NATIONAL "DO NOT CALL" LIST.

The Roundtable believes that if all companies across the nation were able to use a single "Do Not Call" list, there could be real benefits in terms of time efficiencies, lower costs, and simplicity. Although section 310.4(b)(1)(iii)(B) of the proposal attempts to

[2] 15 U.S.C. § § 6801-6809.

establish such a central "Do Not Call" registry, the proposal's approach would complicate, rather than centralize, the do-not-call process, because of its lack of a preemption provision. The FTC list does not replace, but adds to, a growing number of existing lists at the state levels and does not necessarily guarantee that more consumers will make use of this list.

The proposal adds yet another layer to the already complex process for businesses to determine which individuals have opted out of telemarketing. Telemarketers currently are subject to at least two federal do-not-call requirements (*i.e.*, under both the TSR and the Federal Communications Commission's existing rules implementing the Telephone Consumer Protection Act of 1991) and also must comply with many state laws that establish state-by-state do-not-call lists. Telemarketers already are required to examine multiple databases, with different information and inconsistent formats, just to determine whether a marketing call may be placed to an individual. Unless the proposal provides for nationwide preemption, companies could be required to comply with 50 state laws in addition to the existing and proposed federal requirements. Furthermore, companies would need to analyze how the proposal relates to each state law with respect to conflicts, redundancies, inconsistencies, etc.

The proposal would further complicate the process for consumers as well, because the FTC list and the various state lists have different requirements and exceptions. Consumers will be confused about the requirements that apply and whether a particular telemarketing call is a violation of the FTC rule or the applicable state law.

The Roundtable feels strongly that the proposal should not create another "Do Not Call" list without addressing this problem. If the FTC decides to adopt the national "Do Not Call" list approach, it should make it clear that the national list replaces individual state lists and that the FTC rule preempts any state requirements to maintain such lists.

If the FTC determines it is beyond its authority to preempt state law in this area, the Roundtable respectfully requests that the FTC not issue a final rule incorporating a "Do Not Call" list until Congress can address this issue and provide the FTC with the authority to create a true national regulatory scheme for telemarketing. Consumers and companies benefit if there is one standard for all companies to follow as opposed to the inevitable confusion over what is permitted or prohibited under several different laws.

II. THE SCOPE OF THE PROPOSAL SHOULD BE NARROWED.

Even if the FTC were to provide strong preemption, the proposed rule is much broader than existing state do-not-call laws, making nationwide application of the proposal potentially more harmful than beneficial to companies. State laws generally only apply to "unsolicited" calls and allow exemptions for prior or existing business relationships. Under state laws, calls to a traditional prospect lead (*e.g.*, a consumer who voluntarily gives his or her phone number to a company as part of a transaction or an inquiry into products and services) are not considered "unsolicited," and therefore those calls are not subject to the do-not-call provisions. The proposed national FTC list, on the other hand, would apply to *all* outbound calls and actually expands the definition of outbound calls to include some incoming customer-initiated calls. There are also concerns about what use of "express verifiable authorization" will be allowed under the proposal.

A. The Proposal Should Not Apply to Financial Institutions and Entities Acting on Behalf of Financial Institutions.

The Roundtable believes that a scope provision should be incorporated into the proposal to reflect the fact that the Telemarketing Act is limited in scope. In particular, this provision should state that, as provided in section 6(a) of the Telemarketing Act, the Proposed Rule does not apply to entities that are exempt from the coverage of the Federal Trade Commission Act ("FTC Act").[3] The exempted entities are set forth in section 5(a)(2) of the FTC Act and include financial institutions. In addition, this provision should clarify that entities that act on behalf of such financial institutions are not covered by the proposal, including both subsidiaries and affiliates of financial institutions and other companies. Financial institution subsidiaries are viewed by the federal financial services agencies as operating effectively as divisions or departments of their parent institutions.[4] In addition, other companies providing these services to financial institutions are subject to regulation and examination by the federal financial supervisory agencies under the Bank Service Company Act[5] with respect to such services. The proposal should clarify that financial institution subsidiaries and other companies are not subject to the proposal when they are acting on behalf of financial institutions.

B. The Proposal Should Not Apply to Existing Customers.

Section 310.4(b)(1)(iii)(B) of the proposal would prohibit companies from calling individuals who place their name and/or phone number on the centralized "Do Not Call" list. However, there is no exception made for companies wishing to contact individuals with whom they have established customer relationships. As a result, a company would not be permitted to telemarket its own customers if those customers add themselves to the "Do Not Call" list.

This may be difficult to implement as a practical matter. For example, there may be instances when a company contacts a customer as part of servicing the account, but the call develops into what may be considered to be telemarketing. It is impossible to foresee

[3] 15 U.S.C. § 45(a)(2).
[4] *See*, *e.g.*, OCC Advisory Letter, AL 2002-3, dated March 22, 2002.
[5] 12 U.S.C. § 1867.

every scenario where a customer service call may become a call whereby the customer is offered improved or related products.

Moreover, consumers are harmed if their financial institution cannot call its customers and inform them of circumstances or new products and services that are clearly beneficial to the customers. The proposal would unnecessarily limit the flexibility of financial institutions to manage their businesses as they deem appropriate by discouraging the use of agents in telephone service centers and in customer contact positions. As a result, the proposal interferes with a financial institution's relationship with its customers and limits the ability of an institution to provide the high quality of service that its customers have come to expect.

Financial services customers save billions of dollars each year from relationship pricing, discounts on bundled products, proactive offers to meet the needs of customers, targeted marketing, and third-party services.[6] Existing customers would lose these valuable benefits if inclusion on the "Do Not Call" list prevents institutions from calling their own customers about offers for cheaper, more efficient, or otherwise enhanced products. If an individual does not want to hear from his or her financial institution (or other company from which the individual receives goods or services), the individual can ask the company to stop calling.

If the FTC adopts the centralized "Do Not Call" list approach, it should provide a clear exception for calls made to individuals with whom a company has an established customer relationship. Additionally, the proposal should allow companies to contact former customers with offers of new products or services, if the customer stopped doing business with that company because it previously did not offer such products or services. An exception also should be made to allow businesses to contact non-customers (prospects) who have requested information from or regarding an institution. Finally, an exemption should be made to allow an institution to return phone calls to any individual who has previously called.

In addition, the FTC should make it clear that any member of a corporate family, including all affiliates and subsidiaries, should be permitted to call an individual on the "Do Not Call" list so long as the individual has an established customer relationship with any member of that corporate family. This change is important in order to preserve the benefits that the GLB Act was intended to provide, while still maintaining the consumer protections envisioned in the proposal. The affiliated companies work together to service all of the financial needs of the consumer by offering a variety of financial products and services. Finally, the exception should apply to agents of the seller if the consumer reasonably would expect the agent to be included under the exception.

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[6] "Customer Benefits from Current Information Sharing by Financial Services Companies," conducted by Ernst & Young for The Financial Services Roundtable, December 2000.

C. The Proposal Should Not Apply to Incoming Service-Oriented Calls From a Consumer.

Telephone calls that are initiated by a consumer are exempt from the current TSR. Section 310.2(t) of the proposal, however, expands the definition of an "outbound telephone call" to cover calls initiated by a consumer if the call is transferred to another telemarketer. Such incoming calls thus would be subject to the requirements and prohibitions in the proposal.

The burden this provision would place on inbound sales is onerous and unnecessary. It would require telemarketers to instantaneously determine whether or not the individual placing the inbound call has placed his or her name on the "Do Not Call" list, even though that consumer initiated the call. If the caller's name were in fact on the list, the customer would be prevented from making any additional purchases other than the initial sale. If the consumer was not on the list but was calling outside of the designated telemarketing hours as specified by the proposal, no "up-sale" could be made, or possibly no sale could be made at all.

While the proposal discusses a number of activities that take place in connection with such inbound calls, the FTC does not make the case that such activities are likely to involve deceptive or abusive acts or practices, nor would allegations of deception or abuse be credible, given the nature of inbound calls. Consumers calling a business voluntarily put themselves in a business environment and know that they are doing so. There is a very high level of consumer protection in this environment where a telemarketer is offering a consumer an opportunity to purchase additional products or services following the completion of an initial purchase on a call initiated by the consumer and where the customer has already provided his or her billing information.

This aspect of the proposal also could raise significant customer service concerns, because the company representative could be rendered unable to discuss with a customer additional products or services that require a call transfer merely because the customer that initiated the call is on the "Do Not Call" list. Under the TSR, when a customer calls his or her financial institution, the customer service representative is able to advise the customer of new products or services or policy upgrades that would better meet the customer's needs. However, in order to comply with the GLB Act's prohibition on sharing of account numbers, these calls generally are transferred to a telemarketer who would not have access to the account numbers. Moreover, financial services companies frequently provide various parts of an overall product set through different affiliated entities. Therefore, it is extremely common for one affiliate to sell the products and services of another affiliate that complement those the customer may already have or that meet the evolving financial needs of the customer. It is important that financial institutions and their agents be able to direct an inbound call appropriately within the organization and recommend products and services to the consumer. This activity helps institutions solve customer issues to the benefit of both the consumer and the institution.

Under the proposal, all disclosures required for outbound telemarketing would have to be made at the beginning of an inbound "up-sale" or cross sale attempt. Having to obtain specific credit card information, such as the account number, for every product sold would be a cumbersome and extremely redundant process that would likely annoy the consumer who has already provided this information along with his or her consent to be billed. If the customer is required to give his or her account name and number in each "up-sale," this practice could produce negative sales results since the consumer may be inconvenienced by continually having to repeat this information.

The Roundtable believes that the current definition of "outbound telephone call" in the TSR should be retained. The list was designed to give consumers a tool to avoid receiving unwanted or inconvenient telemarketing calls, and should not be applied to calls initiated by consumers.

D. The Proposal Should Be Made Consistent With the GLB Act's Treatment of Preacquired Account Information.

Section 310.4(a)(5) of the proposal would prohibit the receipt of consumer billing information for use in telemarketing, unless the consumer provides that information directly. This prohibition would apply even if it is previously acquired account information and the customer had specifically authorized the use of that information.

This prohibition on the use of preacquired account information would prohibit a company from selling a product or service to an incoming caller and billing it to a credit card number the consumer had previously provided to the marketing firm. This important and legitimate method of billing a consumer for a sale authorized by the consumer has existed for over 25 years. Its elimination would not result in any increased consumer protections, but would result in additional burdens on commerce with the additional costs being passed on to consumers.

This issue is already addressed under the GLB Act and the FTC's implementing Privacy Regulation, which prohibit a financial institution from disclosing a customer's account number for use in telemarketing, among other types of marketing. The proposal does not appear to add any consumer protections not already provided in the GLB Act, at least as it pertains to financial institutions. Rather, the proposal only complicates an already confusing situation under the GLB Act.

Moreover, the proposal would take away several of the important exceptions contained in the GLB Act, which were adopted by eight federal agencies, including the FTC. These exceptions allow:

- the sharing of account numbers with the financial institution's agent or service provider for the purpose of marketing the institution's own products (as long as the agent or service provider is not able to initiate charges to the account);
- the sharing of account numbers with a participant in a private label or affinity card program; and
- the sharing of encrypted account numbers as long as the recipient is not given a means to decode the encrypted number.

The Roundtable believes that the proposal should not cover preacquired account information to the extent it is already covered by, or contrary to, the GLB Act. In the alternative, the Roundtable requests that section 310.4(a)(5) of the proposal be modified to be consistent with the GLB Act and the FTC Privacy Regulation, by including all of the GLB Act's well thought out exceptions.

E. The Definition of "Billing Information" Should Be Clarified and Narrowed.

Section 310.2(c) of the proposal defines "billing information" as "any data that provides access to a consumer's or donor's account…." The Roundtable is concerned that this definition is so broad that it could be construed to restrict the sharing of publicly available identifying information, such as a consumer's name, phone number, and address. Additionally, this definition, in conjunction with section 310.4(a)(5)'s limitation on the receipt of billing information, effectively establishes new disclosure limits on financial institutions. These disclosure limits are more restrictive than the limits established for financial institutions in the GLB Act and the FTC's Privacy Regulation. The effect of this would be to render meaningless a consumer's decision not to opt out of the GLB Act's privacy protections. The FTC should narrow the definition of "billing information" to include only information that is not otherwise publicly available.

F. The Rule Should Not Penalize All Predictive Dialers.

Section 310.4(c)(1)(i) of the proposal makes it an "abusive telemarketing act or practice" and a violation of the proposal for a telemarketer in an outbound telephone call to fail to make specified disclosures. Although the proposal does not explicitly ban predictive or automatic dialers, the Supplementary Information states that "telemarketers who abandon calls are violating" the proposal since under such circumstances a call was successfully placed without the telemarketer providing the disclosures required by the law. The proposal essentially claims that whenever a consumer answers the phone - even to dead air – the consumer has, by law, received the call, thereby calling for a zero percent abandonment rate.

This requirement would effectively prevent companies from using predictive dialing equipment in the manner for which it was designed, completely eliminating the efficiencies gained through predictive dialing technology and setting the telemarketing industry back almost twenty years to when calls were manually dialed on touch tone phones. Where it is now possible for an individual telephone sales representative to complete up to eighteen or more consumer contacts in one hour with predictive dialing technology, that same individual can barely complete ten consumer contacts over an hour when manually dialing consumer phone numbers.

Eliminating the efficiencies gained through predictive dialing would cause a dramatic reduction in productivity with a correspondingly dramatic increase in the costs required to contact the same number of consumers. Many businesses would simply no longer be able to justify the expense of using the telephone or would have to severely reduce the level of marketing via the telephone.

Even in a completely manual environment, there would be times when a consumer picks up the phone just at the moment the phone representative hangs up to dial another number. Therefore, the proposal, in reality, will be impossible to comply with in all cases.

The Roundtable believes that the proposal should not impose strict liability standards for telemarketers that use predictive dialers. The proposal should allow for some possibility or some number of abandoned calls that balances the desire to reduce the number of such calls while allowing for efficiencies provided by predictive dialers. The Roundtable believes that even the Direct Marketing Association's voluntary five percent standard is substantially too low and is not followed in practice.

The Roundtable recommends that before the FTC requires a zero percent abandon rate, it should first enforce a more realistic and reasonable abandonment rate. Until a realistic abandon rate becomes an enforceable law, there is no way to determine if it is necessary to go to zero percent or even an extremely low percent. Required disclosures should only be specified for calls that are completed. The FTC should set the abandon call rate at a reasonable percent initially, with review of the results of such mandate after a prescribed amount of time set by the FTC.

Additionally, the Roundtable does not support the FTC's proposal to require telemarketers to play a recorded message that reads every one of the section 310.4(d) disclosures as soon as the consumer answers the call if there is no live agent to take the call. This would increase the operational and technological costs necessary to comply and would eliminate the effective use of predictive dialers. We would, however, support an alternative that allows predictive dialers to play a recorded message that simply identifies the caller and asks the consumer to hold for a live representative.

G. The FTC Should Clarify the Application of the Proposal to the Sale of Credit Card Protection.

The proposal would require certain disclosures in connection with the sale of credit card protection plans. It also would prohibit certain misrepresentations in connection with the product. The Roundtable believes that the proposal should be clear that the disclosures and prohibition are limited to plans that purport only to cover liability related to the unauthorized use of credit cards.

III. THE REQUIREMENTS FOR EXPRESS VERIFIABLE AUTHORIZATION SHOULD BE FAIR AND WORKABLE.

Section 310.3(a)(3) of the proposal would require a telemarketer to obtain a consumer's "express verifiable authorization" before submitting the consumer's billing information for payment. The only exception to the express verifiable authorization requirement is for credit cards and other means of payment that are covered by the unauthorized use and billing error protections of the Truth In Lending Act ("TILA"), or "comparable" protections. The Roundtable believes that the procedures for obtaining "express verifiable authorization" are cumbersome and difficult to implement.

It appears that the proposal would impose on all telemarketers more rigid, explicit requirements that substitute for the liability limitations and dispute resolution procedures in TILA. But whereas these TILA provisions had the effect of increasing consumer confidence about the use of credit cards, the Roundtable believes that these provisions of the proposal could have the perverse effect of diminishing consumer enthusiasm for transacting business by telephone. The primary reason for this perverse effect is that it is unclear to what transactions the express verifiable authorization requirement applies, but it is clear how unscrupulous telemarketers could exploit this uncertainty.

The Roundtable is concerned that this provision appears to exclude debit cards for the category of payment methods that are acceptable under this provision. Companies may be forced to determine whether a consumer's payment device is a credit card or a debit card although they may have no practical means of making such a determination. It is also not clear how determinations would be made as to whether the protections are "comparable."

Debit cards issued by financial institutions that provide access to a consumer's deposit account are covered by the provisions of the Electronic Funds Transfer Act ("EFTA") and Regulation E implementing that statute. Regulation E provides for limitations on liability for unauthorized transactions that are in practice substantially similar to those contained in TILA and its implementing regulation, Regulation Z. The FTC should explicitly recognize other examples of payment mechanisms that provide adequate protections and therefore are not subject to the requirement for express verifiable authorization prior to submission for payment. In particular, the FTC should expressly exempt payment methods covered by Regulation Z, and payment methods covered by Regulation E, as well as payment methods covered by the UCC. Further, the final rule should exempt transactions using payment systems that limit customer liability by a payment system rule, such as the Visa and MasterCard rules.

Additionally, under the proposal, a customer's authorization is deemed to be valid if it is either an express written authorization including the consumer's signature, or an express *oral* authorization, which is recorded and made available upon request to the consumer and the consumer's bank and which evidences clearly the consumer's authorization; the number, date, and amount of debit(s), charge(s), or payment(s); the consumer's name; the consumer's billing information (*including account number*); a customer service telephone number; and the date of the consumer's authorization.

The Roundtable commends the FTC for recognizing that express verifiable authorization may be obtained over the telephone. The Roundtable urges the FTC, however, to amend the manner in which the express verifiable authorization may be obtained. In particular, the FTC should remove the requirement that the consumer's account number be part of the authorization. Asking consumers to recite their account number over the telephone is an unsafe procedure that is conducive to identity theft. Additionally, consumers are likely to be unwilling to share their account numbers over the telephone. For those consumers who may not have problems with sharing their account numbers, the time it would take for them to obtain their credit cards may be perceived as burdensome and the sale may be lost. An added opportunity for error exists when the telephone representative manually types the credit card number. A consumer could truly want a product but not receive it because the credit card account number for billing was not valid. Without a valid account to bill, the seller is unable to receive payment for the product.

IV. THIRD PARTY SERVICES SHOULD NOT BE PERMITTED TO REGISTER ON BEHALF OF CONSUMERS.

The proposal requests comment on whether to allow third parties to act on behalf of consumers to register the consumers on the "Do Not Call" list. The Roundtable believes that it is critical that third parties not be permitted to place individuals on the list. Allowing intermediary service providers to register on behalf of consumers will decrease the accuracy of the "Do Not Call" list and create the potential for consumer fraud and abuse. We thus agree with the FTC's comment that enrollment on the "Do Not Call" list should be required to be made by the individual consumer.

V. COMPANIES SHOULD BE ALLOWED ADEQUATE TIME TO UPDATE INTERNAL LISTS.

Under the proposal, companies would be expected to update their data with the "Do Not Call" list obtained not more than 30 days before a call is made. Such periodic updates may require significant reprogramming and information distribution efforts.

The Roundtable believes that this time frame may be too short for some companies in view of the complex processes and substantial cost involved each time a company must update its list. For example, the lists may be prepared with the help of multiple parties and may involve a series of screens. Also, a particular telemarketing campaign may last for some time and a 30-day time period could mean that telemarketing lists may "expire" before all consumers on the list have been called.

The Roundtable requests that the proposal be revised to allow for a more reasonable time period, such as quarterly, for companies to update their internal lists. That is the requirement in most state telemarketing laws, and this would provide businesses with ample time to accurately update their internal databases.

Additionally, because consumers may be under the mistaken belief that their election to place their telephone number on the "Do Not Call" list would eliminate all telephonic solicitations the instant such list becomes available, the Roundtable respectfully suggests that the time period given to companies to update their lists be clearly disclosed to consumers at the time that they put their name on the list.

VI. CUSTOMER IDENTIFICATION REQUIREMENTS SHOULD BE STRENGTHENED.

The proposal indicates that a consumer would be able to place his or her name *and/or* telephone number on the "Do Not Call" list. The list is unlikely to be useful if it relies on a centralized list of only names *or* only phone numbers to identify consumers. The list must include *both* a name and a phone number, as well as an address, in order to ensure that individuals who wish not to be called are not called. There may be thousands of consumers with the same name on the list, so without a phone number and address, the information is worthless. This combination of data elements also addresses the situation where multiple consumers live at the same address and share the same phone number. Each consumer should have the ability to make their own decision regarding telemarketing, and one household resident should not have the authority to deny access to another resident who may be interested in receiving marketing information.

Additionally, the Roundtable suggests that the FTC require at least one other piece of identifying data in order to avoid fraud, increase the accuracy of the list, and facilitate authentication of a consumer when he or she calls in for verification.

Finally, the proposal should provide a clear exception for individuals operating businesses out of their homes. Many sole proprietors and individual entrepreneurs conduct their businesses from their homes using their residential telephone lines instead of separate commercial lines. We believe that the intent of the Telemarketing Act was to protect individuals who subscribed to telephone service primarily for personal, family, and non-commercial use, and not to reach those who use the telephone for commercial purposes.

VII. THE LIST SHOULD HAVE AN END DATE AND A MECHANISM FOR REMOVAL OF NAMES.

The proposal does not address issues that arise when consumers move and change their phone number. Under the proposal, it would appear that if a consumer added his or her number to the "Do Not Call" list, that number would stay on the list even if that consumer changed numbers and a new consumer assumed the original phone number. The list will become inaccurate as consumers change locations and their phone numbers are redistributed. Given the mobility of consumers today, many entries on the list will become stale over a fairly short time period.

The Roundtable believes that names on the list should have an automatic expiration date (two to three years) so numbers for consumers who move are automatically allowed back into the callable domain. Additionally, the Roundtable believes that the proposal should provide for an easy mechanism for consumers to take their names off the list when they move or if they no longer want to be on the list.

VIII. THE PROPOSAL SHOULD BE CLEAR ABOUT HOW BUSINESSES WILL ACCESS THE "DO NOT CALL" LIST.

The proposal provides no details about how the "Do Not Call" list will be made available to companies. The Roundtable believes that the FTC should specify how businesses will access the list, with a goal of making this access both convenient and inexpensive for its ultimate users. The proposal should indicate clearly the method of accessing the list, the frequency of access (*i.e.* monthly, quarterly, etc.), and the cost to each institution for each access.

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In conclusion, the Roundtable respectfully requests that the FTC revise the proposal, keeping in mind the comments offered in this letter and the substantial concerns voiced by businesses impacted by the proposal. The FTC should reissue the revised proposal for notice and comment to develop requirements that strike a more equitable balance between the interests of protecting consumers from fraudulent marketing activities and allowing consumers to get timely and beneficial information from companies. The Roundtable supports a regulatory scheme that would create a national "Do Not Call" list that preempts state laws and contains appropriate exceptions to allow businesses to maintain and service existing customers.

Thank you for considering the views of The Financial Services Roundtable on these important issues. If you have any further questions or comments on this matter, please do not hesitate to contact Maura Solomon or me at (202) 289-4322.

Sincerely,

Richard M. Whiting

Richard M. Whiting