HSBC

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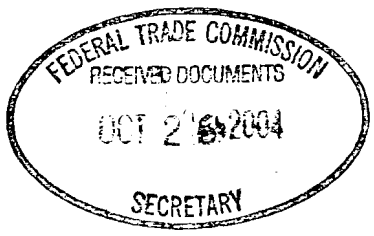

October 25, 2004 **Via Federal Express**

Federal Trade Commission
Office of the Secretary
Room H-159 (Annex R)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: FACTA Prescreen Rule, Project No. R411010

Ladies and Gentlemen:

HSBC North America Holdings Inc. ("HSBC") submits this comment letter in response to the Proposed Rule ("Proposed Rule") issued by the Federal Trade Commission ("FTC") regarding the type size, format, and manner in which entities must provide the disclosures required by Section 615(d) of the Fair Credit Reporting Act ("FCRA") ("Prescreening Disclosures"). Through its subsidiaries, HSBC provides consumer lending goods and services to millions of consumers. HSBC is pleased to have the opportunity to comment on the Proposed Rule.

1. General

Section 615(d) of the FCRA sets forth Prescreening Disclosures that must be included in all written prescreened solicitations made to consumers. The FCRA further requires that the Prescreening Disclosures be given to consumers in a "clear and conspicuous statement" included with the solicitation. The FACT Act amended Section 615(d) to require the FTC to establish specify the format, type size, and manner in which the Prescreened Disclosures are presented "so as to be simple and easy to understand." While we commend the FTC for the language of the concise and understandable text of the Model Notices, we believe the Layered Notice included in the Proposed Rule goes beyond what was intended or required by Congress.

2. Basis for the Proposed Rule

The FTC states that the Proposed Rule "carries out the [FTC's] mandate to improve prescreen notices so that they are simple and easy to understand." The FTC goes on to cite two components it believes are necessary to make a notice simple and easy to understand. First, the notice must use language and syntax that effectively convey the message to readers. Second, the "presentation and format must call attention to the notice and enhance its readability."

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HSBC agrees with the FTC that to make a notice simple and easy to understand the focus must be on language and syntax. HSBC fully supports ongoing industry and regulatory efforts to provide useable, clear information to consumers regarding financial products and services. However, HSBC respectfully disagrees with the FTC's contention that making the Prescreened Disclosures simple and easy to understand also necessitates calling attention to them. While HSBC agrees that the Prescreened Disclosures should be clear and conspicuous as Section 615(d) requires, Congress did not amend, nor did it grant the FTC authority to implement regulations pertaining to, the clear and conspicuous requirements.

Of additional concern is the apparent conflict between the Proposed Rule and the FTC's interpretation of its regulations implementing the Gramm-Leach-Bliley Act ("GLB Rule"). In the GLB Rule, the FTC states that there are two components to the definition of "clear and conspicuous." First, the notice must be "reasonably understandable" and second, the notice must be "designed to call attention to the nature and significance of the information in the notice." While the GLB Rule treats these two components as separate and distinct from each other, the Proposed Rule treats one as a necessary component of the other. This conflicting treatment will result in confusion as to how the FTC interprets whether a statement is easily understood or conspicuous.

Assuming, for the sake of argument, the second component put forth by the FTC is necessary in order to make the Prescreened Disclosures simple and easy to understand, we believe the proposed Layered Notice nevertheless exceeds the FTC's rulemaking authority. Prescreened credit solicitations, by their nature and by federal mandate, contain information relating to the terms and conditions on which that credit is offered. Congress has recognized the importance of such information, and requires it to be featured prominently in such solicitations. As proposed, however, the Layered Notice would make the Prescreened Disclosures more prominent than other federally mandated disclosures, as well as the context of the solicitation itself. The statute and legislative history certainly do not indicate this to be the intent of Congress, nor does highlighting the Prescreened Disclosures to the possible detriment of other credit-related information serve any consumer benefit. As more fully discussed below, we believe the model Long Notice by itself is both easy to understand and presented in such a manner that calls the reader's attention to it and enhances its readability.

3. Layered Notice

The Proposed Rule would require written prescreened solicitations made to consumers by a Layered Notice consisting of two separate and distinct notices, a Short Notice and a Long Notice. The FTC proposes that the Short Notice appear on the front page of the principal promotional document, in larger type size than the principal text on the same page, but in no event smaller than 12 point type, located and in a format such

that it is distinct from other text, such as inside a border. In addition to informing the reader that he or she has the right to opt out of receiving prescreened solicitations and the toll-free number to call and exercise that right, the Short Notice must also alert the reader to the location of the Long Notice. The Short Notice must be simple and easy to understand and the Proposed Rule prohibits the inclusion of any additional language.

The Long Notice must also be simple and easy to understand and contain all of the Prescreened Disclosures. It must begin with the heading "OPT-OUT NOTICE", appear in type that is no smaller than the principal text on the same page, but in no event small than 8 point type, be in a typeface that is distinct from other typeface used on the same page, and be set apart from other text on the page. The Proposed Rule prohibits the inclusion of additional language that would undermine the purpose of the opt-out notice in any way.

a. Conclusion that Prescreened Disclosures are More Important than Other Legally Required Notices

Respectfully, HSBC strongly opposes the use of the Layered Notice. In proposing the Layered Notice, the FTC seems to have concluded that the Prescreened Disclosures are more important and must appear more prominently than any other legally required disclosures. This conclusion is neither supported by the statute or its the legislative history. Certainly, if Congress had intended that the Prescreened Disclosure be more prominent than any other legally required disclosures, it would have clearly stated that intention as it has done in the past. As the FTC is aware, Section 122(c)(1)(B) of the Truth in Lending Act includes a statutory requirement that certain disclosures (i.e., the Schumer box) be "placed in a conspicuous and prominent location on or with any written application, solicitation or other document," such as written prescreened solicitations. It should also be noted that even in light of a statutory requirement that a disclosure be prominent, the Federal Reserve Board (the "Board") concluded that in order to be prominent, the disclosure does not have to be on the front side of the first page of the principal solicitation document. Instead the Board deems the disclosures to be prominent if they appear elsewhere as long as the application or solicitation reply form provides a clear and conspicuous reference to the location of the disclosures. Notwithstanding, Congress did not require that the Prescreened Disclosures be prominent and we do not believe the requirement that such disclosures be simple and easy to understand means that they must also be more prominent that those disclosures Congress has clearly mandated be prominent.

b. Format of Model Short Notice

Of additional concern is the "cigarette warning" style format of the Short Notice. As proposed, the model Short Notice carries with it the implied notion that prescreening

is harmful to consumers and they should exercise the right to opt-out. Providing the notice in such an ominous manner presents an unbalanced approach and, consequently does a disservice to consumers. There have been many academic studies over the years as to the benefits of prescreening. Prescreening allows consumers across the creditworthiness spectrum to become more informed about available credit, which in turn enables them to comparison shop more effectively. Certainly, prescreened solicitations are one of the primary drivers of credit card competition, allowing the consumer to seek and obtain better terms.

c. The Study

The FTC commissioned a consumer study (the "Study") in order to compare the "noticeability and comprehension" of three different versions of Prescreened Disclosures. Again, the Congressional mandate was for the FTC to improve the Prescreened Disclosures by making them more simple and easy to understand. Congress did not direct the FTC to examine whether the Prescreened Disclosures were conspicuous to the consumer. Therefore, the Study is not applicable in its entirety to the Congressional mandate. The only portion of the Study that is relevant is that which was related to consumer comprehension of the Prescreened Disclosures.

Setting aside our disagreement that the Study be used to determine which of the three versions was more conspicuous, it should be noted that the difference in consumers' awareness of the Prescreened Disclosures between the Layered Notice and the Improved Notice was only 2%. Therefore, the Study does not support a conclusion that the Layered Notice is the only way to increase the conspicuousness of the Prescreened Disclosures.

As for the relevant portion of the Study, the Supplementary Information states that once consumers read the Prescreened Disclosures, there was little difference in the effectiveness of the communication between the Layered Notice and the Improved Notice. The FTC notes that any difference between the effectiveness of communication between these two notices was not statistically significant. Said differently, once the Layered and Improved Notices were read, the Study revealed that each communicated the opt-out notice in simple and understandable terms. Therefore, the Study appears to support the conclusion that the Improved Notice satisfies the Congressional mandate and the Layered Notice is not the only manner in which to do so.

d. Costs of the Layered Notice

We applaud the FTC for recognizing that in prescreened solicitations, space is at a premium. However, the FTC's belief that the Layered Notice will not unnecessarily increase costs is flawed. The Layered Notice would be extremely costly to implement. For example, all prescreen solicitation templates would have to be changed to accommodate the Short Notice. Making these changes and then reviewing each for

compliance with the Proposed Rule would involve expense and man-hours well in excess of the FTC's estimate. In addition, existing stock would have to be destroyed at substantial cost if the date for compliance occurs as proposed. On the other hand, if the Improved Notice is adopted, minimal expense would be involved as there are fewer templates for the back page of prescreened solicitations. Since the Study itself revealed that the Improved Notice satisfies the Congressional mandate, certainly requiring companies to use the Layered Notice in light of these significant costs cannot be justified.

4. Model Long/Improved Notice

As a general matter, we commend the FTC for developing model notices and for indicating that the notices may, but are not required to be used in order to comply with the final rule. More specifically, we applaud the FTC for developing the text of the model Long Notice and we strongly suggest that, with minor modifications, it be adopted as the Improved Notice. The model Long Notice communicates the Prescreened Disclosures in a clear and concise manner that is easy for the consumer to understand and is a vast improvement over a recitation of the statutory requirements. We do, however, recommend a few enhancements to the notice. First, because the language used addresses more than just the method to exercise the right to opt-out, we suggest that the heading "OPT-OUT NOTICE" be replaced with a heading that more accurately describes the contents of the notice, such as "PRESCREENING NOTICE" or "PRESCREENING DISCLOSURES."

We also believe that in order to present a more balanced approach enabling consumers to make an informed decision, the FTC should include language in the notice that was tested as part of the Study. For example, in the Study the FTC tested the following sentences: "Offers like these may be useful in comparing terms and benefits of various credit offers."; "If you call or write, you may be asked to provide your Social Security number and other personal information to verify your identity. This information will be used only to process your request"; and "Please note: Even if you choose not to receive prescreened offers of credit [or insurance], you still may get other credit [or insurance] offers." The FTC concluded that these sentences would likely comply with the Proposed Rule. Therefore, we ask the FTC to include these sentences as part of the model Improved Notice or, in the alternative, indicate that use of these sentences would comply with the Proposed Rule.

5. Definition of Simple and Easy to Understand

As set forth above, we believe the model Improved Notice would satisfy the Congressional mandate that the Prescreened Disclosures be simple and easy to understand. In the Supplementary Information, the FTC states that the standard for determining whether a communication is simple and easy to understand "is based on the totality of the disclosure and the manner in which it is presented, not on any single

factor." In determining whether a communication meets this standard, the FTC has reasonably defined the term to mean a communication that is written in "plan language designed to be understood by ordinary consumers." While we appreciate the FTC's efforts to provide further clarification to this term by listing eight factors to be considered, we are concerned as to how those factors may be interpreted by others. We believe the definition, without the eight factors, taken together with the model Improved Notice will provide companies with sufficient guidance toward meeting the "simple and easy to understand" standard. We therefore suggest that the FTC remove the eight factors from the definition of that term.

6. Effective Date

The Proposed Rule indicates that the final rule will become effective 60 days after it is issued. We respectfully suggest that the FTC give institutions at least nine months to comply. Prescreened solicitations require significant lead time and mail pieces are typically prepared at least two months prior to being mailed. Consequently, only a 60 day lead time would result in having to cancel millions of mailings, at significant cost, which were compliant at the time they were prepared, but are no longer so at the time of mailing due to the subsequent issuance and effective date of the final rule. In addition, institutions will need adequate time to revise their prescreened solicitations and review them for compliance with the final rule once it is issued. Because prescreened solicitations currently must include clear and conspicuous Prescreened Disclosures, we do not believe significant consumer benefits exist warranting the implementation of the rule on an expedited basis in light of the consequent costs.

We appreciate the opportunity to comment on the Proposed Rule.

Sincerely,

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