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*MasterCard International*

***By Hand***

October 28, 2004

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**

To Whom It May Concern:

MasterCard International Incorporated ("MasterCard")[1] submits this comment letter in response to the proposed rule ("Proposal"), issued by the Federal Trade Commission ("Commission"), to make the prescreen disclosures required by the Fair Credit Reporting Act ("FCRA") "simple and easy to understand." MasterCard appreciates the opportunity to provide its comments to the Commission.

## In General

Congress directed the Commission to establish the format, type size, and manner for the disclosures to be included with written prescreened solicitations so as to be "simple and easy to understand." The Proposal establishes a "layered" format requiring certain prescreen disclosures to appear on the first page of the written solicitation and allowing other disclosures to appear elsewhere in the solicitation. The Proposal effectively emphasizes a limited subset of the prescreen disclosures over the other prescreen disclosures. Consequently, the Proposal elevates the consumer's right to opt out of receiving prescreened solicitations as *the single most important disclosure* provided to the consumer as part of the prescreened solicitation. MasterCard does not believe that Congress intended such a result. In addition, the approach taken in the Proposal is inconsistent with other regulatory interpretations published by the Commission and may have unintended negative consequences for consumers. We believe that many of these

[1] MasterCard is a SEC-registered private share corporation that licenses financial institutions to use the MasterCard service marks in connection with a variety of payments systems.

problems could be addressed by eliminating the layered approach and adopting an approach more consistent with the so-called "improved notice" the Commission developed and considered as part of preparing the Proposal. The following is a more detailed discussion of these issues and includes suggestions for improving the Proposal.

## Background

*Benefits of Prescreening*

Prescreening benefits consumers enormously. The use of prescreening has allowed credit card issuers, for example, to compete efficiently in a nationwide marketplace of consumers.[2] That increased competition has lowered prices for credit cards, increased the development of affinity and co-brand programs (such as providing airline miles in connection with use of the card), and increased the ability of consumers to choose from a variety of card issuers. Because of prescreening, consumers in the United States enjoy unparalleled access to a variety of financial products and services at lower costs. In 1996 Congress recognized the consumer benefits related to prescreening when it amended the FCRA and established national uniform standards for prescreening. By enacting the Fair and Accurate Credit Transactions Act (the "FACT Act"), Congress reaffirmed and preserved the important benefits of prescreening by ensuring a continued national uniform standard regarding prescreening.

The most notable benefit of prescreening to consumers is that prescreening gives them access to credit at lower costs. One reason for the lower costs is that card issuers compete vigorously with one another through the use of prescreening, resulting in lower prices. This benefit of prescreening is fully documented in a case study entitled "The Adverse Impact of Opt-In Privacy Rules on Consumers: A Case Study of Retail Credit" ("Case Study").[3] The Case Study generally notes that through the late 1970s, most credit cardholders acquired their cards through their local financial institutions. Customers in smaller towns therefore had fewer choices than residents in larger cities. By the early 1990s, however, credit card issuers began to use prescreening on a wider national scale to make more competitive offers to more consumers. The Case Study notes that between 1991 and 1992, for example, when prescreening was becoming a more widespread mechanism for acquiring new customers, the proportion of revolving credit card balances in the U.S. being charged an APR greater than 18% "plummeted" from 70% to 44% in just 12 months.[4] It is also noteworthy that in the not-too-distant past, many credit cards carried an annual fee. Competition has made the annual fee a thing of the past for many types of credit cards.

Aside from the obvious benefit to consumers of lower costs, prescreening provides other benefits as well. For example, we understand that accounts obtained through

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[2] Our comments will focus exclusively on the use of prescreening for credit cards. However, the benefits of prescreening would presumably be equally applicable to prescreening for other types of products, such as mortgages or insurance.

[3] The study can be obtained at www.bbbonline.com/UnderstandingPrivacy/library/whitepapers/RetailCreditStudy.pdf.

[4] The Case Study at 10.

prescreening have a loss rate of approximately one-fourth to one-half of those associated with accounts obtained through other means. Furthermore, fraud losses on prescreened accounts are reportedly approximately one-seventh of those associated with accounts obtained through other means. This means that fewer consumers are victimized by identity thieves and other fraudulent operators when prescreening is used as a vehicle to provide them credit.

We also note that prescreening increases the likelihood that consumers will receive offers for which they qualify. As a result, consumers do not receive as many "mass mailings" for products they cannot use.[5]

*Disclosures to Be Included in Written Prescreened Solicitations*

While Congress recognized the significant benefits provided to consumers through prescreening, Congress also specified that consumers should receive certain disclosures with each written prescreened solicitation. Specifically, each written prescreened solicitation must include "a clear and conspicuous statement" that: (i) information contained in the consumer's consumer report was used in connection with the prescreen; (ii) the consumer received the offer of credit because the consumer met the criteria for creditworthiness under which the consumer was selected for the offer; (iii) if applicable, the credit may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer or any applicable criteria bearing on creditworthiness, or does not furnish any required collateral; (iv) the consumer has the right to opt out of the prescreening process; and (v) the consumer may opt out of prescreening by using the system established under other requirements in the FCRA (generally, by calling a toll-free telephone number or writing the appropriate consumer reporting agency) (collectively, "Prescreen Disclosures").

*The FACT Act*

Section 213 of the FACT Act addressed the issue of prescreening in a variety of ways. With respect to improving the Prescreen Disclosures, Section 213(a) states, in relevant part, that the "statement under paragraph (1) [*i.e.*, the Prescreen Disclosures] shall...be presented in such format and in such type size and manner as to be simple and easy to understand, as established by the Commission, by rule, in consultation with the Federal banking agencies and the National Credit Union Administration." It is important to note that the congressional direction to the Commission in Section 213(a) applies to *all* of the Prescreen Disclosures and does not in any way distinguish one element of the

[5] We note that the Federal Reserve Board ("Board") will be releasing a study with respect to prescreening in the near future. We are concerned that the Commission may not have the benefit of the Board's findings for purposes of finalizing the Proposal. We believe the Board's study would be directly relevant to assessing the Proposal's principal focus on the consumer's right and ability to opt out, a focus that is heavier than for any other required disclosure. It is our hope that the Commission will not finalize the Proposal until the Board's study is released and interested parties have sufficient time to provide the Commission with additional comments for the record based on the Board's study. We believe that any slight delay that may result from such an approach would be justified, and we believe the Commission would agree. Indeed, the Proposal appears to have been delayed, at least in part, in order to incorporate the Commission's survey of consumer awareness. We believe the Board's study to be of equal importance.

Prescreen Disclosures from another. This contrasts with other provisions included in Section 213. For example, Section 213(c) focuses solely on the duration of a consumer's choice to opt out. Similarly, Section 213(d) directs the Commission to engage in a public awareness campaign to publicize the right to opt out. In Section 213(e), Congress directed the Board to study a variety of issues relating to prescreening, including the extent to which consumers are opting out of prescreening. Clearly, Congress understood how to single out the prescreening opt out for special treatment. As discussed below, the fact that Congress did so in three subsections of Section 213 but did not in Section 213(a) is significant and highlights the need for revisions to the Proposal.

**The Proposal**

*Definitions*

The Proposal defines "simple and easy to understand" to mean "plain language designed to be understood by ordinary consumers." The Proposal further states that "factors to be considered in determining whether a statement is simple and easy to understand include:" (i) use of clear and concise sentences, paragraphs, and sections; (ii) use of short explanatory sentences; (iii) use of definite, concrete, everyday words; (iv) use of active voice; (v) avoidance of multiple negatives; (vi) avoidance of legal and technical business terminology; (vii) avoidance of explanations that are imprecise and reasonably subject to different interpretations; and (viii) use of language that is not misleading (collectively, "Factors"). However, in the Proposal's Supplementary Information, the Commission states that the "determination of whether a notice meets the 'simple and easy to understand' standard is based on the totality of the disclosure and the manner in which it is presented, not on any single [F]actor."

MasterCard appreciates the Commission's desire to provide assistance in complying with the Proposal. However, we are concerned that the Factors will be used as a checklist for compliance purposes despite the Commission's specific admonition that compliance would not be determined by "any single [F]actor." For example, although the Prescreen Disclosures are not subject to private lawsuits under the FCRA, we are concerned that the class action bar will use the Factors to formulate a cause of action under state law in a manner inconsistent with the Commission's intent. Accordingly, we request that the Factors be excluded from the final rule.

*Layered Notice*

The Proposal envisions a "layered notice" with respect to the Prescreen Disclosures. In particular, the Proposal requires that a prescreened solicitation include a "short notice" on the front side of the first page of the solicitation with a "long notice" included anywhere else in the solicitation. The short notice is limited to a statement informing the consumer of the right to opt out of receiving prescreened solicitations and the toll-free number the consumer can call to opt out ("Opt-Out Disclosures"). The short notice must also direct the consumer to the existence and location of the long notice, including by stating the heading of "OPT-OUT NOTICE" in the disclosure. The short notice must be prominent, clear, and conspicuous in a type size that is larger than the type

size of the "principal" text on the same page, but in no event smaller than 12-point type size. The short notice must be in a format so that the statement is distinct from other text, such as inside a border. The typeface of the short notice must also be distinct from "other" typeface used on the same page, such as through use of bold type.

The long notice must contain the remainder of the Prescreen Disclosures other than the Opt-Out Disclosures ("Remaining Disclosures"), and may not contain any other information that "interferes with, detracts from, contradicts, or otherwise undermines the purpose of the opt-out notices."[6] The long notice must be clear and conspicuous in a type size that is no smaller than the type size of the principal text on the same page, but in no event smaller than 8-point type. The long notice must have the heading "OPT-OUT NOTICE" and be in a typeface that is distinct from other typeface used on the same page. The long notice must also be set apart from other text on the page, such as by including a blank line above and below the statement, and by indenting both the left and right margins.

The approach taken in the Proposal clearly elevates the prescreening opt out to paramount importance among all of the disclosures that must be included with a written prescreened solicitation. For example, under the Proposal, the prescreening opt out is effectively made more important than: (i) the fact that the consumer's credit history was used for the prescreening; (ii) the fact that the offer may be conditioned on certain factors; (iii) the rates that will be charged on the credit card account including any penalty rates; (iv) whether the rate on the account is variable; (v) whether the account has a grace period; and (vi) other information about fees and charges the consumer may incur on the account. There is nothing in the record that even remotely suggests Congress intended such a result.

As noted above, Section 213(a) directs the Commission to develop a rule to ensure that all Prescreen Disclosures are "presented in such format and in such type size and manner as to be simple and easy to understand...." This language seems quite clear on its face—it directs the Commission to engage in a rule making on all of the Prescreen Disclosures and does not distinguish one disclosure from another. Based on the plain language of Section 213(a) it seems impossible to read it as directing the Commission to do what it has done in the Proposal. In this regard, it is difficult to understand how a directive to develop a rule to ensure that all of the Prescreen Disclosures are "presented in such format and in such type size and manner to be simple and easy to understand" can be construed to produce a rule in which a single disclosure is highlighted on the first page in virtually unprecedented fashion and all of the Prescreen Disclosures are renamed "OPT-OUT" disclosures including those disclosures that have nothing to do with opting out.

The approach taken in the Proposal appears to be largely based on the Commission's reading of the heading of Section 213 titled "Enhanced Disclosure of the Means Available to Opt Out of Prescreened Lists." We are unaware of any principle of statutory construction that supports the notion that a heading of a section in a statute can be used to contradict the plain language of the statute itself. In fact, established principles of statutory construction appear to produce the opposite result. Specifically, a section

[6] It is not clear whether the Commission intends to prevent language undermining the disclosure pertaining to opt outs or the Prescreen Disclosures in general.

heading "may not be used as a means of creating an ambiguity when the body of the [section] itself is clear.[7] Stated more simply, the section "title cannot control the plain words of the statute."[8] In addition, it seems unnecessary to refer to the heading of Section 213 to determine the meaning of Section 213(a) when the plain language of Section 213(a) speaks so clearly for itself.

We also note that there are very good reasons for avoiding the arbitrary use of statutory headings when interpreting language that is clear on its face. For example, Section 214 of the FACT Act is entitled "Affiliate Sharing." Based on the principle of statutory construction embodied in the Proposal, Section 214 apparently could be read to mean that disclosures about the sharing of information among affiliates are of paramount importance in implementing Section 214 and the disclosure with respect to the right to opt out of certain types of marketing should be given subordinate status, perhaps relegated to some less prominent position on the disclosure. We do not believe that such a result would be a fair interpretation of Section 214 any more than the Proposal's treatment of the opt-out disclosure is a fair interpretation of Section 213(a).

The Commission also references selected floor statements by minority members of the Senate in formulating the Proposal.[9] Although each of the statements cited by the Commission mentions the opt-out issue, we are aware of nothing in the legislative history that contradicts the plain language of Section 213(a) such that the Commission would conclude that it was directed to elevate the opt-out right above all other disclosures. In addition, the congressional directives contained in other portions of Section 213 make clear that Congress did not intend Section 213(a) to focus on the prescreen opt out. As noted above, subsections (c), (d), and (e) of Section 213 all specifically single out the opt-out provision for special attention. It is highly unlikely that Congress specifically chose language singling out the prescreening opt out in these three subsections, did not use such language in Section 213(a), but somehow intended all four subsections to be construed as focused on the opt out.

We also note that where Congress directed the FTC to focus on the prescreen opt out, the legislative history admonishes the Commission to take a balanced approach. Specifically, the only provision that actually directs the Commission to focus on the prescreening opt out is Section 213(d) which instructs the Commission to, among other things, take measures to increase public awareness regarding the availability of the right to opt out of prescreening. In guiding the Commission with respect to this provision, Representative Bachus, the original sponsor of the FACT Act, stated that the Commission's awareness campaign "is to be designed to increase public awareness, not only of the right to opt out of receiving prescreened solicitations, but also of the benefits and consequences of opting out." Representative Bachus went on to state that "consumers [should] know they can opt out of getting these offers, [but] they should also know that opting out or not affects their chances of getting additional credit offers with competitive terms." 149 Cong. Rec. H12218-19 (daily ed. Nov. 21, 2003). Again, it seems unlikely

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[7] Norman J. Singer, Statutes and Statutory Construction § 47:03 (6th ed. 2000).
[8] *Id.*
[9] See footnote 6 to the Proposal.

that Congress intended the Commission to take a balanced view with respect to the public awareness campaign on opting out, but intended the Commission to disregard any such balance under Section 213(a).

Moreover, the Commission's interpretation of Section 213 appears to be inconsistent with the position taken by the Commission under the federal Gramm-Leach-Bliley Act ("GLBA") with respect to the meaning of "clear and conspicuous." In this regard, by proposing the layered approach, the Commission clearly is attempting to make the opt-out right more noticeable than the other Prescreen Disclosures. The Proposal appears to be based on the assumption that the phrase "simple and easy to understand" has something to do with the degree to which the disclosure is noticeable or designed to call attention to the information contained therein. In a similar context—the GLBA privacy notices—the Commission took the opposite approach, however. Specifically, in defining the term "clear and conspicuous" the Commission took the position that the term had two separate components. The Commission stated that "clear and conspicuous" means that a notice is "reasonably understandable **and** designed to call attention to the nature and significance of the information in the notice." 16 C.F.R. § 313(b)(1) (emphasis added). Thus, in the context of the GLBA, the Commission took the position that the understandability of the disclosure and the question of whether the disclosure was designed to call attention to the nature and significance of the information in it were two separate and distinct issues. Indeed, if the phrase "reasonably understandable" were meant to encompass whether the disclosure was also noticeable or designed to call attention to itself, much of the guidance on "clear and conspicuous" in the FTC's GLBA rule would be superfluous. By taking these inconsistent approaches, the Commission creates uncertainty regarding what the Commission means when it releases regulatory promulgations and other guidance involving similar standards. For example, if "simple and easy to understand" means noticeable or "designed to call attention to itself" in the context of the Proposal but "reasonably understandable" does not in the context of GLBA, the ability of the Commission to communicate its regulatory and enforcement expectations will be undermined.

Finally, the Commission's own study does not appear to support the need for the layered approach. For example, the study seems to demonstrate that the Commission's "improved version" of the prescreened solicitation that does not rely on a layered approach conveys the notion that the consumer could opt out of prescreening virtually as effectively as the layered version.[10] Nonetheless, the Commission suggests that the layered approach is preferable because the study demonstrated that consumers better understand how to opt out of prescreening upon an initial read of the layered notice relative to the improved notice. We do not believe this is the significant finding of the study. Indeed, to the extent the Commission is interested in conveying the substance of the Opt-Out Disclosures, what is most important to convey in the initial reading is that the consumer has the right to opt out of receiving prescreened solicitations. Only if the consumer is interested in opting out does the disclosure for the method of opting out achieve significant importance. Stated

[10] According to the study, approximately 31% of respondents who saw the layered notice said the notice told them they could opt out of prescreening. Approximately 28% of respondents who saw the improved notice said the same thing.

differently, a consumer who is not interested in opting out will have no interest in understanding the mechanism to do so. Assuming the consumer is interested in opting out, the consumer will then take the time to learn how to do so, *i.e.*, the consumer will take the time to read the Prescreen Disclosures. The study best replicates this dynamic by forcing the consumer to read the Prescreen Disclosures. In fact, the study demonstrates that roughly equal numbers of consumers notice their rights to opt out of receiving prescreened solicitations regardless of whether the layered notice or the improved notice is used. Of those equal numbers who know their rights, it must be assumed that the propensity to opt out will be the same among each group of consumers. Of those inclined to opt out, *i.e.*, *those who will then take the time to learn how to do so among the information they had already read to inform them of the right to opt out*, the study demonstrates that the improved notice provides virtually the same results as the layered notice.[11]

In short, the study suggests that equal numbers of consumers understand the right to opt out regardless of whether they received the layered notice or the improved notice. Furthermore, of those who are interested in reading further (or, as measured by the study, those who are forced to read the Prescreen Disclosures), roughly equal numbers understood how to opt out, again regardless of whether the layered notice or the improved notice was provided. It would appear, therefore, that the layered notice provides little to no advantage over the improved notice tested by the Commission.

As part of its discussion in the Supplementary Information, the Commission states that the layered approach "will convey effectively the required information, while at the same time not unnecessarily increasing costs to those making prescreened offers." MasterCard disagrees. The layered notice would be quite costly; it would require each entity that prescreens to completely redesign each of their templates used for written prescreened materials in order to find space for the Opt-Out Disclosures. In addition, we believe the Commission's cost estimate of as little as $110,870 *for the entire industry* to be significantly understated. The Commission estimates that each company that prescreens will need only eight hours of labor to come into compliance with the Proposal. This is unrealistic, especially when many companies have dozens of templates that will need a complete review and redesign. It is our understanding that the Proposal would cost millions of dollars simply from that perspective without including the costs associated with a reduction in the viability of prescreening as more consumers opt out. Use of the improved notice, on the other hand, would require less drastic adjustments to the existing disclosures provided in prescreen solicitations and involve lower cost increases than the layered approach.

*Recommendation to Use the Improved Notice*

MasterCard strongly urges the Commission to revise the Proposal to require written prescreened solicitations to include the Prescreen Disclosures in the general manner represented in the "improved notice" tested by the Commission in its study. Use of the improved notice instead of the layered notice is desirable for several reasons. First, the

[11] The study found that, after a forced reading, 57% of consumers knew they could call a toll-free number to opt out. The results were only slightly higher, less than 65%, for the layered notice.

improved notice does not result in the Prescreen Disclosures, or the Opt-Out Disclosures, gaining unwarranted prominence over other federally mandated disclosures. We believe the improved notice is more consistent with congressional expectations and intent and reduces the likelihood that the opt-out disclosure will be presented in a way that detracts from other disclosures. Second, the improved notice appears to be as effective as the layered notice in conveying the ability to opt out to the consumer. Third, for those interested in opting out, the improved notice appears to be as effective as the layered notice with respect to informing the consumer how to opt out of prescreening. Fourth, the improved notice would be less costly to implement.

*Format for Improved Notice*

The Proposal's requirements with respect to the long notice would form the crux of the requirements for implementing the improved notice. In this regard, the improved notice should be a simple and easy to understand statement that includes the information required by Section 615(d) of the FCRA. The Proposal indicates that the long notice may not include "any other information that interferes with, detracts from, contradicts, or otherwise undermines the purpose of the [Opt-Out Disclosures]." The Proposal includes model notices for the long notice. We applaud the Commission for developing model notices that are relatively concise, straightforward, and easy to understand. We urge the Commission to retain the bulk of the model notices in the final rule. However, the model notices use a heading of "OPT-OUT NOTICE." We believe it would be more appropriate to describe the disclosures more fully and accurately by using a heading of "PRESCREEN DISCLOSURES." Furthermore, the Commission elaborates in the Supplementary Information that using the following sentences, in addition to use of the model notices, would "likely comply" with the Proposal: (i) "Offers like these may be useful in comparing terms and benefits of various credit offers."; (ii) "If you call or write [to opt out], 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 (iii) "Please note: Even if you choose not to receive prescreened offers of credit, you still may get other credit offers.". We strongly urge the Commission to include this language as part of the model notices themselves. The Commission itself tested this language in the study, and there is no evidence that it detracts from the Prescreen Disclosures. Entities that prescreen should have the option to include this language without fear of being challenged on compliance grounds. Indeed, we believe it is important and beneficial for consumers to understand, at least at a general level, that there are benefits to prescreening before opting out and that opting out will not eliminate all offers of credit to the consumer. We also believe that consumers should be told about the need to provide a Social Security Number to opt out so they can expect it as part of the normal process of opting out.

The improved notice should also: (i) be clear and conspicuous; (ii) appear in the solicitation; and (iii) be in a type size of the principal text on the same page. MasterCard appreciates the flexibility to include the long notice anywhere in the solicitation (so long as it is clear and conspicuous), and we urge the Commission to retain this flexibility for the improved notice. Furthermore, if the Commission chooses to use the improved notice instead of the layered notice, we concur with the Proposal's requirement to use a typeface

that is distinct from other typeface used on the same page and to set the Prescreen Disclosures apart from other text on the page. However, we ask the Commission to clarify that the typeface should be distinct from the *principal* typeface used on the same page. Simply because a small portion of text on the page is in bold, or underlined, or is otherwise in a different typeface, should not preclude the improved notice from being presented in such typeface, so long as the manner is distinct from the principal typeface used on the page.

*Suggested Modifications to Short Notice/Opt Out Disclosures*

Although MasterCard strongly recommends that the Commission abandon the layered notice in favor of the improved notice, we offer comments on the short notice in the event the Commission retains the approach provided in the Proposal. In particular, we believe the short notice should direct consumers to *all* of the Prescreen Disclosures. As noted above, the statute appears to grant equal weight to each of the Prescreen Disclosures, suggesting equal importance. However, as drafted, we believe many consumers may act upon the Opt-Out Disclosures without feeling the need to review the Remaining Disclosures. This would be a rational outcome as many consumers may assume that the Opt-Out Disclosures would not contain an "action item" (*i.e.*, call the toll-free number) if there was other important information to consider before taking the recommended action.[12] We believe there is neither statutory nor legislative history supporting such an outcome.

If the layered notice is kept, we recommend revising the short notice in a manner that encourages consumers to view all of the Prescreen Disclosures. For example, the short notice should be revised to read: "Please see our PRESCREEN NOTICE [specify location of notice] to receive important disclosures about 'prescreened' offers of [credit or insurance] and your rights." ("Revised Short Notice"). As drafted, the Revised Short Notice conveys to the consumer the importance of *all* of the Prescreen Disclosures and directs the consumer where to find the Prescreen Disclosures. We believe this is the most appropriate approach, and if such an approach is taken, we would concur with the Commission's view that the Revised Short Notice should not contain any additional information. If the Commission decides to retain the layered notice and not use the Revised Short Notice, at the very least the model notices for the short notice should not use language suggesting some nefarious purpose behind prescreening. The model notices begin with "To stop receiving 'prescreened' offers...," implying that the consumer should have an obvious interest in no longer receiving prescreened solicitations. We believe the language should be revised, *at a minimum*, to state "If you are interested in no longer receiving 'prescreened' offers..."

[12] It cannot be denied that informing the consumer to call the toll-free number in a manner that is more prominent than the solicitation itself is an implied recommendation to call the toll-free number. The Commission does not address this in its Supplementary Information, and indeed such a recommendation would appear to conflict with the Commission's mission to foster competitive markets. It was also our understanding that the Commission understood the benefits of prescreening, which makes the Proposal all the more difficult to comprehend. Indeed, the short notice provided in the model notices calls to mind the cigarette label warning, suggesting that prescreening harms consumers. We question the wisdom of providing a government-required implied recommendation to opt out of prescreening in light of its demonstrated benefits.

With respect to the format of the short notice, we understand the need to make the disclosure clear and conspicuous. However, we do not believe that the short notice should be more prominent than the principal text of the solicitation itself. We request the Commission to amend the Proposal to require only that the notice be clear and conspicuous and on the front side of the first page of the principal promotional document in the solicitation (or, if provided electronically, on the first screen). We believe this approach would meet the Commission's apparent objective of stressing to the consumer the presence of the Prescreen Disclosures elsewhere in the solicitation without giving undue weight to the Prescreen Disclosures relative to other disclosures or the solicitation itself. It would also be less costly to implement the layered approach if the short notice did not need to meet each of the requirements listed in the Proposal.

*Effective Date*

The Proposal indicates that the final rule would be effective 60 days after it is published. MasterCard believes that this timeframe is insufficient for card issuers to redesign completely the templates used for written prescreened solicitations, as would be required by the Proposal. Furthermore, once the templates are redesigned, there must be adequate lead time to have the written solicitations printed and mailed. Although the process used by each credit card issuer will obviously vary, we understand that card issuers will need a minimum of 9 months to implement the changes required by the Proposal. We therefore request the Commission to adjust the effective date accordingly.

*Model Notices*

The Proposal includes model notices for use by those making prescreened solicitations. Although the Proposal does not provide for an explicit safe harbor, the Commission indicates in the Supplementary Information that it "considers the model notices compliant with the statutory requirements, as well as with the requirements of the [Proposal]." We applaud the Commission for including model notices in the Proposal, and we ask that the Commission provide similar model notices in the final rule. However, we request that the Commission provide an explicit safe harbor in the text of the final rule itself stating that compliance with the model notices, to the extent applicable, constitutes compliance with the final rule. This would essentially codify the Commission's stated intent while providing for similar enforcement by other enforcement agencies. We also understand that the Commission intends for the model notices to be optional. However, the Proposal states that the model notices "demonstrate more clearly proper format, manner, and type size of" the required disclosures. We urge the Commission to clarify that the use of a box around the short notice, the use of bold typeface, etc., as used in the model notices, are not the only ways to provide the disclosures in the "proper format, manner, and type size." We fear that others may inappropriately use the Proposal's text to argue otherwise.

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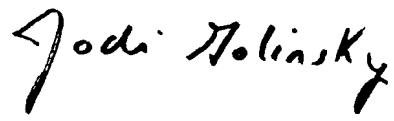
Once again, MasterCard appreciates the opportunity to comment on the Proposal. If you have any questions concerning the comments contained in this letter, or if MasterCard may otherwise be of assistance in connection with this issue, please do not hesitate to call me, at the number indicated above, or Michael F. McEneney at Sidley Austin Brown & Wood LLP, at (202) 736-8368, our counsel in connection with this matter.

Sincerely,



Jodi Golinsky
Vice President &
Senior Regulatory Counsel

cc: Michael F. McEneney, Esq.