THE FINANCIAL SERVICES ROUNDTABLE 

G.L.B. Act Notice Workshop – Comment PO14814

Prepared Testimony of
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INTRODUCTION

My name is Steve Bartlett, president of The Financial Services Roundtable. The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO.

I have two points to make: (1) a short form privacy notice developed by the FTC and the federal financial regulators would be helpful to our customers; and (2) we applaud the consistency of the regulations from the separate agencies and note that state privacy laws must be uniform and reflect that same consistency.

This Workshop, initiated by the federal financial regulatory agencies, is timely and necessary as a continuing effort by all affected parties to develop a privacy notice that best serves our customers. We urge the agencies, consumers and industry to work on this project together, noting that whatever the outcome, it will require plenty of thought and time for implementation. The agencies should include the National Association of Insurance Commissioners in discussions on this issue.

PROPOSED POLICY CHANGES

The Financial Services Roundtable supports three proactive policy changes that we believe are needed in connection with the subject of this workshop.

A) *Allow the industry to issue a short form notice to customers – with appropriate protections – on a broader basis.*

B) *Apply commonsense remedies to avoid harmful application of inconsistent state privacy laws.*

C) *Elevate the problem of identity theft as a stand-alone issue, separate from the core privacy discussion.*

EXPLANATION

The first change will allow the industry to issue, on a more limited basis, a short form notice to customers. If legislation or regulatory changes are necessary to accomplish this, it's worth it. We believe customers should have adequate notices and the opportunity to choose to opt-out of information sharing with third parties. My view, while maybe not widely shared by all parties, is that the FTC is the appropriate lead agency because the issues involved are primarily about deceptive trade practices.

The second proactive policy change is federal preemption of inconsistent state privacy laws. The Fair Credit Reporting Act and the Gramm-Leach-Bliley Act provide a national standard for the protection of a consumer's financial information and for the provision of valuable and tangible benefits for consumers. A permanent federal preemption for both laws is of critical importance to consumers, lenders and the entire financial services industry.

There is no question that multiple, additional state restrictions will be chaotic for consumers. The California legislature recently came very close to creating havoc for consumers in that state. The bill, SB 773, would have almost forced a consumer to op-out of information sharing with affiliates, thus placing unsuspecting consumers at a real risk of loss and the job of gathering important information about criminal activity more difficult for the government.

The third policy change elevates the issue of identity theft, a very real problem that deserves scrutiny and action as a stand-alone issue of concern. Discussion of how institutions share information is often blurred when identity theft is injected into the process. Identity theft, while a huge issue of concern to both the financial service providers and their customers, is an issue of criminal conduct on the part of an individual or individuals and has little to do with the core privacy issue before the gathering today.

Financial services firms recognize identity theft as an intensely personal problem for consumers because of the time, effort and cost of trying to reclaim one's identity after it has been stolen. While, it is clear that not all identity theft problems are within the financial service industry's purview, the industry has responded in many ways. Information brochures are made available for customers, we have lent our support to the FTC Identity Theft Hotline, the issue has been highlighted in public advertising and brochures, and appropriate industry personnel work on an ongoing basis to share information and best practices on ways to prevent it.

The agencies and industry together need to elevate the priority of this issue. Indeed, the Roundtable is holding meetings with high level law enforcement government personnel to discuss ways to help law enforcement to prevent identity theft and to help the industry find ways to both prevent and mitigate the effects of the crime of identity theft. ID theft is of increasing concern and, in answering the question of where we go from here, we must adopt new solutions to solve this growing criminal problem.

PRIVACY NOTICES

On July 1, 2001, we completed a mailing of more than 600 million privacy notices to our customers and former customers pursuant to the implementation of Title V of the Gramm-Leach-Bliley Act. The industry was able to meet the privacy provisions of that Act because most of the nation's financial firms determined long ago that the protection of our customer's personal information was important and helpful to the industry. However, it has become clear that a more user-friendly privacy notice would produce still greater consumer benefit and increase the level of trust between institutions and customers.

Therefore, just as the industry and regulators worked together to implement Gramm-Leach-Bliley with positive results for all, we believe that same spirit of cooperation and good intentions can produce a notice that is just as effective and simpler for the consumer to understand.

The challenge remains, however, on how to create a simple, easy to understand privacy notice while at the same time allowing for competitive differentiation.

THE REALITY OF THE MARKETPLACE

Some 600 million privacy notices later, the question is where are we now and what should happen next?

We at the Roundtable believe that the regulators should take a proactive leadership role on this issue and, working with the industry, initiate a simpler set of requirements for customer notification. The regulators should prepare a one page short form for the majority of those consumers who were provided the long form last year. Each consumer should have easy access through facilities such as a toll free number, or internet request to obtain the long version. Make no mistake, the only way model language can work, whether in the long version or short form, is with a safe harbor from the threat of litigation. In many ways consumers are ahead of their political leaders in this area. Consumers increasingly understand the benefits of their institution's ability to manage information on behalf of their customers.

The Roundtable recently commissioned Ernst & Young to survey companies to substantiate the benefits that customers receive from the management of their information by financial firms. The Ernst & Young survey shows that customers of our member companies are estimated to save $195 per year per household or $17 billion for all Roundtable member company customers as a result of information sharing within the firm and with outside contractors. In addition, the survey demonstrates that customers of Roundtable member companies save 320 million hours per year or 4 hours per household. Tech-savvy internet consumers save an additional 3 hours a year. These savings are from, among other things, discounts, relationship pricing, targeted offers of financial products, and conveniences, such as ATM machines. Information sharing is critical to the fraud protection that customers receive.

That these benefits are real and dramatic is supported by the focus groups conducted that validated the survey results. Although a meaningful explanation is required, customers fully grasp the benefits they receive.

THE CASE FOR PREEMPTION

It is critically important to recognize that gains are jeopardized by the chaos that multiple state laws, by each trying to control the flow of information within their borders, would cause. Make no mistake; most of the so-called privacy laws proposed at the state level are actually restrictions on the flow of electronic information, with a privacy title attached. Regardless of how one feels about any of these restrictions, electronic information does recognize lines drawn on a map.

It is noteworthy that several states, notably California, are actively engaged in attempting to enact state laws restricting the flow of electronic information. Such restrictions would, de facto, become national law, imposed by individual state legislatures, but never considered by the national government. The California bill would permit customers to opt-out of affiliate sharing of information with some exceptions, and the penalties are harsh and vague, among other serious difficulties created by the bill. Although apparently well-intentioned, the practical effect could easily be that customers who opt-out are denied some pretty basic protections and that companies because of penalties involved for a mistake, choose to restrict the sharing of important information, particularly with tellers who are often the front-line defense against criminal activity.

Creating an exception for fraud is a nice sounding response, but unfortunately fails the reality of the marketplace "test." The California bill is anti-consumer in many respects, but principally unworkable as one state legislature imposes its will on the other 49 states. So, where we go from here should include decisions that are determined by the US Congress and the federal agencies.

Let me relate a brief, but actual, example of the dangers of allowing states unilateral action in this complex area. A few months ago a woman walked into a bank in a Midwest state and tried to withdraw money from an account in a related bank in California. As proof of identity, she produced a California driver's license, a credit card and the account number for a banking customer in California. This was not a legitimate transaction. It was fraud. The teller caught it right away because she could look at all the customer's information that the bank in California maintained on this account. She could see that the California account holder had a 1934 birth date but the young woman standing in front of the teller appeared to be in her twenties.

The teller's ability to detect fraud saved the customer, the Bank—and indeed, all customers of the bank—thousands of dollars—and prevented a highly organized, sophisticated theft ring from committing more costly fraud in the future. The key to the Bank's success in this case was its ability to identify, track and easily retrieve transaction information. If, for instance, the account owner had opted-out under the California bill, the teller would not have been able to crack the ID theft ring and all customers of the California bank would have difficulty doing business at the Bank's affiliate located in other states. Penalties for the inadvertently improper

use of information would have the effect, no doubt unintended by the sponsor of the California bill, of causing the Bank to restrict the flow of information for all customers rather than risk sanctions.

It is widely expected by all observers that California will indeed enact such damaging restrictions, intending of course to accomplish just the opposite. The fact that the debate in the state legislature got as far as it has should be frightening to us all. The FTC should support federal legislative efforts to preempt state privacy laws.

FAIR CREDIT REPORTING ACT

One last issue to consider is the Fair Credit Reporting Act. It is acknowledged by all quarters as a most important force in providing the democratization of credit for the benefit of all consumers. At its heart is a limited, but critically important federal preemption so that a lender anywhere in the nation has an accurate and reliably transparent view of a consumers credit history. This transparency and reliability means that a consumer can obtain credit he or she has earned by his or her actions and behavior. In 2004, the federal preemption allowing the sharing among affiliates of transactional information, and which assures a national uniform standard, expires. The preemption of state law should be extended in order to assure the continued certainty of uniformity.

CLOSING

Thank you for the opportunity to share our views and these policy actions as recommended by The Financial Service Roundtable.