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

Re: FACTA Prescreen Rule, Project No. R411010

To Whom It May Concern:

JPMorgan Chase Bank and Bank One, N.A. and their affiliated companies, including, but not limited to, Chase Manhattan Bank USA, N.A., Chase Manhattan Mortgage Corporation, Chase Insurance Agency, Bank One Trust Company, N.A., and Banc One Insurance Agency, Inc. (collectively referred to as "JPMC") welcome the opportunity to comment on the above referenced notice of Proposed Rule (the "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").

JPMorgan Chase & Co. is a leading global financial services firm with assets of $1.1 trillion and operations in more than 50 countries. The firm is a leader in investment banking, financial services for consumers and businesses, financial transaction processing, asset and wealth management, and private equity. The U.S. consumer and commercial banking businesses currently operate under the Chase and Bank One brands. These businesses include retail banking, credit card, home and auto finance, insurance, small business, middle market and mid-corporate banking. Once the merger of the Chase and Bank One businesses are complete, the Chase brand will be used to serve 850,000 small businesses and 31,000 commercial businesses through 2,300 branches in 17 states. It also will service 87 million credit cards.

I. BACKGROUND

Section 213 of the Fact Act requires that the opt-out disclosure which federal law mandates be included in prescreened solicitations: 1) include the address and toll-free number by which the consumer can opt out of receiving future such solicitations; and 2) be presented in a format, type size and manner that is simple and easy to understand. Section 213 also charges the FTC, in consultation with other Federal Banking Agencies and the National Credit Union, with providing regulatory guidance concerning the format of the disclosure within one year of the Fact Act's enactment.

JPMC commends the FTC for its efforts in attempting to draft a prescreening disclosure which is simple and easy to understand. However, JPMC cannot support the "layered" notice approach contained in the Proposed Rule because the short notice is so prominent in appearance that it will distract consumers from other important and required disclosures, such as the basic terms of the account. Moreover, the Proposed Rule's prohibition on informing consumers of the many benefits of receiving prescreened offers of credit in the short notice deprives consumers of the ability to make an informed choice on whether to opt out. For those reasons, JPMC asks the FTC not to adopt the Proposed Rule. In its stead, JPMC suggests that the FTC promulgate a single notice which contains more balanced information concerning the consumer's opt out rights and that the notice be placed, where possible, with the other disclosures federal law requires in prescreened solicitations.

Additionally, and regardless of the disclosure's ultimate form, the FTC's Final Rule should not become effective until at least 180 days after adoption. The FTC's Proposed Rule significantly understates the costs associated with switching to a new prescreening disclosure. Giving entities this time will provide some relief by allowing them to use up much of their current inventories of solicitations and also to make the system changes which will be required to comply with the Proposed Rule in an orderly manner.

II. THE OPT OUT NOTICES DO NOT EFFECTUATE CONGRESSIONAL INTENT

Section 213 of the Fact Act amends the Fair Credit Reporting Act to require that the statement required by Section 615(d) of that act, which already must be clear and conspicuous, also be simple and easy to understand. In developing the notices contained in the Proposed Rule, the FTC interprets the simple and easy to understand standard not just as meaning how well the language used conveys the intended message to the consumer but as also including a requirement that the notice itself be prominent so as to call itself to the consumer's attention. As a result, the Proposed Rule adopts a "layered" approach which requires that a short opt-out notice containing only information on how consumers can opt out of receiving future prescreened solicitations be placed on the primary page of solicitation, visually set off by itself and printed in a larger size and bolder typeface than any other information in the solicitation. The Proposed Rule then requires a second longer notice giving more details on prescreened offers within the body of the solicitation.

Were the opt out notice the only disclosure which Congress thought important enough to be presented to consumers in a clear and conspicuous manner, the prominence of the Proposed Rule's notices might make sense. However, there are other disclosures, such as the offer's account terms, which Congress also mandated should be disclosed in a clear and conspicuous manner. Since the natural effect of the supersized short notice is to convey the impression that the method by which the consumer can opt out of receiving prescreened offers is the most important message for the consumer to understand, the Proposed Rule essentially represents a policy decision by the FTC that the prescreened disclosure is the most important disclosure. Yet, nothing in the Fact Act states, or even infers, that Congress thought that the prescreened opt out notice was the most important disclosure in a prescreened solicitation, and so should be more prominently disclosed than the offer's terms. The Proposed Rule's layered notice approach is, thus, inconsistent with what Congress directed the FTC to do in Section 213.

III. THE PROPOSED RULE DEPRIVES CONSUMERS OF INFORMATION NEEDED TO MAKE AN INFORMED CHOICE

Under the Proposed Rule, the short notice contains only the basic contact information which consumers can use to opt out of prescreened solicitations. The Proposed Rule forbids the addition of any information informing consumers why they might not want to opt out. The practical effect of this constrained short notice is to encourage consumers to make hasty and ill-informed decisions to opt out. The Proposed Rule then is affirmatively harmful to consumers because it discourages them from learning about the many benefits to prescreened solicitations.

Prescreened solicitations allow consumers to easily compare offers among competitors. By doing so, prescreened solicitations also ensure robust competition in the marketplace as well. Further, credit profiles are dynamic and consumers who are relatively new to the credit system, or whose credit has been impaired, may see their profiles improve if they responsibly pay their bills and the receipt of prescreened offers allows consumers to take advantage of their improved credit profiles. Without prescreened solicitations, consumers may be unaware of products with better credit terms or products that better suit their needs.

It is important that consumers understand the potential benefits of prescreened solicitations before opting out. The short notice in the Proposed Rule discourages that. The FTC should issue a Final rule which provides consumers with more balanced information with which to make their choice.

IV. JPMC'S RECOMMENDATION

Consistent with Congress' intent that the prescreening disclosure be simple and easy to understand, JPMC recommends that the Final Rule embody a single notice consisting of a plain statement giving consumers directions on how to opt out as well as information designed to inform consumers of the various factors one might consider when deciding whether to exercise the right to opt-out. Further, JPMC recommends that this notice appear, where possible, with the other important disclosures which Congress has mandated also be disclosed in a clear and conspicuous manner in a solicitation, such as with the account's terms and conditions, and in the same font size, type face and ink color as these other required disclosures. JPMC's recommendation is similar to the disclosure contained in Version #2 of the FTC's study (the "Improved Version") although without the change in ink color and box indentation. In making this recommendation, JPMC notes that the FTC concluded that there was only a 2% difference in consumers' retention of their opt-out rights between its layered approach and the Improved Version and that there was some evidence that the Improved Version may be more effective in communicating the benefits of continuing to receive offers. In light of the fact that the FTC's own research demonstrates that the Improved Version presents consumers with a more balanced disclosure, and also because a single such notice does not obscure other equally as important disclosures, JPMC's recommended approach better effectuates Congressional intent than the layered notice.

V. THE FINAL RULE SHOULD ALLOW A REASONABLE TIME FOR COMPLIANCE

The FTC estimates that the cost for each affected firm to comply with the Proposed Rule will be between $110,000 and $167,000. The Proposed Rule also provides that it becomes effective within 60 days of adoption. This cost estimate is unrealistically low. If the Proposed Rule is adopted in its present form, JPMC will have to use larger paper than it now does on prescreened solicitations due to the size and location of the short notice. JPMC expects to send out well over one billion prescreened solicitations in 2005 and the incremental printing and lettershop expenses alone to comply with the Proposed Rule will cost over seven million dollars ($7,000,000). Moreover, given the many lines of business which use prescreened solicitations in volume, such as insurance, home equity and credit card, and given that, by their very nature, these prescreened offers are tailored to the consumer's credit profile, an estimate of eight hours to revise and reformat the solicitations is far too low.

JPMC believes that the high cost of compliance with the Proposed Rule militates in favor of amending it. However, whatever the form of the Final Rule, the FTC should allow entities a sufficient period, at least 180 days, to use up their existing stock of prescreened offers and to make the system changes necessary to generate modified prescreen disclosures in an orderly manner.

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JPMC appreciates the opportunity to comment on this Proposed Rule regarding prescreened solicitations. If you have any questions or comments on this matter, please do not hesitate to contact me directly at (302) 282-6670.

Sincerely,

John C. Simons