

UPDATE

News of Developments in the Financial Sector and Related Areas

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Financial Privacy Guidance

The Federal Trade Commission ("FTC") has issued guidance to help financial institutions under its jurisdiction comply with the agency's consumer privacy regulations. The entities covered by the regulations of the FTC include, but are not limited to, mortgage lenders, finance companies, mortgage brokers, non-bank lenders, account servicers, check cashers, wire transferors, travel agencies operated in connection with financial services, collection agencies, credit counselors, financial advisors, and tax preparation firms. The regulations of the FTC implement the privacy provisions of the Gramm-Leach-Bliley Act of 1999 and are substantially similar to that of other federal agencies. The guidance issued by the FTC provides answers to "Frequently Asked Questions" ("FAQs") covering various aspects of the privacy rules, including:

- which entities are covered by the privacy rules;
- when financial institutions must deliver privacy and opt-out notices;
- what limits apply to the use and disclosure of customer information received from an unrelated financial

institution;

- what limits apply to the disclosure of customer account numbers; and
- how to comply with the exception for disclosures under joint marketing arrangements with an unrelated financial institution.

The FTC privacy regulations govern the circumstances under which a financial institution must provide a consumer with a notice explaining the institution's privacy policies and practices and provide a consumer with a reasonable opportunity to prevent, or "opt-out" of, disclosures of certain information to nonaffiliated third parties. The FTC will post the FAQs and answers on its web site at <http://www.ftc.gov/privacy/glbact/index.html>. The Office of the Comptroller of the Currency ("OCC") has issued a new *Privacy Rule Small Bank Compliance Guide* including questions and answers on complying with privacy regulations that is available on the web site of the OCC at <http://www.occ.treas.gov>. The compliance guide of the OCC includes a summary of its version of the privacy rules and a privacy preparedness checklist.

SEC Rule Defining "Qualified Purchaser"

The Securities and Exchange Commission ("SEC") in its Release No. 33-8041 has issued a proposed rule for comment defining the term "qualified purchaser" under the Securities Act of 1933 ("1933 Act") to implement a provision of the National Securities Markets Improvement Act of 1996 ("NSMIA"). The proposed definition mirrors the definition of accredited investor under Regulation D of the 1933 Act. The new

qualified purchaser definition identifies the well-established categories of persons to be financially sophisticated and therefore not in need of the protection of state registration when they are offered or sold securities. The SEC believes that the proposed rule should facilitate capital formation, especially for small businesses. With the passage of NSMIA, Congress realigned the federal and state regulatory partnership governing registration of securities offerings, thus changing the dual system of securities offering registration that had prevailed in this country since the 1930s. While the SEC retains authority to require that securities offerings be registered, the states may not require registration of offerings involving "covered securities". Section 18 of the 1933 Act now specifies the classes of covered securities:

- securities that are listed on the New York Stock Exchange, American Stock Exchange or NASDAQ national market system;
- securities issued by an investment company registered under the Investment Company Act of 1940;
- most exempt securities listed in Section 3(a) of the 1933 Act;
- securities issued in exempt transactions under Section 4(1) or (3) of the 1933 Act where the issuer files reports under the Securities Exchange Act of 1934;
- securities issued in exempt transactions under Section 4(4) of the 1933 Act;
- securities issued in exempt offerings under Rule 506 of Regulation D; and
- any security offered or sold to a "qualified purchaser".

The proposed rule may be accessed on the

web site of the SEC at <http://www.sec.gov>.

Check Truncation Act

The staff of the Federal Reserve Board is developing a draft law known as the Check Truncation Act (the "Act"), which would remove certain legal impediments to check truncation. The Federal Reserve Board believes that removing these legal impediments would facilitate the use of electronics to truncate checks in the collection or return process and would lead to overall payment system improvements. The proposed Act was drafted in accordance with five guiding principles. First, the proposed law should improve the overall efficiency of the nation's payment system. Second, laws should foster innovation without mandating the receipt of checks in electronic form, significant operational changes, or specific technical solutions or operational processes. Third, the law should ensure that a bank and its customers would be in the equivalent legal and practical position regardless of whether or not they received the original check. Fourth, the burdens associated with the law should not outweigh the associated benefits for either banks in the aggregate or their customers in the aggregate. Lastly, the law should provide that banks that chose to convert a check to, or receive a check in, electronic form should internalize to the extent practical, the cost and risk related to the creation of the substitute check, as they receive most of the associated benefits. The primary benefit associated with the Act is that it should result in the faster collection and return of checks. Recent data collected by the Federal Reserve Board suggests check writing in the United States is steadily giving way to electronic forms of payment as consumers, businesses and financial institutions seek to be more efficient and cost-effective. The Act has not been introduced in Congress. The Act is available on the web site of the Federal Reserve Board at www.federalreserve.gov.