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March 26, 2004

Via Electronic Mail

Ms. Jennifer J. Johnson
Secretary of the Board
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1173, Alternative Forms of Privacy Notices

Federal Trade Commission
Office of the Secretary, Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Alternative Forms of Privacy Notices, Project No. P034815

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Executive Secretary Section
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: Alternative Forms of Privacy Notices

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552

Attention: No. 2003-62, Alternative Forms of Privacy Notices

Public Information Room
Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 1-5
Washington, D.C. 20219

Attention: Docket No. 03-27, Alternative Forms of Privacy Notices

101 CONSTITUTION AVENUE, NW, Suite 700, WASHINGTON, DC 20001-2133
Telephone: (202) 624-2184 Facsimile: (202) 572-4808

Ms. Becky Baker
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: Alternative Forms of Privacy Notices

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549-0609

Re: File No. S7-30-03, Alternative Forms of Privacy Notices

Ms. Jean A. Webb
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Alternative Forms of Privacy Notices

Ladies and Gentlemen:

These comments are submitted on behalf of the American Council of Life Insurers ("ACLI") in connection with the advance notice of proposed rulemaking ("ANPR") requesting comment on whether the Agencies should consider amending the regulations implementing sections 502 and 503 of the Gramm-Leach-Bliley Act ("GLB Act") to allow or require financial institutions to provide alternative forms of privacy notices. The ACLI is the principal trade association of life insurance companies whose 368 member companies account for 71 percent of the assets of legal reserve life insurance companies in the United States, 69 percent of life insurance premiums and 76 percent of annuity considerations. ACLI members are also major participants in the pension, long term care insurance, disability income insurance and reinsurance markets.

As insurers, ACLI member companies are not directly subject to the Agencies' current regulations implementing the GLB Act nor will they be directly subject to any modification to these regulations. However, any changes in the federal rules relating to the GLB Act notices will affect insurance companies individually, their holding companies, their affiliates, and their customers. Accordingly, ACLI member companies have a significant interest in the ANPR and appreciate the Agencies' consideration of their views.

For the reasons set forth below, the ACLI believes that modifications to the GLB Act notices or to the federal rules that govern the notices is a project best undertaken after completion of the rulemakings required by the Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159 ("FACT Act"), particularly after the rulemaking to implement the new notice requirements imposed under FACT Act

§214 is completed. Therefore, although the ACLI has comments on the various questions and alternative types of notices described in the ANPR, we do not include those comments in this letter because we believe that such commentary is premature at this time. The ACLI would like to be clear: ACLI member companies believe that giving financial institutions the ability to make GLB Act notices easier for consumers to read and use is a laudable long term goal. However, in our view, the complexity and far-reaching implications of such a project favor addressing it after resolution of the FACT Act issues.

INSURERS AND THE STATES

The GLB Act provides that enforcement and regulatory authority of the privacy provisions is vested in the state insurance authorities. 15 U.S.C. § 6805(a). Because the state insurance regulatory system required each state to consider legislation or rules, it has taken more than four years for the states to adopt guidance for insurers to implement the current GLB Act privacy requirements. Most of these state requirements are based on the Model Privacy of Consumer Financial and Health Information Regulation adopted by the National Association of Insurance Commissioners (the "NAIC Model Regulation").

The National Association of Insurance Commissioners ("NAIC") used the Agencies' work product to develop a model regulation intended to apply to the financial institutions subject to their jurisdiction. The obvious need for conformity of all notice requirements necessitated that the NAIC defer its rulemaking process until completion of the federal rules. In practice, development of NAIC model regulations is generally similar to federal rulemaking processes in that proposed rule language is published, a comment period is provided, and ultimately a final model regulation is adopted. Yet the NAIC has no statutory authority to mandate that individual states adopt any of its model regulations. Each state insurance regulator is free to promulgate the NAIC approved language pursuant to its respective rulemaking authority, or, significantly, to promulgate different language or none at all.

The NAIC adopted Model # 672, Privacy of Consumer Financial and Health Information Regulation, in October, 2000. At that time, the NAIC Model Regulation became available to the state functional regulators for their use in promulgating their own regulations, the processes for which are also generally similar to the federal rulemaking processes, or for use in developing legislative language. The states then commenced efforts to develop and adopt the implementing rules and statutes. At this writing, Alaska is finalizing its GLB Act regulation.

In some states that chose or were required to pursue the legislative track for GLB Act implementation, the process proved difficult and time consuming. For example, Oregon's legislature meets biennially. The Oregon process for bill introduction requires legislative language to be in virtually final form the year before the legislative session commences. In 2000, the Oregon Insurance Department began work to integrate the GLB Act notice requirements into its state insurance code (which already contained other privacy notice requirements). In 2001, the legislature adopted the recommended modifications to its code. Despite the best efforts of a very efficient regulator, assisted by extremely able counsel, the resulting law had significant flaws. Revisions to the law were prepared in 2002, and in 2003, they were enacted into law when the legislature was again in session. Thus, integrating GLB Act privacy requirements into law in Oregon took four years. Although most state legislatures meet annually, other states that have implemented GLB Act notice requirements legislatively also have biennial legislative sessions.

It is also noteworthy that there is no assurance that all (or even most of) the states will change their notice requirements to conform with any modifications to the federal requirements and that state legislative and regulatory processes do not necessarily yield uniform results nationally. Despite industry

efforts to obtain GLB Act privacy laws and regulations that were uniform with the federal rules and from state to state, current requirements of some states deviate from the federal rules and the NAIC Model Regulation. For example, the Vermont requirements, that were the subject of recent litigation, differ in significant ways that impact the GLB Act notices used in that state. ACLI member companies that do business across the country have gone to great lengths to assure that they meet the current GLB Act requirements for all the states in which they do business, particularly the notice requirements.

IMPACT OF MODIFIED FEDERAL GLB ACT NOTICE STANDARDS

Given the current state insurance regulatory system, without parallel change in the state GLB Act notice requirements, insurers' ability to conform their notices to reflect modified federal standards, applicable to federally regulated financial institutions, would be limited or nonexistent. The ACLI understands the Agencies' desire to address public concern regarding the complexity of current notices. At the same time, ACLI member companies believe that Agency action to modify the federal GLB Act notices or the federal rules governing these notices prior to completion of the FACT Act rulemakings, particularly the FACT Act § 214 rulemaking, may engender even higher levels of consumer confusion and concern.

In fact, if the federal standards were to change at this time, multiple different GLB Act notices probably would be required in connection with the same product. For example, in the case of variable life insurance and variable annuity products, Securities and Exchange Commission ("SEC") Regulation S-P and the applicable state insurance law or regulation now apply. Since the current requirements of Regulation S-P and the vast majority of the state laws and regulations are at least operationally uniform, the same form may be used by a single issuer to fulfill both the federal and the state notice requirements. By contrast, modification of the federal notice rules, without a similar change in state requirements, would likely require a single issuer to provide separate, different Regulation S-P and insurance GLB Act notices for the same product.

Also, insurance and annuity sales by affiliated depositary institutions frequently trigger dual notice obligations, with notices to be provided by the seller and the issuer. In the current regulatory environment, it often is possible to satisfy all applicable regulatory requirements with a single notice. When the seller and issuer are affiliated institutions, this frequently is the case. Again, change to the federal rules, without change to the state rules, is likely trigger separate, different GLB Act notices in connection with sales of insurance products by affiliated depositary institutions.

Similarly, the current practice, adopted by some financial services organizations that include insurance companies, of providing a single notice for use by all affiliates, or groups of affiliates, would come to an end. Disparate regulatory requirements are likely to lead to development of different forms (even if they describe identical policies and practices).

In sum, the outcome of modifying the federal notice requirements without change in the state requirements would be further consumer confusion and consternation. This would be accompanied by the increased operational complexity and cost of providing two notices where currently only a single notice is required to satisfy all applicable laws and regulations. Consumer dissatisfaction and complaints are likely to increase rather than decrease due to this confusion. No consumer interest and no public policy purpose would be served by these results.

LEVERAGING FACT ACT RULEMAKING

As the Agencies are aware, the FACT Act was enacted on December 4, 2003. The Fact Act calls upon the Agencies to adopt numerous rules over the next several months, some of which will undoubtedly affect the notices required under the GLB Act. FACT Act § 214 amended the Fair Credit Reporting Act ("FCRA") to impose notice and other requirements on companies that wish to use certain consumer information obtained from their affiliates for marketing purposes; and requires the Agencies to adopt rules implementing these restrictions.

The Agencies' FACT Act rules will undoubtedly address the disclosures and notices that companies will be required to make under § 214(a), and will include methods for integrating the required FCRA disclosures with those required by the GLB Act. (FCRA § 624(b), as amended by the FACT Act, provides that a notice or other disclosure under § 624 may be coordinated and consolidated with any other notice required to be issued under any other provision of law.) The rulemaking required by §214 will certainly address questions relating to the efficacy and readability of consumer notices as well as the integration of such requirements into existing privacy notices. This process is likely to result in substantial advancements in the understanding of issues relating to the clarity of notice language.

The ANPR makes it clear that the Agencies recognize that any effort to modify the GLB Act notices would be a complicated and difficult undertaking. The ACLI urges the Agencies to wait for the opportunity to leverage the learning that comes from the FACT Act rulemaking before making a decision to take on or engaging in the more complex issues relating to the GLB Act privacy notices. Then, at that later time, the very best thinking, as applied to a similar problem, will be available. If changes to the federal requirements are adopted as a result, the requirements and the notices themselves are likely to be the better for this process. In addition, better arguments and factual support will be available to support changes to state laws and regulations that are likely to be necessary to re-achieve a uniform national GLB Act notice. This will be particularly important in states that may otherwise decline to reopen the issue, since they will already have satisfied the GLB Act requirements for a compliant notice once.

In conclusion, the ACLI respectfully notes that there is real potential for consumer confusion and dissatisfaction if the federal GLB Act notice standards are modified at this time. Deferring consideration of the project until completion of the FACT Act rulemaking decreases the potential for this outcome, and increases the likelihood of allowing insurers, and where applicable, insurers' affiliates, to develop compliant, conforming, notices. The ACLI believes this outcome is in the best interests of consumers and the financial institutions that serve them, including but not limited to insurers.

For all of the reasons noted above, the ACLI respectfully urges that the Agencies take no further action on ANPR at this time. The ACLI thanks the Agencies for their consideration of its views.

Sincerely,

Robert B. Meyer