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Wells Fargo & Company
420 Montgomery Street
San Francisco, CA 94104

May 20, 2009

Via e-mail to: rule-comments@sec.gov

Elizabeth M. Murphy
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number S7-09-07

Ladies and Gentlemen:

Wells Fargo & Company and its subsidiaries, including the Wachovia companies acquired by Wells as of December 31, 2008, appreciate the opportunity to comment on the proposed Model Privacy Form ("Model") under the Gramm-Leach-Bliley Act ("GLBA") in light of the recently released consumer research. The combined Wells Fargo/Wachovia enterprise is one of the largest financial services organizations in the United States and includes commercial banks, trust and asset custody operations, insurance agents, brokers and underwriters, and securities broker-dealers and investment and funds managers.

We will let others comment on the validity of the methodology and findings of the recently released research. While the new research, on its face, seems to provide further support for the proposition that a tabular format disclosure improves consumers' ability to comprehend the privacy disclosures and compare privacy policies across institutions, that research does not even purport to address the many serious issues with the proposed model forms that were raised by Wells Fargo and many other financial institutions and industry groups in comments to the original proposal in 2007. Those issues, which are set out at length in our letter of May 29, 2007, a copy of which is attached for your reference, include:

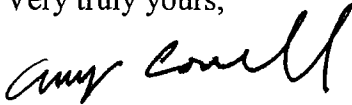
1. Requiring the Model to be printed on one side only of 8.5 x 11 inch paper is extremely wasteful and, in many cases, would preclude including annual disclosures with statement mailings.
2. There are alternative formats to the Model that are readable and understandable to the average consumer and that avoid the shortcomings of the Model.

COMMENT

3. The Model would not accurately reflect at least some financial institutions' lawful information policies or the scope of consumers' rights under federal law.
4. The Model should be more reflective of the breadth of disclosure permitted under § __.13.
5. The Model's description of information-sharing among affiliates should be clarified.
6. Financial institutions should be permitted to include state law addenda in the notice itself without jeopardizing safe harbor status.
7. The Agencies should delete or modify the concept of informing consumers about a timeframe in which to opt out of information-sharing.
8. A financial institution should be able to make modifications to the Model if the financial institution determines such modifications to be appropriate or necessary.
9. For the sake of brevity, including certain information in the Proposed Model should be optional.
10. Additional branding and color should be allowed on the Model.

Wells Fargo is grateful for the opportunity to comment on the Guidance. If you have any questions or would like to discuss any of the issues raised herein, please do not hesitate to contact me at (415) 222-5798 or amy.b.lovell@wellsfargo.com

Very truly yours,



Amy B. Lovell
Senior Counsel

Copies by regular mail to:

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 1-5
Washington, DC 20219

Re: SEC File Number S7-09-07 and
Docket ID OCC-2007-0003

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

Re: SEC File Number S7-09-07 and
Federal Reserve System Docket No. R-1280

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

Re: SEC File Number S7-09-07 and
FDIC RIN 3064-AD16

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: SEC File Number S7-09-07 and
NCUA RIN 3133-AC84

Ms. Eileen Donovan
Acting Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: SEC File Number S7-09-07 and
RIN 3038-AC04

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention: OTS-2007-005

Re: SEC File Number S7-09-07 and
Docket ID OTS-2007-0005

Federal Trade Commission
Office of the Secretary
Room 135 (Annex C)
600 Pennsylvania Avenue, N.W.
Washington, DC 20585

Re: SEC File Number S7-09-07 and
Model Privacy Form, FTC File No.
P034815

Exhibit 1 to May 20, 2009 letter



Peter L. McCorkell
Senior Counsel

Law Department
633 Folsom Street
Seventh Floor
San Francisco, CA 94107
415-396-0940
415-975-7863

May 29, 2007

Via e-mail to: www.regs.comments@occ.treas.gov

RE: INTERAGENCY PROPOSAL FOR MODEL PRIVACY FORM

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 1-5
Washington, DC 20219

Re: Docket ID OCC-2007-0003

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

Re: RIN 3064-AD16

Ms. Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: RIN 3133-AC84

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Number S7-09-07, Model Privacy Form

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

Re: Docket No. R-1280

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention: OTS-2007-005

Re: Docket ID OTS-2007-0005

Federal Trade Commission
Office of the Secretary
Room 135 (Annex C)
600 Pennsylvania Avenue, N.W.
Washington, DC 20585

Re: Model Privacy Form, FTC File No. P034815

Ms. Eileen Donovan
Acting Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: RIN 3038-AC04

Office of the Comptroller of the Currency
Ms. Jennifer Johnson/Board of Governors of the Federal Reserve System
Mr. Robert E. Feldman/Federal Deposit Insurance Corporation
Regulation Comments/Office of Thrift Supervision
Ms. Mary Rupp/National Credit Union Administration
Federal Trade Commission
Ms. Nancy M. Morris/Securities and Exchange Commission
Ms. Eileen Donovan/Commodity Futures Trading Commission
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RE: INTERAGENCY PROPOSAL FOR MODEL PRIVACY FORM

Ladies and Gentlemen:

This comment letter is submitted on behalf of Wells Fargo & Company and its subsidiaries and affiliates (“Wells Fargo”) in response to the Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act (“Proposal”) issued by the Office of the Comptroller of the Currency, Office of Thrift Supervision, Board of Governors of the Federal Reserve (“FRB”), Federal Deposit Insurance Corporation, National Credit Union Administration, Federal Trade Commission, Commodity Futures Trading Commission, and Securities and Exchange Commission (“SEC”) (collectively, the “Agencies”). Wells Fargo appreciates the opportunity to provide our comments to the Agencies.

Wells Fargo is one of the country’s largest diversified financial services organizations. The Wells Fargo family of companies includes national and state-chartered banks, consumer finance companies, insurance brokers and underwriters, and securities broker-dealers and investment advisors. We have operations in almost all 50 states as well a number of countries outside the United States. A key aspect of Wells Fargo’s business strategy is to develop multiple relationships with its customers across its various lines of business, in many cases by offering packages of complementary products and services. To the extent that the Model Form Proposal inhibits doing so in an integrated fashion, it has effects on Wells Fargo that may be different in kind than the impact on other financial institutions.

Summary

Wells Fargo supports the Agencies’ efforts to develop a simplified Gramm-Leach-Bliley Act (“GLBA”) privacy disclosure and opt-out form that is relatively easy for consumers to read and understand. We share the Agencies’ goal of providing financial institutions with a model form that provides a safe harbor for certain requirements under the regulations issued by the Agencies implementing Title V, Subtitle A of GLBA (“GLBA Regulations”). And we support the goal of making it easier for consumers to compare privacy policies and practices across different financial institutions.

By statute, use of the model form developed by the Agencies (“Model”) is voluntary. To achieve the goal of comparability across institutions, the Model must be attractive enough so that it will be adopted by a critical mass of financial institutions. If the model form is not widely adopted, the clear intent of the Agencies and of Congress—to provide easily comparable GLBA privacy policies—will not be achieved. Unfortunately, the Model does not provide a viable option to

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Wells Fargo, and we believe many other financial institutions will reach the same conclusion. In our view, significant changes must be made to the Model for it to have any chance of widespread use. We urge the Agencies to carefully consider the comments they receive in response to the Proposal and to issue a revised proposal for further comment.

We have two fundamental concerns with the proposed Model:

1. The format requirement that the Model be in the form of three separate sheets—for any institution that provides an opt out under GLBA or FCRA—printed on one side only, would result in prohibitive increases in paper, printing, postage and other distribution costs for initial and, especially, annual privacy notices; and
2. The extremely prescriptive content requirements make it impossible for many institutions—including Wells Fargo—to use the Model and still accurately describe information use and sharing policies and practices which are not merely allowed by GLBA, but in some respects, more protective of consumers than what the statute requires. Instead, the content required by the Proposal will, in some cases, be misleading to consumers and, in others, simply does not accurately describe the law.

Regardless of the changes made to the Model, we ask the Agencies to provide financial institutions with a meaningful safe harbor with respect to the GLBA privacy notice requirements based on content and not format. If a financial institution uses a notice substantively similar to the final text of the Model, such financial institution should be deemed compliant with the GLBA disclosure requirements even if it does not follow the proposed format.

In General

Wells Fargo believes that the Agencies should make significant modifications to the Model and repropose it for additional public comment. We believe this is appropriate because, in our opinion, the changes necessary to the Model are of such magnitude as to require an almost entirely new format and text. Specifically, we believe the Agencies should develop a Model that can be printed on a single sheet of paper (not necessarily 8.5" x 11") with modifications to the existing textual requirements. We firmly believe this objective can be achieved (and we provide some sample alternatives) while still providing consumers with the required information in a simple, clear and comparable manner. If the Agencies are not willing to explore such an approach, we believe it is unlikely that many of the larger financial institutions will adopt the Model in any form, thus defeating the goal of comparability across institutions.

We recognize that the Agencies have spent significant time and effort researching alternatives to the existing GLBA privacy notices. However, the Agencies seem to be relying almost exclusively on consumer testing which did not include anything resembling the notice that we

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propose. In addition to considering comments received on the Proposal, the Agencies should engage in additional consumer testing of alternative versions of a privacy notice. The question is not whether consumers prefer a three-page GLBA privacy notice, because that will be a moot point if significant numbers of financial institutions decline to provide such a notice. The relevant question is whether a notice that is actually likely to be used by a critical number of financial institutions can provide GLBA privacy disclosures in a manner that is both comparable across institutions and easy for consumers to understand. To our knowledge, the Agencies have not tested such a concept.

Format, Cost and Delivery Considerations

Under the Proposal, in order to qualify for the safe harbor, a financial institution's notice must be at least two pages in length no matter how simple its privacy policy might be. Furthermore, any institution—and that would include Wells Fargo—that provides any type of opt-out choice to the consumer must add a third page. The Model notice must be printed on only one side of 8.5" x 11" paper, and must be presented in a manner that allows the consumer to view all pages simultaneously. No other information could be printed on the otherwise unused portions of these sheets, and they may not be combined into any other document. Meeting these requirements would result in enormous increases in the cost of paper, printing, production and postage, especially for the annual privacy disclosures. In addition, several of our business units are simply not able to deliver notices that conform to the Model's format requirements without making significant changes to their print production environments.

Like many other financial institutions, Wells Fargo now provides information to its customers that goes beyond what is legally required to be in the GLBA privacy notice including legally required information—such as the notice of reporting negative credit information to consumer reporting agencies required by Section 217 of the FACT Act—and other, optional information—such as how to opt out of credit bureau prescreening, information about the Direct Marketing Association's Mail Preference Service, and internal solicitation preferences (do not mail, do not call, etc.) information. We believe this information is useful to and appreciated by our customers (and, in the case of the FACT Act Section 217 notice, legally required) so we would want to (or have to) continue to provide it. This means that using the Model form would require sending at least FOUR sheets of paper, instead of the one we now use. If nothing else, the environmental and natural resource impacts inherent in the Proposal ought to invite serious reconsideration.

Some of the additional costs that would have to be incurred in order to comply with the format requirements of the Model form are described and quantified below.

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Cost and Environmental Impact of Additional Paper

Just for Wells Fargo's annual privacy notices, and assuming we did not need a separate sheet of paper in order to disseminate the other required and optional information described above, we estimate that paper costs to produce the Model form would more than double compared to current costs. The cost of shipping that paper to the printer and then to distribution facilities (not including postage to deliver the notice to consumers) would also be more than double current costs. Moreover, the environmental impacts of using that much more paper are staggering: More than 2,000 additional trees would have to be cut down to produce that paper; and, using a recycling rate of approximately 50%, nearly 60 additional tons of paper would wind up in landfills.

Cost of Printing

We estimate the cost of printing annual notices using the Model format would be approximately 50% higher than the current cost, again assuming that we did not do any additional printing to provide the other information described above which, under the Proposal, could no longer be included in the privacy disclosure.

Cost of Postage

Again, just for our annual privacy disclosures, we estimate that the average weight per piece would increase from 0.21 oz. to 0.53 oz. Because of this additional weight, and because, as explained below, many of the notices that are now delivered along with periodic statements would have to be mailed separately, we estimate that we would incur an additional \$3,000,000 in postage costs to deliver the Model notice.

Production Costs and Constraints

In addition to the direct costs associated with paper, printing and mailing privacy policies that are at least one, if not two, additional pages, the Model would impose other costs that are more difficult to quantify. In particular, many Wells Fargo business units would have difficulty delivering the Model using their existing delivery mechanisms.

The GLBA Regulations require, in many circumstances, a financial institution to provide customers the initial GLBA privacy policy no later than at the time the customer relationship is established. Some of our business units ensure compliance with this requirement by integrating the privacy policy into the other required disclosures and materials provided to the consumer at

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the time of account opening. This type of delivery would appear to be prohibited if we were to adopt the Model. Simplicity of delivery is critical in light of the fact that it is not practical to train our own employees and also employees of establishments for whom we issue private label and similar forms of credit, on the finer points of regulatory compliance requirements. If the Model must be three pages, and the pages must not have any other information on them, it is not clear to us how a card-issuing financial institution could provide failsafe "take one"-style applications (or any other application styles, for that matter) in a retail environment without redesigning significant portions of the marketing and compliance components of the card program.

In addition to the difficulties we would have in delivering the Model privacy policy at the point of account opening, some of our businesses would have problems mailing the Model, either as an initial or an annual privacy policy. Most of our annual privacy notices are delivered along with periodic statements. Our credit card division, for example, sends billing statements in envelopes that simply cannot accommodate 8.5" x 11" paper. Other business units have the same problem. To use the Model notice they would need to reconfigure their production processes, either by changing envelopes or mailing the annual notice as a stand alone document in a larger envelope. Both options are expensive. Even in the businesses that can currently accommodate 8.5" x 11" paper in their statement envelopes, stuffing three additional pieces of paper is significantly harder, more expensive and more prone to error than stuffing just one. Also some units produce privacy statements "in stream" with other documents being sent in the same envelope. The size of the file for each customer is a significant production consideration. Also, the large areas that need to be printed in dark ink prescribed in the Model form may not dry fast enough in a high-speed printing environment causing pages to stick together and/or smear.

Alternative Formats

It would be one thing if the three-sheet format, and the prohibition of including any other information, were the only way to achieve the stated goals of readability and comparability. However, that is demonstrably not the case. Exhibits A, B and C to this letter are samples of single-sheet disclosures (using, for the sake of example only, the content prescribed in the Proposal). While they "sacrifice" either font size or the ability to place all three pages side-by-side, we believe each is perfectly readable by the average consumer. Moreover, each has some space which could be used for other required disclosures or "optional" information without detracting or distracting from the GLBA privacy notice. Most importantly, a single-sheet notice actually has some chance of being adopted by a significant number of financial institutions—if the content issues discussed below can be resolved.