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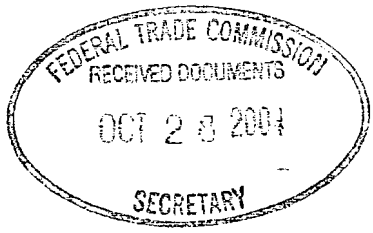

October 26, 2004

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

To Whom it May Concern:

On behalf of Juniper Financial Corp. and its wholly owned subsidiary Juniper Bank (together "Juniper") I am pleased to submit this letter in response to the Federal Trade Commission's ("FTC" or "Commission") Notice of Proposed Rulemaking; Request for Public Comment regarding the proposed rule to "improve the required notice to consumers regarding their right to opt out of prescreened solicitations for credit."

Juniper Bank is a partnership focused issuer of credit cards with approximately $1.4 billion in managed credit card receivables and approximately 800,000 credit card accounts. Founded in 2001, it is one of the fastest growing credit card issuers in the United States. Juniper is currently a 98% owned subsidiary of the Canadian Imperial Bank of Commerce ("CIBC"), a United States Financial Holding Company. However, on August 18, 2004, Barclays Bank PLC entered into a Stock Purchase Agreement to acquire Juniper from CIBC. That transaction is scheduled to close after regulatory approval is obtained, after which Juniper will become a 100% subsidiary of Barclays Bank PLC, and Barclays Group U.S. Inc.

Summary of Argument

Juniper would like to commend the FTC for its efforts in attempting to draft a notice that is clear, easy to understand and balanced while recognizing that space is at a premium in prescreened solicitations and that prescreened notices, pursuant to various laws, must disclose a significant amount of information. However, Juniper is very concerned about the proposed layered notice. By making the notice of consumers' rights to opt-out of receiving prescreened solicitations the most prominent legally required disclosure in the solicitation (over price or any other legally required disclosure), Juniper is concerned that consumers will be driven to opt-out of prescreening without an understanding of the benefits of receiving prescreened solicitations. Juniper does not believe that such a result is consistent with the FACT Act or Congressional intent in passing the FACT Act and is concerned that it may have unintended consequences for consumers. Juniper proposes that many of these issues could be addressed by eliminating the layered notice and instead adopting a prescreening disclosure scheme similar to that developed by the Commission in "version #2 (improved)" notice that was used in the Synovate study. At the very least, the notice on the

first page of the solicitation should not encourage opting out and the notice on the back of the solicitation should incorporate information about the benefits of prescreening.

Issue Regarding the Definition of Simple and Easy to Understand

The Proposal lists a number of factors to be considered in determining whether a disclosure is simple and easy to understand. They include: 1) use of clear and concise sentences, paragraphs and sections, 2) use of short explanatory sentences, 3) use of definite, concrete, everyday words, 4) use of active voice, 5) avoidance of multiple negatives, 6) avoidance of legal and technical business terminology, 7) avoidance of explanations that are imprecise and reasonable subject to different interpretations, and 8) use of language that is not misleading. These are all laudable factors that anyone should try to follow in drafting any document.

Juniper's concern is that these factors could become legal standards and that if an issuer fails to live up to any of them, that the issuer may be exposed to legal liability. Although the prescreen disclosures are not subject to a private right of action under the Fair Credit Reporting Act, Juniper is concerned that private litigants will not feel so constrained in state courts (witness the recent development in California regarding affiliate sharing). It is very possible that these factors could be used by private litigants as a checklist and that if an issuer comes up short on any of them, legal liability could be imposed. Accordingly, we request that the Factors be excluded from the final rule.

Issues Regarding the Layered Format

The proposed Rule envisions a layered notice consisting of an initial "short" statement on the front side of the first page of the solicitation which encourages consumers to opt out of prescreening and a "long notice which may be included anywhere in the solicitation. The short notice must be: 1) prominent, clear and conspicuous, 2) larger than the type size of the principal text and not smaller than 12 point type, 3) on the front page of principal document, 4) located distinct from other text (in other words inside a box) and 5) in a type face distinct from other type face used on the same page. The short notice is limited to a statement informing the consumer of the right to opt-out, the toll free number that can be called to opt-out and where consumers can find out more information about opting out (where the "OPT-OUT NOTICE" disclosure may be found).

This short form notice would be significantly more prominent that any other disclosure required by the Truth in Lending Act, the USA Patriot Act, and any other federal or state laws. The proposed disclosure elevates the importance of the prescreening opt-out right over all other legally required disclosures, including APR, whether the APR is variable or may change, fees, grace period and whether the offer may be conditioned upon certain factors.

Juniper submits that this should not be the case. By making the right to opt-out of prescreening a more prominent right than any other legally required disclosure and highlighting the opt-out right on the front page of the solicitation, many consumers will be led to believe that the opt-out right is the most important term of the offer. At the very least, the first page highlighted notice will drive opt outs by 1) leading some consumers to believe that as a result of its prominence, it is the most important legal protection available to them; 2) in effect recommending that they opt, 3) referring to the disclosure as an opt-out disclosure as opposed to a prescreening disclosure, 4) enabling consumers to opt-out without the need to review remaining disclosures (referring to the '800 number with no countervailing factors) and 5) not disclosing that there are countervailing reasons as to why a consumer might not want to opt out. If nothing else, it will encourage ill informed decisions not based on all the facts. It will also necessarily diminish the perception of the importance of other legally required disclosures such as the pricing disclosures contained in the "Schumer" box.

Moreover, as the Commission recognizes, there are enormous consumer benefits to prescreening. The use of prescreened solicitations has allowed credit card issuers (especially relatively small issuers such as Juniper) to compete efficiently in the nationwide credit card marketplace. This increased competition has led to lower prices, increased choice and increased options (such as co-branded and rewards cards). Moreover, even when consumers are not in the market for credit, the receipt of prescreened solicitations enables consumer to learn about the types of and pricing of credit that are available to them. By becoming better informed, consumers correspondingly become better shoppers and can obtain better terms. Moreover, due to safety and soundness considerations and the better credit performance of cardholders who acquire their credit card accounts through prescreening as opposed to other marketing channels (the loss rates of credit cards acquired through prescreening are one-half to one-fourth the loss rates of credit card accounts acquired through other means), consumers who receive prescreened offers often receive their credit at lower prices than that offered through other channels. At the same time consumers are not adversely impacted by and do not pay increased costs as a result of prescreening. Fraud rates are much lower for accounts acquired through prescreening than accounts acquired through other marketing channels. The only inconvenience is the requirement that the consumer must throw out the solicitation. Accordingly, any disclosure about prescreening should mention the fact that there are potential benefits to receiving prescreened offers so consumers can make meaningful and informed decisions as to whether to opt out.

Juniper also respectfully submits that the prominence accorded the opt-out right in the layered approach was not mandated by Congress. As noted by the FTC, the FACT Act mandated that the information required to be disclosed regarding prescreening under FCRA Section 615(d) (as opposed specifically to the opt-out right) "be presented in such format and in such type size and manner as to be simple and easy to understand" (emphasis added). Simple and easy to understand does not mean more prominent than all other disclosures. It does not require that disclosure be provided in two locations or on the front page of the

solicitation. It also does not mean that one component of the prescreening disclosures mandated by 615(d) be more prominent than the others. Even where Congress requested that the FTC to take measures to increase public awareness of the opt-out right, it also requested that this include increasing public awareness of the benefits and consequences of opting-out (see Congressman Bachus' statement in the Congressional Record) .We agree with the Commission that prescreened solicitations, under various laws must disclose a significant amount of information. That does not mean that the prescreening opt-out notice must be more prominent than other disclosures to be simple and easy to understand. It is also contrary to the legislative history that the Commission take a balanced approach.

We submit that there is no need to include a short form notice highlighting the opt-out right on the front page of the solicitation and that doing so is contrary to good public policy. Instead, we urge that the Commission require the information required to be disclosed pursuant to Section 615(d) be included in one notice on one page. In essence, we propose something akin to Version #2 in the Synovate study. We believe Version #2 complies with the Congressional mandate that the disclosure be balanced, simple and easy to understand. The Synovate study also appears to indicate that this Version #2 was as effective as the layered notice in conveying to consumers who might want to opt-out (as opposed to those who are not interested in opting-out) the notion that the consumer could opt-out

In any event, should the Commission decide to proceed with the layered disclosure, Juniper proposes amending the disclosure on the first page so it does not actively encourage or invite consumers to opt out of prescreening, as the current proposed language clearly does. Leading off the literature with the words "to stop receiving prescreened offers..." is clearly an invitation to opt out. As we stated above, there are substantive consumer benefits to receiving prescreened solicitations. Any disclosure regarding prescreening should be even handed and <u>not</u> encourage opt outs. Even the mention of toll free number without a mention that there are benefits to receiving prescreened offers is an encouragement to opt out. We agree with the Commission that there is not sufficient room on the first page of the solicitation to include all aspects of the required disclosure. Accordingly, we would propose words to the effect:

> "Please see the PRESCREEN NOTICE on [the reverse side of this page] [another specific location] to view important disclosures about prescreened offers of credit."

This directs the consumer to consider all the prescreen disclosures, is neutral on its face and neither encourages or discourages the consumer to opt out – it simply refers consumer as to where to find relevant information.

Long Form Notice

Juniper agrees with the Commission that the long form notice should be presented in a manner that is simple and easy to understand and must contain all the information required by Section 615(d) of the FCRA. We also agree that putting it in a typeface that is no smaller than other typeface of the printed text of the page and that is distinct from other type-face used on the same page (such as bold lettering) is appropriate, as long as the Commission clarifies that underlining the text or putting it in boldface is sufficient so as to give issuers certainty as to how to make the type-face distinct. However, we also urge that the notice be neutral on its face – that while it must inform consumers of their opt-out rights, it should neither encourage or discourage opt-outs. We submit that the best way to do this, in addition to informing consumers about their opt-out rights, is for the notice to contain references to the potential benefits of prescreening. It should assist consumers in understanding the potential ramifications of opting out so they can make informed decisions. For instance, a sentence to effect that "There may be benefits to receiving prescreened solicitations. Offers like these may be useful in comparing the terms and benefits of various credit offers" would convey useful information. In addition, rather than a heading labeled "OPT OUT NOTICE" the notice should be headed to the effect "PRESCREEN NOTICE", "PRESCREEN RIGHTS NOTICE" or "PRESCREEN DISCLOSURES" to more accurately reflect the information contained in the notice (it is also clearly more neutral in concept).

Again, the "improved Version #2" notice used in the Synovate study seems to be a step in the right direction. According to the study, improved Version #2 was as simple and easy to understand as the layered version, even if it was not as noticeable. Just as important, it is clearly a more balanced disclosure that does not encourage opt outs and is more neutral on its face. We submit it is vastly preferable to the proposed layered notice.

Federal Reserve Study

Congress also mandated that the Federal Reserve Board ("Board") conduct a study with regard to prescreening. We understand that the Board will be releasing the results of its study in the near future. We urge the Commission not to finalize its proposal until the Board releases the study and until interested parties have had the time to submit to the Commission additional comments based on the Board's study.

60 Day Implementation Period

Juniper postulates that providing issuers only 60 days to implement the provisions of the Rule once the Rule is final is not sufficient. The fact is that it will take longer than 60 days to revise wording and formatting of the various prescreened solicitation templates, obtain required approvals to the revised wording, arrange for revised typesetting (including requirements for different type faces) reformat the solicitation materials, print the materials, send them to the mailhouse and

mail them. Issuers prepare solicitations with substantially lead time. We respectfully submit that 180 days would be more appropriate amount of time to accomplish all the required steps to implement the new disclosure.

Conclusion

Juniper would again like to say that it appreciates the opportunity to comment on the proposal. If you have any questions concerning any of the comments in this letter, please do not hesitate to contact me at 302-255-8700 or at cwalker@juniper.com. Thank you.

Sincerely,

Clinton W. Walker
General Counsel