

August 16, 2004

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

Re: FACT Act Affiliate Marketing Rule, Matter No. R411006 (Electronic Comment)

Ford Motor Credit Company, a wholly owned subsidiary of Ford Motor Company, is one of the largest automobile finance companies in the world. We appreciate the opportunity to comment on the Fact Act Affiliate Marketing Rule ("Proposed Rule") issued by the Federal Trade Commission ("Commission") regarding the affiliate marketing provisions included in Section 624 of the Fair Credit Reporting Act ("FCRA") as amended by the Fair and Accurate Credit Transactions Act ("FACT Act").

We concur with the comments relating to the pre-existing relationships in the sale and financing of motor vehicles included in the comment letters submitted by the Coalition to Implement the FACT Act, the Financial Services Roundtable, and the American Financial Services Association. For the reasons set forth below, the Commission should modify the Proposed Rule consistent with the positions taken in those letters.

#### The Proposed Rule

The FACT Act created a new Section 624 to the FCRA that prohibits any person that receives from an affiliate information that would be a "consumer report", but for the exceptions ("Eligibility Information") to that definition in Section 603(d)(2)(A) of the FCRA, from using the Eligibility Information to make a solicitation for marketing purposes to a consumer about its products or services unless it is clearly and conspicuously disclosed to the consumer that the Eligibility Information may be shared for purposes of making solicitations and the consumer is provided an opportunity and simple method to opt out of receiving such solicitations. Section 624 also identifies several instances in which Section 624 will not apply. For example, Section 624 does not apply to a person using Eligibility Information to make a solicitation for marketing purposes to a consumer with whom the person has a pre-existing business relationship. An affiliate that receives Eligibility Information from a person could use the Eligibility Information to make a solicitation to a consumer with whom it has a pre-existing business relationship, regardless of whether the consumer has received a notice and opportunity to opt out.

Section 624(d)(1) of FCRA defines a "pre-existing business relationship" to be a "relationship between a person, or a person's licensed agent, and a consumer, based on:

- (A) a financial contract between a person and a consumer which is in force;
- (B) the purchase, rental, or lease by the consumer of that person's goods or services, or a financial transaction (including holding an active account or a policy in force or having another

continuing relationship) between the consumer and that person during the 18-month period immediately preceding that date on which the consumer is sent a solicitation covered by this section;

(C) an inquiry or application by the consumer regarding a product or service offered by that person, during the 3-month period immediately preceding the date on which the consumer is sent a solicitation covered by this section; or

(D) any other pre-existing customer relationship defined in the regulations implementing this section"

Pursuant to Section 214(b) of the FACT Act, the Commission has authority to prescribe regulations to implement section 624 of FCRA. Pursuant to that authority, the Commission published the Proposed Rule for comment.

#### Pre-existing Relationship in the Sale and Financing of Motor Vehicles

It is critical for the Commission to modify the Proposed Rule to address the application of the "pre-existing business relationship" exception to the sales and financing of new motor vehicles and recognize the relationship among product manufacturers ("Manufacturers"), their affiliated finance companies ("Captive Finance Companies") and the retailers who sell the products to the public and perform services for the Manufacturer and the Captive Finance Company.

Since most states have laws that prohibit motor vehicle Manufacturers from selling motor vehicles directly to consumers, a well-established and accepted network of manufacturer authorized or "franchised" dealers has developed. These franchisees sell motor vehicles to the general public and provide warranty and other servicing of the vehicles sold pursuant to agreements with Manufacturers. Often, motor vehicle sales transactions are financed by the Captive Finance Company, either through a lease or retail installment sales transaction. The Manufacturer has an ongoing relationship with the consumer well after the consumer obtains the vehicle from the franchised dealer. This relationship includes warranty obligations, recalls, and other communications relevant to the safety and use of the vehicle whether carried out directly by the Manufacturer or through its franchised dealer.

During the consumer's possession of the vehicle, the Manufacturer often sends the consumer other information including marketing materials about its products and services and information relating to product use and safety such as recalls. To provide meaningful and relevant information to the consumer, marketing plans are often supplemented by information obtained from the Captive Finance Company. This information may include experience or transactional information such as the amount of the customer's monthly payment and present status of the consumer's finance contract allowing the Manufacturer to tailor marketing offers that best meet the consumer's needs. Because the consumer sought out the Manufacturer's products, the consumer often welcomes the subsequent marketing campaigns that allow him or her to trade into a higher line vehicle or a newer model, often with financial benefits for the consumer.

The Proposed Rule states that it is appropriate to consider the "reasonable expectations of the consumer" in determining the scope of the "pre-existing business relationship." (Proposed Rule, page 16) Our experience shows that a consumer who acquires a new motor vehicle from a franchised dealer and who finances that acquisition from the Captive Finance Company fully expects, and in fact welcomes, information from that Manufacturer about new products and financing arrangements to acquire new products, even if the consumer does not request information from or provide contact information to the Manufacturer.

Without specifically addressing the ongoing relationship between Manufacturers and the consumers who purchase vehicles from the Manufacturer's franchised dealers, the Proposed Rule would considerably complicate the ability of a Manufacturer to provide such advantageous marketing offers to consumers with whom it has an ongoing business relationship. We ask the Commission to clarify that the relationship between the Manufacturer and the consumer as described herein meets the definition of "pre-existing business relationship" in Section 624(d)(1)(B) or alternatively that the relationship be recognized as a "pre-existing business relationship" pursuant to the authority granted the Commission in Section 624(d)(1)(D).

Sincerely,

David L. Korman  
Executive Vice-President and  
Global General Counsel