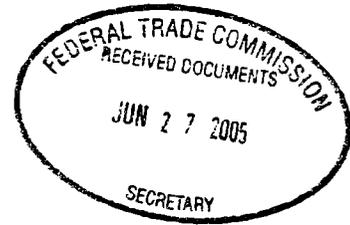


BANK

June 27, 2005



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

Re: CAN-SPAM Act Rulemaking, Project No. R411008

Ladies and Gentlemen:

Discover Financial Services, which includes Discover Bank (collectively "Discover") appreciates the opportunity to comment on the Commission's Notice of Proposed Rulemaking ("NPRM") to amend and clarify certain definitions and substantive provisions under the Controlling the assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act"), specifically:

1. Defining the term "person," which is not currently defined under the Act;
2. Modifying the definition of "sender" to address scenarios in which a single email message contains advertisements from multiple entities;
3. Clarifying that Post Office boxes and private mailboxes established pursuant to United States Postal Service regulations are "valid physical postal addresses;"
4. Shortening from ten days to three the time a sender may take to honor a recipient's opt-out request; and
5. Clarifying that to submit a valid opt-out request, a recipient may not be required to pay a fee, provide information other than his or her email address and opt-out preferences or take any steps other than sending a reply email message or visiting a single Internet Web page.

Other topics addressed in the NPRM include the definition of "transactional or relationship message;" the Commission's views on how the CAN-SPAM Act applies to certain e-mail marketing practices, including "forward to a friend" e-mail marketing campaigns; and the Commission's determination not to designate additional "aggregated violations" under section 7704(c)(2) of the Act.

Discover Financial Services, a business unit of Morgan Stanley, operates the Discover Card with more than 50 million Cardmembers, the Discover Network, with more than 4 million merchant and cash access locations and the PULSE ATM/Debit network currently serving over 4,000 banks, credit unions and savings institutions.

Following is Discover's response to the Commission's request for comment:

Questions on Proposed Specific Provisions

1. Section 316.2 – Definitions

a. Does the proposed definition of “person” clarify those individuals and entities that are covered by the Rule and the Act? Should the proposed definition be modified? If so, how?

Discover believes that proposed definition of “person” adequately clarifies that “any individual, group, unincorporated association, limited or general partnership, corporation or other business entity” is covered by the Rule and the CAN-SPAM Act and that it does not need to be further modified. Discover agrees that it would be beneficial to clarify in the CAN-SPAM Act that the term “person” is broadly construed, and is not limited solely to a natural person.

b. Does the proposed definition of “sender” clarify who will be responsible for complying with the CAN-SPAM Act when a single e-mail contains content promoting or advertising the products, services, or Web sites of multiple parties? Should the proposed definition be modified? If so, how? Do the proposed criteria provide adequate guidance to establish who is the sender when there are multiple advertisers?

Discover believes that the proposed definition of “sender” does help to clarify who will be responsible for complying with the CAN-SPAM Act when a single e-mail contains content promoting or advertising the products, services, or Web sites of multiple parties. Discover agrees with the Commission that this change would benefit both companies sending commercial e-mail messages and consumers. However, Discover believes that the proposed definition should be further clarified in order to provide more specific guidance as to who “controls the content” of an e-mail message in the case when more than one person’s products or services are advertised or promoted in a single e-mail message. Discover believes that it is critical that the criteria established to determine who is the sender is clear and concise and does not leave room for different interpretations, given the consequence that if another advertiser satisfies any one of the three proposed criteria, that advertiser will be also deemed a “sender.” If another advertiser were to be deemed a “sender,” significant time and coordination between the senders would be necessary to suppress the opt-outs collected from both senders. Discover recommends that the Commission clarify that the mere fact that an advertiser has the right to approve the specific content in an e-mail message or offer relating to that advertiser’s product or service, does not by itself deem the advertiser to “control the content” of the message and thereby make it a “sender”.

c. Should opt-out obligations be extended to third-party list providers who do nothing more than provide a list of names to whom others send commercial e-mails? If so, how could this be accomplished, given the statutory language which defines “sender” in terms of an entity that both initiates a message and advertises its product, service, or Internet web site in the message?

Discover believes that opt-out obligations should be extended to third-party list providers who provide a list of e-mail addresses to which others send commercial e-mails. Discover believes that if it is not clear to recipients that an e-mail is being sent because the recipients opted-in to receive e-mail communications from the third-party list provider, they might wrongfully think that the advertiser, with whom they have no direct relationship, is sending unsolicited e-mail. Discover believes that this could be partially remedied if the Commission were to modify or clarify the definition of “sender” to include third party list providers who provide a list of e-mail addresses to which others send commercial e-mails.

d. Should the Commission adopt a “safe harbor” with respect to opt-out and other obligations for companies whose products or services are advertised by affiliates or other third parties? If not, why not? If so, what would be the appropriate criteria for such a safe harbor?

Discover believes that the Commission should adopt a “safe harbor” with respect to opt-out and other obligations for companies whose products or services are advertised by affiliates or other third parties. Discover believes that if an advertiser has no direct relationship with a recipient, the third party who actually has the direct relationship should be solely responsible for providing the opt-out mechanism, since the advertiser’s message is simply content in a communication that was delivered as a result of the recipient’s relationship with the third party.

e. Does the proposed definition of “valid physical postal address” clarify what will suffice under the Act’s requirement that a sender include such an address in a commercial e-mail? Should the proposed definition be modified? If so, how?

Discover believes that the proposed definition of “valid physical postal address” adequately clarifies what will suffice under the Act’s requirement that a sender include such an address in a commercial e-mail and that it does not need to be further modified.

Discover agrees with the Commission’s proposal that the CAN-SPAM Act’s requirement of a “valid physical postal address” should be interpreted as including a Post Office box. Many valid reasons exist for senders not to be required to include a street address in a commercial e-mail message. Numerous companies use Post Office boxes to manage receipt and distribution of mail to assure accountability and control. In addition, many companies are justifiably concerned that the publication of street addresses could needlessly put their employees’ safety at risk. We therefore urge the Commission to clarify that a Post Office box is a valid physical postal address under the CAN-SPAM Act.

f. Should CAN-SPAM apply to e-mail messages sent to members of online groups? What types of online groups exist? How are they formed? Does formation typically address the use of unsolicited commercial e-mail with respect to the group? How are e-mail messages transmitted or posted to an online group?

Should members be able to opt-out of unwanted commercial messages while continuing to receive messages relating to the subject matter of the group? Does this analysis change depending on whether the message is sent by a group member or a source outside the group? Does this analysis change depending on whether the message is unrelated to the subject matter of the online group? Does this analysis change if the online group has a moderator who decides which message to forward to the group?

2. Section 316.2(o) – “Transactional or Relationship Message”

a. If an e-mail message contains only a legally mandated notice, should this message be considered a transactional or relationship message? Which, if any, of the existing categories of transactional or relationship message would such a message likely fit into? If such a message were considered not to have a transactional or relationship purpose, would it be exempt from regulation under the Act?

Discover strongly believes that an e-mail message that contains only a legally mandated notice should be exempt from regulation under the CAN-SPAM Act because its primary purpose is not “the commercial advertisement or promotion of a commercial product or service.”

b. Should debt collection e-mails be considered “commercial”? Or should debt collection e-mails be considered transactional or relationship messages that complete a commercial transaction that the recipient has previously agreed to enter into with the sender? Such an interpretation assumes that the entity with whom the recipient transacted business is the entity sending the collection e-mail, or that the term “sender” can be interpreted to encompass a third party acting on behalf of one who would otherwise qualify as a sender. Can a third-party debt collector be considered a “sender”?

Discover strongly believes that debt collection e-mails should be exempt from regulation under the CAN-SPAM Act. Debt collection e-mails are sent well after a relationship has been entered into, and are not the type of messages contemplated by the CAN-SPAM Act, since their primary purpose is not “the commercial advertisement or promotion of a commercial product or service.”

In addition, Discover believes that the company with which the customer is doing business should be considered the sender, not a third party debt collector. As the Commission stated on page 20 of the NPRM , ...

”the Act reflects Congress’s determination that the obligation of the ‘sender’ will fall only on an entity whose products or services are advertised in the message, even though other parties may also transmit or procure the transmission of the message. The Act’s definition of ‘sender’ simply does not apply to entities that do nothing more than provide a list of names or transmit a commercial e-mail

message on behalf of those whose products or services are advertised in the message.”

Since a debt collector is retained by a company simply to collect a debt from a customer on behalf of the company and the primary purpose of the e-mail communication is not to advertise a product or service, Discover believes a debt collector should not be considered a “sender.”

c. Are there any messages that fall outside of the reach of the proposed Rule that should not? If so, how might this be remedied?

Discover is not aware of any such messages.

d. Can a “commercial transaction” under section 7702(17)(A)(i) exist even in the absence of an exchange of consideration?

Discover believes that a “commercial transaction” under section 7702(17)(A)(i) can exist even in the absence of an exchange of consideration if the parties are entering into a mutual obligation, such as a consumer submitting a credit card application to a financial institution or enrolling to use a free service.

e. If the primary purpose of an e-mail message is to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender, it is a transactional or relationship message under section 7702(17)(A)(i). Should messages from affiliated third parties that purport to be acting on behalf of another entity (the one with whom the recipient transacted) be considered transactional or relationship messages under this provision?

Discover believes that if the primary purpose of an e-mail message is to facilitate, complete or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender, it is a transactional or relationship message under section 7702(17)(A)(i). Discover also believes that such messages from affiliated third parties that purport to be acting on behalf of another entity should be considered transactional or relationship messages under this provision.

f. Under what, if any, circumstances should an e-mail message sent to effectuate or complete a negotiation be considered a “transactional or relationship message” under section 7702(17)(A)(i)?

Currently, the CAN-SPAM Act provides under section 7702(17)(A)(i) that the term “transactional or relationship message” means “an electronic mail message the primary purpose which is to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender.” Discover believes that this definition should be expanded to include not only situations in which a deal has closed, but also situations in which the parties are effectuating or completing an ongoing negotiation (for example, one party provides a counter-offer).

g. Is it appropriate to classify messages offering employee discounts or other similar messages as transactional or relationship messages that “provide information directly related to an employment relationship”? Is a relevant factor the employer’s provision of the e-mail address to which such message are sent to the employee? For example, should all messages sent from an employer to an employee at the employer-provided e-mail address be considered transactional or relationship under section 7702(17)(A)(iv)?

Discover believes that an e-mail message that offers employee discounts or other similar messages should be exempt from regulation under the CAN-SPAM Act when the message is sent to an employer-provided e-mail address. Discover believes that a company should be permitted to send e-mail communications to an employee in its sole discretion if those communications are sent to a company-provided e-mail address, since the e-mail address is not the property of the employee. A company-provided e-mail address is a tool created by an employer to allow the company, in its sole discretion, to facilitate communication to its employees. However, if the e-mail message is sent to an employee’s personal e-mail address, Discover believes the message should be considered a transactional or relationship message that “provide(s) information directly related to an employment relationship” under section 7702(17)(A)(iv).

h. The Commission believes that an e-mail message sent on behalf of a third party, even with the permission of an employer, is not “transactional or relationship.” Is there any such scenario in which the e-mail message at issue could be considered “transactional or relationship”? If so, explain.

i. For purposes of section 7702(17)(A)(iv) of the Act, should “provid[ing] information directly related to an employment relationship” include providing information related to such a relationship after an offer of employment is tendered?

Discover believes that for purposes of section 7702(17)(A)(iv) of the Act, “provid[ing] information directly related to an employment relationship” includes providing information directly related to such a relationship after an offer of employment is tendered, since parties generally engage in negotiations regarding an offer of employment until the parties reach an agreement as to the final terms of the offer and the offer is accepted.

j. Where a recipient has entered into a transaction with a sender that entitles the recipient to receive future newsletters or other electronically delivered content, should e-mail messages the primary purpose of which is to deliver such products or services be deemed transactional or relationship messages?

Discover is concerned that if the primary purpose of a newsletter were to automatically be deemed to be a transactional or relationship message, unscrupulous companies could take advantage of this exception, since they would not be legally required to provide an

opt-out mechanism to the consumer. Discover believes that the primary purpose of a newsletter should be determined on a case-by-case basis, depending upon the content of each newsletter.

k. Should the Commission modify the Act's definition of "transactional or relationship message" to include what some commenters call "business relationship messages," which are individualized messages that are sent from one employee of a company to an individual recipient (or a small number of recipients)? If so, what changes in e-mail technology and practices warrant this, and is such a modification necessary to accomplish the purposes of the Act?

Discover does not have sufficient experience with these situations to comment.

l. The Commission believes that e-mail messages from an association or other membership entity to its membership are likely "transactional or relationship" in nature, pursuant to section 7702(17)(A)(v). Should messages from such senders to lapsed members also be considered "transactional or relationship" under that section? Should such messages to lapsed members be considered "commercial" when they advertise or promote the membership entity?

Discover does not have sufficient experience with these situations to comment.

3. "Forward-To-A-Friend" E-mail Messages

a. Does the Commission's discussion in this NPRM of the Act's definitions of "initiate," "procure," and "sender" provide sufficient guidance to industry and consumers? Does the Commission's explication of the term "induce" provide sufficient guidance to industry and consumers? Does the Commission's discussion of "routine conveyance" provide sufficient guidance to industry and consumers? Does the Commission's interpretation of any of these terms impose any undue burdens on industry or consumers?

Discover believes that the Commission's discussion in this NPRM of the Act's definitions of "initiate," "procure," "sender," "induce" and "routine conveyance" provide sufficient guidance to industry and consumers and is in full agreement with the Commission's interpretation of the meaning of each term. Discover does not believe that the Commission's interpretation of any of these terms imposes any undue burdens on industry or consumers.

Discover does not believe that a sender of a commercial e-mail message that asks recipients to forward the commercial e-mail to others should be regarded as having initiated the commercial e-mails that its customers send to others if the sender does not pay or provide other consideration to induce the recipients to forward the e-mail to others. As a practical matter, the sender of the original e-mail might never know to whom its recipients forward e-mails, or whether those third parties had previously opted-out from the sender's messages. We believe there to be considerable benefit to

consumers in permitting such programs because they facilitate the distribution of information to persons whom friends determine may be most interested in receiving the information. Accordingly, we believe that companies that participate in “forward-to-a-friend” programs should not be regarded as senders of e-mails that are forwarded by recipients.

b. Are there other forwarding mechanisms not discussed in this notice that should be considered “routine conveyance”? Are there other forwarding mechanisms that should not be considered “routine conveyance”?

Discover is not aware of any other forwarding mechanisms that should or should not be considered “routine conveyance.”

c. Does the Commission’s reading of “procure” to mean something that entails either payment of consideration or some explicit affirmative action or statement designed to elicit the initiation of a commercial e-mail message provide sufficient guidance to industry and consumers? Why or why not?

Discover believes that the Commission’s reading of “procure” to mean something that entails either payment of consideration or some explicit affirmative action or statement designed to elicit the initiation of a commercial e-mail message provides sufficient guidance to industry and consumers. We believe that the Commission’s statement that “a person who intentionally pays, provides consideration to, or induces another to send on his or her behalf a commercial e-mail message that advertises or promotes his or her product may be considered to have ‘procured’ the origination of that message under the Act, and therefore be an initiator or sender” clearly explains the term “procure” and does not leave room for confusion.

d. Are there circumstances in which a seller could offer consideration to a person to forward a commercial e-mail that should be included within the “routine conveyance” exception?

Discover is not aware of any such circumstances.

e. Does the Commission’s position on “routine conveyance” provide industry with sufficient guidance concerning Web-based forwarding mechanisms? Does it impose any undue burdens on industry or consumers?

Discover believes that the Commission’s position on “routine conveyance” provides industry with sufficient guidance concerning Web-based forwarding mechanisms and that it does not impose any undue burdens on industry or consumers.

4. Section 316.4--Prohibition Against Failure To Honor Opt-Out Requests Within Three Business Days of Receipt

a. Is three business days an appropriate deadline for effectuating an opt-out request? If not, what time frame would be more appropriate? Does the Commission's proposal that multiple advertisers in a single commercial e-mail message may arrange to have only one of those advertisers be the "sender" affect what time frame would be appropriate? If so, how?

While we understand the Commission's desire to eliminate deceptive and fraudulent e-mail communications, we believe that there is also a need to permit legitimate businesses to achieve the full benefits of electronic communications. Discover believes that three business days is not an adequate period of time within which to honor opt-out requests. Discover further believes that the minimum amount of time necessary for effectuating an opt-out request is ten business days, the time period currently provided under the Act. We believe that a ten-business-day time frame, as noted by the Commission in the NPRM, "provides sufficient time for companies who must synchronize multiple e-mail databases, forward opt-out requests to third parties, or manually process opt-out requests." We also agree that if the time frame were to be fewer than ten days, it would not leave enough "flexibility to accommodate the various ways companies effectuate opt-out requests."

In the context of an e-mail that is being initiated by one company but which is for the sole purpose of advertising for another company, the process of transmitting lists of opted-in and opted-out recipients can be time consuming and is fraught with risks of processing errors and delays. In addition, in joint marketing situations or other instances where multiple advertisers are involved in sending an e-mail communication, three days would be insufficient. It takes significant time for businesses to obtain an opt-out list and scrub it against a list of addresses to which a commercial e-mail will be sent. Often a commercial e-mail campaign is already in progress with the e-mail addresses selected more than three days prior to the date the message is sent. Therefore, it would be impracticable to comply with a three day opt out in these situations, particularly when the sender uses a third party to transmit the message on its behalf.

In addition, the software required to process opt-outs in real time is not widely used in industry at this time. It would be costly and time consuming for businesses to purchase the software and integrate it into their systems. We do not believe that the benefit of having in place a three-day opt-out period would outweigh the costs and burdens that would be imposed on businesses, given that there is no record of abuse to date by legitimate senders of the current ten-day opt-out period. Currently, there is a wide range of practices among businesses with respect to collecting and processing opt-out requests. Businesses also use multiple platforms and systems to provide and store data. We believe that it is critical that the time frame allotted to senders for processing opt-outs is consistent with the capabilities of the majority of senders.

Moreover, if businesses were required to honor opt-out requests within a three-day time frame, they would not be left with sufficient time to test and audit the e-mail communications that they plan to send to the recipients. As a result, rather than businesses risking not properly auditing and testing their e-mail communications, they

might decide not to send certain legitimate and beneficial e-mails to their customers, thus depriving their customers of a valuable service. We are also concerned that some businesses, rather than deciding not to send the e-mail communications, might decide to send the e-mails despite the fact that they were not left with sufficient time to conduct proper quality control testing. We fear that if this were to happen, the risk of sensitive, personal information being sent to the wrong recipient could increase significantly.

For these reasons and for the reasons listed in our answer to question 4d, we believe that ten business days is a commercially reasonable deadline for effectuating opt-out requests. We recommend that the Commission revisit this issue as technology continues to advance.

b. Are some commenters' concerns warranted that under the original ten-business-day provision senders would be permitted to bombard a recipient with e-mail for ten business days following his or her opt-out request? Why or why not? Is this a commonly-occurring practice? If so, what is the evidence supporting this? Providing as much detail as possible, explain whether recipients continue to receive commercial e-mail from a particular sender after submitting an opt-out to that sender. For example, are recipients who submit opt-out requests targeted for receipt of additional commercial e-mail? How likely are recipients to continue to receive additional commercial e-mail from a particular sender within ten business days after submission of an opt-out request? How likely after ten business days?

Discover does not believe that concerns are warranted that under the original ten-business-day provision, senders would be permitted to bombard a recipient with e-mail for ten business days following his or her opt out request. We do not believe that this is a commonly occurring practice and have found no record of abuse by legitimate senders to date. In fact, the Commission stated on page 69 of the NPRM that it also believes that it has not been demonstrated that fears of "mail-bombing" during an opt-out period are well-founded.

In addition to the protection provided to consumers under the CAN-SPAM Act, spam filter programs effectively provide consumers with the ability to opt out of receiving unsolicited and unwanted e-mails from senders with whom they have no prior relationship. If the rate of complaints provided to an internet provider rises above a certain level, the provider will not deliver the sender's e-mail to its intended recipients. It is likely that the technology used to conduct this type of screening will continue to become more commonly used, more sophisticated and ultimately more effective for the consumer. As a result, legitimate senders of commercial e-mail have the incentive to keep the complaint rate low, otherwise their e-mail communications will not be delivered to their intended recipients.

c. Some commenters indicated that there are several software products on the market that can effectuate opt-out requests almost immediately. Are such products widely or currently used by e-mail senders? Are these products affordable for small entities? What are the costs and benefits of using such products?

Discover believes that software products used to effectuate opt-out requests in real time are not widely or currently used by e-mail senders. While some businesses are able to provide automated opt-out processing for consumers, the majority of businesses do not currently have systems in place that can accommodate a three day opt-out period. In fact, many businesses have manual processes in place. It would take significant time and resources for a business to implement new systems. In addition, if businesses were required to honor opt-out requests within a three day time frame, even if software products were in place that could effectuate opt-out requests almost immediately, businesses would not be left with sufficient time to test and audit the e-mail communications that they plan to send to the recipients. As a result, rather than businesses risking not properly auditing and testing their e-mail communications, they might decide not to send certain legitimate and beneficial e-mails to their customers, thus depriving their customers of a valuable service. We are also concerned that some businesses, rather than deciding not to send the e-mail communications, might decide to send the e-mails despite the fact that they were not left with sufficient time to conduct proper quality control testing. We fear that if this were to happen, the risk of sensitive, personal information being sent to the wrong recipient could increase significantly. Accordingly, we believe that the benefits of using such products would not outweigh the costs of implementing them or the risks associated with shortening the current ten business day opt-out period.

d. What specific technical procedures are required to suppress a person's e-mail address from a sender's directory or distribution list? What are the specific time requirements and costs associated with those procedures? What, if any, manual procedures are required to suppress a person's e-mail address from a sender's directory or distribution list? What, if any, costs are associated with the manual suppression of e-mail addresses? How do such costs compare with costs associated with electronic processing? What, if any, circumstances would require manual processing of opt-out requests? How prevalent is the use of manual procedures to suppress people's e-mail addresses from a sender's directory or list? What are the characteristics of senders that use manual procedures to process opt-out requests? What are the characteristics of senders that use electronic procedures to process opt-out requests? Do small entities process opt-out requests manually or electronically?

The following is an example of the technical procedure required to suppress a person's e-mail address from a sender's directory or distribution list. These procedures contemplate that a third party vendor is used to send the e-mail communication on behalf of the sender.

Day 1: A list pull is conducted against the sender's list of targeted customers. Customers' opt-in/opt-out preferences are evaluated at this time.

Days 2 and 3: The sender conducts a manual quality control audit of the file of e-mail addresses to which the e-mail communication will be sent to ensure that the data

contained in the file is accurate. Certain criteria is evaluated to determine whether the customer is eligible for the promotion, including opt-in and opt-out preferences.

Day 3: The campaign file is transferred via a secure internet site to the sender's third party e-mail vendor. In the event multiple advertisers are involved, the advertisers provide their opt-out requests to the third party e-mail vendor at this time so that the vendor can suppress the opt-out requests delivered by the advertisers.

Days 4-5: The third party e-mail vendor uploads the campaign file into its database. Since the database is comprised of over 3.5 million records, this process takes over 12 hours (almost one full day).

Days 5-10: The third party e-mail vendor tests the e-mails that are to be sent to make sure that they contain the proper content and are personalized correctly. This process generally takes at least five days to complete. The e-mails are dynamically generated, meaning that each customer is selected to test different content. In addition, each version of the e-mail communication is tested, as well as all personalized data. The sender and the third party e-mail vendor also confirm that all data was uploaded on the vendor's database correctly.

Day 10: The e-mail communication is sent to customers.

e. In marketing agreements involving the use of third parties, what typically is the role of each third party in processing an opt-out request? For example, who typically receives the opt-out request and how? If the opt-out request must be transferred to a third party, how is that transfer accomplished, and how long does such a transfer typically take? Once an opt-out request is received by the third party, what procedures are involved in effectuating the opt-out request, and how long do such procedures typically take?

Discover does not have sufficient experience with these situations to comment.

f. Should there be time limits on the duration of opt-out requests? Why or why not? Does the CAN-SPAM Act give the Commission authority to limit the time opt-out requests remain in effect? If so, how?

Discover believes that a five year time limit should be established as the period during which an opt-out must be maintained and honored, similar to the time limit established for the National Do Not Call Registry. Since a large percentage of e-mail addresses change annually, establishing a time limit on the duration of opt-out requests would reduce the costs and burdens to senders of scrubbing lists against nonfunctional e-mail addresses. In addition, recipient preferences may change over time. Discover believes that imposing a five year time limit would provide the businesses with the opportunity to send commercial e-mail and reduce the costs associated with maintaining records indefinitely, while still providing the consumer with the protection contemplated by the CAN-SPAM Act.

Discover believes that section 13(a) of the CAN-SPAM Act authorizes the Commission to limit the time opt-out requests remain in effect.

Again, Discover appreciates the opportunity to comment on these issues. We would be pleased to provide any further information you may need regarding these comments.

Respectfully submitted,
Discover Bank

K.M. Roberts
President