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July 19, 2004

RECEIVED

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The Honorable Timothy J. Muris, Chairman
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

OFFICE OF THE CHAIRMAN

The Honorable James E. Gilleran, Director
Office of Thrift Supervision
177 G Street NW
Washington, DC 20552

Dear Chairman Muris and Director Gilleran:

I am writing on behalf of Flagstar Bank, FSB, a federally chartered savings bank, with regard to California Assembly Bill No. 68, The Online Privacy Protection Act of 2003, California Business and Professional Code sections 22575-22579.

As you know 15 USCA 6807 and 2 CFR 573.17 (b) provide that the Federal Trade Commission in consultation with The Office of Thrift Supervision shall determine if a state law regarding the privacy of consumer information affords greater protection than the federal law and regulation.

I hereby petition, on behalf of Flagstar Bank, FSB, that the Federal Trade Commission in consultation with the Office of Thrift Supervision as provided under 15 USCA 6807 and 12 CFR 573.17 for a determination as to whether Sections 22575, 22576 and 22577 of the California Business and Professional Code (copies enclosed) afford consumers greater protection than is provided under 12 CFR 573.

Flagstar Bank, FSB is an interested party because it does business in the state of California and endeavors to provide legally accurate disclosures to its customers.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Albert J. Gladner", written over a horizontal line.

Albert J. Gladner
Senior Vice President and General Counsel

July 19, 2004

cc: Arthur Goodhand, Regional Director
Office of Thrift Supervision
Atlanta Regional Office
1475 Peachtree Street, N.E.
Atlanta, GA 30309

Charles Kirkpatrick
Matthew I. Roslin
Kevin Kath

Westlaw.

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West's Ann.Cal.Bus. & Prof.Code § 22576

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West's Annotated California Codes Currentness

Business and Professions Code (Refs & Annos)

Division 8. Special Business Regulations (Refs & Annos)

Chapter 22. Internet Privacy Requirements (Refs & Annos)

→§ 22576. Violation of section for failure to comply with provisions of posted privacy policy

<Section operative July 1, 2004.>

An operator of a commercial Web site or online service that collects personally identifiable information through the Web site or online service from individual consumers who use or visit the commercial Web site or online service and who reside in California shall be in violation of this section if the operator fails to comply with the provisions of Section 22575 or with the provisions of its posted privacy policy in either of the following ways:

(a) Knowingly and willfully.

(b) Negligently and materially.

CREDIT(S)

(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update

2003 Legislation

Section 1 of Stats.2003, c. 829 (A.B.68), provides:

"This act shall be known as, and may be cited as, the Online Privacy Protection Act of 2003."

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West's Ann.Cal.Bus. & Prof.Code § 22575

CREDIT(S)

(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update

2003 Legislation

Sections 1 and 2 of Stats.2003, c. 829 (A.B.68), provide:

"SECTION. 1. This act shall be known as, and may be cited as, the Online Privacy Protection Act of 2003.

"SEC. 2. The Legislature finds and declares all of the following:

"(a) Each operator of a commercial Web site or online service has an obligation to post privacy policies that inform consumers who are located in California of the Web site's or online service's information practices with regard to consumers' personally identifiable information and to abide by those policies.

"(b) It is the intent of the Legislature to require each operator of a commercial Web site or online service to provide individual consumers residing in California who use or visit the commercial Web site or online service with notice of its privacy policies, thus improving the knowledge these individuals have as to whether personally identifiable information obtained by the commercial Web site through the Internet may be disclosed, sold, or shared.

"(c) It is the intent of the Legislature that Internet service providers or similar entities shall have no obligations under this act related to personally identifiable information that they transmit or store at the request of third parties."

West's Ann. Cal. Bus. & Prof. Code § 22575, CA BUS & PROF § 22575

Current with urgency legislation through Ch. 68 & Res. Ch. 1 of 2004 Reg.Sess.,
Ch. 1 (end) of 3rd Ex.Sess., Chs. 1 & 2 (Prop. 57) & Res. Ch. 1 (Prop. 58)
of 5th Ex.Sess., & Props. 55 & 56

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West's Ann.Cal.Bus. & Prof.Code § 22576

For legislative findings and declarations relating to Stats.2003, c. 829 (A.B.68), see Historical and Statutory Notes under Business and Professions Code § 22575.

West's Ann. Cal. Bus. & Prof. Code § 22576, CA BUS & PROF § 22576

Current with urgency legislation through Ch. 68 & Res. Ch. 1 of 2004 Reg.Sess., Ch. 1 (cnd) of 3rd Ex.Sess., Chs. 1 & 2 (Prop. 57) & Res. Ch. 1 (Prop. 58) of 5th Ex.Sess., & Props. 55 & 56

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West's Ann.Cal.Bus. & Prof.Code § 22577

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Business and Professions Code (Refs & Annos)
Division 8. Special Business Regulations (Refs & Annos)
Chapter 22. Internet Privacy Requirements (Refs & Annos)

→ § 22577. Definitions

<Section operative July 1, 2004.>

For the purposes of this chapter, the following definitions apply:

(a) The term "personally identifiable information" means individually identifiable information about an individual consumer collected online by the operator from that individual and maintained by the operator in an accessible form, including any of the following:

- (1) A first and last name.
- (2) A home or other physical address, including street name and name of a city or town.
- (3) An e-mail address.
- (4) A telephone number.
- (5) A social security number.
- (6) Any other identifier that permits the physical or online contacting of a specific individual.

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West's Ann.Cal.Bus. & Prof.Code § 22577

(7) Information concerning a user that the Web site or online service collects online from the user and maintains in personally identifiable form in combination with an identifier described in this subdivision.

(b) The term "conspicuously post" with respect to a privacy policy shall include posting the privacy policy through any of the following:

(1) A Web page on which the actual privacy policy is posted if the Web page is the homepage or first significant page after entering the Web site.

(2) An icon that hyperlinks to a Web page on which the actual privacy policy is posted, if the icon is located on the homepage or the first significant page after entering the Web site, and if the icon contains the word "privacy." The icon shall also use a color that contrasts with the background color of the Web page or is otherwise distinguishable.

(3) A text link that hyperlinks to a Web page on which the actual privacy policy is posted, if the text link is located on the homepage or first significant page after entering the Web site, and if the text link does one of the following:

(A) Includes the word "privacy."

(B) Is written in capital letters equal to or greater in size than the surrounding text.

(C) Is written in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language.

(4) Any other functional hyperlink that is so displayed that a reasonable person would notice it.

(5) In the case of an online service, any other reasonably accessible means of making the privacy policy available for consumers of the online service.

(c) The term "operator" means any person or entity that owns a Web site located on the Internet or an online service that collects and maintains personally identifiable information from a consumer residing in California who

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West's Ann.Cal.Bus. & Prof.Code § 22577

uses or visits the Web site or online service if the Web site or online service is operated for commercial purposes. It does not include any third party that operates, hosts, or manages, but does not own, a Web site or online service on the owner's behalf or by processing information on behalf of the owner.

(d) The term "consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money, or credit for personal, family, or household purposes.

CREDIT(S)

(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update

2003 Legislation

Section 1 of Stats.2003, c. 829 (A.B.68), provides:

"This act shall be known as, and may be cited as, the Online Privacy Protection Act of 2003."

For legislative findings and declarations relating to Stats.2003, c. 829 (A.B.68), see Historical and Statutory Notes under Business and Professions Code § 22575.

West's Ann. Cal. Bus. & Prof. Code § 22577, CA BUS & PROF § 22577

Current with urgency legislation through Ch. 68 & Res. Ch. 1 of 2004 Reg.Sess.,
Ch. 1 (end) of 3rd Ex.Sess., Chs. 1 & 2 (Prop. 57) & Res. Ch. 1 (Prop. 58)
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West's Ann.Cal.Bus. & Prof.Code § 22578

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West's Annotated California Codes Currentness

Business and Professions Code (Refs & Annos)

Division 8. Special Business Regulations (Refs & Annos)

Chapter 22. Internet Privacy Requirements (Refs & Annos)

→ § 22578. Legislative intent of chapter

<Section operative July 1, 2004.>

It is the intent of the Legislature that this chapter is a matter of statewide concern. This chapter supersedes and preempts all rules, regulations, codes, ordinances, and other laws adopted by a city, county, city and county, municipality, or local agency regarding the posting of a privacy policy on an Internet Web site.

CREDIT(S)

(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update

2003 Legislation

Section 1 of Stats.2003, c. 829 (A.B.68), provides:

"This act shall be known as, and may be cited as, the Online Privacy Protection Act of 2003."

For legislative findings and declarations relating to Stats.2003, c. 829 (A.B.68), see Historical and Statutory Notes under Business and Professions Code § 22575.

West's Ann. Cal. Bus. & Prof. Code § 22578, CA BUS & PROF § 22578

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West's Ann.Cal.Bus. & Prof.Code § 22578

Current with urgency legislation through Ch. 68 & Res. Ch. 1 of 2004 Reg.Sess.,
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West's Ann.Cal.Bus. & Prof.Code § 22579

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Business and Professions Code (Refs & Annos)
Division 8. Special Business Regulations (Refs & Annos)
Chapter 22. Internet Privacy Requirements (Refs & Annos)

→ § 22579. Operative date of chapter

<Section operative July 1, 2004.>

This chapter shall become operative on July 1, 2004.

CREDIT(S)

(Added by Stats.2003, c. 829 (A.B.68), § 3, operative July 1, 2004.)

HISTORICAL AND STATUTORY NOTES

2004 Electronic Update

2003 Legislation

Section 1 of Stats.2003, c. 829 (A.B.68), provides:

"This act shall be known as, and may be cited as, the Online Privacy Protection Act of 2003."

For legislative findings and declarations relating to Stats.2003, c. 829 (A.B.68), see Historical and Statutory Notes under Business and Professions Code § 22575.

West's Ann. Cal. Bus. & Prof. Code § 22579, CA BUS & PROF § 22579

Current with urgency legislation through Ch. 68 & Res. Ch. 1 of 2004 Reg.Sess.,

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West's Ann.Cal.Bus. & Prof.Code § 22579

Ch. 1 (end) of 3rd Ex.Sess., Chs. 1 & 2 (Prop. 57) & Res. Ch. 1 (Prop. 58)
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