

STATE OF COLORADO

Department of Regulatory Agencies

M. Michael Cooke
Executive Director



Bill Owens
Governor

DIVISION OF BANKING

Richard Fulkerson
State Bank Commissioner

OPERATING MEMORANDUM

TO: President or Chief Executive Officer of all Money Transmitters and Non-Depository Trust Companies Regulated by the Division of Banking

FROM: Richard Fulkerson
State Bank Commissioner

DATE: October 23, 2000

RE: Applicability of the Financial Privacy Provisions of the Gramm-Leach-Bliley Act to Non-Depository Trust Companies and Money Transmitters

Section 504(a) of the Gramm-Leach-Bliley Act (GLB) imposes certain notice requirements and restrictions on disclosure of nonpublic personal information by financial institutions. Section 505 of the Act requires the federal banking regulators, State insurance authorities, and the Federal Trade Commission (FTC) to promulgate regulations and enforce the privacy provisions with respect to financial institutions subject to their jurisdiction.

In accordance with the Act, the federal banking regulators collectively published final privacy rules on June 1, 2000. The regulations apply to all institutions within the respective jurisdictions of the federal regulators. Specifically, 12 CFR Part 40 applies to national banks, 12 CFR Part 216 applies to holding companies, non-bank subsidiaries, and state-member banks, 12 CFR Part 332 applies to state nonmember banks, savings banks, industrial banks, and depository trust companies.

The FTC has jurisdiction over other "financial institutions" that are not specifically identified under paragraphs 1 through 6 of Section 505 of the Act. The FTC published its final rule – 16 CFR Part 313 – on May 24, 2000. The rule defines a financial institution as an entity whose business is engaging in a financial activity as described in Section 4(k) of the Bank Holding Company Act of 1956 (BHCA). Pursuant to Section 4-082.72 (4)(A) of the BHCA, such activities include "Lending, **exchanging, transferring, investing for others, or safeguarding money or securities.**" [Emphasis added] The FTC rule identifies wire transferors, among other entities, as financial institutions that fall under the purview of the final rule. Accordingly, the FTC rule would appear to be applicable to money order companies and money transmitters. Although not specifically identified, non-depository trust companies engage in types of financial activities defined under Section 4(k) of the BHCA Act, and would also fall under the purview of the FTC.

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All money transmitters and non-depository trust companies regulated by the Division of Banking (Division) are subject to the requirements of the FTC final rule. Although the Division does not have specific regulatory authority or enforcement responsibility with respect to the privacy rules, compliance with federal regulations is a safety and soundness issue. The Division will not implement specific examination procedures, programs, or checklists to review for compliance with the financial privacy provisions; nevertheless, Division employees will notify the applicable federal regulator of instances of obvious non-compliance discovered during the normal supervisory process.

A copy of the FTC final rule is enclosed for your review. If you have general questions regarding the privacy provisions or this notice, please feel free to contact the Division at 303-894-7575. However, specific questions should be directed to the FTC.

H:ban/rjf/privacy letter to MO and TC