companies who inquire about, seek or propose to buy the MoneyGram Assets. First Data may require the independent auditor/manager to sign a confidentiality agreement prohibiting the disclosure of any material confidential information gained as a result of his or her role as independent auditor/manager to anyone other than the Commission.

- n. All material transactions, out of the ordinary course of business and not precluded by subparagraphs 3.a.—3.n. hereof, shall be subject to a majority vote of the management team. In case of a tie, the independent auditor/manager shall cast the deciding vote.
- o. The independent auditor/manager shall report in writing to the Commission every thirty (30) days concerning the independent auditor/manager's efforts to accomplish the purposes of this Agreement to Hold Separate.
- 4. Should the Federal Trade Commission seek in any proceeding to compel First Data to divest itself of the MoneyGram Assets or the Western Union Assets, or to seek any other equitable relief, First Data shall not raise any objection based on the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. First Data also waives all rights to contest the validity of this Agreement.
- 5. For the purpose of determining or securing compliance with this Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to First Data made to its General Counsel, First Data shall permit any duly authorized representative or representatives of the Commission:
- a. Access during the office hours of First Data and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of First Data relating to compliance with this Agreement; and
- b. Upon five days' notice to First Data, and without restraint or interference from it, to interview officers or employees of First Data, who may have counsel present, regarding any such matters.
- 6. This Agreement shall not be binding until approved by the Commission.

Attachment A

Notice of Divestiture and Requirement for Confidentiality

First Data Corporation ("First Data") has entered into Consent Agreement and Agreement To Hold Separate with the Federal Trade Commission relating to the divestiture of the MoneyGram Business or the Western Union Business. Until after the Commission's Order becomes final and First Data's interest in either the MoneyGram Business or the Western Union Business is divested, the MoneyGram Business must be managed and maintained as a separate, ongoing business, independent of all other First Data businesses and independent of Western Union Business. All competitive information relating to the MoneyGram Business, except information received by First Data in connection with the provision of data processing services to the

MoneyGram Business as described in and protected by the confidentiality provision of Paragraph V. of the Consent Order, must be retained and maintained by the persons involved in the MoneyGram Business on a confidential basis and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other First Data business, including the Western Union Business. Similarly, all such persons involved in the Western Union Business shall be prohibited from providing, discussing, exchanging, circulating or otherwise furnishing competitive information about such business to or with any person whose employment involves the MoneyGram business

Any violation of the Consent Agreement or the Agreement to Hold Separate, incorporated by reference as part of the Consent Order, may subject First Data to civil penalties and other relief as provided by law.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed consent order from First Data Corporation ("First Data"), under which First Data would divest either the MoneyGram or Western Union consumer money wire transfer business.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

On June 13, 1995, First Data and First Financial Management Corporation ("First Financial") agreed to merge in a stock swap valued at \$6.7 billion. Under the proposed agreement, First Financial shareholders would receive 1.5859 shares of First Data stock for each share of First Financial.

The proposed complaint alleges that the proposed merger, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for consumer money wire transfer services. A consumer money wire transfer is a unique method of transferring cash between two people in different geographic locations that is quick, secure and convenient to use. First Data currently provides consumer money wire transfers through its MoneyGram business. First Financial currently provides consumer money wire transfers through its subsidiary, Western Union Financial Services, Inc. These two companies are currently the only two domestic consumer money wire transfer services. No potential entrant is well-situated to overcome the high barriers to entry and deter or counteract the anticompetitive effects of the proposed merger. As a consequence, the combination of these two companies is likely to result in a monopoly

and lead to anticompetitive effects such as higher prices and reduced services in the United States consumer money transfer market.

The proposed Consent Order would remedy the alleged violation by replacing the lost competition that would result from the merger of First Data and First Financial. The proposed Consent Order provides that, within twelve (12) months after the date the Order becomes final, First Data shall divest either the consumer money wire transfer assets of MoneyGram or those of Western Union. If First Data is unable to divest these assets during the allotted time period, then a trustee may be appointed to divest the Western Union assets within a (12) month period. If, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the time period for divestiture can be extended by the Commission, or, in the case of a courtappointed trustee, by the court. The Commission, however, may extend this period only two (2) times.

A Hold Separate Agreement signed by First Data provides that until the MoneyGram or Western Union consumer money wire transfer assets are divested, the MoneyGram assets will be operated independently of the Western Union assets. Under the provisions of the Order within sixty (60) days following the date this Order becomes final, and every sixty (60) days thereafter until First Data has completely divested its interest in either the MoneyGram or Western Union assets.

The Order also provides that, if First Data divests the MoneyGram assets, First Data would then be prohibited from entering into a contract with any selling agent who is under contract to provide the MoneyGram service at the time of the divestiture. However, the Order does permit First Data to enter into a contract with such an agent after the agent's contract with First Data would have expired absent the divestiture.

The Order expressly allows First Data to supply data processing services to other consumer money wire transfer suppliers, provided that it shield any First Data employee who is involved in providing First Data's consumer money wire transfer provider. This provision will allow competing consumer money wire transfer companies to use First Data's data processing service while preventing the facilitation of collusion that could occur as a result of the transfer of proprietary information from other consumer money wire transfer providers to First Data, through its role as a data processor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms. Donald S. Clark,

Secretary.

Statement of Commissioner Christine A. Varney, Merger of First Financial Management Corp. and First Data Corp. [File No. 951–0107]

The First Financial/First Data merger represents another milestone in the fast-