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**CROSS-BORDER PRIVACY RULES SYSTEM & PRIVACY RECONITION FOR  
PROCESSORS JOINT OVERSIGHT PANEL**

2019 RECOMMENDATION REPORT ON THE  
APEC INITIAL RECOGNITION OF SCHELLMAN & COMPANY, INC. FOR THE  
PRIVACY RECOGNITION FOR PROCESSORS SYSTEM

**Submitted To:** Shannon Coe

Chair, Joint Oversight Panel

May 16, 2019

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EXECUTIVE SUMMARY

Pursuant to Paragraph 20 of the *Protocols of the Joint Oversight Panel* (herein ‘*JOP Protocols*’), APEC Member Economies had been given the opportunity to take into account the Joint Oversight Panel (herein ‘*JOP*’) Recommendation Report and Addendum to the Recommendation Report and the Member Economies ultimately granted Schellman & Company, Inc. (herein ‘*Schellman*’)’s request for recognition. On November 08, 2018 the Office of Digital Services Industries received an application from Schellman to be recognized as a Privacy Recognition for Processors System Accountability Agent in the United States.

SCOPE OF CONSULTATION PROCESS

Pursuant to the *JOP Protocols* and the *Policies, Rules and Guidelines*, members of the JOP<sup>1</sup> began a consultative process to:

- Confirm that Schellman meets the recognition criteria as identified in the *Accountability Agent Recognition Criteria (Annex A of the Accountability Agent APEC Recognition Application)* using the *Accountability Agent Recognition Criteria Checklist (Annex B of the Accountability Agent APEC Recognition Application)*;
- Confirm Schellman makes use of program requirements that meet the baseline established in the PRP system; and
- Confirm Schellman has provided the necessary signature and contact information; and
- Consider claims made by others regarding Schellman’s recognition.

The following Recommendation Report was drafted by the JOP pursuant to paragraph 24 of the *JOP Protocols* and complies with the requirements set out in paragraph 16 of the *JOP Protocols*.

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<sup>1</sup> For purposes of this consultative process JOP membership consists of: Shannon Coe, Department of Commerce, United States of America; Evelyn Goh, Personal Data Protection Commission, Singapore; and Shinji Kakuno, Ministry of Economy, Trade and Industry, Japan.

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RECOMMENDATION OF THE JOINT OVERSIGHT PANEL

*Having verified the United States is a participant in the APEC Privacy Recognition for Processors System and has demonstrated the enforceability of the PRP program requirements pursuant to the information provided in Annex B of the United States Notice of Intent to Participate;*

*Having verified Schellman is located in the United States and is subject to the enforcement authority described in Annex A of the United States Notice of Intent to Participate;*

*Having verified with the Administrators of the APEC Cross Border Privacy Enforcement Arrangement (CPEA) that the United States Federal Trade Commission, a Privacy Enforcement Authority in the United States, is a participant in the APEC CPEA;*

*Having determined, in the opinion of the members of the Joint Oversight Panel, that Schellman has policies in place that meet the established recognition criteria and makes use of program requirements that meet those established in the PRP system;*

*Having verified Schellman has provided the required signature and contact information, and;*

*The JOP recommends APEC Member Economies consider the conditions established in the Charter of the Joint Oversight Panel to have been met by Schellman; and to grant Schellman's request for APEC recognition to certify organizations within the United States and under the jurisdiction of the United States Federal Trade Commission as compliant with the PRP system pursuant to the established guidelines governing the operation of the PRP system.*

**Submitted by the Joint Oversight Panel:**

Shannon Coe  
Chair, Joint Oversight Panel  
U.S. Department of Commerce, United States

Evelyn Goh  
Member, Joint Oversight Panel  
Personal Data Protection Commission, Singapore

Shuji Tamura  
Member, Joint Oversight Panel  
Ministry of Economy, Trade and Industry, Japan

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REQUEST FOR CONSENSUS DETERMINATION

APEC Member Economies are asked to make a determination as to Schellman's request for recognition as an Accountability Agent for the Privacy Recognition for Processors (PRP) System, taking into account the JOP's recommendation. Any APEC Member Economy has the right to reject the request of an applicant Accountability Agent for recognition for failure to meet any of the recognition criteria required in the APEC Accountability Agent Recognition Application. When making this determination, any APEC Member Economy may request additional information or clarification from Schellman or the JOP. If no objection is received within the deadline for consensus determination as established by the ECSG Chair, the request will be considered to be approved by the ECSG. Should Member Economies determine that Schellman has met the necessary criteria, APEC recognition will be limited to one year from the date of recognition, which is the date of endorsement of this report, **DD MONTH2019**. Schellman may re-apply for APEC recognition if it so wishes at least one month prior to the date of recognition, following the same process described herein. Any subsequent re-recognition will be for a period of two years.

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I. ENFORCEABILITY

*Is the Applicant subject to the jurisdiction of the relevant enforcement authority in a PRP participating Economy?*

**Recommendation**

The JOP is satisfied that Schellman continues to be subject to the jurisdiction of the United States Federal Trade Commission (FTC), a participant in the Cross Border Privacy Enforcement Arrangement (CPEA).

**Discussion**

In its *Notice of Intent to Participate*, the United States described its enforcement authority as the United States Federal Trade Commission and the United States Patent and Trademark Office:

*To become a recognized APEC Accountability Agent, an applicant must complete and sign the Accountability Agent APEC Recognition Application...By publicly posting its Recognition Application, a recognized APEC Accountability Agent further represents that the answers contained in the document are true.*

*In addition, any organization that publicly displays a seal, trustmark or other symbol indicating its participation in the PRP System, or causes its name to appear on a list of recognized APEC Accountability Agents, is making an enforceable representation that it complies with the requirements applicable to a recognized APEC Accountability Agent.*

*If an APEC-recognized Accountability Agent subject to the jurisdiction of the Federal Trade Commission (FTC) fails to comply with any of these requirements, its representations of compliance may constitute unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC has broad authority to take action against unfair and deceptive acts and practices.*

*Furthermore, if an APEC-recognized Accountability Agent authorizes the use of its certification mark, 15 U.S.C. §1127, to convey compliance with the PRP program requirements, under Section 14(5) of the Lanham Act, 15 U.S.C. § 1064(5), the U.S. Patent and Trademark Office may cancel the certification mark if the Accountability Agent (a) does not control, or is not able legitimately to exercise control over, the use of such mark, including by failing to monitor the activities of those who use the mark, (b) engages in the production or marketing of any goods or services to which the certification mark is applied, (c) permits the use of the certification mark for purposes other than to certify, or (d) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.*

The JOP has confirmed that Schellman is subject to the regulatory oversight and enforcement authority of the United States Federal Trade Commission (herein 'FTC')

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since it is a Florida-based for profit entity. The JOP has further confirmed that the FTC is a participant in the Cross Border Privacy Enforcement Arrangement (herein 'CPEA') and that the United States is a recognized participant in the APEC PRP System. Schellman agrees that should it receive APEC recognition, it will publicly indicate its participation in the PRP System including allowing its name to appear on a list of recognized APEC Accountability Agents. Schellman agrees to post all PRP-certified companies online as well as the applicable PRP program requirements. The JOP has verified that Schellman has completed and signed the *Accountability Agent APEC Recognition Application*.

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II. RECOGNITION CRITERIA

The *Accountability Agent Application for Recognition* requires applicants to describe how each of the 15 Accountability Agent Recognition Criteria have been met using the Accountability Agent Recognition Criteria Checklist. Following is an overview of each listed requirement and recommendation of the sufficiency of each based on the information submitted to the JOP by Schellman.

**Conflicts of Interest (Recognition Criteria 1-3)**

*Applicant Accountability Agent should describe how requirements 1(a) and (b) in Annex A of the Accountability Agent Application for APEC Recognition have been met and submit all applicable written policies and documentation.*

*Applicant Accountability Agent should submit an overview of the internal structural and procedural safeguards to address any of the potential or actual conflicts of interest identified in 2(a-e) of Annex A of the Accountability Agent Application for APEC Recognition.*

*Applicant Accountability Agent should describe the disclosure/withdrawal mechanisms to be used in the event of any actual conflict of interest identified outlined in Annex A section 3 of the Accountability Agent Application for APEC Recognition.*

**Recommendation**

The JOP is satisfied that Schellman meets Recognition Criteria 1-3.

**Discussion**

*Obligation to Impartially Administer Certification*

Any entity maintaining a registered trademark in the United States is required by law to apply certification standards in an impartial manner. Schellman submitted their documentation on the Policies and Procedures on their internal processes to ensure that certification standards are applied in an impartial manner. The JOP has confirmed that Schellman is required to apply its certification standards in an impartial manner. The JOP has confirmed that the Schellman Certification logo is a services mark of Schellman and may not be used in connection with any product or services that is not within the scope of the PRP certification. The service mark should only be used upon the granting or extending of a PRP certification. Title 15, Chapter 22, Subchapter I, § 1064 of the United States Code<sup>2</sup> permits the Federal Trade Commission to request that the United States Patent and Trademark Office cancel this service mark on the grounds that the holder of the mark “discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.” (See U.S. Notice of Intent to Participate, Annex A, “[I]f an APEC-recognized Accountability

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<sup>2</sup> 15 USC 1064, available at <http://www.uspto.gov/trademarks/law/tmlaw.pdf>



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*Agent authorizes the use of its certification mark, 15 U.S.C. §1127, to convey compliance with the PRP program requirements, under Section 14(5) of the Lanham Act, 15 U.S.C. § 1064(5), the U.S. Patent and Trademark Office may cancel the certification mark if the Accountability Agent (a) does not control, or is not able legitimately to exercise control over, the use of such mark, including by failing to monitor the activities of those who use the mark, (b) engages in the production or marketing of any goods or services to which the certification mark is applied, (c) permits the use of the certification mark for purposes other than to certify, or (d) discriminately refuses to certify or to continue to certify the goods or services of any person who maintains the standards or conditions which such mark certifies.”)*

*Obligation on Behalf of Employees and Officers to Avoid Conflicts of Interest*

Schellman, as an Accountability Agent, commits that all decisions are not influenced by outside parties and that certifications are conducted in an impartial manner. Furthermore, Schellman does not outsource any activities related to the certification services, and any such activities are performed by Schellman employees.

In addition, Schellman performs an annual Independence Review which helps to identify, analyze and document the possibilities for conflicts of interests. Part of this review requires employees to disclose personal relationships of any Applicants organization or Participants organization on an annual basis, , satisfying the PRP System’s conflict of interest requirements.

Schellman commits to disclose all relevant information when it receives an inquiry or is asked for explanation from the JOP or APEC member economies concerning possible conflict of interests in order to ensure that there is no such conflict of interest. When Schellman receives a certification, they have committed to assessing and reassessing if the certification poses a threat to impartiality.

**Program Requirements (Recognition Criterion 4)**

*Applicant Accountability Agent should indicate whether it intends to use the relevant template documentation developed by APEC or make use of Annex C of the Accountability Agent Application for APEC Recognition to map its existing intake procedures program requirements.*

**Recommendation**

The JOP is satisfied that Schellman meets Recognition Criterion 4.

**Discussion**

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The JOP has confirmed that Schellman meets this requirement and has used Annex C to demonstrate compliance with the Assessment Criteria and intake documents approved by APEC.

**Certification Process (Recognition Criterion 5)**

*Applicant Accountability Agent should submit a description of how the requirements as identified in 5 (a) – (d) of Annex A of the Accountability Agent Application for APEC Recognition have been met.*

**Recommendation**

**The JOP is satisfied that Schellman meets Recognition Criterion 5.**

**Discussion**

The JOP has confirmed that Schellman has in place a comprehensive certification process to review a program applicant organization's policies and practices with respect to the program applicant participation in the PRP system and to verify its compliance with the Accountability Agent's Program Requirements.

The JOP has also confirmed that Schellman has in place a combination of methodologies to conduct the privacy certification review. Schellman has documented their internal procedures for assessing an applicant organization's policies and practices to confirm their compliance with the PRP system requirements. In its application, Schellman explained the following outline of its certification process:

- 1) Schellman will perform an initial review and assessment of the applicant's compliance based on their responses from the completed Intake Questionnaire;
- 2) Schellman will perform one or more testing procedures that includes inquiry, observation and inspection of the documentation;
- 3) Schellman then provides an Information Request List that documents the findings regarding compliance with the Intake Questionnaire;
- 4) Schellman then reviews and verifies any required changes as outlines in the Information Request List;
- 5) Upon successful conclusion of the above-listed steps, Schellman will certify that the applicant is in compliance with their program requirements.

**On-going Monitoring and Compliance Review Processes (Recognition Criteria 6, 7)**

*Applicant Accountability Agent should submit a description of the written procedures to ensure the integrity of the certification process and to monitor the participant's*

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*compliance with the program requirements described in 5 (a)-(d) in the Accountability Agent Application for APEC Recognition.*

*Applicant Accountability Agent should describe the review process to be used in the event of a suspected breach of the program requirements described in 5(a)-(d) in the Accountability Agent Application for APEC Recognition.*

**Recommendation**

The JOP is satisfied that Schellman meets Recognition Criteria 6, 7.

**Discussion**

Schellman has documents of its internal procedures to ensure integrity of its certification processes and to monitor compliance of the certified organization. As Schellman explains in the application documents, it has established monitoring and compliance review mechanisms. These mechanisms include following functions and procedures:

- 1) Schellman compiles an audit report that will include the Applicant's level of compliance with program requirements.

Where there are reasonable grounds to believe that a Participant has engaged in a practice that may constitute a breach of the program requirements, an immediate review process will be triggered whereby verification of compliance will be carried out. In these situations, the Compliant process, as outlined below, will be followed

The complaint process provides another method of on-going monitoring and compliance review during the certification period. Where non-compliance with any of the program requirements is found, Schellman will notify the Participant as outlined in the Complaint process outlined below. As the Complaint process outlines, Schellman will verify that the required changes have been properly completed by the Participant within the stated timeframe. At such time, the certification will be suspended until Schellman can verify that the Participant is in compliance with the requirements.

**Re-Certification and Annual Attestation (Recognition Criterion 8)**

*Applicant Accountability Agent should describe their re-certification and review process as identified in 8 (a)-(d) in the Accountability Agent Application for APEC Recognition.*

**Recommendation**

The JOP is satisfied that Schellman meets Recognition Criterion 8.

**Discussion**

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The JOP has confirmed that Schellman requires an annual re-certification at which time Schellman investigates whether the Participant is meeting and/or exceeding Schellman's Program Requirements. In addition, if the Participant notifies Schellman of a change or Schellman detects a change outside the annual re-certification cycle, the change will be verified by Schellman immediately.

**Dispute Resolution Process (Recognition Criteria 9, 10)**

*Applicant Accountability Agent should describe the mechanism to receive and investigate complaints and describe the mechanism for cooperation with other APEC recognized Accountability Agents that may be used when appropriate.*

*Applicant Accountability Agent should describe how the dispute resolution process meets the requirements identified in 10 (a) – (h) of Annex A, whether supplied directly by itself or by a third party under contract (and identify the third party supplier of such services if applicable and how it meets the conflict of interest requirements identified in sections 1-3 of Annex A) as well as its process to submit the required information in Annexes D and E.*

**Recommendation**

The JOP is satisfied that Schellman meets Recognition Criteria 9, 10.

**Discussion**

The JOP has confirmed that Schellman has an existing customer dispute resolution program to receive and investigate complaints about participants and to resolve disputes between complainants and participants. Following is an overview of Schellman's dispute resolution process as provided in its application for recognition:

- 1) Schellman receives and records the complaint and record and then reviews the commitments that the Participant has made under the PRP Program Requirements. The form by Schellman that will be available to consumers will also request the complainant to provide consent before Schellman shares their personal information with the program Participant the complainant is filing a dispute about.
- 2) The consumer receives a confirmation from Schellman that the complaint has been received within five business days;
- 3) The nature and duration of the investigation will vary depending on the complaint that was submitted, and the consumer will receive an update at minimum once per month on the status of their complaint;
- 4) Once the complaint is resolved, Schellman will send an email notice to both the complainant and the Participant notifying them of closure of the complaint;
- 5) If noncompliance is found Schellman will contact the Participant outlining the noncompliance and remediation;

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- 6) Finally, Schellman will then provide a written notice of complaint resolution to the complainant and the Participant.

**Mechanism for Enforcing Program Requirements (Recognition Criteria 11-15)**

*Applicant Accountability Agent should provide an explanation of its authority to enforce its program requirements against participants.*

*Applicant Accountability Agent should describe the policies and procedures for notifying a participant of non-compliance with Applicant's program requirements and provide a description of the processes in place to ensure the participant remedy the non-compliance.*

*Applicant Accountability Agent should describe the policies and procedures to impose any of the penalties identified in 13 (a) – (e) of Annex A.*

*Applicant Accountability Agent should describe its policies and procedures for referring matters to the appropriate public authority or enforcement agency for review and possible law enforcement action. [NOTE: immediate notification of violations may be appropriate in some instances].*

*Applicant Accountability Agent should describe its policies and procedures to respond to requests from enforcement entities in APEC Economies where possible.*

**Recommendation**

The JOP is satisfied that Schellman meets Recognition Criteria 11-15.

**Discussion**

The JOP has confirmed that Schellman has a mechanism in place to enforce its program requirements, has established procedures to remedy non-compliance, impose penalties and notify public authorities, where appropriate. Following is an overview of these procedures as provided in Schellman's application for recognition:

1. Schellman has the authority to enforce its program requirements against clients, or Participants, through contract/JAL. Schellman has the authority to suspend, withdraw, or reduce the scope of a certification under just cause and as a result of reasonable evidence.
2. Schellman has adequately outlined the mechanisms and scenarios upon which a certification can be suspended, including through complaints, monitoring, or persistent issues which have not been remedied in a timely fashion.

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3. Under suspension, the client's certification is temporarily invalid. Included within the JAL are the enforceable arrangements regarding the suspension of the certification to help ensure, that in case of suspension, the client refrains from further promotion of its certification and use of the Schellman certification seal. Schellman will make publicly accessible, on the company website, the suspended status of the certification.
4. Schellman acknowledges they are required to refer the violation to the Federal Trade Commission, where a reasonable belief is pursuant to its established review process that a client's failure to comply with the APEC PRP System has not been remedied within a reasonable time, so long as such failure to comply can be reasonably believed to be a violation of applicable law. Schellman will respond to requests from enforcement entities in APEC Economies that reasonably relate to that Economy and to the PRP related activities of Schellman.
5. If the determination is to withdrawal the certification, Schellman, as included in the JAL, has enforceable arrangements with the Participant concerning conditions of withdrawal, ensuring upon notice of withdrawal of certification that the client discontinues its use of all advertising matter that contains any reference to a certified status.
6. Upon request by any party, Schellman will correctly state the status of certification of the participant, or client, as being suspended, withdrawn, or reduced.

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**SIGNATURE AND CONTACT INFORMATION**

By signing this document, the signing party and agrees to the findings of the Joint Oversight Panel contained herein and attests to the truth of the information provided to the Joint Oversight Panel pursuant to the Application for APEC Recognition.

**[Signature of person who has authority to commit party to the agreement]**

**[Typed name]:**

**[Date]:**

**[Typed title]:**

**[Typed name of organization]:**

**[Address of organization]:**

**[Email address]:**

**[Telephone number]:**

APEC recognition is limited to one year from the date of recognition. Each year one month prior to the anniversary of the date of recognition, the Accountability Agent must resubmit this form and any associated documentation to the appropriate government agency or public authority or as soon as practicable in the event of a material change (e.g. ownership, structure, policies).

**NOTE: Failure to comply with any of the requirements outlined in this document may result in appropriate sanctions under applicable domestic law.**