



May 29, 2007

Via Electronic Delivery

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File Number S7-09-07: Model Privacy Form

Dear Ms. Morris:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the Interagency Proposed Rule for Model Privacy Form (the “Model Form”) under the Gramm-Leach-Bliley Act (“GLB Act”) jointly issued by the Securities and Exchange Commission (the “Commission”) and the other Federal agencies² (the “Agencies”). The Agencies’ proposal responds to Congress’s direction in the Financial Services Regulatory Relief Act of 2006 (the “Regulatory Relief Act”) to jointly develop a model form that may be used at the option of financial institutions to provide initial and annual privacy notices under section 503 of the GLB Act.³

I. SUMMARY

SIFMA recognizes the importance of respecting customer information and strongly supports the GLB Act privacy provisions. Our member firms have worked hard to provide consumers with accurate and meaningful information about their privacy policies in order to make informed choices. We commend the Commission and the Agencies on their efforts to develop a model form that provides clear and conspicuous disclosures, is comprehensible to consumers and is succinct.

¹ The Securities Industry and Financial Markets Association (“SIFMA”) brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

² Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Trade Commission, Office of Thrift Supervision, Federal Deposit Insurance Corporation, National Credit Union Administration and the Commodity Futures Trading Commission.

³ Section 728 of the Financial Services Regulatory Relief Act of 2006, Pub. L. 109-351, 120 Stat. 1966.

SIFMA believes that a model disclosure form can serve consumers and financial institutions. We also believe the structure of the proposed Model Form establishes a format that could potentially make privacy notices clearer and more useful to consumers.

However, because of the rigidity and prescriptive nature of the proposed Model Form many firms will not be able to accurately reflect their practices in the form as proposed. Therefore, in order to make the Model Form applicable to actual firm policies as well as useful and meaningful to consumers, SIFMA recommends that the Commission and the Agencies provide financial institutions with flexibility to modify certain items contained in the Model Form to reflect institutions' actual information collection practices and disclosure policies. We present below various ways in which this flexibility may be accomplished.

In addition, SIFMA believes that certain operational aspects of the proposal are needlessly burdensome. Providing additional flexibility in the areas presented below will improve the usefulness and comprehension of the Model Form to consumers without diminishing its importance. SIFMA member firms indicate that it is more likely that they will use the Model Form if the Agencies provide additional flexibility which enables them to more accurately describe their privacy and information sharing policies to consumers.

Accordingly, we are pleased to present the following comments.

II. PROPOSED MODEL FORM

We appreciate that the Commission's proposed rule provides that use of the Model Form constitutes compliance with the notice content requirements of Regulation S-P. While the Model Form provides consumers with a simple presentation, SIFMA is concerned that in some sections, the Model Form is overly simplistic. We believe that the format may not enable financial institutions to adequately convey certain details of their information-sharing practices. For example, institutions may adopt different sharing practices depending upon the sensitivity of the information. Accordingly, we request the Agencies provide financial institutions with flexibility to modify the language of the Model Form as indicated below without affecting their ability to continue to fall within the safe harbor provided in the proposal.

A. Page One

i. Affiliates

The proposed rule states that page one permits an institution to include on the form the name of the financial institution or a group of affiliated institutions providing the notice on the form. SIFMA agrees that affiliated institutions should be permitted to adopt a single privacy notice for affiliated institutions. However, given the limited space available and the fact that in many instances the names of affiliates are not similar, SIFMA is concerned that consumers may not comprehend to which institutions the notices apply. To alleviate this concern, SIFMA believes that financial institutions should be permitted to indicate on the Model Form the names of the

institutions covered by the policy. This could be accomplished through the use of a footnote, a listing on the reverse side of the form, or provision for expansion of the definition of the term “affiliates” on page 2 of the Model Form.

Financial institutions often have sharing practices that differ among affiliated entities, divisions and lines of business. If such organizations desire to use a single Model Form for all their affiliated entities, divisions and lines of business, the form must reflect the sharing practices of each business unit. For example, the department that administers customer retirement accounts may have a sharing policy that differs from that of the related retail brokerage operation. The proposed Model Form does not currently accommodate differing disclosures. Accordingly, in order to facilitate the ability of institutions to send a single Model Form that accurately reflects the sharing policies of affiliates, divisions and business lines, SIFMA requests the Agencies permit firms to indicate the sharing practices of each affiliate, division or business line in the disclosure frame on page 1 of the Model Form if appropriate to reflect varying sharing policies among such business units.

If the Commission and the Agencies provide this flexibility, affiliated financial institutions and separate business units will be able to deliver a single Model Form to customers. This will avoid having consumers receive the same Model Form from companies and business units that are part of the same enterprise. Receiving the same form multiple times from the same enterprise could prove confusing and frustrating to consumers, who will wonder why they are receiving so many notices from the same organization. Avoiding the need to send multiple forms to the same customer has the added benefit of conserving resources and reducing costs incurred by financial institutions. Such flexibility also benefits the environment because fewer forms means using fewer natural resources to prepare Model Forms and attend to their disposal.

The Agencies also ask whether an institution regulated by the Commission and an affiliated institution regulated by one of the Agencies that intend to provide a joint privacy notice should be able to rely on the Commission Model Form or the form proposed by the other Agencies. SIFMA believes that affiliated financial institutions should have the ability to rely upon either Model Form. The differences between the two Model Forms are already slight. If the Agencies provide the flexibility as described below, institutions will strive to achieve even greater uniformity and consistency among affiliates. Accordingly, providing affiliated financial institutions with the ability to use either form should provide meaningful disclosure to consumers.

ii. Information Collected

The key frame entitled “What?” sets forth the type of information financial institutions collect and share. Financial institutions may not alter the language in this frame. SIFMA believes that the inability to indicate what information the institution actually collects has the potential to mislead and cause confusion among consumers. For example, the key frame applicable to securities firms indicates that they may collect and share credit history and credit scores. Many securities firms do not collect such information. It is likely that securities firms will receive

numerous inquiries from consumers expressing concern as to why such information is collected. Our member firms believe that their ability to disclose their information collection and sharing practices will be more meaningful to consumers and better enable them to compare privacy policies among financial institutions. Accordingly, in order to provide more accurate disclosure and avoid needless confusion, SIFMA believes that financial institutions should have the flexibility to modify this frame to reflect the types or categories of information institutions actually collect and share.

iii. Account Closure

The key frame entitled “What?” also contains the statement that the institution will continue to share information about a customer when the account is closed. SIFMA requests that the Commission and the Agencies clarify that financial institutions are not required to provide a statement regarding sharing of information relating to closed accounts if the institution does not share information after an account is closed.

In addition, SIFMA is concerned that this statement is placed in an incorrect location and could be easily overlooked. In order to make this disclosure more meaningful to consumers, SIFMA suggests that the statement should not appear in the “What?” frame but rather in the “How?” frame, which relates more directly to information-sharing practices rather than the type of information collected and shared.

iv. Disclosure Table

SIFMA agrees with the Agencies that the disclosure table is the heart of the Model Form. Accordingly, it is important to ensure that the information contained in the table accurately reflects an institution’s sharing practices. The Agencies state that the first column entitled “Does [name] share?” permits only a “yes” or “no” answer. SIFMA is concerned that the rigid structure of the permitted responses in the first column does not provide financial institutions with sufficient flexibility to accurately describe their actual privacy and information sharing policies. For example, a financial institution should be permitted to indicate in the column that it shares with certain affiliates, including the name of specific affiliates with which it shares, or types of institutions. This additional flexibility will provide additional clarity to consumers and will not weaken the goal of making the disclosures clear and understandable.

SIFMA also believes that the first row of the Disclosure Table is unnecessary because it repeats virtually the same information that is in the frame entitled “How?” There is simply no reason why the Model Form should contain precisely the same information in two consecutive sections. SIFMA questions the need to mention in the Disclosure Table that financial companies share information for everyday business purposes. As the Model Form indicates, all financial companies need to share personal information to process transactions and maintain accounts. No institution could possibly provide consumers with an opportunity to opt-out from such sharing because an opt-out would thwart the ability of the company to deliver the products and services consumers have

contracted for. Providing a consumer with the opportunity to opt-out from sharing for everyday business purposes is inconsistent with a company's responsibility to provide products and services in a timely, efficient manner. Retaining this provision in the Disclosure Table runs the risk that customers will conclude that the company has chosen not to give them a choice when, in reality, there is no logical or practical reason for providing customers with the opportunity to opt out under these circumstances. Eliminating this row from the Disclosure Table does not affect the ability of consumers to compare sharing policies across financial institutions because, as the Model Form clearly states, "[a]ll financial institutions need to share customers' personal information to run their everyday business . . ." To us, this means that no institution will provide consumers with an opportunity to opt out from such sharing. Accordingly, SIFMA recommends that this row of the Disclosure Table be deleted because it is unnecessary and provides no additional information to customers. In this regard, SIFMA also suggests that the language in the "How?" section be modified to inform customers that they may not limit sharing of information for everyday business purposes.

v. State and Global Requirements

As the Commission and the Agencies are aware, as permitted by the GLB Act, several states have adopted additional privacy and disclosure requirements. Institutions have modified their privacy policies to accommodate the additional requirements that are applicable to customers in the affected states. In addition, some member firms have modified their GLB Act privacy policies to comply with privacy requirements of foreign countries. The rigid nature of the Model Form does not allow for alteration to address these unique state and international requirements. Accordingly, SIFMA requests that the Commission and the Agencies permit financial institutions to modify the language of the Model Form to incorporate changes that affect consumers in states that have altered the GLB Act requirements as well as other privacy laws of states and foreign countries that have differing requirements for their residents.

vi. Contact Information

The contact information section permits financial institutions to provide a telephone number or a web address. Actual practices of member firms differ based upon customer preferences and business needs. SIFMA recommends that financial institutions should be permitted to provide contact information based upon their actual practices rather than simply a telephone number or website address.

B. Page 2

i. Frequently Asked Questions on Sharing Practices

The Agencies state that the language contained in the section entitled "Frequently Asked Questions" may not be altered. SIFMA believes that the inability to modify the FAQs to reflect an institution's actual sharing practices has the potential to mislead and cause confusion among

consumers. For example, the FAQ which indicates that a firm collects personal information when the customer uses a credit or debit card may have no relation to a particular company's business. It is likely that such information will result in numerous inquiries from consumers expressing concern as to what this FAQ means. It would be more meaningful to consumers and better enable them to compare privacy policies among financial institutions if information in the FAQs reflected an institution's actual sharing practices. Accordingly, SIFMA recommends that the Agencies provide institutions with flexibility to modify the FAQs to reflect an institution's actual sharing policy.

SIFMA also believes that it may prove confusing to consumers to have a FAQ regarding information collection practices in the section entitled "sharing practices." The collection of information would appear to have little reason to appear in the "sharing practices" section. Accordingly, SIFMA recommends that the FAQ regarding information collection be moved to a more appropriate section.

SIFMA also believes that the response to the first FAQ does not accurately reflect when financial institutions are required to provide information to customers. The Model Form states that institutions "must notify [customers] about [their] sharing practices when [the customer] opens an account and each year while [the customer] is a customer." The GLB Act and Agencies' regulations provide that the initial notice that reflects the institution's privacy policies and practices are to be provided when the person becomes a customer and annually thereafter.⁴ If the customer obtains an additional product or service, no additional notice is required if the prior notice delivered to the customer was accurate with respect to the new product or service.⁵ Accordingly, SIFMA recommends that the Model Form be changed to state that institutions must notify customers about their sharing practices when the person becomes a customer and each year while he or she is a customer.

ii. Definitions – Everyday Business Purposes

The definition of "everyday business purposes" provides short examples of instances where institutions routinely share information. SIFMA believes that the three examples provided do not adequately convey the range of circumstances under which information may be shared for everyday business purposes across the numerous types of financial institutions subject to the GLB Act. SIFMA believes that it would be more meaningful to consumers if financial institutions could expand this disclosure to include additional instances in which they share information. For example, a financial institution's sale of assets or a sale of a business may involve the transfer of customer information to the purchaser. This constitutes an everyday business purpose, yet is not included in the definition. Further, the definition includes disclosure of information to credit bureaus. This has the potential to confuse customers if an institution is not providing information to credit bureaus. SIFMA believes that institutions should be permitted to modify the definition of everyday business purposes to reflect the institution's actual practices.

⁴ See, e.g., 12 C.F.R. § 216.4(a)(1); 216.5(a)(1).

⁵ See, e.g., 12 C.F.R. § 216.4(d).

C. Page 3

i. 30 Day Delay

The third page of the Model Form provides that institutions are required to delay sharing for 30 days from the date of the Model Form. Because the Model Form will be sent each year, this seems to suggest that every year a financial institution is required to cease sharing a customer's nonpublic personal information for 30 days from the date of the annual notice. SIFMA believes that this is not what Regulation S-P intends or requires. SIFMA believes that the Commission did not intend to impose a 30-day moratorium on sharing each year. *See* 17 C.F.R. § 248.10. Such a moratorium may be contrary to the wishes of customers who have previously chosen not to opt out because it may prevent them from receiving information about products and services offered by third parties. Moreover, as a practical matter, institutions cannot possibly implement a 30-day moratorium on information sharing each year. Accordingly, SIFMA request that the Model Form be modified to indicate that the 30 day waiting period applies only to the initial opt-out opportunity provided to consumers when they first become customers, as set forth in Regulation S-P.

ii. Partial Opt-out

Regulation S-P permits firms to allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt-out. *See* 17 C.F.R. § 248.11(c). The Model Form does not appear to permit institutions to offer partial opt-outs to consumers. Because the Commission's Regulation S-P permits partial opt-out, in order to ensure that institutions are able to accurately describe to customers their available opt-out options, SIFMA requests that firms be provided such flexibility in the Model Form. SIFMA also suggests that the Agencies permit financial institutions to modify the disclosure table on page 1 of the proposed Model Form to reflect these options.

iii. Affiliate Opt-Out

The opt-out form provides a choice that permits a consumer to prohibit the institution from allowing its affiliates to use the customer's information to market to the customer. SIFMA is concerned that this statement does not accurately convey the fact that Section 624 of the Fair Credit Reporting Act ("FCRA"),⁶ as amended by section 214 of the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), permits a company to use information of an affiliate to market to a customer under a variety of circumstances without providing customers the opportunity to opt out. For example, a company may use information of an affiliate for marketing purposes if the person is a customer of both institutions, or if the person authorized or requested the solicitation. Accordingly, SIFMA requests that financial institutions be permitted to modify the Model Form to indicate that consumers do not have the right to prevent an institution from using an affiliate's information if the consumer is a customer of both institutions.

⁶ 15 U.S.C. § 624(a)(4).

III. OPERATIONAL ISSUES

As the Commission and the Agencies are aware, financial institutions incur considerable expenses in connection with compliance with the initial and annual GLB Act privacy notice requirements. Institutions have adopted policies and procedures that enable them to provide privacy notices in an efficient and economical manner. SIFMA member firms have advised us that several aspects of the proposed Model Form will require them to implement dramatic changes to their existing procedures and will impose significant additional burdens and expenses on them. The following presents our views on important operational effects of several proposed requirements.

A. Size of Paper

The proposal requires that the Model Form be printed on 8 ½” by 11” paper. SIFMA does not believe that it is necessary for the Agencies to specify the paper size in order for the Model Form to accomplish the objectives set forth in the Regulatory Relief Act. SIFMA believes that consumers will be able to comprehend the information in the Model Form without having to specify the size of the paper on which the form is printed. In this regard, we note that the Agencies tested the Model Form only on 8 ½” by 11” paper. As a result, the test results do not indicate whether the Model Form would be just as effective if it were printed on smaller or larger-sized paper. Member firms have found that the size of the paper is not as significant as how information is presented and the nature of the information the document contains. Using different-sized paper also enables financial institutions to economize on paper costs. This means that less paper will be used and fewer natural resources will be consumed in meeting the requirements of the GLB Act and in disposing of forms not retained by consumers. This will help conserve the environment, which we believe is a worthy objective. In light of this, we recommend that no paper size requirement be established.

B. Number of Pages

The proposal provides that the Model Form appear on two pages, and, if applicable, the opt-out form appear on a separate page. The Agencies propose to require that each page be printed on a separate sheet of paper because consumers stated a preference for the model that allowed them to view the information on pages one and two side-by-side. SIFMA objects to the requirement that pages one and two be printed on separate pages. Such a requirement will significantly increase an institution’s cost for paper, handling and processing. Moreover, a requirement of a multi-page Model Form does not materially increase consumer comprehension and usability because, as the Agencies concede, the research they conducted indicated that page one alone was adequate for consumer comprehension and usability.⁷

⁷ 72 *Fed. Reg.* at 14944. *See, also*, “Evolution of a Prototype Financial Privacy Notice,” Kleimann Communication Group, Inc. at 7 (February 28, 2006) (“The Secondary Frame is page 2 of the prototype. . . . Testing did not show this information as essential for consumers to have, . . .”)

Permitting a financial institution to print the Model Form on one sheet of paper will save an enormous amount of natural resources and reduce expenses. We estimate that requiring an additional sheet of paper will increase the cost by approximately \$7,500 per million notices. As a result, a financial institution that sends 5 million notices per year could save \$37,500 per year if the Model Form could be printed on two sides of a sheet of paper. Given the billions of notices sent each year, permitting the Model Form to be printed on two sides of a sheet of paper could reduce costs by \$7.5 million per billion notices. Accordingly, we request that the Agencies permit financial institutions to print the Model Form on two sides of one piece of paper. This will enable institutions to send the Model Form on as many pages as required to describe their sharing practices.

C. Delivery of Model Form

Many firms find it efficient to include their annual privacy notices with periodic statements sent to customers. We find that customers pay attention to important documents such as periodic statements. Sending the notice along with a periodic statement insures that consumers will focus on the material because of the significance of the accompanying document. However, the proposed 8 ½" x 11" paper size requirement will preclude many firms from being able to send the Model Form with a periodic statement because many periodic statements are often smaller than 8 ½" x 11". As a result, the Model Form will not fit in the same envelope as the periodic statement. Accordingly, many institutions would be unable to make use of existing mailings and will find it necessary to send the form in a separate mailing unless the Agencies permit the Model Form to be printed on smaller-sized paper. Sending the privacy notice in a separate mailing will impose significant costs on financial institutions with very little benefit to consumers. We estimate that the printing, preparation and mailing cost of sending the Model Form in a separate mailing is approximately \$0.41 per notice.⁸ A financial institution that sends 10 million notices per year could save \$4.1 million per year if the Model Form could be sent with other material in the same mailing. Accordingly, SIFMA requests that the Agencies permit financial institutions to print the Model Form on paper sized to enable the form to be sent with periodic statements.

The requirement that the Model Form appear on separate pages will also increase mailing costs for financial institutions. Three 8 ½" x 11" pages weigh 0.5 oz. Adding this weight to a statement will force the total weight of the mailing to exceed 1 oz. and will require additional postage of approximately \$0.12 per notice (presorted). Accordingly, a financial institution that sends 10 million notices per year could save \$1.2 million per year if a smaller, lighter version of the Model Form could be sent in the same mailing with other material.

The Agencies propose that financial institutions not be permitted to incorporate the Model Form into any other document. SIFMA believes that this restriction is unduly harsh and strongly objects to it. There is no evidence that incorporating the privacy notice into another document dilutes the effectiveness of the notice. In fact, many institutions provide consumers with privacy notices as part of a booklet that describes the terms and conditions relating to the consumers'

⁸ \$0.31 postage (pre-sorted); \$0.05 paper and envelope; \$0.05 mailing preparation and addressing.

account relationships with the institutions. Because of their importance and comprehensiveness, consumers typically review and retain these booklets. SIFMA believes that it is highly likely that a consumer will review the institution's privacy policy when it is part of a booklet containing comprehensive terms and conditions relating to the consumer's relationship with the institution. Being part of the booklet in fact highlights the importance of the notice. Prohibiting institutions from incorporating the Model Form into a brochure or booklet will not make the Model Form more comprehensible to consumers, will not cause the disclosures to be clearer or more conspicuous and will not enable consumers to better identify and compare institution sharing practices. Accordingly, SIFMA requests that the Agencies provide institutions the flexibility to incorporate the Model Form with other documents such as in a booklet which conveys account terms and conditions.

Given the billions of privacy notices that are sent to customers each year, if the Agencies adopt the above recommendations we believe that it would result in cost savings of more than \$75 million for financial institutions as well as have considerable benefits for the environment.

D. Web-Based Notice

The Agencies state that institutions that post a pdf version of the Model Form on their Internet websites may obtain a safe harbor. The Agencies ask, however, whether they should develop a web-based design for financial institutions to use. SIFMA believes that financial institutions should have the option to use either a pdf version of the Model Form or use a web-based Model Form. A web-based Model Form may prove more convenient to consumers because it does not require them to open up a pdf document to view the institution's privacy policy. They can review the privacy policy by simply clicking on the appropriate web page. However, given the unique aspects of many firms' websites, SIFMA believes that the Agencies should leave it to financial institutions to develop web-based designs and content. Accordingly, we request that the Agencies permit financial institutions to develop web-based designs for use on their websites.

The Agencies should also be mindful that online privacy policies often include information regarding terms and conditions of website usage and other consumer issues relating to online activities. For example, many firms provide important information on their websites relating to phishing frauds and identity theft that consumers find informative and helpful. Therefore, SIFMA requests that the Commission and the Agencies not disrupt current practices and permit firms that choose to provide web-based forms to also provide additional information relating to other consumer issues. Institutions should also be permitted to include on the printed Model Form a reference to website URLs where consumers can obtain additional information which informs them of important consumer issues.

E. Notice of Changes

Financial institutions may notify consumers of changes to their privacy policies in their annual privacy notices. The Agencies ask if financial institutions should be required to highlight changes in their policies in a distinctive manner as part of the Model Form. SIFMA believes that

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Regulation Comments
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Re: Docket ID OTS-2007-0005

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Proposed Rule Part 716 (Model Privacy Notice Form)