

May 30, 2007

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: Release Nos. 34-55497, IA-2598, IC-27755; File No. S7-09-07  
Interagency Proposal for Model Privacy Form under the Gramm-Leach-Bliley Act**

Dear Ms. Morris:

The Financial Planning Association (“FPA®”)<sup>1</sup> is writing in response to the recent interagency proposal for a model privacy form required under the Gramm-Leach-Bliley Act. The proposed safe harbor model privacy form for use by financial institutions providing disclosures required under the privacy rules will affect a significant number of FPA members, many of whom are investment advisers registered with the SEC.<sup>2</sup> FPA members that currently use privacy notices based on the sample clauses in the SEC’s privacy rule will no longer be able to rely on the guidance provided with respect to those notices if they are delivered more than a year after the final publication of this rule, so FPA seeks to ensure that the proposed model privacy form will be carefully crafted to contain language allowing investment adviser firms to accurately convey their privacy policies to their clients.

**Do standardized provisions provide sufficient flexibility in disclosing information sharing practices?**

In the proposal, the Agencies have requested comments on whether financial institutions can accurately disclose their information sharing practices by using the standardized provisions and vocabulary in the proposed model form, including whether the proposed disclosure table provides a financial institution with sufficient flexibility to disclose its sharing practices, or any additional opt-outs it offers.

FPA believes that the standardized provisions in the proposed model do not allow many financial planning firms to accurately disclose their information sharing practices. For example,

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<sup>1</sup>The Financial Planning Association is the largest organization in the United States representing financial planners and affiliated firms, with approximately 28,500 individual members. Most are affiliated with investment adviser firms registered with the Securities and Exchange Commission, state securities administrators, or both. FPA is incorporated in Washington, D.C., where it maintains an advocacy office, with headquarters in Denver, Colo.

<sup>2</sup> The SEC has oversight over federal investment advisers and the Federal Trade Commission requires equivalent privacy disclosures by state-registered investment advisers.

a financial planning firm registered as an investment adviser typically does not collect personal information when a client uses his or her credit or debit card, share information on a client's credit scores, or provide auditing services when managing customer accounts. FPA urges the SEC to allow for greater flexibility in crafting disclosures that more precisely describe the firm's practices and allow a financial institution to take advantage of the safe harbor offered through the use of the model privacy form.

FPA understands and supports the stated need for increased uniformity among privacy disclosures to enable consumers to compare practices between financial institutions; however, FPA urges the SEC to carefully craft the language<sup>3</sup> describing the personal information that is collected and shared and how the information is collected and shared so that the model form adequately reflects an investment adviser's privacy practices and policies. If, in order to take advantage of the safe harbor, an adviser must use standardized language that is overbroad and includes practices that are not applicable to a financial planning or investment adviser firm the result will be consumer confusion and inaccurate disclosures. As a result, the adviser may choose to continue creating its own unique privacy policy disclosures to comply with the relevant rules because it cannot accurately communicate its policies through use of the standardized form. If significant numbers of advisers are compelled to create unique privacy disclosures, the goals of uniformity and easy comparison between similar firms will be undermined. Another consequence will be an added compliance burden on investment adviser firms that find it necessary to draft their own unique disclosures and ensure that they are in compliance with the relevant rules.

### **Should Agencies make a model form available on their Web sites?**

The Agencies have also requested comments on 1) whether they should develop and make available on their Web sites a readily accessible and downloadable model form with "fillable" fields for institutions that wish to use the model form to create their own privacy notices, 2) whether institutions would use such a model form; and 3) whether such a form would be useful for smaller institutions that want to obtain the safe harbor.

Many FPA members are affiliated with small independent investment adviser firms registered with the SEC. Many of these firms would find a downloadable model form extremely useful. Most investment adviser firms have already incurred significant costs to create and distribute their privacy policies and privacy disclosures that are currently in place; therefore, providing an easily accessible form will likely encourage more advisers to use the new model form. FPA encourages the SEC and other agencies to make such a form accessible through their Web sites.

### **Do the standardized SEC provisions allow accurate disclosures?**

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<sup>3</sup> The specific sections in the proposed model privacy form that contain information collection and sharing practices that do not apply to investment advisers and financial planners are the "What" box, the "How does [name of financial institution] collect my personal information?" box, and the box contained in the Definitions section called the "Everyday business purposes" box.

The SEC has specifically requested comments relating to whether the standardized provisions and vocabulary in the proposed model form for SEC-regulated financial institutions are sufficient to allow these financial institutions accurately to disclose their information sharing practices. FPA is concerned that the standardized provisions must allow for additional flexibility in order to more accurately reflect the information sharing practices of financial planners that are registered as investment advisers with the SEC. Some of the provisions simply do not apply to many investment advisers, particularly smaller firms. For example, an investment adviser typically does not collect personal information when a client uses his or her credit or debit card. Investment advisers also do not typically report personal information to credit bureaus or provide auditing services when managing customer accounts. Greater flexibility in the use of these terms must be provided for to allow firms to accurately describe their practices and to avoid confusing or even misleading clients through the use of the model form.

The SEC also requested comments relating to whether institutions should be able to omit certain terms that may not apply to their information collection practices or their sources of information. FPA strongly believes that in order to use the model privacy form and accurately describe their policies, procedures and practices, investment advisers must be able to omit specific terms that do not apply to their information collection and/or sharing practices. FPA urges the SEC to provide for omissions of specific terms that simply do not apply to certain SEC regulated institutions. Doing so will encourage greater use of the model form and will allow more institutions to take advantage of the safe harbor that the form provides for regulated financial institutions.

In closing, FPA looks forward to working with the SEC on this and other initiatives. I would be pleased to respond to any questions in connection with these comments. Please do not hesitate to contact me at 202.449.6342.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert H. Neill Jr.", written in a cursive style.

Robert H. Neill Jr., Esq.  
Assistant Director of Government Relations