

May 20, 2009

**Via Electronic Mail** ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))

Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Re: Release No. 34-59769; File No. S7-09-07  
Model Privacy Form

Dear Ms. Murphy:

The Privacy and Data Protection Subcommittee of the Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> 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”) issued by the Securities and Exchange Commission (the “Commission”). The proposal directly responds to Congress’s direction in the Financial Services Regulatory Relief Act of 2006 (the “Regulatory Relief Act”) to “jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under section 503 of the GLB Act.”<sup>2</sup>

The Commission is reopening the period for public comment on proposed rule amendments<sup>3</sup> in order to provide an opportunity to comment on the additional quantitative testing documents that have been prepared in connection with the model form.<sup>4</sup> The additional quantitative testing documents include: (i) the test data collected and provided by Macro together with the codebook that relates to the data; (ii) the report provided by Macro, which includes a summary of the methodology used in collecting the

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<sup>1</sup> The Securities Industry and Financial Markets Association brings together the shared interests of more than 600 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.

<sup>2</sup> P.L. 109-351 (Oct. 13, 2006), 120 Stat. 1966.

<sup>3</sup> See Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act, Securities Exchange Act Release No. 55497, Investment Company Act Release No. 27755 (Mar. 20, 2007) [72 FR 14940 (Mar. 29, 2007)] (“Interagency Proposal”).

<sup>4</sup> The consumer research project on privacy notices was launched in 2004. *Id.*, at Section I.B.

data, the interview protocol, and the four test notices; and (iii) a report describing the results of the test data prepared by Dr. Alan Levy and Dr. Manoj Hastak.<sup>5</sup>

## **I. Proposed Model Form**

SIFMA strongly supports the GLB Act privacy provisions and believes that a model disclosure form can serve to make privacy notices clearer and more useful to customers. SIFMA member firms have worked hard to provide consumers with accurate and meaningful information about their privacy policies. We commend the Commission for their thoughtful efforts underlying the Model Form.

However, for the reasons set forth in SIFMA's prior comment letter to the Commission,<sup>6</sup> SIFMA recommends that the Commission provide financial institutions with flexibility to modify certain items contained in the Model Form to reflect institutions' actual information collection practices and disclosure policies. SIFMA believes that certain operational aspects of the proposal are needlessly burdensome and that providing additional flexibility will improve the usefulness and comprehension of the Model Form to consumers without diminishing its importance. SIFMA member firms also 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.

SIFMA wishes to reiterate all suggested changes set forth in our previous comment letter.<sup>7</sup> In particular, we strongly oppose the elimination of the safe harbor for institutions that use the sample clauses. SIFMA member firms have dedicated time and resources to reconcile the federal requirements with state privacy laws and other federal and state statutes, and we urge the Commission to preserve the existing safe harbor for institutions that use the sample clauses.

## **II. Quantitative Testing Documents**

SIFMA strongly believes that performing quantitative testing of the Model Form without having first addressed concerns raised during the prior comment period may have produced test results that are inaccurate and/or incomplete. The results of the quantitative testing may very well change once the formats are revised to reflect variations necessary to address the concerns raised by SIFMA and others. For example, a Tabular format that is changed to allow for a more flexible response, rather than a static "yes or no" response, could test differently for comparison against the other formats.

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<sup>5</sup> Available at <http://www.sec.gov/comments/s7-09-07/s70907.shtml>.

<sup>6</sup> See Letter to Nancy M. Morris, Secretary, Commission, From Alan E. Sorcher, Managing Director and Associate General Counsel, SIFMA (May 29, 2007).

<sup>7</sup> *Id.*

We respectfully recommend that the Commission reissue the proposed Model Form for another round of comments, after the form has been revised to take into account issues raised in the comment periods and the results of additional testing.

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SIFMA appreciates the opportunity to provide its comments to the Commission on the Model Form. We commend the Commission for their efforts to provide clear and conspicuous disclosures and effective consumer comprehension. If you have any questions concerning our comment letter, or need additional information, please feel free to contact me at 202-962-7300.

Respectfully submitted,



Ira D. Hammerman  
Senior Managing Director and General Counsel

cc: Via Electronic Mail

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