

Securities and Exchange Commission
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Chris Barnard

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- **17 CFR Part 248**
- **File No. S7-02-12**
- **Identity Theft Red Flags Rules**

Dear Sir.

Thank you for giving us the opportunity to comment on your Joint proposed rules and guidelines: Identity Theft Red Flags Rules.

The CFTC and the SEC, (together, the Commissions) are jointly issuing these proposed rules and guidelines to implement new statutory provisions enacted by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These provisions amend section 615(e) of the Fair Credit Reporting Act and direct the Commissions to prescribe rules requiring entities that are subject to the Commissions' jurisdiction to address identity theft in two ways: first by requiring financial institutions and creditors to develop and implement a written identity theft prevention program that is designed to detect, prevent, and mitigate identity theft in connection with certain existing accounts or the opening of new accounts; and second by establishing special requirements for any credit and debit card issuers that are subject to the Commissions' jurisdiction, to assess the validity of notifications of changes of address under certain circumstances.

I am in favour of your proposed rules and guidelines, which are substantially similar to the identity theft red flags rules and guidelines adopted by the Agencies¹ in 2007. The proposed rules and guidelines are common sense and should reduce the risk of identity theft and losses due to fraud. However, I have some comments on certain definitions, which I hope will add to the discussions thereon.

¹ The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Trade Commission.

Definitions

Proposed § 248.201(b)(1) defines account as “a continuing relationship established by a person with a financial institution or creditor to obtain a product or service for personal, family, household or business purposes.” It is not clear what “continuing relationship” means in this regard. Is an account an account if the relationship merely exists, or do other criteria have to be fulfilled for it to be “continuing”? I would be grateful if you would clarify this point, in order to make the definition of account more robust and objective.

Proposed § 248.201(b)(9) states that: “*Identity theft* means a fraud committed or attempted using the identifying information of another person without authority.” This definition of identity theft relates identity theft to fraud, which is a more general crime, and possibly confuses the two issues – identity theft with fraud. As a minimum, and for completeness I would recommend that you change this definition slightly as follows: “*Identity theft* means a fraud, deception or other crime committed or attempted using the identifying information of another person without authority.” I believe that this definition is sufficient and complete in order to capture salient features of identity theft, as it relates more generally to financial and other crimes.

Yours faithfully

C.R.B.

Chris Barnard