

May 27, 2008

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

RE: File No S7-06-08; Proposed Amended to Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Personal Information

Dear Ms. Morris,

Thank you for the opportunity to provide comment on the proposed amendments of the Securities and Exchange Commission (“the SEC”) to Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Personal Information. First Allied Securities, Inc. (“FASI”) recognizes the importance of Regulation S-P in protecting customer’s nonpublic personal information and is in favor of rules the safeguard such information.

By way of background information, we offer a brief description of First Allied Securities, Inc.’s (“FASI”) business model. FASI is a dual registrant with over 650 producing independent registered representatives conducting full service financial and investment advice to over 100,000 customer accounts from approximately 423 office locations nationwide.

FASI presents the following comments for consideration on what we believe to be the key provisions of the proposed amendments:

**Exception from the Notice and Opt-out Regulation S-P Provisions**

We are pleased with the SEC’s efforts to provide a reasonable compromise to protect client’s nonpublic information and improve the portability of a client’s account to a departing registered representative’s new firm by providing a limited exception from the notice and opt-out provisions currently mandated under Regulation S-P. However, as proposed the exception is flawed in its stated intent because a broker-dealer, at its sole discretion, retains the right to prevent a departing registered representative from sharing a client’s basic contact information with the new firm. This shortcoming defeats the intent of the proposed exception to provide better facilitation of a registered representative’s transition to the new broker-dealer. Thereby, causing a hindrance in the portability of the client accounts to the new broker-dealer and denying the client’s the choice to have the departing registered representative continue to service their accounts. FASI recommends the SEC consider clarifying the scope of the exception to require broker-dealers and investment adviser firms to share the proposed customer information with their former registered representative’s new firm as long as the registered representative follows the conditions proposed.

Furthermore, FASI has additional concerns with the proposed exception as follows:

- The exception does not afford the registered representative the right to retain customer information necessary to comply with regulatory inquiries or defend themselves against customer complaints initiated at the previous firm. FASI recommends the proposed amendments be modified to require a broker-dealer or investment adviser to honor a request from its former registered representative for information pertaining to a customer complaint wherein the registered representative is the subject of such complaint.

- With respect to the date of “separation from employment,” as the proposed deadline in which a departing registered representative must provide his/her broker-dealer a written record of the permissible information he/she intends to share with the new firm, there are a number of firms, such as FASI, whose registered representatives are independent contractors and not employees of the firm. Therefore, the word “employment” should be replaced with a more general term such as “affiliation” to take in to consideration the varied business models of the broker-dealers, which in some cases include a hybrid of both employees and independent contractors.
- As proposed, the exception extends to information that is shared by the registered representatives with broker-dealers and SEC registered investment advisers, but does not extend to information shared by or with state registered investment advisers. Although jurisdictional limitations prevent the SEC from implementing this inclusion, we encourage the SEC to pursue the matter with the appropriate oversight agency or NASAA to ensure the exception is all encompassing.

### **Unauthorized Access or Use of Personal Information**

The proposed amendments would require broker-dealers, registered investment advisers, and other industry participants to develop written policies and procedures for responding to unauthorized access to use of personal information that could result in substantial harm or inconvenience.

The proposed threshold for client notification appears to be too low in that the notification requirements apply in situations where there is a significant risk of “more than trivial financial loss” or “loss of time.” Due to the ambiguity and broad-reaching effect of this requirement, it could extend to events where client data is encrypted or unreadable. In setting the threshold too low, firms could incur significant costs for sending such notifications and unnecessarily alarming clients. FASI recommends the SEC consider raising the threshold to exclude situations where client data has not been breached to pose a threat to clients and limiting the requirement to breaches of data that are most likely to result in “significant risk of financial loss” to the impacted individual.

The proposed amendment contains a requirement that a broker-dealer must provide written notification to its designated examining authority (“DEA”) by submitting Form SP-30 upon awareness of certain broad-reaching incidents of unauthorized access to, or use of, personal information. To avoid unnecessary administrative burden, FASI recommends such notice be required only in incidents that present substantial risk or harm to individuals subject to the breach or when a significant number of individuals are significantly impacted by the breach. For example, firms should only be required to notify their DEA of a breach if more than 1,000 customers are affected. Additionally, we suggest providing firms the flexibility in the method of notification to enable firms to better control their costs in complying with this requirement.

### **Safeguards and Disposal Rules**

The proposed amendments would extend the coverage of the Safeguards and Disposal Rules to associated persons of a broker-dealer, supervised persons of a registered investment adviser, and other participants, collectively referred to as “associated persons.” Specifically, firms would be required to document in writing the proper disposal of personal information. FASI is of the opinion that this requirement is not conducive to the independent broker-dealer model, such as FASI’s model, where the associated persons are located in remote offices. This amendment implies that a written record will be required for each time a firm disposes of any personal information, which would be extremely challenging and, in some cases impossible to comply with and supervise, given the geographical dispersion of the office locations. Instead, the SEC should consider requiring firms to have reasonable policies and procedures for the disposal of personal information and verify compliance

with the policies through ordinary branch office examinations and internal controls audits currently mandated by the regulatory agencies. Most firms today have equivalent policies and procedures, to some degree, in place to satisfy the safeguarding of customer's personal information as mandated under Regulation S-P.

We recommend the SEC seek guidance from the industry associations that represent the interests of independent broker-dealers, namely FSI, NAIBD and SIFMA, to adopt a more reasonable solution for independent broker-dealer models, but yet satisfy the SEC's concerns with respect to evidencing proper disposal of personal information.

### **Information Security Program**

The proposed amendments would require broker-dealers, registered investment advisers, and other industry participants to develop, implement, and maintain a comprehensive information security program ("the program") appropriate to their size and complexity, the nature and scope of their activities, and the sensitivity of any personal information they utilize.

As proposed, FASI questions the necessity in requiring the designation of a firm employee or employees responsible for the coordination of the information security program ("the program"). FASI believes that the proposed amendments should be modified to allow firms the choice of also designating an affiliated position or division responsible for such program, rather than exclusively someone directly employed by the member firm. Larger broker-dealers, such as FASI, have an organizational structure whereby multiple registered firms are under the common control of an unregistered entity that carries out certain functions of the firms' supervisory controls and initiatives on an "enterprise" basis. FASI believes it is important that the SEC recognize this type of organizational structure and consider providing firms the flexibility to designate an employee of an affiliate or a position at an affiliate as the person or department/division responsible for the coordination of the enterprise's information security program. Such flexibility will foster consistency in the implementation of the program across the enterprise and afford firms the advantage of economies of scales to lessen the administrative costs and reduction in resources necessary to develop, implement and maintain the program.

Given the scope of the proposed amendments, namely the requirement to develop and maintain a comprehensive information security program, we strongly encourage the SEC to consider providing ample time for firms to comply. At minimum, we believe 18 months is a reasonable period of time in which to permit firms to take the necessary steps to fully implement the proposed requirements.

FASI supports the efforts of the SEC to strike a balance between providing meaningful protection of consumer's nonpublic information and reasonable regulation to permit firms to meet the requirements with undue cost and administrative burden. If you have any questions, please feel free to contact the undersigned at (619) 702-9600.

Sincerely,

Keith Gregg  
President and CEO

Donna B. Lawson  
Chief Compliance Officer