

March 24, 2006

Douglas J. Scheidt, Esq.  
Associate Director and Chief Counsel  
DIVISION OF INVESTMENT MANAGEMENT  
SECURITIES AND EXCHANGE COMMISSION  
100 F Street NE  
Washington, DC 20549

Re: **Ameriprise Financial Services, Inc.**

Dear Mr. Scheidt:

Ameriprise Financial Services, Inc. (“Ameriprise”) respectfully requests the Staff’s assurance that the Division of Investment Management would not recommend an enforcement action to the Commission under Rule 206(4)-3, 17 C.F.R. § 275.206(4)-3 (“Rule”) promulgated under the Investment Advisers Act of 1940, (“Act”) if in the context of certain direct marketing solicitations, Ameriprise delivers its Brochure (defined below) at the initial in-person meeting with a prospective client as more fully described in this letter.

As described in detail below, Ameriprise proposes to provide prospective clients contacted through direct marketing solicitations with a concise disclosure at the time of the initial solicitation, which will alert prospective clients that the solicitor receives a fee from Ameriprise for introducing Ameriprise to its customers. If a prospective client responds to an offer for certain free financial services information, such as retirement guides or money management workbooks (“financial services information” or “Fulfillment Package”), Ameriprise proposes to deliver the solicitor’s disclosure statement (defined below) with the information. In connection with an offer for a free initial in-person meeting, Ameriprise proposes to provide prospective clients with the Brochure at their first in-person meeting. The proposed approach provides prospective clients with reasonable notice of the solicitor’s incentives to refer clients to Ameriprise given the limited and attenuated nature of the solicitation, and is consistent with both the policies underlying the rule and the Staff’s prior no-action positions.

## **I. BACKGROUND**

Ameriprise is an investment adviser registered under the Act and a former indirect wholly-owned subsidiary of American Express Company. Ameriprise provides a wide variety of personal financial advisory services to individuals. These services include, among other things: 1) analyzing and evaluating an individual’s current financial status and attitude toward investment risk, 2) developing and presenting financial planning recommendations, and 3) implementing and monitoring the financial planning recommendations.

In marketing its personal financial advisory services, Ameriprise may, from time to time, enter into a written agreement with third-party retailers and service providers (that are not in the financial services industry) (e.g., retailers of general merchandise such as apparel, food or home furnishing) (“retailers”) to provide Ameriprise access to the retailers’ customers. The Agreement between Ameriprise and the retailer typically requires Ameriprise to pay the retailer if the retailer’s customer responds to the Ameriprise offer, meets with an Ameriprise financial advisor or purchases an Ameriprise Financial Advisory Service.<sup>1</sup>

The retailer provides Ameriprise access to its customers in the following way: Ameriprise, through a third-party vendor, contacts customers using certain direct marketing called the “co-branding letters.” The co-branding letters are sent to a target audience of customers. Ameriprise provides the criteria, such as age, marital status and income, to the third-party vendor who will use the criteria to produce the appropriate customer list.<sup>2</sup> The third-party vendor identifies the target audience based on the general target criteria specified by Ameriprise. The third-party vendor mails the co-branding letters to the customers.

Ameriprise solicits customers through the following co-branding letters:

1. letters offering free financial services information such as retirement guides or money management workbooks;
2. letters offering free financial services information and a free initial in-person meeting with an Ameriprise financial advisor; or
3. letters offering a free initial in-person meeting with an Ameriprise financial advisor.

The co-branding letters are signed by an Ameriprise officer. Each co-branding letter identifies Ameriprise and the retailer (e.g., the logos or names of Ameriprise and the retailer are included in the co-branding letter). Ameriprise is identified in the co-branding letters as a financial advisor or provider of financial services. The co-branding letters do not include detailed information on Ameriprise and its services.<sup>3</sup> The co-branding letters may offer customers incentives for attending an in-person meeting with an Ameriprise financial advisor, such as discounts or coupons for use at the retailer’s business or frequent flyer miles (“incentives”).<sup>4</sup> In each of the co-branding letters, Ameriprise includes the following disclosure,

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<sup>1</sup> Ameriprise Financial Advisory Services include a written financial analysis, and specific investment and product recommendations available through Ameriprise and its affiliates.

<sup>2</sup> From time to time, the retailer may pre-sort customer data and send to the third-party vendor based upon criteria that only the retailer would have (i.e., frequent flyer status or membership level).

<sup>3</sup> Under a written agreement, the retailers and their employees or agents will be generally prohibited from making any description of Ameriprise’s services or taking part in the financial services offered by Ameriprise, other than through the direct marketing contacts.

<sup>4</sup> Customers also may receive incentives for purchasing a financial service from Ameriprise after attending an in-person meeting (e.g., additional frequent flyer miles). Ameriprise pays for and delivers the incentive if the qualifying activity occurs.

or substantially similar disclosure, to alert customers that Ameriprise is compensating the retailer in connection with the solicitation (the “compensation disclosure”):

[Retailer] receives compensation from Ameriprise for introducing Ameriprise to its customers. [Retailer] is not providing your name or personal information to Ameriprise. If you choose to meet with an Ameriprise financial advisor, you will receive additional materials from Ameriprise about how Ameriprise’s services may benefit you and about the compensation arrangement between [Retailer] and Ameriprise. You should review these additional materials carefully before purchasing a financial advisory service.<sup>5</sup>

As disclosed in the compensation disclosure, Ameriprise is not given customers’ names or addresses so Ameriprise cannot directly contact the customer. Customers are invited to reply to the co-branding letters by calling the third-party vendor at a 1-800 number or returning a reply card to the third-party vendor.

If the third-party vendor receives a reply card or in-bound phone call requesting the financial services information, the third-party vendor will send the customer financial services information, the solicitor’s disclosure statement, another co-branded cover letter and, in some cases, an offer for a free initial in-person meeting with an Ameriprise financial adviser (with a reply card to the vendor and the vendor’s 1-800 number for responses). If a reply card or in-bound phone call requests a free initial in-person meeting, the third-party vendor will send a co-branded cover letter, repeating the compensation disclosure, the solicitor’s disclosure statement and financial services information, including a short general financial services brochure prepared by Ameriprise. In addition, the third-party vendor will provide the customer’s name, address and phone number to Ameriprise so that an Ameriprise representative can call the customer directly to arrange the in-person consultation meeting.<sup>6</sup>

Under the written agreement, Ameriprise will compensate the retailer if, as a result of a co-branding letter, a customer responds to the Ameriprise offer, meets with Ameriprise or purchases an Ameriprise financial advisory service (e.g., pay a fee and/or pay all or a portion of the cost of the incentives). The details of the compensation arrangement vary from retailer to retailer; however, the fee paid by Ameriprise to compensate the retailer in connection with the

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<sup>5</sup> Customers also will be notified that their names will be provided to Ameriprise if they return a reply card to request financial services information or to arrange an in-person meeting with an Ameriprise financial advisor.

<sup>6</sup> The activities of the third-party vendor will be limited to only administrative or clerical duties permitted under NASD guidance to broker-dealers employing unregistered persons to contact prospective customers. See NASD Notice to Members 88-50, Registration of Persons Soliciting on Behalf of Members Under Schedule C of NASD By-Laws at [http://nasd.complinet.com/nasd/display/display.html?rbid=1189&element\\_id=1159000407](http://nasd.complinet.com/nasd/display/display.html?rbid=1189&element_id=1159000407)

co-branding letters does not vary based on the amount of the customer's assets. Ameriprise will not attempt to recoup those amounts paid to a retailer by increasing the fees or expenses of any customer who purchases a financial advisory service from Ameriprise. In addition, Ameriprise may pay the retailer for other services that do not directly relate to the co-branding letters such as fees for administrative services and/or fees for Ameriprise's advertising banners on the retailer's website.

The retailers have no direct involvement in the solicitation of their customers for Ameriprise, other than: (1) providing the customer information to the third-party vendor; (2) having their logo or business identified in the co-branding letters and envelopes; and (3) honoring any incentives received by their customers for responding to the solicitations.

Under Ameriprise's existing direct marketing arrangements, each customer who returns a reply card is sent a Fulfillment Package. Currently, the Fulfillment Package is also accompanied by Ameriprise's Brochure and the solicitor's disclosure statement (together, the "Brochure Materials"), as well as the acknowledgement of receipt of such materials.<sup>7</sup> The disclosure documents are expensive to print and expensive to mail to anyone who simply sends in a reply card since a number of those prospective clients who request a Fulfillment Package do not become clients or must be given new copies of the Brochure Materials at the initial in-person meeting, thereby diminishing the need for such extensive (and expensive) disclosure at this stage.

Ameriprise estimates that out of 100,000 direct marketing letters offering an in-person meeting, Ameriprise receives approximately 600 responses, and between 75 and 120 persons attend an in-person meeting. With respect to direct marketing solicitations offering financial services information, Ameriprise estimates that out of 100,000 direct marketing letters, Ameriprise receives 2,000 requests for the information and, from that number, between 90 and 100 customers will attend an in-person meeting. Thus, Ameriprise currently sends approximately 2,600 copies of its Brochure Materials yet only 165 to 220 persons (or less than 8% of customers sent the Brochure Materials) attend an in-person meeting with Ameriprise. This current method of direct mailing is not viable on an ongoing basis because it is cost-prohibitive for Ameriprise to continue to mail the Brochure Materials with the rest of the Fulfillment Package.

In lieu of its current practice, Ameriprise proposes to do the following: in an initial direct marketing solicitation, Ameriprise will provide the retailer's customers (now also Ameriprise's prospective clients) with a general description of Ameriprise's financial advisory services and a reply card for them to return if they are interested in obtaining more information. This initial mailing will contain the prominent compensation disclosure, reproduced above. Individuals who return the enclosed reply card or call a 1-800 number, requesting financial services information or financial services information and an initial in-person meeting, will be sent a Fulfillment Package, which will include the solicitor's disclosure statement but will not include Ameriprise's

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<sup>7</sup> The acknowledgement of receipt must be given to, and signed and dated by, the client prior to or at the time of entering into an investment advisory contract. 17 C.F.R. § 275.206(4)-3(a)(2)(iii)(B).

Brochure. If the individual continues to be interested in the services Ameriprise offers, a meeting with a financial advisor will be arranged. During that initial in-person meeting with the prospective client, the Ameriprise advisor will provide the Brochure. A form for the client to acknowledge receipt of the Brochure Materials will also be provided to the prospective client at that initial in-person meeting, and the client will be informed that he or she must sign and date the form prior to or at the time of entering into any written investment contract, as required by the Rule.

Thus, Ameriprise plans to alert prospective clients of the nature of the relationship between itself and the retailer through the compensation disclosure included in the initial contact with the customer, the solicitor's disclosure statement which will accompany the financial services information and to provide interested prospective clients with the Brochure at the first in-person meeting, well in advance of the time that the parties would enter into a written investment advisory agreement. Even in the cases where a client enters into a written investment advisory agreement at the initial in-person meeting, the client will have the ability to cancel the agreement for at least five business days.

## **II. DISCUSSION**

The disclosure approach outlined above provides clients reasonable notice of the solicitor's incentives to refer clients to Ameriprise in light of the limited nature of the referral from the retailer and is consistent with both the policies underlying the rule and the Staff's prior no-action positions.

### **A. Clients Will Receive Adequate And Timely Disclosures**

Ameriprise's proposed method of handling direct marketing solicitations and contacts with potential clients thereafter provides reasonable notification to prospective clients about the nature of the solicitation and affords a full opportunity for prospective clients to review both the Brochure Materials before entering into any kind of contract with Ameriprise.

The initial prominent compensation disclosure<sup>8</sup> in the co-branding letter informs prospective clients upfront and in clear, concise terms that Ameriprise will pay a retailer for the referral. The co-branding letter with the compensation disclosure alerts a customer to a potential bias on the part of the retailer in recommending Ameriprise (i.e. the retailer is compensated by Ameriprise) at the time of the solicitation, and before the customer decides whether to seek additional information about Ameriprise. The identification of both Ameriprise and the retailer in the co-branding letters, together with the compensation disclosure, emphasizes the relationship between the two entities and will ensure that prospective clients are aware of the retailer's bias at the time of the solicitation. Moreover, since the co-branding letters identify Ameriprise, are signed by an Ameriprise officer, and are impersonal communications about Ameriprise to

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<sup>8</sup> Ameriprise acknowledges that the compensation disclosure does not meet the disclosure requirements of rule 206(4)-3(b) under the Advisor's Act.

customers who have not previously indicated any interest in advisory services, the co-branding letters are more akin to an advertisement by Ameriprise than a solicitation by the retailer.

The compensation disclosure that Ameriprise includes in all materials at the point of initial contact is an appropriate disclosure for that stage of marketing. At the in-person meeting, the advisor can specifically point out the Brochure, and explain the import of its content, as well as the fact that the prospective client must acknowledge having received the Brochure Materials. Delivering the Brochure at the first in-person meeting appears to be a more effective way to provide meaningful disclosure than at the moment of solicitation via direct mail; when inundated with information and disclosures via the mail, prospective clients may tend to discard materials that do not interest them. At the point of an in-person meeting, however, a prospective client will have an opportunity to review carefully and understand fully the Brochure. The prospective client will have time to review the Brochure because the same protections that apply in the context of Brochure delivery under Rule 206-3(b) will apply to protect prospective clients in the delivery of the Brochure.<sup>9</sup> Moreover, prospective clients receiving the financial services information will receive the solicitor's disclosure statement with the information.

#### **B. The Proposed Approach Is Consistent With The Policies Underlying Rule 206(4)-3**

Rule 206(4)-3 governs the procedures that an advisor must follow if it pays cash referral fees to solicitors. Although the Commission first proposed to prohibit the payment of cash fees to third party solicitors, it ultimately decided that the better way to protect potential investors was to disclose the nature of the relationship between the investment advisor and the solicitor. This disclosure provision, embodied in the Rule at paragraph (a)(2)(iii)(A)(3), requires that the solicitor, at the time of the solicitation provide the potential client with the adviser's written disclosure statement required by Rule 204-3 (the "Brochure") and with a separate written disclosure document that includes specific information about the solicitation arrangement (the "solicitor's disclosure statement"). Pursuant to paragraph (b) of the Rule, the solicitor's disclosure statement informs the potential client of the nature of the relationship between the solicitor and the advisor, as well as the terms of the compensation agreement and the amount, if any, that the client will be charged which is attributable to the compensation that the solicitor receives.<sup>10</sup>

The Commission relies upon disclosure of the cash fee for solicitation services in order to alert potential customers of any conflicts of interests involved in their solicitation and to

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<sup>9</sup> See 17 C.F.R. § 275.204-3. This rule promulgated under the Act requires that the Brochure be delivered to a prospective client no less than 48 hours before the prospective client and advisor enter into a written or oral contract for advisory services, unless the contract can be terminated without penalty for the following 5 business days. In Ameriprise's proposal, there are no situations where the solicitor's disclosure statement would be delivered after the Brochure, so prospective clients will have at least 48 hours to review the disclosures or at least five business days in which to cancel the agreement.

<sup>10</sup> 17 C.F.R. § 275.206(4)-3(a)-(b).

eliminate any impression that the referral they received was neutral.<sup>11</sup> This conflict of interest scenario is particularly acute when the potential investor would be receiving the referral personally from a person with whom the potential investor had a pre-existing relationship of trust and confidence. Thus, upon adoption of the Rule, the Commission specifically exempted certain solicitation scenarios from complying with the Rule where a prospective client should know that the referral does not come from a neutral source. Disclosure is not required where an employee of an investment advisor refers clients to other services offered by the investment advisor, because “prospective clients would be aware of the natural predilection of such employees to recommend their employers.”<sup>12</sup> Similarly, the Commission stated that no disclosure was necessary where clients were solicited for impersonal advisory services, since it “believed that sales of such [impersonal advisory] services will frequently be made by individuals who are identifiable as salesmen and that prospective clients would normally be aware that such salesmen are compensated on a commission basis.”<sup>13</sup>

The Commission did not require disclosures in circumstances where it believed that it would be apparent to potential clients that the referrals they received were coming from someone who was being compensated for the referral, or did not have a relationship of trust or confidence with the solicitor. Consistent with that policy, we believe the impersonal nature of a mass marketing solicitation does not require or warrant the heightened disclosure appropriate in other more personal solicitation methods. Most prospective clients understand that the nature of a mass marketing solicitation does not entail a tailored recommendation of services to them, and that the recommendation of services is not based on knowing any salient facts about them. Moreover, most prospective clients do not expect to receive or rely on financial recommendations from entities with which they have mere retail customer relationships.

### **C. The Proposed Approach Is Consistent With Prior Staff Positions**

Permitting Ameriprise to deliver the Brochure at the first in-person meeting is consistent with the Staff’s positions in prior no-action letters that address similar situations. As described above, Ameriprise will deliver the solicitor’s disclosure statement with financial services information. Prospective clients who only request the financial services information do not require the adviser’s Brochure because the solicitation and financial services information are impersonal and attenuated, and the prospective clients have not met with a financial advisor or entered into a relationship with Ameriprise. The assurance requested here is substantially similar to that granted in three no-action letters from the Staff. The first letter, E.F. Hutton & Company Inc., provided that the Staff would not recommend enforcement action where the advisor gave the disclosure statements directly to the prospective client in a mailing sent in response to the

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<sup>11</sup> The Commission, in its releases related to the promulgation of the Rule, repeatedly emphasized the conflict of interest inherent in an arrangement where the person or entity who recommends a certain investment advisor is being paid for the recommendation. See Requirements Governing Payments of Cash Referral Fees By Investment Advisors, Advisors Act Release No. 688 (July 12, 1979).

<sup>12</sup> Id.

<sup>13</sup> Id. (referring to certain kinds of sales that are exempt from the requirements of the Rule).

advisor's receipt of a reply card from a direct marketing.<sup>14</sup> The second letter, to Moneta Group Investment Advisors Inc., similarly enabled that advisor to engage in a direct marketing without providing in it the Brochure or solicitor disclosure statement.<sup>15</sup> The advisor proposed to provide those disclosures after receipt of a reply card if additional materials were requested and through a personal meeting with the member or at a seminar sponsored by Moneta. The Staff agreed that this arrangement did not pose problems that would require enforcement action under the Rule. The third letter, to AMA Investment Advisors, Inc., provided similar relief, and the Staff emphasized that their position here, and in regard to Hutton and Moneta, was based on: (i) the inclusion in the initial direct marketing of "a written statement alerting [a prospective client] that a solicitation agreement existed under which the solicitor would be compensated by [the advisor] if the prospective client[s] purchased services," and (ii) the assurance that "prospective clients would have ample opportunity to review the [d]isclosure [s]tatements and evaluate the relationship between the solicitor and [the advisor]."<sup>16</sup>

Although Ameriprise's request could be distinguished from those three letters since Ameriprise is requesting to provide the Brochure at the first in-person meeting rather than in the first contact with the prospective client after the advisor's receipt of a reply card, this distinction is without merit in light of the policy underlying the rule.<sup>17</sup> First, Ameriprise's initial contact with a prospective client and subsequent mailings of any financial services materials will always include the "written statement alerting [a prospective client]" about the fee-for-referral arrangement, which the Staff has identified as a necessary prerequisite to granting no-action relief. Second, providing the Brochure at the initial meeting ensures that a prospective client will have at least 48 hours to review the disclosures, which is an "ample opportunity" to evaluate the solicitation relationship and the disclosures contained in the brochures.<sup>18</sup> Indeed, the Commission itself in a release relating to the Brochure and Rule 204-3 described the 48 hour waiting period as "designed to afford clients and prospective clients an opportunity to consider carefully the disclosures contained in the written statements,"<sup>19</sup> thereby bolstering Ameriprise's

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<sup>14</sup> See E.F. Hutton & Co. Inc., SEC No-Action Letter (Sept. 21, 1987).

<sup>15</sup> See Moneta Group Investment Advisors, Inc., SEC No-Action Letter (April 21, 1993).

<sup>16</sup> AMA Investment Advisors, Inc., SEC No-Action Letter (Oct. 19, 1993).

<sup>17</sup> In the letters, this first post-reply-card contact could have been an in-person meeting or another mailing. See, e.g., Moneta Group Investment Advisors, Inc., supra note 12 (explaining that the initial mailing contains "a card to be returned by the member if they are interested in obtaining additional information from Moneta. The additional information may be provided through a personal meeting with the member, a seminar sponsored by Moneta or additional written information.") Ameriprise proposes to send a Fulfillment Package, accompanied by the solicitor's disclosure statement, after receipt of a reply card, and then if the prospective client still has an interest, to arrange an in-person meeting. Ameriprise believes that distributing the Brochure at that in-person meeting is fully consistent with the Staff's prior positions and the policies underlying the Rule, as described herein.

<sup>18</sup> See Rule 204-3, 17 C.F.R. § 275.204-3 (providing that "an investment advisor...shall deliver the statement required by this section to an advisory client or prospective advisory client not less than 48 hours prior to entering into any written or oral investment advisory contract").

<sup>19</sup> Investment Advisor Disclosure and Recordkeeping Requirements, Advisors Act Release No. 601 (July 21, 1997).



position that 48 hours constitutes the “ample opportunity” that the Staff has considered so important to granting no-action relief. As stated earlier, even in those cases where a client enters into a written investment advisory agreement at the initial in-person meeting, the client will have the ability to cancel the agreement for at least five business days.

Finally, in prior no-action letters, the Staff has recognized that the impersonal nature of certain solicitation activities obviates the need for detailed disclosures in an initial contact. In the AMA no-action letter, the Staff’s reply indicates that the relief granted to Hutton, AMA, and Moneta should be available

only in compelling circumstances, such as where the solicitor or adviser proposes to contact a large number of persons, who have not indicated any prior interest in the advisory services, through an impersonal medium such as direct marketing, and the costs of providing the [d]isclosure [s]tatements with the initial contact outweigh the benefits.<sup>20</sup>

Ameriprise presents such compelling circumstances, where the cost of mailing both the Brochure and the solicitor’s disclosure statement with the Fulfillment Package far outweighs any benefit that might be gained over the compensation disclosure that Ameriprise proposes to include with the initial direct marketing and the solicitor’s disclosure statement that Ameriprise proposes to include in the Fulfillment Package.

### III. CONCLUSION

Providing prospective clients with a prominent compensation disclosure in the co-branding letters; the solicitor’s disclosure statement in the Fulfillment Package; and the Brochure at the first in-person meeting with the financial advisor will result in a meaningful and appropriate disclosure. Ameriprise’s proposal complies with the policy behind the Rule and the Staff’s positions in previous no-action letters. Accordingly, we ask that the Staff confirm that it will not recommend enforcement action if Ameriprise delivers the Brochure at the first in-person meeting between the Ameriprise advisor and the prospective client.

Please call the undersigned at 212-640-0162 or James Anderson at 202-663-6180, if you have any questions or need additional information.

Very truly yours,

Rockell Metcalf  
Vice President and Group Counsel  
Ameriprise Financial Services, Inc.  
40 Wall St., 19<sup>th</sup> Floor

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<sup>20</sup> See AMA Investment Advisor’s Inc., supra note 16.

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