Securities Industry Association
1425 K Street, NW • Washington, DC 20005-3500 • (202) 216-2000, Fax (202) 216-2119 • www.sia.com, info@sia.com

March 29, 2004

Via E-Mail

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 5th Street, NW
Washington, D.C. 20549-0609

Re: File No. S7-30-03

Re: Interagency Proposal To Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act

Ladies and Gentlemen:

The Securities Industry Association ("SIA")[1] appreciates the opportunity to comment to the Securities and Exchange Commission (the "Commission") and to the other federal agencies (the "Agencies") on the Interagency Proposal To Consider Alternative Forms of Privacy Notices Under the Gramm-Leach-Bliley Act (the "Proposal"). 68 *Fed. Reg.* 75164 (December 30, 2003).[2] The proposal requests public comment on ways to improve the privacy notices broker-dealers and other financial institutions are required to provide to consumers under the Gramm-Leach-Bliley Act ("GLB Act"). The SIA commends the Agencies for initiating this proposal to consider ways in which notices of company privacy policies and practices can be made more meaningful to consumers.

[1] The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs more than 800,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry is projected to generate $142 billion in domestic revenue and $283 billion in global revenues. (More information about SIA is available on its home page: www.sia.com)

[2] In addition to the Commission, the agencies participating in the interagency proposal are the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Trade Commission and the Commodity Futures Trading Commission. We understand that the Commission will share the SIA's comments with the other agencies.

The Agencies' notice is not proposing any specific action at this time, but only seeking feedback so that they can determine whether to propose a rule or guidance to allow for privacy notices that are more understandable to consumers. The Agencies seek comment on what approaches for privacy notices would be most useful to consumers while taking into consideration the burden on financial institutions. The notice seeks comment on, among other things, the format, elements and language to be used in privacy notices, and whether to pursue the development of a short privacy notice.

SIA has long recognized the importance of respecting customer information, and been supportive of the GLB Act privacy provisions, which highlight the obligation to respect the privacy of customers and to protect the security and confidentiality of customers' nonpublic personal information. Our member firms have worked hard to effectively implement the GLB Act privacy provisions and to provide customers with information that enables them to make choices that are in their best interests.

We support the Agencies' proposal to consider making GLB Act privacy notices even more understandable and useful to consumers. Although firms have had very little feedback on notices from customers, and very few complaints, in some cases, we think making the notices shorter and simpler could be beneficial to customers. While there would likely be substantial time and cost involved in implementing a new short form notice, a priority for SIA firms is doing what is best for customers and keeping them informed.

Our recommendations are focused on ensuring that a revised notice allows consumers to more easily understand the privacy practices of each financial institution. SIA recommends that any new notice: 1) focus primarily on consumers' needs; 2) provide sufficient flexibility to financial institutions; 3) avoid rigid disclosure requirements; 4) be coordinated with the other notices that firms will be required to provide under the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"); 5) be a consistent form that overrides the states' ability to impose privacy notice requirements; and 6) be voluntary so that firms can determine whether such a notice makes sense for their business and customers.

THE AGENCIES SHOULD TAKE CONSUMERS' NEEDS INTO ACCOUNT

SIA strongly believes that if the Agencies determine to proceed with a proposed rule, the goals of a revised notice should be to educate customers by providing them with useful information in a meaningful way. The notice should make the firm's practices of handling customer information easily understandable. Although firms have worked hard within the current structure to make understandable notices, the current requirements in many cases have resulted in long, legalistic notices.

SIA believes that a "one size fits all" approach is neither a practical nor appropriate way for the Agencies to proceed. Given the considerable differences among firms in the financial services industry, as well as the varying products and businesses within firms, a rigid notice requirement would not be in consumers' best interests. A rigid format or standardized wording for privacy notices would only serve to constrain

the ability of financial institutions to explain their privacy policies to their customers and other consumers. It is important that any proposed rule provide financial institutions with flexibility to accommodate variations that exist in the financial services industry and in the various sectors of the industry. Firms should be able to adjust their notice based on the kinds and sizes of operations, structures, types of products and services offered and customer base. Most importantly, notices should have the flexibility to accommodate the many different ways that firms collect and use customer information.

Accordingly, we believe that any proposal the Agencies announce should not establish required disclosure formats, but rather provide a range of alternative means by which financial institutions can choose to meet the requirements of the GLB Act. Financial institutions should retain the ability to structure compliance efforts to best suit their needs and the needs of their customers.

EFFECTIVE NOTICES MUST PROVIDE FLEXIBILITY TO FINANCIAL INSTITUTIONS

SIA believes that the Agencies may wish to consider permitting financial institutions to craft shorter and simpler notices that provide consumers with important information regarding their privacy policies and permit financial institutions to have a more detailed version available to consumers upon request. Financial institutions would have the flexibility to create meaningful notices that focus on the highlights of their privacy policies. Consumers would benefit because it is more likely that they would review a shorter and simpler notice. Privacy notices would therefore be more useful to consumers, as shorter, less complex notices would be more readily understandable. A more detailed version of the privacy policy would be available to those who are interested. This would result in less confusion among consumers.

SIA believes that the approach reflected in Appendix C to the Agencies' notice is most consistent with the approach that should be proposed by the Agencies. This option offers consistency in format and sufficient flexibility in substance. Option C requires six categories of information – 1) Who we are; 2) Information collection; 3) Information shared; 4) Your preferences – this category may need to be changed for firms that do not share with third-parties because no opt-out needs to be provided; 5) Important information; and 6) How to contact us. This format also requires an opt-out form if the firm is required to give one. Therefore, the style and presentation of notices throughout the industry would be comparable so that customers can conveniently assess a firm's policies. At the same time, this format allows firms enough flexibility to describe their own information sharing practices – no matter how different they are. In short, the presentation is concise and clear.

We believe that the best approach would to be to provide financial institutions the option of implementing a short form privacy notice along the lines of Appendix C. Thus, firms that have basic information practices because, for instance, they do not share information with third-parties or affiliates may not find it necessary to adopt the short notice. In addition, those firms that have drafted simple notices may find the short notice unnecessary. Firms that choose to implement the short notice would be required to make their long form GLB Act notice available to customers upon request. The rule must also

include some kind of litigation protection for those firms opting to utilize the new short form to summarize the practices set forth in their long form notices. Without such protection, there would be little incentive and increased risk in incurring the costs involved with establishing the new notices.

RIGID DISCLOSURE REQUIREMENTS WOULD NOT BENEFIT CONSUMERS

The Agencies have requested comment on whether a simplified approach similar to a nutrition label would be desirable. Such an approach is not appropriate for privacy matters. While the nutrition label approach may be an effective method for comparing calories and fat content among foods, such an approach is not effective for describing and comparing privacy policies of financial institutions. Nutrition facts are straightforward and can be measured objectively. Privacy policies are often not simple to describe, and attempts to squeeze them into a rigid disclosure format simply for comparison purposes will not result in effective and meaningful comparisons. This would likely result in additional consumer confusion.

The Agencies also suggest that because the privacy rules currently provide institutions flexibility in designing their privacy notices, notices have been difficult to compare. The Agencies therefore are considering a standardized approach for all institutions to follow to facilitate comparisons among privacy statements. While, as mentioned above, we may be able to support a reasonable approach to standardize the order of the topics within privacy statements, our experience is that trying to force standardized language may prove to be counterproductive. Many financial institutions will find it difficult to use standardized language to explain their privacy policies. Requiring financial institutions to use standardized language may result in oversimplified privacy notices that may run the risk of not providing sufficient or meaningful information to consumers, or worse, could result in misleading disclosures.

Similarly, SIA does not believe it is appropriate for the Agencies to mandate that financial institutions use model language developed by the Agencies. Such a requirement runs the risk that the model language is not readily understandable by consumers, a problem we encounter today. Moreover, model language inevitably will not describe the policies and practices of every financial institution. As a result, financial institutions will find it necessary to modify the model language to reflect individual circumstances. Accordingly, if the Agencies choose to propose model language, they should make it clear that such language is purely optional and that a financial institution is free to tailor the language of its privacy notice to suit its particular circumstances.

As the Agencies are aware, the Appendix to the Agencies' current GLB Act rules now contains sample clauses that financial institutions may use in their privacy notices. To ensure compliance with the privacy rules, many financial institutions have incorporated the model language into their firms' privacy notices. However, the sample clauses have generally been regarded as unduly complex and have been the subject of some criticism. As a result, we believe that the Agencies should ensure that disclosures are understandable and meaningful to consumers.

We believe that the Agencies should continue to include sample phrases in its rule for financial institutions to consider. Sample phrases are helpful because they provide guidance to financial institutions as to the language that the Agencies regard as acceptable. To ensure that sample phrases are easily understandable by consumers, they should undergo extensive testing. We also recommend that the Agencies propose simpler key terms that financial institutions can use in place of more legalistic terms such as "affiliate" and "nonpublic personal information."

THE GLB ACT PRIVACY NOTICE SHOULD BE COORDINATED WITH OTHER REQUIRED NOTICES

We believe that it is important for the Agencies to proceed cautiously to ensure that any proposal that may be issued takes into account changes that financial institutions may be required to make as a result of the recently enacted Fair and Accurate Credit Transactions Act of 2003 ("FACT Act"), Pub. L. 108-159. Multiple notices relating to information use and sharing will only serve to confuse consumers.

The FACT Act requires the Agencies to seek public comment on, and adopt, a number of rules over the next several months, that will, of necessity, affect notices that financial institutions are required to provide to consumers under the GLB Act. For example, § 214 of the FACT Act amends the Fair Credit Reporting Act ("FCRA") to impose certain disclosure and other obligations on companies that wish to use for marketing purposes certain consumer information obtained from their affiliates. Financial institutions are permitted under § 214(b) of the FACT Act to coordinate any additional disclosures that may be required under § 214 with their GLB Act notices. Accordingly, we anticipate that many financial institutions will choose to incorporate these additional disclosures into one uniform notice that they will provide to consumers to inform them of their privacy policies and procedures.

Development of the FACT Act disclosures and the integration of these disclosures with the existing GLB Act notices will be a complex undertaking. Accordingly, we urge the Agencies to proceed carefully so as to ensure that financial institutions will be able to seamlessly merge any new notices required under the FACT Act with the privacy notices required under the GLB Act. Proceeding carefully and deliberately will also ensure that consumers are not confused by receiving multiple privacy notices from the same financial institution because of a failure by the Agencies to coordinate the timing of notice requirements. The Agencies should ensure that financial institutions are not required to revise their privacy statements multiple times and incur additional unwarranted expense.

THERE MUST BE A CONSISTENT NOTICE

The Agencies should recognize that disclosure requirements that states may impose have the potential to thwart the Agencies' objective of making privacy notices more meaningful to consumers. Again, multiple notices relating to information use and sharing will only serve to confuse consumers. For example, California's SB 1 will soon impose additional requirements on financial institutions. SB 1 is very detailed regarding the format that financial institutions must use in providing privacy notices to consumers, including text type size and minimum Flesch reading ease score. Cal. Fin. Code div. 1.2, § 4053(d) (effective July 1, 2004).

The SIA believes that to achieve their objectives, the Agencies should pre-empt the ability of states to impose disclosure requirements that depart materially from those adopted by the Agencies on the basis that such requirements are inconsistent with those established by the Agencies under the GLB Act. If the Agencies do not preempt state variations, it will be important to provide financial institutions with ample flexibility to accommodate state actions that impose additional requirements on financial institution privacy notices. Without state law preemption on this issue, it is conceivable that financial institutions may some day be forced to send dozens of privacy notices to consumers pursuant to an inconsistent and possibly contradictory patchwork of state regulation. No one could agree that this would be a good outcome for the consumer, and, in fact, would be the exact opposite of what the Agencies are trying to accomplish. Therefore, we urge that this issue be considered within the scope of this project.

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The SIA appreciates your consideration of our views. If we can provide additional information, please contact the undersigned at (202) 216-2043.

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel

CC: Brian R. Baysinger (via U.S. mail)
Special Counsel, Division of Market Regulation
U.S. Securities and Exchange Commission