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May 16, 2008

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-9303

Re: Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Personal Information (File Number S7-06-08)

Dear Ms. Morris:

On behalf of H.D. Vest Investment Services and H.D. Vest Advisory Services (collectively, "H.D. Vest"), I would like to thank the U.S. Securities and Exchange Commission (the "Commission") for the opportunity to comment on the above-referenced proposal to amend Regulation S-P (the "Proposal"). H.D. Vest Investment Services is a broker-dealer registered with Commission and a member of the Financial Industry Regulatory Authority ("FINRA"). H.D. Vest Advisory Services is an investment adviser also registered with the Commission. H.D. Vest collectively has over 5,200 representatives who operate nationwide as independent contractors offering financial services to their clients.

The security of confidential customer information is a very high priority for H.D. Vest, and as such we do not oppose reasonable standards governing the safeguarding, disposal and sharing of client information. We commend the Commission for attempting to clarify the standards governing these important issues. The challenge posed by Regulation S-P is to provide sufficient clarity to allow well-intentioned firms to achieve compliance, while at the same time providing sufficient flexibility to allow firms with diverse business models to implement the rules. The unintended consequence of overly proscriptive or restrictive rules would be to burden competition and decrease consumer choice, to the detriment of the very investors the rules aim to protect.

We have reviewed the comment letters submitted by Wells Fargo & Company and SIFMA, and agree with the comments they have provided. In particular, we agree that: (1) standards for firms regulated by the Commission should be consistent with (and *not* more restrictive than) those imposed by the federal banking agencies; (2) firms should be required to implement information security programs appropriate to their size and the nature of their business; and (3) expanding Regulation S-P to cover entities and firm employees is beyond the statutory mandate of the Gramm-Leach-Bliley Act ("GLBA"). Accordingly, we join in those comment letters and will not reiterate all of their points here.

H.D. Vest writes separately to address an issue of particular importance to independent contractor firms such as H.D. Vest – the ability to transfer client accounts when an independent representative moves his or her book of business to another firm.

Introduction

As noted by the Commission, the Proposal contains a "pragmatic exception" intended to "give firms flexibility while facilitating the transfer of accounts, promoting investor choice, and providing firms with legal certainty."[1] This statement recognizes that there are at least three interests that the Commission must balance in addressing the important issue of account transfers. First, firms have an interest in protecting their client relationships and proprietary information, and in having clear standards that allow them to comply with privacy regulations without fear of regulatory reprisal in hindsight. Second, representatives (and in particular independent contractors) have an interest in the book of business they develop. Third, clients have (often internally inconsistent) interests in both the privacy of their confidential information, and the portability of that same information when they transfer their accounts.

All of these interests are recognized in and as the numerous requirements and equally numerous exceptions in Regulation S-P demonstrate, no one interest is clearly paramount in all instances. In adopting privacy rules, the Commission should recognize that many of these issues are governed by contracts which set out the parties' agreement and expectations. As a starting point, to the extent it is consistent with investor protection, the Commission should respect the parties' own agreements with respect to these issues.

For the reasons that follow, we believe that the "pragmatic exception" for limited disclosure provides a useful baseline for the transfer of account information, and should be adopted. However, in order to provide the legal certainty and flexibility the Proposal seeks to achieve, the Commission should amend and supplement the Proposal in several important respects. In particular, firms and representatives need to be on clear notice regarding their respective responsibilities in connection with account transfers, and the Commission should provide specific guidance and additional clarity in this regard.

I. Background

Before discussing our specific recommendations, it may be helpful to provide some background on the independent contractor model, and the unique issues the Proposal needs to address with respect to independent firms, their representatives and clients.

A. The Independent Firm Business Model

In implementing the privacy and security provisions of GLBA, the Commission should provide enough flexibility so that all firms can achieve compliance without radically altering their business models. In particular, independent contractor representatives and their clients have different interests than exist for typical large wirehouse firms and their employee representatives.

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[1] SEC Press Release 2008-31 (Mar. 4, 2008) (quoting Eric Sirri, Director, Division of Trading and Markets).

In large wirehouse firms, the representatives are almost always employees of the firm. The firm pays for the employee's office space and much of the overhead, provides marketing materials and programs, and often provides substantial support to help the representative build a book of business. The wirehouse firm often will provide a range of services to the client, including research and banking services, that go beyond the relationship between the client and the individual employee representative. Thus, the firm itself has a broad and direct relationship with the client.

Independent contractor firms typically are much different. In the independent context, the representative is not an employee of the firm. Unlike an employee representative, independent contractors usually maintain and pay for their own office. They usually do business under their own business name (with the affiliated broker-dealer or investment adviser disclosed as required by law). They pay their own overhead and advertising costs, and usually are primarily responsible for developing a business plan to grow their business. In many instances, clients have a pre-existing relationship with the representative, and they hire the representative, not necessarily the firm with which the representative is affiliated. Moreover, the client's relationship with the firm is often limited to services provided personally by the representative.

Independent firms fill a significant void by providing financial services and advice to a broad demographic of individuals and businesses that otherwise would be underserved by large national wire house firms. Independent representatives often have offices in areas across the country the large wirehouses do not service. They typically establish community-based businesses that provide services to people in areas in which the representative has close personal ties, high visibility and established name recognition. Moreover, although independent representatives service the full spectrum of demographics, many serve investors who do not have the minimum amounts need to obtain personalized service at larger national firms. The Commission and Congress have both recognized what these investors already know – namely, that as people live longer and have fewer guaranteed retirement benefits, there is significant value in receiving professional financial advice. However, in the absence of independent representatives, many communities and families would be without access to this important service.

B. Independent Representatives and their Clients Have an Interest in Continuing Access to Confidential Information

Unlike the wirehouse employee model, when an independent representative transfers his business to another firm, the changes from the client's perspective relate primarily to the back office. This is not to say that there is no distinction between the products and services (or level of service) between independent firms. However, irrespective of these differences, clients who transfer their accounts continue see the representative's business as the primary face of the firm, and do not expect the services provided by their representative to be interrupted when their representative transfers to new firm.

Under these circumstances, the interests and expectations of the client are different when dealing with an independent contractor representative. More often than not, from the inception of the client relationship the client's files are in the possession of the independent representative. The client expects the representative to use this information to service the client's account, and does not expect the level of service to be interrupted if the representative changes firms. We think it highly unlikely that a client who agrees to move their account would expect that the representative would purge all information concerning the relationship up to the date of transfer. Accordingly, clients who have built a relationship with an independent representative have an interest in having their representative have access to their historical information when that representative services the account at the new firm.

II. The Proposed Exception for Limited Contact Information Should be Adopted

Proposed Section 248.15(a)(8) would allow departing representatives to transfer limited customer contact information to their new firm as long as the transfer is allowed by the old firm. The baseline information allowed by the Proposal strikes an appropriate balance between confidentiality and portability, and should be adopted.

We commend the Commission for making the exception permissive, and this aspect of the exception should be retained in any final rule that is adopted. Firms should be allowed – but not required – to transfer the limited information to a new firm. Firms vary greatly in terms of how they treat this information upon representative departure, and agreements between the firm and representative in this regard should be respected. Furthermore, as long as the old firm's privacy policies allow representatives to take basic client information with them when they depart the firm, no client notice or consent should be required.

The Commission asked whether firms relying on the proposed exception to transfer information should be required to obtain certification that the new firm complies with the safeguards and disposal rules. This should not be a requirement. Many of the firms receiving the information would undoubtedly be subject to the safeguarding and disposal rules, and as such requiring a certification that they are complying with regulatory requirements is not a meaningful exercise. Furthermore, as the Proposal notes the limited contact information is "unlikely to put investors at serious risk of identity theft." Under these circumstances, an additional certification requirement is unnecessary.

III. Subject to Consent by the Transferring Firm and Client, Representatives Should Have Flexibility to Transfer Additional Confidential Client Information

The Proposal also appropriately recognizes the applicability of existing Regulation S-P exceptions providing for the transfer of confidential information with client consent or in connection with the transfer of accounts. In the proposing release, the Commission notes that "if an investor chooses to move his or her business to the representative's new firm, he or she may consent to having the original firm disclose additional information about the customer's account to the representative's new firm without the first firm having to provide the customer with an opt out."

This exception would provide significant flexibility for firms to transfer account information to the extent a firm deems it consistent with its business model and clients' interests. However, certain critical amendments, discussed in more detail below, are necessary for the "consent" exception to have any practical application in the account transfer context. These amendments are necessary because the "consent" exception, in its current form, assumes that the firm in possession of confidential information has an interest in obtaining client consent, and intends to use the information for its own purposes. However, the exception needs to be adapted to the account transfer context to shift the burden for obtaining client consent to the firm seeking to use the information.

As with the transfer of limited contact information, the "consent" exception should remain permissive rather than mandatory, and agreements between the firm and representative as to what the representative may take upon departure should be respected.

IV. Representatives and Firms Receiving Confidential Information Should Have Primary Responsibility for Enforcing Compliance with Regulation S-P in Connection with Account Transfers

An important issue that is not adequately addressed in the Proposal concerns various parties' responsibility for ensuring compliance with Regulation S-P in the context of account transfers. In order to provide appropriate notice of what required, the Commission should set out explicitly the obligations of the old firm, the representative and the new firm.

A. Individual Representatives Should Have Primary Responsibility

It is important that any rule make clear that compliance with Regulation S-P in the context of account transfers is primarily the responsibility of the individual representative who is changing firms. Imposing the compliance obligation directly on individual representatives will help reduce overall compliance burdens because they are the low-cost avoider – specifically, the representative is the person who unequivocally is required to know and comply with the requirements of Regulation S-P, as well as the privacy policies of both the old and new firm. They are thus in the best position to ensure compliance. Imposing the primary regulatory obligation directly on the representative also makes sense because any inappropriate use of information is likely to emanate from individual representatives, and personal responsibility for that conduct is most likely to deter improper behavior.

The existing Rule 15(a)(1) exception permitting transfers of confidential information with client consent does not require any notice to the old firm. *In the specific context of account transfers*, the framework the proposed notice requirements for transferring limited contact information should also be adopted with respect to transfers of additional information with consent. This would put the old firm on notice of what information the representative intends to transfer to the new firm. As discussed below, the representative and firm receiving the information should be exclusively responsible for obtaining and documenting client consent, and otherwise complying with Regulation S-P in connection with account transfers.

It is also important that the Commission incorporate a "grace period" into the rule to allow the representative and new firm adequate time to obtain client consents. Since the old firm has no incentive to seek or obtain client consent, the representative will often have to do so after he or she has already moved to the new firm. In this regard, the Commission should allow representatives 120 days from the date they leave the old firm to obtain necessary client consents. In order to protect the client's confidentiality during this grace period, the representative should be required to maintain any confidential client information in full compliance with Regulation S-P's safeguarding and disposal requirements and use of the information should be limited to the representative in facilitating the account transfers. Upon expiration of the grace period, if a client has not consented to transfer the information, the new firm should be prohibited from using the information, and be required to supervise the representative's disposal of the information in compliance with Regulation S-P's proposed disposal procedures.

Accordingly, when transferring client accounts the representative should be responsible for: (1) providing accurate and complete notice to the old firm prior to the termination date regarding what information he or she intends to transfer to the new firm; (2) complying with Regulation S-P and the privacy policies of the old and new firm; (3) obtaining client consents when necessary; and (4) returning any other information to the old firm, and/or disposing of it in compliance with Regulation S-P.

B. Firms to Which Accounts Are Transferred Should Primarily Supervise Compliance with Regulation S-P

The new firm, which is recruiting the representative and using client information to obtain client accounts, should have primary responsibility for supervising the representative's conduct in connection with account transfers. As above, this makes sense for several reasons. The new firm will have an ongoing relationship with the representative and client. As such, the new firm is in the best position to control the representative's conduct, and to protect clients by enforcing policies designed to protect, oversee and prevent the inappropriate transfer or use of their information. The new firm also stands to profit from account transfers, and thus is the logical party to bear the cost of ensuring that they are done in compliance with Regulation S-P. Accordingly, the new firm should be required to supervise the account transfer process to ensure that any information it receives from the representative or client is obtained in compliance with Regulation S-P.

C. The Old Firm's Responsibilities Should be Limited and Clearly Defined

Finally, any rule that is adopted should recognize that, in the specific context of account transfers, the firm from which the representative is departing has little control over what information the representative takes upon leaving, including information taken in potential violation of firm policies or Regulation S-P. This is true to an extent for all firms since once the relationship terminates the firm no longer has a direct ability to control the representative's behavior. It is especially challenging for independent firms because they do not own or control the office space from which the representative conducts business, and are

no longer able to inspect the office after the relationship is terminated. As such, the transferring firm should not be subject to regulatory penalties when a representative or new firm fails to comply with Regulation S-P.

In the context of account transfers, the specific obligations of the transferring firm from which the representative is departing should be limited and defined as follows:

- The firm should be required to adopt reasonable privacy policies governing the disposition of client information when a representative transfers, and include reasonable notice in its privacy policy.

- The firm should have to reasonably inform representatives through contracts and compliance manuals regarding the firm's policies concerning transfer of information upon termination of the relationship.

- When the transferring firm receives the required notice of the information the departing representative intends to take, the firm should have to review it to ensure that what is represented is consistent with its policies. If so, the transferring firm should be entitled to rely on the notice unless it reveals a violation on its face. Since they are in the best position to comply with the requirements, the individual representative should be responsible for providing accurate notice to the old firm, and the new firm receiving the information should be responsible for ensuring compliance with Regulation S-P in connection with account transfers.

If the transferring firm implements these requirements in good faith, it should be entitled to a safe harbor from liability.

D. The Allocation of Responsibility Discussed Above is Necessary and Appropriate

The allocation of responsibility discussed above is both necessary and appropriate if the Commission is going to provide firms and representatives flexibility and legal certainty. An example will help demonstrate why this is the case.

Assume that a representative informs his existing firm that he is terminating the relationship, and concurrently that he intends to transfer to his new firm account statements and other specific information with client consent (as permitted by the representative's contract and the firm's privacy policies). At this point, if the notice indicates that the representative is violating Regulation S-P or firm policy, the old firm can voice objection and possibly initiate legal action against the representative. However, if the representations in the notice do not reveal a violation, the old firm has no basis for further action, and after the representative leaves the firm has no direct control over his behavior.

At this point, the responsibility for obtaining the documentation necessary to effect the account transfer rests with the representative and the new firm. Because block transfers

generally are not allowed under FINRA rules, the representative and new firm already must deal individually with each client to obtain consent for account transfers, whether through the ACAT process or by obtaining client instructions to change the broker of record on accounts held directly at fund firms or insurance companies.[2] The 120-day window proposed above would give the representative an appropriate amount of time to obtain client consent to retain any confidential information still in the representative's possession from the old firm. Importantly, *the transferring firm does not necessarily have any contact whatsoever with the client during this process*, and may only learn of the account transfer after it has already been approved. Therefore, the representative and new firm must ensure that confidential information transferred from the old firm is handled appropriately.

As part of the transfer process, the client receives the new firm's privacy policies, and thus can make an informed decision regarding whether to permit the transfer of confidential personal information relating to the client's accounts. By requiring informed client consent, the Commission can achieve the appropriate balance between preventing the unauthorized use of client information, and facilitating the orderly transfer of accounts when that is what the client desires. Moreover, because the new firm is already required to obtain client consent for account transfers, they can build client consent into the existing process.

V. Effective Date

While firms should be permitted rely on any exceptions included in a final rule that is adopted, the Commission should make the effective date for the other parts of the proposal at least 12 months from the date a final rule is published in the federal register.

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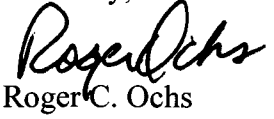
In conclusion, we agree with the Proposal's overarching goal of creating reasonable standards governing the safeguarding, disposal and sharing of customer information when registered broker-dealers or investment advisory representatives move from one firm to another. However, the Commission should not adopt a final rule without defining each party's responsibilities in connection with account transfers.

Sincerely,



Roger C. Ochs
President

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[2] FINRA Rule 11870; Notice to Members 02-57 (Sept. 2002).