May 12, 2008

Ms. Nancy M. Morris
Secretary
U. S. Securities & Exchange Commission
100 F Street N.E.
Washington D.C. 20549

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

Dear Ms Morris:

We welcome the opportunity to comment on the proposed amendments to Regulation S-P. Our comments are limited to amendment "D*", Exception for Limited Information Disclosure When Personnel Leave Their Firms.* Rembert Pendleton Jackson is an investment adviser, registered solely with the Securities & Exchange Commission since 1984.

Summary

The Commission's position on the disclosure of non public personal information regarding account transfers [1] appropriately interprets, in our view, the intent, clear mandate and plain language of Regulation S-P. Yet, the important objective of Amendment D, to provide investor choice and legal certainty for both firms and representatives, necessarily poses a challenge to applying Reg S-P. [2] The Commission's caution in seeking to carefully craft a limited exception that minimizes direct conflicts between the opposing principles is apparent. We strongly support the intent of an exception only including "certain limited customer contact information", and respectfully recommend modifying the language in the proposal to reflect this narrower exception.

Regulation S-P Legislative Background

The legislative background is clear. "It is the policy of Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers..."[3] Reg S-P, was promulgated, as noted by the Commission, to establish standards to "insure the security and confidentiality of customer records and information", protect against anticipated threats to the security of those records, and protect against the unauthorized access to or use of those records which results in substantial harm or inconvenience. [4] Presently, among other requirements, the rule prohibits firms from disclosing customer personal nonpublic information to unaffiliated third parties without notice and opt out or customer prior consent.

FINRA Policy Background

A central part of the background on this proposal is separate from privacy concerns and Regulation S-P. It is the longstanding differences between brokerage firms and representatives on whether the firm "owns" the customer or whether the customers are not "owned" and may be allowed to choose to switch firms with their representative. A review of the NASD 2001 rule interpretation regarding account transfers is a reminder of past account transfer practices NASD found troublesome and sought to correct. As is noted in the June Request for Comment [5], NASD is aware "some members are seeking court orders that have the effect of preventing customers from transferring their accounts to follow a registered representative to his or her new employer. NASD regulation believes that as a matter of policy, customers should have the freedom to choose the registered representatives and firms that service their brokerage accounts." NASD CEO Robert Glauber noted at the time the NASD rule aimed to "balance the needs of customers to access and control their brokerage accounts with real competitive concerns of firms." [6]

Amendment Proposal

The Commission proposes to amend Regulation S-P with a new exception to the notice and opt-out requirements allowing "disclosures of investor information when a registered representative of a broker-dealer or a supervised person of a registered investment adviser moves from one brokerage or advisory firm to another." The proposed exception would permit the disclosure, without prior customer consent, of the following information to the new firm: the customers name, a general description of the type of account and the products held by the customer, and contact information which includes address, telephone number and email information. Three types of information are expressly excluded from this shared information; ie: the customer's "account number, Social Security number, or securities positions."

The Commission explains the exception is needed to let departing reps "contact clients and offer them a choice about whether to follow a representative to the new firm." Further, the exception is designed to carefully specify what types of information are covered:

> "(It is) designed to provide an orderly framework under which firms with departing representatives could share *certain limited customer contact information* (emphasis added) and could supervise the information transfer .... By specifically limiting the types of information that could be disclosed to the representative's new firm, the proposed amendments are designed to help firms safeguard more sensitive client information."

Ensure Customers' Can Choose Their Firm and Representative and Also Retain Control Over Their Personal Information

We view the central issue is how Regulations S-P's mandate to secure the confidentiality of customer information can be maintained parallel with the equally important goal to ensure customers' the right to choose the representative and firm to entrust their investments.

The proposed exception is overly broad. The proposed exception includes "a general description of the account." While we have been advised the Commission has not defined a "general description," there is evidence the market has. This proposed exception mirrors, in its scope, the 2004 brokerage firm protocol regarding what information a broker could take from one firm to another. [7] In the Commission's action against NEXT Financial for violating Reg S-P last (noted above), the personal customer information the Commission found that NEXT received from new recruits included customer and/or 2nd account holders: tax ID numbers, annual income, net worth, DOB, passport number, bank information, occupations, employers' address and contact information. Further, when a rep left NEXT, the Commission reported, "He is permitted to take copies of all customer files and documents." It appears, as seen here, that "general" information can come to mean, essentially, *any* information associated with the customer in the firm's files.

(Further, it should be noted, the information described above is information from independent brokers, who we believe to not be engaged in comprehensive financial planning. As such, this information does not include the, arguably, far more personal information that an adviser often obtains [and holds in their files] in the course of providing comprehensive financial planning services. In such engagements, in addition to documents pertaining to investments, we will also typically have in our files tax returns, estate documents, marital / post marital agreements, insurance policies, and business or employment agreements, for example.)

Customer control of personal information should parallel control of their account.
In light of how this proposal has, essentially, already been interpreted, the importance of the principle enunciated by NASD (noted above) as to customers' retaining "control" of their accounts raises a parallel question. Should a right to "control" an account include a right to "control" personal information associated with the account? If so, another question should be considered: Under what circumstances should investors – particularly investors the Commission points out, often have "close professional and personal relationships" with their representative – be denied this right and effective control over their personal information? Under what circumstances, for example, should investors not expect to be given notice and the opportunity to decide whether "all their files and documents" are copied and shipped to another firm?

Customer control of personal information should not be denied or diminished on just the basis of fears or concerns of potential inconveniences to customers. There have been concerns expressed as to how the Commission's application of Regulation S-P may aggravate the difficulties and inefficiencies of the customer account transfer process. [8] There is no question there is widespread dissatisfaction with how accounts are transferred via ACATs. [9] Beyond the additional time required of the representative to fill out documents and forms, there are significant unanswered questions, however, as to impact of a prior customer consent requirement on the account transfer process and customer service. [10] FSI expresses concern, understandably, of delays. However, FSI offers no accompanying documentation, analysis or calculation as to the estimated impact or inconvenience to the customer of requiring prior consent. [11] Finally, the FSI discussion raises additional questions as to the whether insuring the security and confidentiality of customer records is at the root of "delay" problems in the account transfer process. [12]

A modified exception can attain the stated objective and may more closely align with the Commission's stated intended outcome. The Commission's stated objective to ensure an orderly transfer and a customers right to choose his firm and representative can be attained through a narrower exception. The Commission, noted above, refers to sharing just "certain limited contact information." We respectfully recommend an exception that only allows for customer contact information, and does not allow for the disclosure of any additional product or account information is sufficient to meet your stated objectives.

Questions Posed by The Commission

The Commission posed several question for those offering comments to address. Here are our responses.

Would it promote investor choice and convenience?

The proposal, with the modification as recommended here, would promote investor choice. Investors could be contacted and provided the opportunity to choose to follow their representative. As noted above, the account transfer process is inherently cumbersome. It is unclear, based on what has been provide for the record, whether this proposal materially affects customer convenience.

Would it foreclose the transfer of particularly sensitive information, that if misused, could lead to identity theft?

As proposed and discussed above, we strongly believe this exception would unnecessarily allow the transfer and disclosure of virtually all customer information on file (with the exception of the three types of excluded information) that, if misused, could lead to the effective theft of a customer's *privacy*, and violate the mandate to "insure the security and confidentiality of customer records and information."

Should the transfer be conditioned on the receiving firm certifying that it complies with the safeguards and disposal rules?

Yes.

Regarding the likely effect on recruiting, are there alternative approaches that would both protect investor information and not unduly restrict the transfer of representatives from one firm to another?

A meaningful alternative approach that facilitates account transfers may be in the model of the emerging third party providers offering secure internet accessible storage of individual health information. This approach allows the customer to remain in control of his/her information while also potentially allowing for a streamlined transfer process.

Are investors likely to understand disclosures? Should the availability of the exemption be conditioned on disclosure saying whether personal information would be shared upon a reps' departure?

Disclosures can be written such that investors understand them. A plainly written disclosure explaining privacy issues can be drafted. A sample disclosure is offered below.

> *Federal law allows me to share your personal information with others, unless you tell me not to share it. You may instruct me to not share your information with anyone. You may also allow me to keep your contact information and your personal financial information should I leave this firm and join another firm where I can continue to work with you. Please check and initial from the statement options listed below, which option you want me to use to protect your personal information.....*

Conclusion

This amendment addresses an issue that is caught directly in the intersection between two fundamental, and in some respect, conflicting principles important to protecting investors. The Commission's thoughtful analysis and logic for crafting an exception to best reconcile any conflicting elements, with the small recommended modification we discuss, fulfills the stated objectives of the amendment effectively.

We appreciate the opportunity to express these comments and would be pleased to address any further questions on this issue. We may be reached at 703-821-6655.

Sincerely,

Donald M. Rembert
President

Knut A. Rostad
Chief Compliance officer

Rembert Pendleton Jackson
Falls Church, Virginia

End Notes

1. In re: Next Financial Group. Inc., Administrative Proceeding, File No. 3-12738. See Violation, 1.

2. The direct conflict is plainly evident in Violation, 2. “By allowing registered representatives to take customer non public personal information with them, NEXT failed to ensure the security of customer records and information...”

3. Sec. 6801. (a)

4. Regulation S-P, S 248.30

5. Proposed IM-2110-7

6. May 7, 2001, Release

7. See note 91.

8. See Financial Services Institute (FSI) Member Briefings, April 17, 2007, April 8, 2008.

9. See NASD Report of The Customer Account Transfer Task Force, September 2006.

10. See FSI April 2007 Briefing, page 4, for a description of how individual accounts might be handled if prior customer consent were required.

11. FSI notes from the Customer Account Transfer Taskforce, September 2006, that more than 17000 accounts or partial accounts are transferred via ACATs each day; over a two year period 6,000 customers complained about the account transfer process to their firms; and a transfer takes (when there are no complications) generally about “six to ten days.” The report characterizes customer dissatisfaction with account transfers as “high.” Further, account transfer problems are reported as the most frequent of complaints of brokers to the SEC, at 622 in 2005. While strongly emphasizing the importance of the additional “delay” that the SEC position may entail, FSI provides no calculation to quantify the delay, and no analysis to its potential impact on customers given the present account transfer time.

    While the present account transfer process is clearly not as efficient as reps or firms would like and clearly generates customer complaints, it is also not clear from the data presented that customer complaints or satisfaction/dissatisfaction is, in point of fact, comparatively high, low, or neither relative to similar transactions, given the quantity and nature of the transactions. From the information provided, on a daily basis there are 17,000 account transfers and [6,000/480 (business days in a two-year period)] the firms receive, on average, some 12.5 complaints each day.

12. In it's April 2007 memo FSI offers as evidence that insuring the confidentiality of customer information further causes delays, a statement by Commissioner Glassman, given in a speech January 25, 2006. In the Commissioner's statement on this topic (reprinted below in its entirety), FSI finds proof for its assertion that transferring personal customer information without prior customer consent is required to efficiently handle transfers of proprietary funds. Given the scenario described by the Commissioner, it appears there may be numerous other strategies for avoiding customer dissatisfaction in this scenario, not least of which may be the Commissioners own advice to reps; ". *Clear communication, in plain understandable language rather than securities jargon, is essential to reducing or avoiding this otherwise predictable complaint."*

    What I would like to do now is talk about the top five types of complaints against broker-dealers, and what you can do to minimize or avoid them and thereby avoid problems. The largest category of complaints (622) involves transfer of account problems. This is a continuing problem and in fact it increased from 2004 to 2005. An example is where a customer has an investment in a proprietary fund, changes brokerage firms, and the proprietary fund cannot be transferred into an account at the new firm. The reasons for changing firms varies, but typically include that the broker has moved to a new firm and the customer would like to follow or where the customer has been solicited by a new broker to open an account. When the customer finds out that the attempted transfer has problems, the customer becomes unhappy. If this unhappiness is not resolved, the customer complains to the SEC. If you the broker (whether at the old firm or the new firm) take the time upfront, when the initial account transfer request is made, to analyze the customer's existing account and the difficulties that may arise from transferring it, you can inform your customer of the anticipated problems and options to deal with them. In other words, you can manage your customer's expectations. ***Clear communication, in plain understandable language rather than securities jargon, is essential to reducing or avoiding this otherwise predictable complaint.*** (Emphasis added.)