91

Michael J. Mungenast
Chief Executive Officer and President
Post Office Box 518
Birmingham, Alabama 35201-0518
Phone: 205-268-5144
Phone: 1-800-288-3035
FAX: 205-268-1624
mike.mungenast@proequities.com

ProEquities

May 12, 2008

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

Re: File No. S7-06-08
Release No. 34-57427; Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Personal Information

Dear Ms. Morris:

ProEquities, Inc. ("ProEquities" or "the Firm"), a registered broker/dealer firm and a registered investment adviser, is submitting these comments on proposed revisions to Regulation S-P (the "Proposed Rule"), as set forth in Release No. 34-57427 (the "Release").

Background

The ProEquities sales force is comprised of "independent contractor" registered representatives, many of whom are also investment advisory representatives ("IARs"). Like most firms that operate on the "independent contractor" business model, the Firm's representatives/IARs are primarily responsible for locating their own clients and building long-term relationships with these clients. Consistent with this business practice, the Firm (like most major independent contractor broker/dealer-RIA firms) has historically had an understanding with its representatives/IARs that the Firm would facilitate the transfer of client accounts and information if the representative/IAR's affiliation with ProEquities were to terminate. In the Firm's experience, this practice has mirrored the expectations of the Firm's clients, who almost inevitably expect that a change in their representative/IAR's broker/dealer-RIA firm will result in a smooth transition and will not require them to resubmit information that they have previously provided.

Comments—Exception for Limited Disclosure When Personnel Leave Their Firms.

The Proposed Rule adds new paragraph (a)(8) to Rule 248.15. The proposed language is a significant improvement from the current state of the law. However, it is clear that further changes are needed in order to meet the expectations of clients and the obligations of broker/dealers and RIAs:

- In ProEquities' opinion, the exception set forth in proposed Rule 248.15(a)(8) should apply to ***all*** broker/dealers and RIA firms from which a representative/IAR is departing, regardless of that firm's privacy policy. This approach facilitates client choice, by making it clear that the representative/IAR can retain and use information already in his or her possession to contact clients, advise them of the pending change of broker/dealer-RIA firms, solicit a continuing relationship, and facilitate the smooth transfer of the client's account to the new firm. (Obviously, if there is a contract between the representative/IAR and his or her firm that limits the representative/IAR's right to retain this information or to conduct these communications, the representative/IAR may face legal issues with the firm. This situation should be handled as a business matter by the respective firms and the representative/IAR, and not constitute a possible violation of the privacy laws by any party.)

- The Proposed Rule does not take into account situations in which a representative/IAR has an overriding interest in retaining customer information (including information about the customer's accounts and securities holdings). Representatives/IARs need this information to respond to regulatory inquiries and to defend themselves against customer complaints that relate to activities at their previous firms. ProEquities recommends that Regulation S-P be revised to require a broker-dealer/RIA to provide such information upon request from a former representative/IAR or their broker-dealer/RIA.

- The Proposed Rule does not address the need for broker-dealer/RIA firms to conduct due diligence on the securities business of a representative/IAR who is currently affiliated with another firm. Regulation S-P currently prohibits a representative/IAR from making the relevant information available to a prospective broker-dealer/RIA firm (unless his or her current broker-dealer/RIA firm has provided otherwise in its privacy policies and complied with the applicable opt-out provisions). FINRA's assertions in Notice to Members 07-36 to the contrary notwithstanding, Regulation S-P is currently a major impediment to ProEquities and other broker-dealer/RIA firms that wish to conduct an appropriate review of a prospective representative/IAR's business before agreeing to affiliate that individual.

- As a minor drafting point, the Firm suggest that the phrase "separation from employment with you" in Proposed Rule 245.15(a)(8)(iii) be amended to read "separation from employment or affiliation with you" or "the date the representative leaves you".

- In all events, it is essential that the Commission interpret and enforce its rules in an even-handed and non-discriminatory manner. In note 91 of the Release, the Commission observed that it was aware of a "protocol"

among a number of broker/dealers. This protocol clearly contemplates that the broker/dealers would share nonpublic personal customer information without following the Regulation S-P opt-out procedures—conduct that clearly violates Regulation S-P as currently in effect. ProEquities is not aware of any efforts by the Commission to address this activity. However, the Commission has brought cease and desist proceedings against NEXT Financial Group, Inc. ("NEXT") in which the Commission asserted, among other things, that NEXT violated Regulation S-P by providing nonpublic personal customer information to other broker/dealers without following the Regulation S-P opt-out procedures—exactly the kind of conduct engaged in by the "protocol" participants. ProEquities urges the Commission to decide what the rules are and to apply them in the same manner to all firms and all types of firms.

Comments—Information Security and Security Breach Responses

- The definition of "substantial harm or inconvenience" in Proposed Rule 248.30(d)(12) should be revised to make it clear that "trivial" modifies each of "financial loss", "expenditure of effort" and "loss of time".

- The Proposed Rule needs to make it clear that violation of the final Rule will not constitute a private right of action.

- The requirement in Proposed Rule 248.30(b)(2)(ii)—that a firm subject to the Rule "[d]ocument in writing its proper disposal of personal information in compliance with paragraph (b)(1)"—is simply unworkable. At all but the smallest firms, records—whether contained in computer records, on paper, in cell phones or similar devices, or other means—are disposed of at different times by different people who are in different locations and who are following different processes and procedures. (This is especially true at firms with numerous branch offices.) ProEquities does not believe that it is realistic to expect firms to be able to "document" each instance of "proper disposal", and urges the Commission to delete this requirement.

- The time and cost needed to implement rules of the type described in Proposed Rule 248.30 will be substantial. (If past history is any guide, the time and cost for ProEquities and similarly-situated firms will significantly exceed the burdens estimated by the Commission.) If and when a final rule is adopted, the Firm urges the Commission to give broker/dealers and RIAs at least six months (and preferably one year) to implement its provisions.

The Firm appreciates the careful consideration that has been given to proposed changes the rules regarding the privacy and protection of consumer information. We hope

that these comments will assist the Commission in its deliberations. If you wish to discuss the Proposed Rule, this letter, or any thoughts, comments, questions or suggestions that you may have, please call me at (205) 268-5144.

Very truly yours,

PROEQUITIES, INC.

By: _____
Michael J. Mungenast
President

81541v2