

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

Release Nos. 34-59769, IA-2866, IC-28697; File No. S7-09-07

RIN 3235-AJO6

Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Securities and Exchange Commission (“Commission”) is reopening the period for public comment on proposed amendments to Regulation S-P, which implements the privacy provisions of the Gramm-Leach-Bliley Act (“GLB Act”), originally published in the Federal Register on March 29, 2007. The proposed amendments would, if adopted, create a safe harbor for a model form that financial institutions may use to provide disclosures in initial and annual privacy notices required under Regulation S-P.

DATES: Comments should be received on or before May 20, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7-09-07 on the subject line; or
- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number S7-09-07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Paula Jenson, Deputy Chief Counsel, or Brice Prince, Special Counsel, Office of Chief Counsel, Division of Trading and Markets, (202) 551-5550; or Penelope Saltzman, Assistant Director, or Thoreau Bartmann, Senior Counsel, Office of Regulatory Policy, Division of Investment Management, (202) 551-6792, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is reopening the period for public comment on proposed rule amendments,¹ which were proposed pursuant to the Financial Services Regulatory Relief Act of 2006 (the "Act"), enacted on October 13, 2006.² The proposal

¹ See Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act, Securities Exchange Act Release No. 55497, Investment Company Act Release No. 27755 (Mar. 20, 2007) [72 FR 14940 (Mar. 29, 2007)] ("Interagency Proposal") and [72 FR 16875 (Apr. 5, 2007)] (correction notice).

² P.L. 109-351 (Oct. 13, 2006), 120 Stat. 1966.

was published on March 29, 2007, and the comment period closed on May 29, 2007. Section 728 of the Act added subsection (e) to section 503 of the GLB Act, which directs the Commission, together with seven other federal agencies³ (collectively the “Agencies”) responsible for implementing Title V, Subtitle A of the GLB Act, to “jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.”⁴ The proposed amendments would, if adopted, create a safe harbor for a model privacy notice form that financial institutions may use to provide disclosures required under the privacy rules⁵ adopted by the Agencies pursuant to section 504 of the GLB Act.⁶

In connection with the development of the model form, an outside consultant, Macro International (“Macro”) was retained to conduct quantitative testing to evaluate the effectiveness of four different types of privacy notices, including a slightly revised version of the proposed model privacy notice form.⁷ Macro tested the notices on approximately 1,000 consumers at five retail shopping mall locations around the country. Each of the four notices used for testing was printed in a double-sided format, using the front and back sides of an 8½ x 11-inch piece of white paper. We have placed in the comment file for the proposed rule (available at <http://www.sec.gov/comments/s7-09-07/s70907.shtml>) and at

3 The seven other agencies are the: Commodity Futures Trading Commission (“CFTC”), Federal Deposit Insurance Corporation (“FDIC”), Board of Governors of the Federal Reserve System (“Board”), Federal Trade Commission (“FTC”), National Credit Union Administration (“NCUA”), Office of the Comptroller of the Currency (“OCC”), and Office of Thrift Supervision (“OTS”).

4 *See supra* note 2, adding 15 U.S.C. 6803(e). The Act stipulates that the model form shall be a safe harbor for financial institutions that elect to use it.

5 For the Agencies’ privacy rules *see* 12 CFR Part 40 (OCC); 12 CFR Part 216 (Board); 12 CFR Part 332 (FDIC); 12 CFR Part 573 (OTS); 12 CFR Part 716 (NCUA); 16 CFR Part 313 (FTC); 17 CFR part 160 (CFTC); 17 CFR Part 248 (Commission).

6 Codified at 15 U.S.C. 6804.

7 As described in the Interagency Proposal, the consumer research project on privacy notices was launched in 2004. Interagency Proposal *supra* note 1, at Section I.B.

http://www.ftc.gov/privacy/privacyinitiatives/financial_rule_inrp.html) the following documents from the testing: (i) the test data collected and provided by Macro together with the codebook that relates to the data; (ii) the report provided by Macro, which includes a summary of the methodology used in collecting the data, the interview protocol, and the four test notices; and (iii) a report describing the results of the test data prepared by Dr. Alan Levy and Dr. Manoj Hastak.⁸

We are reopening the comment period before final action is taken on the proposal in order to provide all persons who are interested in this matter an opportunity to comment on these additional quantitative testing documents. Accordingly, we are reopening the comment period until May 20, 2009.

By the Commission.

Elizabeth M. Murphy
Secretary

Dated: April 15, 2009

⁸ Dr. Levy and Dr. Hastak are consultants to the model privacy notice research project.