



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS  
AND INDEPENDENT FINANCIAL ADVISORS

## VIA ELECTRONIC MAIL

May 7, 2012

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

RE: File Number S7-02-12 - Identity Theft Red Flags Rules

Dear Ms. Murphy:

On March 6, 2012, the Securities and Exchange Commission (SEC) published in the Federal Register a Proposed Rule that would implement new statutory provisions contained in Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Title X of the Dodd-Frank Act amended the Fair Credit Reporting Act of 1970 (FCRA) to include the SEC on the list of federal agencies required to jointly promulgate rules and guidelines regarding identity theft red flags for financial institutions and creditors.

Under the Proposed Rules, financial institutions that offer or maintain one or more covered accounts would be required to develop a written program that is designed to detect, prevent and mitigate identity theft in connection with the maintenance of a covered account.<sup>1</sup> The proposed Rules set forth four elements that must be included in the written program. The first element of the identity theft program would require the financial institutions listed above to develop policies and procedures designed to identify red flags. The second element of the identity theft program would require financial institutions to detect red flags. The third element of the identity theft red flag program would require financial institutions to have policies designed to prevent and mitigate identity theft, or in other words, policies and procedures that would provide a reasonable response to any red flags that were in fact detected. Finally, the fourth element of the program would require financial institutions to periodically update the identity theft red flag program.

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<sup>1</sup> 77 Fed. Reg. 13450, 13452 (March 6, 2012).

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The SEC's proposed rules would apply to: (1) brokers, dealers or any other person that is registered or required to be registered under the Securities Exchange Act of 1934; (2) an investment company that is registered (or required to be registered) under the Investment Company Act of 1940, that has elected to be regulated as a business development company under that Act, or that operates as an employees' securities company under that Act; and (3) an investment adviser that is registered (or required to be registered) under the Investment Advisers Act of 1940.<sup>2</sup>

The Financial Services Institute<sup>3</sup> (FSI) welcomes the opportunity to comment on the Proposed Rule. While we generally support the Proposed Rule, we have concerns that we urge the SEC to address. We outline these concerns in detail below.

### Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64% percent of all practicing registered representatives – operate in the IBD channel.<sup>4</sup> These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street

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<sup>2</sup> Id.

<sup>3</sup> The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind – FSI is the voice of independent broker-dealers and independent financial advisers in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 100 independent broker-dealers and more than 37,000 independent financial advisers, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, DC.

<sup>4</sup> Cerulli Associates at <http://www.cerulli.com/>.

America" – it is, in fact, almost part of the "charter" of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.<sup>5</sup> Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

### Comments

As noted above, FSI welcomes the opportunity to comment on the Proposed Rule. While we generally support the Proposed Rule, we have concerns that we urge the SEC to address.

As noted in the Proposed Rule, the Fair Credit Reporting Act (FCRA) was amended by the Fair and Accurate Credit Transactions (FACT) Act of 2003 to require various agencies to issue joint rules and guidelines regarding the detection, prevention, and mitigation of identity theft for those entities that were subject to their jurisdiction. Included among these agencies was the Federal Trade Commission (FTC), which subsequently issued identity theft red flag rules under the direction of the FCRA as amended by the FACT Act.

In response to the FTC's promulgating identity theft red flag rules, many of our member firms adopted programs designed to effect compliance with these requirements. Substantial time and money has been invested in order to develop these programs. As the SEC seeks to promulgate its own rules in this space, we have concerns regarding the resources that our members will be required to expend in order to develop new programs designed to comply with the SECs rules.

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<sup>5</sup> These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisers.

As a result, we urge the SEC to limit deviations from the FTC's previously adopted identity theft red flag rules to avoid unnecessary cost associated with updating existing policies and procedures to bring them in compliance with the new rules.

Conclusion

We remain committed to constructive engagement in the regulatory process and welcome the opportunity to work with the SEC on this issue.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 202 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.  
General Counsel and Director of Government Affairs