

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 248

Release Nos. 34-60946; IA-2946; IC-28990; File No. S7-29-04

RIN 3235-AJ24

Regulation S-AM: Limitations on Affiliate Marketing; Extension of Compliance Date

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Securities and Exchange Commission is extending the compliance date for Regulation S-AM (74 FR 40398 (Aug. 11, 2009)), which limits a person's use of certain information received from an affiliate to solicit a consumer for marketing purposes unless the consumer has been given notice and a reasonable opportunity and a reasonable and simple method to opt out of such solicitations.

DATES: The effective date for Regulation S-AM (17 CFR 248.101 through 248.128) remains September 10, 2009. The compliance date for Regulation S-AM is extended from January 1, 2010 to June 1, 2010.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulation as it relates to brokers, dealers, or transfer agents, contact Brice Prince, Special Counsel, or Ignacio Sandoval, Attorney, Office of Chief Counsel, Division of Trading and Markets, (202) 551-5550, or regarding the regulation as it relates to investment companies or investment advisers, contact 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: On August 9, 2009, the Commission adopted Regulation S-AM to implement Section 624 of the Fair Credit Reporting Act, as amended by Section 214 of the Fair and Accurate Credit Transactions Act of 2003 (“FACT Act”).¹ Section 624 required the Commission and other federal agencies to adopt rules implementing limitations on a person’s use of certain information received from an affiliate to solicit a consumer for marketing purposes, unless the consumer has been given notice and a reasonable opportunity and a reasonable and simple method to opt out of such solicitations. Regulation S-AM implements the requirements of Section 624 with respect to investment advisers and transfer agents registered with the Commission, as well as brokers, dealers, and investment companies (collectively “Covered Persons”). The release adopting Regulation S-AM established an effective date of September 10, 2009, and a compliance date of January 1, 2010.²

Two associations representing institutions that are subject to Regulation S-AM have expressed, on behalf of their members, concerns regarding the difficulties that their members are facing in complying with the regulation.³ Specifically, the associations assert that the period for compliance does not provide enough time to design, implement and test the system changes that will be necessary to accommodate, monitor and maintain opt out requests.

¹ Regulation S-AM: Limitations on Affiliate Marketing, Securities Exchange Act Release No. 60423 (Aug. 9, 2009) [74 FR 40398 (Aug. 11, 2009)].

² *Id.*

³ See Comment Letters from the Investment Adviser Association (Sept. 24, 2009) and the Investment Company Institute (Sept. 8, 2009). The comment letters are 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 am and 3:00 pm (File No. S7-29-04), and also are available on the Commission’s Internet Web site: <http://www.sec.gov/rules/proposed/s72904.shtml>.

While we have some concerns about the effect of an extension in delaying the anticipated benefits of the regulation, the Commission is persuaded that a limited extension of the compliance date for Regulation S-AM is appropriate. Our judgment is based on the representations made by the associations (whose members are required to comply with the regulation and thus are in a position to assess the level of difficulty and time involved in such compliance) and our experience in overseeing the industry. We also believe that the additional period for compliance would allow more Covered Persons to combine or coordinate notices required under Regulation S-AM with privacy notices required under the Gramm-Leach-Bliley Act and Regulation S-P, which is specifically permitted under Section 624 of the FCRA Act.⁴ Accordingly, the Commission believes it is appropriate to extend the compliance date for Regulation S-AM to June 1, 2010. The regulation's effective date of September 10, 2009 remains unchanged.

The Commission finds that, for good cause and the reasons cited above, including the brief length of the extension we are granting, notice and solicitation of comment regarding the extension of the compliance date for Regulation S-AM are impracticable,

⁴ See 15 U.S.C. 1681s-3(b). See also 15 U.S.C. 6801-6809 (Gramm-Leach-Bliley Act privacy provisions); 17 CFR Part 248 (Regulation S-P).

unnecessary, or contrary to the public interest.⁵ In this regard, the Commission also notes that Covered Persons need to be informed as soon as possible of the extension and its length in order to plan and adjust their implementation process accordingly.

By the Commission.

Elizabeth M. Murphy
Secretary

Date: November 5, 2009

⁵ See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (“APA”) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are “impracticable, unnecessary, or contrary to the public interest). The change to the compliance date is effective upon publication in the Federal Register. This date is less than 30 days after publication in the Federal Register, in accordance with the APA, which allows effectiveness in less than 30 days after publication for “a substantive rule which grants or recognizes an exemption or relieves a restriction.” See 5 U.S.C. 553(d)(1).