

MEMO# 21121

May 8, 2007

Institute Draft Comment Letter on SEC Request for Comment on Model Form S-P; Comments Due to ICI by Friday, May 18th

[21121]

May 8, 2007

TO: SEC RULES COMMITTEE No. 40-07
SMALL FUNDS COMMITTEE No. 15-07
COMPLIANCE ADVISORY COMMITTEE No. 9-07
CHIEF COMPLIANCE OFFICER COMMITTEE No. 12-07
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 16-07
INVESTMENT ADVISERS COMMITTEE No. 11-07
UNIT INVESTMENT TRUST COMMITTEE No. 5-07
TRANSFER AGENT ADVISORY COMMITTEE No. 24-07
PRIVACY ISSUES WORKING GROUP No. 4-07 RE: INSTITUTE DRAFT COMMENT LETTER ON
SEC REQUEST FOR COMMENT ON MODEL FORM S-P; COMMENTS DUE TO ICI BY FRIDAY,
MAY 18TH

As we previously advised you, the Securities and Exchange Commission, together with other federal regulators of financial institutions, recently published for comment a safe harbor model privacy form that financial institutions may use to provide the privacy notices required by the Gramm-Leach-Bliley Act. [\[1\]](#) The SEC's version of this form is Model Form S-P. Once the form is adopted, SEC registrants will no longer be able to use the Sample Clauses in the Appendix to Regulation S-P to satisfy the requirements of the GLB Act. (They will, however, be able to continue to use their existing privacy notices that are not based on the Sample Clauses.) Comments on the proposal are due to the SEC by May 29th.

Attached is a copy of the Institute's draft comment letter on the SEC's proposal. The letter, which is briefly summarized below, reflects the comments raised by members in our April 4th conference call on the proposal. Please provide any comments you have on the draft to Tami Salmon by phone (202-326-5825) or email (tamara@ici.org) no later than Friday, May 18th.

Summary of the Institute's Letter

The Institute's letter supports adoption of the Model Form but recommends that the Commission both clarify some issues concerning its use and make minor revisions to the contents of the form. The issues that we recommend be clarified include: the optional nature of the form; the meaning of the elimination of the Sample Clauses in Appendix A to Reg. S-P; the continued applicability of the delivery requirements of Section 248.9 of Reg. S-P to delivery of the Model Form, including the ability of SEC registrants to include the form in a prospectus or Form ADV; electronic delivery of the form; the ability of registrants to print the form on the front and back of one sheet rather than on two separate sheets of paper; and how the form can be revised to accommodate joint notices.

With respect to the contents of the form, the letter notes that the Commission has specifically sought comment on (1) whether the standardized provisions and vocabulary in the proposed form are sufficient to allow SEC-registrants to accurately disclose their information sharing practices and (2) whether SEC registrants should be able to omit certain terms from the form that may not apply to their information collection practices or sources of information. According to the Institute's letter, the standardized provisions and vocabulary are not sufficient for use by SEC-registrants, and registrants should be permitted to omit irrelevant terms or information from the form. The letter notes that both of these concerns can be addressed through minor revisions to the form without detracting from or impeding the goal of the federal regulators to adopt a substantively uniform model privacy notice.

The specific changes we recommend to the form's contents, which are detailed in the draft letter, include:

- Permitting registrants to delete references throughout the form to credit history, credit scores, creditworthiness, and credit bureaus, if inapplicable to the registrant's business;
- Clarifying the everyday business practices for which SEC registrants may share personal information;
- Clarifying the instances in which a registrant is required to provide privacy notices to customers;
- Revising the reference to a registrant's security practices relating to "secured files and buildings;"
- Omitting references to bill paying, loan applications, or use of a credit or debit card if inapplicable to the registrant's business;
- Enhancing the disclosure relating to lawful sharing with non-affiliates;
- Omitting any reference to additional privacy protections provided under state law;

- Providing registrants flexibility in the listing of their affiliates; and
- Adding disclosure consistent with Reg. S-P that an investor's opt-out instructions will be implemented "as soon as reasonably practical."

Tamara K. Salmon
Senior Associate Counsel

[Attachment](#)

[1] See *Interagency Proposal for Model Privacy Form Under the Gramm-Leach-Bliley Act*, SEC Release No. 34-55497 (Mar. 20, 2007)(the "Release"), which is available on the SEC's website at: <http://www.sec.gov/rules/proposed/2007/34-55497.pdf>. This memorandum focuses on the SEC's model form, which differs slightly from the model form of the other federal regulators.

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