

## COMMENT LETTER

September 8, 2009

# Comment Letter: ICI Requests a Five-Month Extension of the Compliance Date for Regulation S-AM (pdf)

September 8, 2009 Elizabeth M. Murphy, Secretary U.S. Securities and Exchange Commission 100 F Street, NE Washington, DC 20549 Re: Regulation S-AM Compliance Date; File No. 7S-20-04 Dear Ms. Murphy: The Investment Company Institute is writing to respectfully request a five month extension of the compliance date for Regulation S-AM, which was recently adopted by the Commission.<sup>1</sup> As adopted, the Commission provided its registrants approximately five months (from August 4, 2009 until January 1, 2010) to be compliant with the regulation's requirements. For the reasons discussed below, we believe that a brief extension of the compliance date until June 1, 2010 will permit a more orderly implementation of the regulation. As noted in the Release, amendments to Section 214 of the Fair and Accurate Credit Transaction Act of 2003 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 solicitation.<sup>2</sup> While the Commission's regulation was not adopted until earlier this month, the other agencies required to adopt a rule did so effective January 1, 2008.<sup>3</sup> Their collective rulemaking provided a ten-month compliance period for persons subject to it based on a belief by these agencies that: 1 See Regulation S-AM: Limitations on Affiliate Marketing, Release Nos. 34-60423, IC-28842, and IA-2911 (Aug. 4, 2009) (the "Release"). 2 Release at p. 1. 3 See Fair Credit Reporting Affiliate Marketing Regulation; Final Rule, 72 Fed. Reg. 62910 (November 7, 2007) (the "Agencies' Release"). . . . [D]elaying the mandatory compliance date for approximately one year will give all institutions adequate time to develop and distribute opt-out notices and give most institutions sufficient time to develop and distribute consolidated notices if they choose to do so.<sup>4</sup> The basis for providing a ten-month compliance period seems equally applicable to SEC registrants. Like the other agencies' regulations, Regulation S-AM will, for the first time, impose upon SEC registrants a duty to provide a notice and opt-out to certain consumers in connection with sharing certain information with an affiliate if the affiliate uses that information for marketing.<sup>5</sup> While an SEC registrant may be able to draft such a notice and coordinate its delivery with the registrant's annual privacy notice under Regulation S-P within a five month period (assuming the annual privacy notice will be sent during the five-month period), it does not provide necessary time to design, implement, and test the system changes that will be necessary to accommodate, monitor, and maintain any opt-outs received in response to such notices. We believe, consistent with the compliance time provided by the other agencies, that ten months is a more realistic period for achieving

compliance. For these reasons, the Institute respectfully request that the Commission extend the compliance date for Regulation S-AM from January 1, 2010 until June 1, 2010. We appreciate the Commission's timely consideration of this request. If you need any additional information concerning it, please contact the undersigned at 202-326-5825. Sincerely, /s/ Tamara Salmon Tamara K. Salmon Senior Associate Counsel cc. James A. Brigagliano, Acting Co-Director Daniel Gallagher, Acting Co-Director SEC Division of Trading and Markets Andrew J. Donohue, Director SEC Division of Investment Management 4 The Agencies Release at p. 62938. While the Release refers to extending the compliance date "by approximately one year," the actual extension was ten months. The "consolidated notices" refers to combining the affiliate marketing notices with the annual privacy notices required under the Gramm-Leach-Bliley Act ("GLB Act"). 5 Consistent with the GLB Act, the SEC's privacy rule, Regulation S-P, only requires registrants to provide an opt-out to consumers in the event the consumer's nonpublic personal information will shared with non-affiliates, and such sharing is not permitted under an exemption in the regulation.

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