

The SEC Model Privacy Form

Background: In June 2000, the Securities and Exchange Commission (SEC) and seven other regulatory agencies (“the Agencies”) adopted [Regulation S-P](#) pursuant to the Gramm-Leach-Bliley (GLB) Act privacy directives. Regulation S-P requires registered investment advisers, as well as other securities firms, to provide annual notice to their clients about their privacy policies, and to refrain from disclosing personal information about their clients to non-affiliated third parties, unless they comply with certain conditions. These conditions include providing their clients with the opportunity to “opt-out” from certain information disclosures by the adviser. Those advisers, who were not subject to SEC registration, are subject to similar requirements under privacy rules issued by the Federal Trade Commission.

Regulation S-P contained an appendix with sample clauses that SEC entities were to use as a guide in designing their privacy notices. In December 2009, the SEC, along with the other Agencies, published in the [Federal Register](#) amendments to the rules implementing certain privacy provisions of the GLB Act and adopting a model privacy form. The amendments remove these sample clauses from Regulation S-P effective January 1, 2012. To ease the compliance burden for financial institutions that have been relying on the Sample Clauses, the Agencies adopted a transition period, during which notices compliant with those guidelines continue to trigger the safe harbor and continue to be regarded as proper form. Those annual notices provided during the transition period (i.e., through the end of 2010) will continue to qualify for safe harbor treatment until the next annual notice is due. After 2010, such notices will no longer be compliant.

To rely on the safe harbor, SEC entities must present the model privacy form in a way that is clear, conspicuous, and intact, so that a client can retain the content of the model form. The use of the model privacy form is voluntary. An SEC entity that chooses to use the model privacy form consistent with the instructions to the form will satisfy the disclosure requirements for privacy notices under the GLB Act and Regulation S-P, thereby obtaining a “safe harbor”.

While only the final model privacy form provides a safe harbor for compliance with the privacy disclosure provisions under the GLB Act and Regulation S-P, SEC entities may continue to use other types of notices that vary from the model privacy form, including notices that use the sample clauses, so long as these notices comply with the GLB Act and Regulation S-P.

The SEC provides an online form builder designed to assist advisers in creating their own privacy notices using the Model Form. The builder is available at <http://sec.gov/divisions/marketreg/tmcompliance/modelprivacyform-secg.htm>.

SEC Levies Privacy Fines

On April 7th, 2011, the SEC announced an [administrative settlement](#) in which it fined three individuals for violations of the Privacy Rule and Safeguards Rule of Regulation S-P. This was the first case in which the SEC has assessed civil penalties for violations of its Privacy Rule. In this case, a registered representative of a now defunct securities broker-dealer firm, downloaded information that included names and addresses, account numbers and asset values for account holders to his personal thumb drive for use in a new firm. The SEC alleged that this transfer violated the Privacy Rule, because the individual account holders were not provided with adequate notice and an opportunity to opt out of the transfer. The account holders received a letter only after the transfer occurred and were given insufficient information and time to effectively object to the transfer. In addition, the SEC announced an enforcement action against the chief compliance officer for his failure to ensure that the firm had adequate policies and procedures reasonably designed to safeguard confidential client information.