Securities Industry Association
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August 18, 2004

Via U.S. Mail and E-Mail

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: File Number S7-29-04; Limitations on Affiliate Marketing (Regulation S-AM)

Ladies and Gentlemen:

On August 16, 2004 the Securities Industry Association ('SIA")[1] submitted its comment on the Commission's proposed Regulation S-AM (the "Proposed Rule"). Upon further review of the Proposed Rule, SIA wishes to supplement its views. Accordingly, we would appreciate it if you would incorporate the following with the comment we previously submitted.

EXCEPTIONS

Section 247.20(c) provides as follows:

> (c) *Exceptions.* The provisions of this part [247] do not apply if you use eligibility information you receive from an affiliate: . . .

The section then sets forth six situations to which the Proposed Rule will not apply.

Section 247.20(c) of the Proposed Rule is intended to reflect the statutory exceptions set forth in § 624(a)(4) of the Fair Credit Reporting Act. However, it does not accurately reflect the language of the statute. The words "if you use eligibility information you receive from an affiliate" do not appear in § 624(a)(4). Rather, the

[1] The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs 780,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated an estimated $209 billion in domestic revenue and $278 billion in global revenues. (More information about SIA is available on its home page: www.sia.com.)

statute simply states "[t]his section shall not apply to a person-" and proceeds to specify the six circumstances under which § 624 will not apply.

In choosing the statutory language, Congress ensured that both the person sharing eligibility information and the person receiving the information will be exempt from the requirements of § 624 if they meet the requirements of § 624(a)(4). Section 247.20(c) of the Proposed Rule, however, is not consistent with the language of § 624(a)(4).

It is important that the statutory exceptions of § 624(a)(4) carry through to the Proposed Rule because § 247.20(a) of the Proposed Rule imposes an obligation on firms that disclose eligibility information to affiliates to send notices and opt outs to consumers before their affiliates may use the information to market their products and services to consumers. If the exception in the Proposed Rule is limited solely to persons using eligibility information received from affiliates, it could inadvertently and mistakenly expose companies that share information with affiliates to potential liability. We believe the Commission should conform the Proposed Rule to the language of the statute by deleting the words "if you use eligibility information you receive from an affiliate" from § 247.20(c). This will ensure that the exceptions apply as enacted and as intended by Congress.

SIA appreciates the Commission's consideration of our additional views. If we can provide additional information, please contact the undersigned at (202) 216-2000.

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel

CC: Catherine McGuire (via email)
Associate Director/Chief Counsel