



May 4, 2012

Elizabeth M. Murphy, Secretary  
Securities and Exchange Commission  
100 F Street, NE.  
Washington DC 20549-1090

David A. Stawick, Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re: File S7-02-12; Identity Theft Red Flags Rules**

Dear Ms. Murphy and Mr. Stawick,

This letter is submitted on behalf of the National Society of Compliance Professionals, Inc. (the “NSCP”) in response to the publication of Investment Company Act Release Number 29969, in which the Commodity Futures Trading Commission (“CFTC”) and the Securities and Exchange Commission (“SEC,” together with the CFTC, the “Commissions”) jointly issued proposed rules and guidelines to implement new statutory provisions enacted by Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act<sup>1</sup> (“Dodd-Frank Act”).

**1. About The NSCP**

The NSCP is a non-profit membership organization with approximately 1,900 securities industry professionals dedicated to developing education initiatives and practical solutions to compliance-related issues. Our members work in the compliance areas of broker-dealers and investment adviser firms and come from firms of all sizes. To our knowledge, NSCP is the largest organization of securities industry professionals in the United States devoted exclusively to compliance.

Our remarks reflect the NSCP’s fundamental mission, which is to set the standard for excellence in the securities compliance profession. This commitment is exemplified by, among other things, the time and resources the NSCP, and the industry professionals whose volunteer services

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<sup>1</sup> The Dodd-Frank Wall Street Reform and Consumer Protection Act Publ. Law 111-203, 124 State. 1376 (2010).

it marshals, have devoted in the past five years to the development of a voluntary certification and examination program for compliance professionals.<sup>2</sup>

Our mission is directed at the interests of compliance programs and compliance officers. We accordingly support a regulatory scheme that: (i) promotes practices that support market integrity and the interests of investors; (ii) creates clarity as to a firm's obligations to provide a reasonable system of supervision; (iii) promotes requirements that enable compliance officers to create reasonably workable programs; and (iv) avoids requirements or mandated tasks that are more costly or less efficient in realizing a regulator's public policy objectives, thereby increasing the difficulty facing a compliance officer in the discharge of his or her duties.

## **2. Background/Scope of Proposed Rule**

Dodd-Frank included an amendment to section 615(e) of the Fair Credit Reporting Act of 1970 ("FCRA") that directs the SEC and CFTC to prescribe rules for entities subject to their jurisdiction to address identity theft. It is our understanding that the proposed rules do not create new requirements for those financial institutions, such as banks and many broker-dealers, that are already required to have identity theft programs under the FCRA. The proposed guidelines, however, provide examples of "red flags" to help firms administer their programs.

The new rules proposed in the Release would require "financial institutions" and "creditors" that are subject to the jurisdiction of the SEC or CFTC to develop and implement written identity theft prevention programs that are designed to detect, prevent and mitigate identity theft in existing or new "covered accounts." The proposed guidelines seek to assist these entities in the formulation and maintenance of a program that satisfies the proposed rules.

As noted above, many of the "financial institutions" or "creditors" that are subject to the proposed rules and guidelines have already been required to implement identity theft prevention programs. For example, in 2007, the staff of the SEC advised that Section 114 of the FACT Act and related rules adopted by the FTC applied to mutual funds that otherwise met the definition of "financial institutions," so mutual funds (and their transfer agents) that held covered accounts adopted FACT Act "Red Flags" programs in 2008. For entities already in compliance with existing FACT Act rules, the proposed rules do not impose new requirements.

The proposed rules also establish special requirements for any credit and debit card issuers that are the subject of the jurisdiction of the SEC or CFTC that are designed to assess the validity of notifications of changes of addresses. The Release states that the CFTC is unaware of any entities subject to its jurisdiction that issue debit or credit cards. The Release also states that the SEC believes that few, if any, entities under its jurisdiction are subject to the proposed card issuer rules, since the entities it supervises typically issue cards in partnerships with banks or other financial institutions that are themselves subject to the FACT Act's requirements.

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<sup>2</sup> Persons who complete NSCP's certification program (CSCP) qualify for the "Certified Securities Compliance Professional" designation.

**a. The NSCP Supports The SEC's Proposal As It Relates To Broker-Dealers**

As the Commissions' proposal states that proposed Regulation S-ID would shift oversight of identity theft rules and guidelines of SEC-regulated entities from the FTC to the SEC. Moreover, broker-dealers have been subject to the FTC rules since December 2010, Because proposed Regulation S-ID is substantially similar to those existing rules and guidelines, broker-dealer firms should not bear any new costs in coming into compliance with proposed Regulation S-ID. The new regulation does not contain new requirements, nor does it expand the scope of the rules to include new entities that were not already previously covered by the Agencies' rules.

The NSCP agrees with this characterization as the proposal from the SEC closely tracks the FTC Rule 16 CFR 681.1 and Appendix A. Further, brokers-dealers should already have in place a program that complies with the FTC rule. While firms will need to update some of their procedures to reflect the SEC's new responsibility for the oversight of the application of this rule, many of the changes would be cosmetic and grammatical in nature.

As the NSCP is dedicated to developing education initiatives and practical solutions to compliance-related issues, we also support the training component of the proposal. The training component of the new provisions can be easily adapted into a broker-dealer's Firm Element requirement, or can be infused into any one-off training that firms conduct.

**b. The NSCP Urges the Commissions to Specifically Exclude Investment Advisers**

The SEC's proposed rules apply to "financial institutions" and "creditors," which are broker-dealers, registered investment advisers, registered investment companies, business development companies and employees' securities companies. Investment companies that allow investors to make wire transfers to other parties or that offer check-writing privileges are subject to the SEC's proposed rules, but investment companies whose transactions are made only through a broker-dealer are not. Funds that are not registered with the SEC are not subject to the proposed rules even if they register securities under the Securities Act of 1933 or the Exchange Act. Unregistered advisers are not subject to the proposed rules, even if they report information under the Investment Advisers Act of 1940.

As the SEC notes, most investment advisers will not be subject to the SEC's new rules, since investment advisers usually do not hold accounts that provide similar money-transfer privileges. We agree. We would urge the Commissions to specifically exclude investment advisers from the scope of the rule since it is our view that any adviser that is a financial institution would already be covered by the FCRA. NSCP believes that investment advisers should be omitted, as we cannot foresee any scenario in which an investment adviser would hold transaction accounts. The only exception is where the investment adviser would be dually registered as a broker-dealer or other financial institution subject to the rule, in which case it would have an obligation to comply because of the other operating capacity. We would further note that if the SEC were to include investment advisers, then the investment advisers would have an ongoing burden to periodically review for compliance with a rule that is not applicable to their operations.

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**c. The NSCP Agrees That Investment Advisers Are Not Creditors**

We agree with the proposal that investment advisers are not creditors for purposes of the proposal because advisers generally bill in arrears. We are not aware of any situation where an investment adviser would advance funds and we would note that such advisers would likely run afoul of state rules that prohibit an adviser from loaning funds or borrowing funds from a client.

**3. Omitting Investment Advisers from the Proposal is Consistent with Pre-existing Obligations of Advisers**

We would note that investment advisers are already required to comply with the Privacy Rule (Physical Security, Administrative Security and Technical Safeguards), which forms a first line of defense for identity theft. However, it is the custodial brokerage firm that holds the customer account and must apply the stringent safeguards of the identity theft proposal and thus more appropriately be subject to the red flags requirements.

The Commissions anticipate that a financial institution or creditor that adopts a Program could integrate the policies and procedures with other policies and procedures it has adopted pursuant to other legal requirements, such as compliance and safeguards rules. The Commissions request comment on whether they should provide additional guidance on how to integrate the proposal with pre-existing privacy or information security safeguards. We concur that the Program can be integrated with other policies and procedures such as the Privacy Rule. We welcome SEC guidance on this matter, as many advisers and broker-dealers are affiliates within larger, diversified financial services firms that would be required to integrate the requirements of the proposal into a broader identity theft matrix.

We appreciate the opportunity to comment on this very important initiative.

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Thank you for your attention to these comments. The NSCP appreciates the opportunity to submit comments in response to the Notice and would welcome the opportunity to answer any follow-up questions the CFTC has on this submission. Questions regarding the foregoing should be directed to the undersigned at 860.672.0843.

Very truly yours,



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