

September 24, 2009

Via Electronic Mail

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

Re: Extension of Regulation S-AM Compliance Date
File No. S7-29-04

Dear Ms. Murphy:

The Investment Adviser Association¹ respectfully requests an extension of the time period for investment advisers and other registrants to comply with the requirements set forth in Regulation S-AM.² A five-month extension of the compliance date, from January 1, 2010 to June 1, 2010, is needed to provide registrants with adequate time to establish systems to comply with the regulatory requirements.³

According to the Release, Section 214 of the Fair and Accurate Credit Transaction Act of 2003 (FACT Act) 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.⁴ The Commission proposed Regulation S-AM in July 2004, adopted the Regulation last month, and provided five months for registrants to comply with the requirements. When the

¹ The Investment Adviser Association (formerly the Investment Counsel Association of America) is a not-for-profit association that represents the interests of SEC-registered investment adviser firms. Founded in 1937, the IAA's membership consists of more than 450 firms that collectively manage in excess of \$7 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org.

² See *Regulation S-AM: Limitations on Affiliate Marketing*, Release Nos. 34-60423, IC-28842, and IA-2911 (Aug. 4, 2009) (the "Release").

³ Earlier this month, the Investment Company Institute sent a letter to the Commission seeking an extension of the compliance date for Regulation S-AM. See Letter from Tamara Salmon, Senior Associate Counsel, Investment Company Institute, to Elizabeth Murphy, Secretary, U.S. Securities and Exchange Commission, regarding S-AM Compliance Date (Sept. 8, 2009) ("ICI Letter"). The IAA supports the ICI's request.

⁴ Release at 1.

other agencies adopted the rules implementing the FACT Act requirements, however, they gave entities subject to those rules ten months to comply with the requirements.⁵ As noted in the ICI Letter, the ten-month compliance period was based on a belief by those agencies that:

[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.⁶

Similarly, the Commission should provide registrants with ten months to comply with the requirements set forth in the Regulation.⁷ Regulation S-AM imposes significant new requirements on firms that use information received from an affiliate to make marketing solicitations, including the potential for notice and opt-out provisions or the need to evaluate and reconfigure historic marketing practices to meet one or more exemptions. Accordingly, firms need sufficient time to analyze the requirements set forth in the Regulation, and to draft and implement appropriate systems, policies and procedures. We agree with the points raised in the ICI Letter that, consistent with the compliance time provided by the other agencies, ten months is a more realistic period for achieving compliance.

The IAA requests that the Commission extend the compliance date for Regulation S-AM from January 1, 2010 until June 1, 2010. Please do not hesitate to contact us if we may provide additional information or assistance to you regarding these matters.

Sincerely,

/s/ Valerie Baruch

Valerie Baruch
Assistant General 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

⁵ See *Fair Credit Reporting Affiliate Marketing Regulations; Final Rule*, 72 Fed. Reg. 62910 (November 7, 2007) (the “Agencies’ Release”).

⁶ The Agencies’ Release at 62938. Although 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.

⁷ Adopting a comparable compliance period would help to make Regulation S-AM “consistent with and comparable to” the implementing regulations adopted by the other agencies. Release at 6.