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Securities Industry Association
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Via Electronic Mail and U.S. Mail

May 1, 2002

Regulations and Legislation Division
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 220552

Attention: Study on GLBA Information Sharing

Ladies and Gentlemen:

The Securities Industry Association ("SIA")[1] appreciates the opportunity to comment on the study of information sharing practices among financial institutions and their affiliates being conducted by the Secretary of the Treasury, the federal functional regulatory agencies and the Federal Trade Commission. This study was required as part of the financial privacy provisions included in the Gramm-Leach-Bliley Act ("GLBA"). We commend the agencies for undertaking this important study of information practices under the framework established by the GLBA and for providing the industry an opportunity to express its views.

The securities industry has long recognized the importance of protecting customer information and supported the GLBA privacy requirements. GLBA highlights the financial services industry's obligation to respect the privacy of

[1] The SIA brings together the shared interests of nearly 700 securities firms to accomplish common goals. SIA member firms (including investment banks, brokers-dealers and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80 million investors directly and indirectly through corporate, thrift and pension plans. The industry generates $358 billion of revenue and employs approximately 760,000 individuals. (More information about the SIA is available on its home page: http://www.sia.com.)

customers and to protect the security and confidentiality of customers' nonpublic personal information.

SIA is pleased to take part in this important study. In responding to the study, we have first set out our general comments below. Next, we have provided in the attachment answers to the specific questions in the study.

- ***General Comments***

The GLBA requirements have pushed the financial services industry to the forefront on privacy by providing consumers with the information to make the choices that are best for them. GLBA gives very broad coverage to consumers -- protecting any *nonpublic, personally identifiable information* that is either provided by a consumer to obtain a financial product or service, results from transactions involving a financial product or service, or is otherwise obtained by a financial institution in connection with providing a financial product or service. GLBA requires more than issuing a privacy notice. In addition to the notice and opt-out requirements, GLBA imposes restrictions on the reuse and redisclosure of personal data, requires measures designed to protect the security, confidentiality, and integrity of personal information, and makes it a federal crime to obtain financial customer information under false pretenses.

As a result, consumers now know, either through notices received personally, through the mail, or from policies posted on Websites, what financial institutions do with the information they provide. Consumers know what information about them is collected, where it comes from, and to whom it is given. Consumers have also benefited from the requirements imposed by GLBA upon financial institutions. To comply with GLBA, financial institutions evaluated their information control procedures, account applications, Web-based systems, web screens and vendor management practices. Firms now have a more complete understanding of how customer information is used throughout their organizations.

In passing GLBA, Congress chose the right balance between the privacy needs of customers and the needs of financial institutions to use information to serve the needs of their customers. Financial institutions have more restrictions on their use of customer information than any other industry. GLBA's notice provisions have empowered customers because they now know how their information is being used and they have the final say, including taking their business elsewhere.

We believe, going forward, that the efforts of regulators and legislators should be directed at harmonizing the different federal laws, such as GLBA and the Fair Credit Reporting Act, and the myriad problems caused by federal and state law imposing varying requirements. Indeed, 50 different sets of state laws, and additional federal legislation, will likely create inconsistent and confusing statutory requirements – with no additional benefits for consumers.

We appreciate the opportunity to comment on the privacy study. If you wish to receive additional information related to our specific comments or our responses in the attachment, please feel free to contact the undersigned.

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel
Securities Industry Association
(202) 296-9410

Attachment

The Securities Industry Association's Specific Responses
To Treasury's Study on Information Sharing Practices

The Securities Industry Association sets out below its specific responses to the questions in Treasury's study. We have identified with the number and letter of the question to which the response relates. For ease of reference, we have restated Treasury's questions in italics.

1. ***Purposes for the sharing of confidential customer information with affiliates or with nonaffiliated third parties:***

   a. ***What types of information do financial institutions share with affiliates?***

Broker-dealers may share information about a customer with an affiliate, such as name, address, Social Security number, account balance information, type of account, securities bought and sold, debit, credit card and checking transactions, and fund transfers. Such information is shared for a variety of reasons, including for anti-fraud purposes and institutional risk control.

   b. ***What types of information do financial institutions share with nonaffiliated third parties?***

Information such as names, addresses, social security numbers and number of shares owned in a particular company may be shared with external service providers in order to support and administer the financial products and services that broker-dealers offer to customers. Only information that is needed by the nonaffiliated third party to perform its specified functions is shared with that third party. For example, firms may use external service providers in connection with the preparation of account statements and the sending to customers of various mutual fund mailings, including proxy statements and prospectuses, and company reports (e.g., annual or quarterly reports). Information may also be shared with a third party transfer agent or other third party vendor to facilitate a customer transferring stock to another account or to another firm.

Sharing of information with nonaffiliated third parties also may be required to comply with various laws or regulations. For example, to comply with

escheatment and abandoned property laws of the individual states, firms may share name, last known address, social security number, and amount of monies or securities held in an account. In addition, information may be shared with a nonaffiliated third party in response to a subpoena, court order or request by a law enforcement agency.

c. Do financial institutions share different types of information with affiliates than with nonaffiliated third parties? If so, please explain the differences in the types of information shared with affiliates and with nonaffiliated third parties.

In general, more detailed and specific financial information is shared with affiliated entities in order to provide a customer with the opportunity to consider an affiliate's product. If the affiliate sharing is for anti-fraud purposes, the type of information shared may involve a wider range of information about the customer. More limited personal information (see, answer to 1(b) above) is shared with nonaffiliated service providers for the specific purpose of servicing and administering an account or providing other support for the financial products and services offered by the financial institution.

d. For what purposes do financial institutions share information with affiliates?

Information may be shared with affiliates to meet regulatory requirements related to anti-fraud, money laundering or suspected terrorist activities, and "know-your-customer" and similar due diligence practices and obligations.

Another purpose of sharing with affiliates is to facilitate the provision of financial products and services to shared customers. For instance, a foreign-registered affiliate may be used to process a customer-requested transaction that would otherwise be restricted for the U.S. financial institution, or an institution may act as a distribution agent for an affiliated entity's investment funds. Transactional and experiential information may also be shared so that an affiliate can assess a customer in connection with prospective transactions and dealings between the affiliate and the customer.

Firms may also share with affiliates to offer clients innovative products and services that incorporate numerous features that clients of financial institutions have come to expect. Sharing also gives financial institutions the ability to offer integrated products and services, such as total financial planning and central asset accounts. For example, consolidated account statements – that bring together accounts from different affiliates – permit clients to view all of their transactions, such as loans, credit and debit card transactions, checking and securities

transactions all in one statement. Sharing may also permit a financial institution to offer a client a more competitive rate for that product or service than the client was receiving from another nonaffiliated third party. Lastly, the sharing of customer information between and among affiliates may occur through affiliates having common employees, systems, and support facilities.

e. For what purposes do financial institutions share information with nonaffiliated third parties?

As stated in 1(b) above, financial institutions share information with third parties in order to administer and service customer accounts, to support the products and services offered to their customers, and, as appropriate, to meet regulatory and legal requirements (see examples above).

f. What, if any, limits do financial institutions voluntarily place on the sharing of information with their affiliates and nonaffiliated third parties? Please explain.

Pursuant to Title V of the GLBA and regulations promulgated thereunder, the recipients of personal financial information are required to protect the confidentiality and security of the information that is shared with them and to use it only for the specific purpose for which it is shared.

g. What, if any, operational limitations prevent or inhibit financial institutions from sharing information with affiliates and nonaffiliated third parties? Please explain.

Securities firms may employ certain data security measures to prevent inappropriate information sharing, such as specific system access rights based on other parties' privileges and certain firewalls.

h. For what other purposes would financial institutions like to share information but currently do not? What benefits would financial institutions derive from sharing information for those purposes? What currently prevents or inhibits such sharing of information?

SIA believes that GLBA adopted the right balance between permitting firms to share information and protecting the privacy of customers.

2. The extent and adequacy of security protections for such information:

a. Describe the kinds of safeguards that financial institutions have in place to protect the security of information. Please consider administrative, technical, and physical protections, as well as the protections that financial institutions impose on their third-party service providers.

Financial institutions use physical, electronic and procedural safeguards to protect their customers' non-public personal financial information. For example, firms have established numerous information security protections, including controls on access to nonpublic personal information, the use of firewalls and the use of encryption. Institutions employ extensive training programs to ensure that security procedures are widespread throughout institutions. Contractual restrictions are placed on nonaffiliated third parties that receive such information.

b. To what extent are the safeguards describe above required under existing law, such as the GLBA (see, e.g., 12 CFR 30, Appendix B)?

Many of the safeguards broker-dealers have established to protect nonpublic personal information have been implemented to satisfy the requirements of GLBA.

c. Do existing statutory and regulatory requirements protect information adequately? Please explain why or why not?

SIA believes that existing statutory and regulatory requirements are adequate to protect the personal information of customers. Of course, the success of any regulatory requirement turns on the rigor of financial institutions in applying and monitoring the safeguards imposed by these requirements, and the various federal financial institution regulatory authorities in examining and enforcing the requirements. SIA firms are committed to protecting customer information and meeting or exceeding all requirements under existing laws and regulations.

d. What, if any, new or revised statutory or regulatory protections would be useful? Please explain.

SIA does not believe that there is any need for new or revised statutory or regulatory protections regarding information security. We believe the protections provided by existing law and regulations provide appropriate protection for consumers. The privacy practices employed by securities firms have also added to the protection provided to consumers.

3. The potential risks for customer privacy of such sharing of information:

a. What, if any, potential privacy risks does a customer face when a financial institution shares the customer's information with an affiliate?

SIA firms recognize the importance of protecting customer information. We believe that affiliate sharing presents no significant privacy risks for customers. In the context of sharing among affiliates, affiliated entities operate under common control and are joined in interest of building and maintaining a common reputation for customer satisfaction.

b. What, if any, potential privacy risks does a customer face when a financial institution shares the customer's information with a nonaffiliated third party?

Broker-dealers generally share information with nonaffiliated third parties to support the products and services offered to customers, and to meet regulatory requirements. Therefore, the only significant risk would arise if the nonaffiliated institution breached its contractual obligation to use the shared information only for the limited purpose for which it was given.

c. What, if any, potential risks to privacy does a customer face when an affiliate shares information obtained from another affiliate with a nonaffiliated third party?

We believe that the sharing of information received from an affiliate with a third party does not pose any different risks than the direct sharing of information by an institution with a third party. Also, see response to 3(b).

4. The potential benefits for financial institutions and affiliates of such sharing of information (specific examples, means of assessment, or evidence of benefits would be useful):

a. In what ways do financial institutions benefit from sharing information with affiliates?

Affiliate sharing permits financial institutions to share information to prevent and detect potential fraud. In addition, the greater access to more complete information allows firms to better meet "know-your-customer" obligations and to recommend suitable products and services. Another benefit of affiliate sharing is the ability to provide customers with a broader range of products and services from within a family of affiliated financial institutions – customers thus get the opportunity to learn about products and services offered by another affiliate and how such products may benefit them. Reduced costs and increased efficiencies may also result from affiliate sharing. For instance, by being able to share information, affiliates are able to send a single consolidated account statement to customers. In addition, sharing may permit affiliated entities to share common employees, systems, and support facilities, without having to build in the redundancies that would be required to partition and differentiate those resources.

b. In what ways do financial institutions benefit from sharing information with nonaffiliated third parties?

Information sharing with non-affiliates also has a positive impact on anti-fraud prevention and detection. In addition, nonaffiliated third parties, in some

cases, are able to provide certain services and administrative support functions that are unavailable to the financial institution or that the financial institution could not provide as cost effectively as the third party. Sharing information with nonaffiliated third parties also enhances the ability of financial institutions to offer certain products and services that it might not be feasible to offer alone, such as "wrap fee" accounts.

c. In what ways do affiliates benefit when financial institutions share information with them?

Affiliated institutions, by sharing information, in many cases are able to offer more efficient processing of transactions for clients. Sharing information also enables affiliated institutions to better serve their clients by offering a broader range of products and services to meet their overall financial needs.

Also, see response to question 4(a) above.

d. In what ways do affiliates benefit from sharing information that they obtain from other affiliates with nonaffiliated third parties?

Information from an affiliate that is provided to a nonaffiliated third party may have anti-fraud benefits. Such sharing may also permit financial institutions to offer more efficient processing of transactions for clients, and allow them to better develop and tailor suitable financial products for customers.

e. What effects would further limitation on such sharing of information have on financial institutions and affiliates?

Further limitations on sharing information could have a negative impact on the products and services offered to customers. Such limitations could slow down or otherwise impede the efficient processing of transactions, such as loan applications and account openings. Further restrictions could also increase expenses and impair efficiency for those financial institutions where affiliated entities share employees, systems, databases, and the operational platforms. The sharing of these personnel and systems depends on the ability to share information. If affiliate sharing were restricted, these systems would likely have to be separated and other "Chinese wall" restrictions would have to be established. Further restrictions could also prevent financial institutions from offering a full range of products and services to their customers.

5. The potential benefits for customers of such sharing of information (specific examples, means of assessment, or evidence of benefits would be useful):

a. In what ways does a customer benefit from the sharing of such information by a financial institution with its affiliates?

We believe that customers see the family of affiliated financial institutions as a single organization, and because they seek integrated financial solutions to their needs, they fully expect information about them to be used within the organization in a manner that facilitates access to all services and products that might meet their particular financial goals. Thus, the benefits of sharing information to financial institutions translate into direct benefits to their customers. The sharing reduces the need for a customer to interface with numerous related organizations to get the same range of services. For example, sharing allows a broker-dealer to offer its client information about an affiliate's mortgage rates, or student loans for the client's children's college tuition.

Sharing of information also permits accounts at different affiliates to be integrated for complete servicing convenience. In many cases, clients are thereby able to call one telephone number for all their account servicing requirements. Moreover, when a financial institution shares information about its customers with affiliates, the customer will receive advice and guidance about products and services that take into account the specific financial needs and objectives of that particular customer. Lastly, the sharing of information may allow affiliates to offer products at more competitive rates.

b. In what ways does a customer benefit from the sharing of such information by a financial institution with nonaffiliated third parties.

Customers receive many of the same benefits from the sharing of information with third parties, as they do from the sharing with affiliates. With respect to sharing of information under the GLBA exceptions, firms are better able to administer, process and service a client's account. Sharing with third parties may also enhance the range of products and services offered to customers.

c. In what ways does a customer benefit when affiliates share information they obtained from other affiliates with nonaffiliated third parties?

Same as 5(b).

d. What, if any, alternatives are there to achieve the same or similar benefits for customers without such sharing of such information?

SIA is not aware of any reasonable alternatives – nor do we believe there are any – that would achieve the same benefits for customers without sharing such information. Any feasible alternatives will likely result in decreased efficiencies and higher costs, while not providing any greater privacy protection.

e. What effects, positive or negative, would further limitations on the sharing of such information have on customers?

Further limitations would ultimately have a negative effect on customers by limiting the ability of financial institutions to provide a full range of products and services at competitive rates. In addition, limitations on sharing could impact efficiency and quality of services and products provided to customers.

6. The adequacy of existing laws to protect customer privacy:

a. Do existing privacy laws, such as GLBA privacy regulations and the Fair Credit Reporting Act (FCRA), adequately protect the privacy of a customer's information? Please explain why or why not.

SIA believes that the existing federal laws, such as GLBA and the FCRA, do provide adequate protection for consumers. These laws strike an appropriate balance between protecting consumers' privacy and giving them the benefits of information sharing.

GLBA's notice provisions tell consumers what information about them is collected, where that information comes from, and to whom it is given. By providing consumers with the ability to opt-out, both the GLBA and FCRA give consumers control over how their information will be shared. GLBA also imposes restrictions on the reuse and redisclosure of personal data and requires financial institutions to protect the security of personal information. SIA believes that the GLBA and FCRA requirements have pushed the financial industry to the forefront on privacy protection, and we see no need to add to, or alter, the existing provisions. Ultimately, the adequacy of the protection – like any regulatory requirements – depends on financial institutions complying with these requirements and regulators examining for compliance and enforcing where appropriate. Also, see our general comments in the attached letter.

b. What, if any, new or revised statutory or regulatory protections would be useful to protect customer privacy? Please explain.

We do not believe any new statutory or regulatory protections are needed. SIA is concerned about the potential problem of conflicting federal and state requirements. Varying state requirements across the country will create inconsistency and confusion for consumers. SIA believes that requirements of GLBA should be maintained as a uniform standard throughout the U.S.

7. The adequacy of financial institution privacy policy and privacy rights disclosure under existing law:

a. Have financial institution privacy notices been adequate in light of existing requirements? Please explain why or why not.

SIA believes the privacy notices have been adequate in light of the existing requirements. In drafting the notices, broker-dealers and other financial institutions had the difficult task of including all of the categories and elements spelled out in the regulations and making the information easy to understand. SIA firms have received very few questions or negative comments from customers. In addition, SIA's own survey of consumers showed a high level of understanding.

b. What, if any, new or revised requirements would improve how financial institutions describe their privacy policies and practices and inform customers about their privacy rights? Please explain how any of these new or revised requirements would improve financial institutions' notices.

We do not believe that any new requirements would improve how financial institutions describe their privacy policies. We do recommend that the regulatory agencies work with industry to develop simpler ways that financial institutions could follow in describing their privacy policies.

8. The feasibility of different approaches, including opt-out and opt-in, to permit customers to direct that such information not be shared with affiliates and nonaffiliated third parties:

a. Is it feasible to require financial institutions to obtain customers' consent (opt-in) before sharing information with affiliates in some or all circumstances? With nonaffiliated third parties? Please explain what effects, both positive and negative, such a requirement would have on financial institutions and on consumers.

SIA strongly believes that the opt-out provisions for sharing with nonaffiliated parties provide customers with reasonable and sufficient protection. If a customer does not want information shared, the customer can exercise his opt-out. Moreover, customers are provided with notice of whether and how the financial institution shares information with its affiliates. A customer can choose not to do business with the financial institution if he or she is unhappy with the institution's privacy practices.

Obtaining a client's opt-in would have negative effects on both sharing with affiliates and nonaffiliates. For example, if a broker-dealer customer seeks a mortgage with an affiliate, which then seeks information about the client's account, the broker-dealer would not be permitted to share such information without explicit customer consent. Furthermore, an opt-in requirement could have a dramatic

impact on a firm's ability to share information for anti-fraud or risk control purposes.

b. Under what circumstances would it be appropriate to permit, but not require, financial institutions to obtain customers' consent (opt in) before sharing information with affiliates as an alternative to a required opt in some or all circumstances? With nonaffiliated third parties? What effects, both positive and negative, would such a voluntary opt in have on customers and on financial institutions? (Please describe any experience of this approach that you may have had, including consumer acceptance.)

SIA believes that it is appropriate for financial institutions to have the ability to voluntarily adopt an opt-in policy, if they determine that such policy would be appropriate or beneficial for their business or customers. However, for most financial institutions an opt-in policy would have a significant impact on systems, personnel, efficiency, costs and delivery of products and services. We do not believe that an opt-in policy would ultimately be in the best interest of consumers. This is because we think many consumers would fail to exercise their opt-in due merely to inattention. Thus, consumers would lose the opportunity to consider products and services that they actually intended to receive.

c. Is it feasible to require financial institutions to permit customers to opt out generally of having their information shared with affiliates? [Please explain what effects, both positive and negative, such a requirement would have on consumers and on financial institutions].

SIA does not think it is feasible to implement an opt-out from affiliate sharing without disrupting business and negatively impacting the products and services offered by financial institutions. The costs and burdens would be too great for financial institutions whose business models are geared to one stop financial shopping. Additionally, among other disruptions, customers would be required to provide their information multiple times to each affiliate, increasing possible errors and risks and creating substantial customer inconvenience.

A general opt-out of information sharing with affiliates could also impact anti-fraud, anti-money laundering and institutional risk control efforts.

d. What, if any, other methods would permit customers to direct that information not be shared with affiliates or nonaffiliated third parties? Please explain their benefits and drawbacks for customers and for financial institutions of each method identified.

SIA is not aware of any other viable alternatives that would permit customers to direct that information not be shared. We think the existing opt-out is effective.

9. ***The feasibility of restricting sharing of such information for specific uses or of permitting customers to direct the uses for which such information may be shared:***

   a. ***Describe the circumstances under which or the extent to which customers may be able to restrict the sharing of information by financial institutions for specific uses or to direct the uses for which information may be shared?***

   b. ***What effects, both positive and negative, would such a policy have on financial institutions and on consumers?***

   c. ***Please describe any experience you may have had of this approach.***

Response to 9 a-c.

SIA, in general, believes that permitting customers to restrict the sharing of information for specific uses or to direct how information may be used would not be workable. Such restrictions would likely cause significant disruption to broker-dealers, and their ability to deliver products and services to customers. Our firms' experience with this approach has been very limited and is as a result of operations in certain European countries. Compliance with these information-sharing restrictions has significantly impacted systems, infrastructure and personnel.