



December 20, 2010

**Via Electronic Mail (infoprivacy@cftc.gov)**

David A. Stawick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

**Re: RIN Number 3038–AD13; 17 CFR Part 160; 75 FR 66014  
Privacy of Consumer Financial Information;  
Conforming Amendments Under Dodd-Frank Act**

Dear Mr. Stawick:

The Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> appreciates the opportunity to provide comments on Commodity Futures Trading Commission (“CFTC”) RIN Number 3038–AD13, *Privacy of Consumer Financial Information; Conforming Amendments Under Dodd-Frank Act* (“Notice”) which proposes to implement certain provisions in Titles VII and X of the Dodd Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>2</sup> SIFMA members are committed to safeguarding the security, confidentiality and integrity of customers’ information. SIFMA generally supports the proposed rules for compliance with the Dodd-Frank Act and the Gramm-Leach-Bliley Act (“GLBA”),<sup>3</sup> and offers these comments on the Notice to assist the Commission in developing regulations that accomplish congressional goals without causing unnecessary disruption to the operation of the financial markets.

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<sup>1</sup> The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

<sup>2</sup> In a separate notice of proposed rulemaking, the Commission has proposed to implement statutory provisions enacted by Title X of the Dodd-Frank Act. SIFMA submits comments in response to RIN Number 3038-AD12, *Business Affiliate Marketing and Disposal of Consumer Information Rules*.

<sup>3</sup> 15 U.S.C. § 6801, *et seq.*

**I. The Standard for Relation to State Laws Should Be the Same as the Standard under Section 507(b) of the GLBA, as amended by the Dodd-Frank Act.**

SIFMA believes that proposed section 160.17, “Relation to state laws,” which currently incorporates a standard taken from Section 1041 of Title X of the Dodd-Frank Act, should instead incorporate a standard similar to Section 507(b) of the GLBA, as amended by Section 1093 of the Dodd-Frank Act.

As the CFTC explained at the beginning of the preamble, the Commission’s proposed rules are intended to implement Section 1093 of the Dodd-Frank Act, which amends Title V of the GLBA.<sup>4</sup> Since the purpose of the proposed rules is to implement the Dodd-Frank Act’s amendments to the GLBA, the proposed rules should reflect the standard in the GLBA, as amended. SIFMA believes that maximum consistency with the standard in the GLBA comports with the harmonizing purposes of the proposed rule, and has the added benefit of maintaining the settled expectations of a financial sector that has long complied with the standards of the GLBA. SIFMA also believes that Section 1041 of the Dodd-Frank Act is not applicable here, as that section addresses the preemptive effect of Title X of the Dodd-Frank Act (the Consumer Financial Protection Act), whereas Section 507(b) of the GLBA addresses the preemptive effect of the GLBA and regulations issued pursuant to the GLBA.

Accordingly, SIFMA proposes the following standard based on Section 507(b) of the GLBA (15 U.S.C. § 6807(b)), as amended by Section 1093(6) of the Dodd-Frank Act:

(b) Greater protection under state law. For purposes of this section, a state statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any person is greater than the protection provided under this part, as determined by the Bureau of Consumer Financial Protection, after consultation with the Commission, on its own motion or upon the petition of any interested party.

While this standard is not significantly different from the Commission’s proposal, we believe that the regulatory language should more closely follow Section 507(b) and the Commission should also expressly rely on Section 507(b) – not Section 1041 of the Dodd-Frank Act – as authority for this standard.

**II. The Burden Estimate Should Be Refined In Light of Additional Anticipated Costs.**

The Commission estimates that there will be approximately 300 swap dealers and major swap participants who would be required to provide initial and annual privacy and opt-out notices to all customers who are natural persons. The Commission further estimates that each registrant will issue an average of 20 notices per year, with an average time spent per notice of 24 hours. This will result in an annual aggregate of 1,440 burden hours.<sup>5</sup>

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<sup>4</sup> See 17 C.F.R. Part 160, Summary, at 1.

<sup>5</sup> See 17 C.F.R. Part 160, Supplementary Information, at 12.

Based on SIFMA's rough estimates, we believe that the CFTC's figures underestimate the costs for all firms to implement changes required by the proposal. In particular, the estimates fail to account for burden hours associated with: (i) monitoring the privacy and opt-out notice process; (ii) addressing consumer questions and concerns about privacy and opt-out notices; and (iii) adjusting records where a consumer changes his or her mind about his or her election to opt in or out. Accordingly, we recommend that CFTC revisit and refine its cost-benefit analysis relative to the proposal.

### **III. The Effective Date Should Be Later To Ensure a Reasonable Time for Compliance.**

The Commission proposes to make the regulations effective on July 21, 2011. Given that the publication date of the final rule is not known yet, SIFMA is concerned that this timeframe will not provide a reasonable amount of time for covered entities to address and implement the new rules – particularly in light of the fact that covered entities' resources must also be committed to reviewing, commenting on, and implementing the plethora of new proposals following enactment of the Dodd-Frank Act. To ensure a reasonable amount of time for compliance, SIFMA proposes that the Commission extend the compliance date to nine months after the date of publication in the Federal Register.

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SIFMA appreciates the CFTC's consideration of these views and concerns on the regulations. If you have any questions, please call me at 202-962-7385.

Respectfully submitted,

Melissa MacGregor  
Managing Director and Association General Counsel

cc: Alan Charles Raul, Sidley Austin LLP  
Elisa Jillson, Sidley Austin LLP