

January 11, 2010

Model Privacy Forms

As you may be aware, on November 16, 2009, various Federal regulatory agencies, including the Securities and Exchange Commission (the Commission), the Commodity Futures Trading Commission, the Federal Trade Commission, and various Federal banking regulators, adopted model privacy forms that financial institutions may rely on as a safe harbor to provide disclosures under the agencies' privacy rules (in the case of the Commission, Regulations S-P and S-AM). While the use of the model privacy forms has been permitted since December 31, 2009, as of January 1, 2011 financial institutions no longer can rely on the safe harbors/guidance that had been in place prior to the adoption of the model privacy forms.

The model forms were adopted in response to a 2006 statute requiring the agencies to jointly develop an optional model form for the provision of disclosure under each agency's privacy rules under the Gramm-Leach-Bliley Act.¹ The model forms are intended to provide a standardized format for privacy notices. Each agency has adopted a number of model forms, with each designed for use under a particular scenario (e.g., model form with no opt-out right and model form with opt-out by telephone or online). In addition, each agency has provided a link on its website to an "Online Form Builder" that provides downloadable, fillable versions of the model forms.

The use of the model forms is not mandatory, but each agency's rules provide that use of a form consistent with its instructions constitutes compliance with the notice content requirements of the agency's privacy rules. In this regard, it is important to note that disclosure through another means, including through the prior safe harbors/guidance such as the sample clauses previously included in Appendix B to Regulation S-P, will not provide any comparable comfort.² Accordingly, we encourage broker-dealers, mutual funds, investment advisers registered with the Commission, and insurance companies with registered separate accounts subject to Regulation S-P to consider whether, based on their particular circumstances, it would be appropriate to use the model forms going forward.



If you have any questions regarding this Legal Alert, please feel free to contact the attorneys listed below or the Sutherland attorney with whom you regularly work.

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¹ Regulatory Relief Act, Pub. L. No. 109-351, 120 Stat. 1966 (2006).

² Unlike the prior rules of the other Federal regulators, the sample clauses in Regulation S-P were intended as guidance and did not provide a safe harbor for compliance with the Regulation's requirements for the content of privacy notices. In contrast, all of the regulators, [including the Commission](#), have accorded the new model forms safe harbor status.