

# TANNENBAUM HELPERN SYRACUSE & HIRSCHTRITT LLP

## MEMORANDUM

### Notice of Privacy Policies and Practices under Title V of the Gramm-Leach-Bliley Act and Regulation S-P<sup>1</sup>

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Registered investment advisers, investment companies, and broker-dealers, two inter-related laws will be affected this year by Regulation S-P (Release No. 42974), which has become effective. Under Regulation S-P, the Securities and Exchange Commission (the "Commission") has implemented specific procedures and requirements to effectuate Title V of the Gramm-Leach-Bliley Act ("Title V") (Public Law 106-102).

The purpose of Title V is to increase the security and confidentiality of consumer records and information -- both current and former consumers -- by prescribing rules that require a financial institution to disclose to the consumer its policies and practices with respect to a consumer's nonpublic personal information, i.e. personally identifiable financial information provided by a consumer to a financial institution. Moreover, Title V gives the consumer the discretion to "opt-out", i.e. to authorize disclosure of his or her nonpublic personal information to a third party that is not affiliated with the consumer's financial institution. A limitation of Title V is that it only set forth general guidelines as to what a financial institution's policies and procedures should contain. As such, Title V shifts the responsibility of formulating more specific rules to the Commission with respect to registered investment advisers, investment companies, and broker-dealers, and accordingly, the Commission promulgated Regulation S-P.

Under Regulation S-P, a financial institution must clearly and conspicuously disclose to its customers whether in writing or in electronic form: how a financial institution discloses a customer's nonpublic financial information; how a consumer's nonpublic financial information is safeguarded or disclosed; what type of information of a consumer is collected; who will receive such information; and how does a financial institution protect or disclose a former customer's nonpublic personal information. A notice of a financial institution's policies and procedures with respect to privacy and disclosure is required both when a customer relationship is established and on an annual basis during the lifetime of the customer relationship. Moreover, Regulation S-P regulates the sharing of nonpublic personal information between a consumer's financial institution and a nonaffiliated third party by imposing *inter alia* monitoring rules.

Title V and Regulation S-P mandate that financial institutions will have to have privacy policies and procedures by July 1, 2001. Significantly, in the Commission's

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comments to Regulation S-P, full compliance by July 1, 2001 actually means delivering all required privacy and opt out notices to existing clients prior to June 30, 2001. As such, if you are an investment adviser, investment company, or a broker-dealer, you should start examining your internal policies and consult counsel to ensure that your notice of privacy and opt out notice and your internal procedures are in full compliance with Regulation S-P before July 1st.

Should you need further information, feel free to contact the author.

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