

§ 248.8

17 CFR Ch. II (4-1-03 Edition)

(d) *Joint relationships.* (1) If two or more consumers jointly obtain a financial product or service from you, you may provide a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer.

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require *all* joint consumers to opt out before you implement *any* opt out direction.

(5) *Example.* If John and Mary have a joint brokerage account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary;

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction; or

(iii) Permit John and Mary to make different opt out directions. If you do so:

(A) You must permit John and Mary to opt out for each other.

(B) If both opt out, you must permit both to notify you in a single response (such as on a form or through a telephone call).

(C) If John opts out and Mary does not, you may only disclose nonpublic personal information about Mary, but not about John and not about John and Mary jointly.

(e) *Time to comply with opt out.* You must comply with a consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction.* (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that you collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to § 248.9.

§ 248.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a non-affiliated third party other than as described in the initial notice that you provided to that consumer under § 248.4, unless:

(1) You have provided to the consumer a clear and conspicuous revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the non-affiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by §§ 248.13, 248.14, and 248.15, you must provide a revised notice before you:

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of non-affiliated third party; or

(iii) Disclose nonpublic personal information about a former customer to a nonaffiliated third party, if that

former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to § 248.9.

§ 248.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b)(1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service; or

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectation of actual notice.* You may not, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices; or

(ii) Send the notice via electronic mail to a consumer who does not ob-

tain a financial product or service from you electronically.

(c) *Annual notices only.* (1) You may reasonably expect that a customer will receive actual notice of your annual privacy notice if:

(i) The customer uses your web site to access financial products and services electronically and agrees to receive notices at the web site and you post your current privacy notice continuously in a clear and conspicuous manner on the web site; or

(ii) The customer has requested that you refrain from sending any information regarding the customer relationship, and your current privacy notice remains available to the customer upon request.

(2) *Example of reasonable expectation of receipt of annual privacy notice.* You may reasonably expect that consumers who share an address will receive actual notice of your annual privacy notice if you deliver the notice with or in a stockholder or shareholder report under the conditions in 17 CFR 270.30d-1(f) or 17 CFR 270.30d-2(b), or with or in a prospectus under the conditions in 17 CFR 230.154.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for customers.* (1) For customers only, you must provide the initial notice required by § 248.4(a)(1), the annual notice required by § 248.5(a), and the revised notice required by § 248.8, so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(2) *Examples of retention or accessibility.* You provide a privacy notice to the customer so that the customer can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the customer;

(ii) Mail a printed copy of the notice to the last known address of the customer; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the web site.