

March 15, 2007

By Facsimile and U.S. Mail

Mr. Timothy Le Bas  
Deputy Commissioner and General Counsel  
Office of Law and Legislation  
State of California – Business, Transportation and Housing Agency  
Department of Corporations  
1515 K Street, Suite 200  
Sacramento, CA 95814-4052

Re: Compliance Survey Regarding The California Financial  
Information Privacy Act

Dear Mr. Le Bas:

Thank you for taking the time to speak with me last week about the survey entitled “Compliance Survey Regarding the California Financial Information Privacy Act” that some members of the Investment Adviser Association<sup>1</sup> recently received from the California Department of Corporations.<sup>2</sup>

According to the survey, the Department is gathering information through its examination process to determine compliance with the California Financial Information Privacy Act (the “Privacy Act”) pursuant to its authority under Financial Code Sections 4057 and 4058. In the transmittal letter accompanying the survey, the Department asks that copies of the completed compliance survey be retained, along with any accompanying documents identified in the survey, as books and records “so that Department examiners can request and review these documents during the next [company] examination . . . , as necessary.” The survey itself also purports to require advisers that share information in a manner requiring client “opt-in” to maintain records regarding customer complaints, policies and procedures, employee education, and similar matters.

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<sup>1</sup> The Investment Adviser Association (formerly the Investment Counsel Association of America) is a not-for-profit association that represents the interests of SEC-registered investment adviser firms. Founded in 1937, the Association’s current membership consists of about 500 firms that collectively manage in excess of \$8 trillion in assets for a wide variety of individual and institutional clients. For more information, please visit our web site: [www.investmentadviser.org](http://www.investmentadviser.org).

<sup>2</sup> Copies of the survey and transmittal letter are attached hereto.

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The Privacy Act, however, does not impose any record retention requirements on financial institutions, nor does it provide the Department with survey or inspection authority over investment adviser firms. Further, the California Corporate Securities Law does not - and cannot under NSMIA - confer to the Department routine inspection authority over SEC-registered investment advisers nor can it impose record retention requirements over such advisers. Accordingly, while we understand the reasons the Department wishes to obtain compliance surveys from SEC-registered advisers, the statutory provisions cited do not appear to authorize the Department to mandate a response or require record retention.

During our phone conversation, you indicated that a response from our members that received the survey was required, even though those members are SEC-registered investment advisers that are not registered or licensed with the California Department of Corporations. We respectfully request that you clarify that any response to the survey by such investment advisers is voluntary, not mandatory. We also request affirmation that the record retention portions of the survey do not apply to SEC-registered investment advisers. The transmittal sheet accompanying the survey asks for the survey to be returned "within 20 days of receipt." Accordingly, your prompt clarification of this matter would be greatly appreciated.

Please do not hesitate to contact me if you have any questions or if I may provide any additional information about this matter.

Sincerely,



Valerie Baruch  
Assistant General Counsel