

the applicable interval in the Airbus A340 Certification Maintenance Requirements, Issue 14.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(h) EASA airworthiness directives 2006-0224, dated July 27, 2006, and 2006-0225, dated July 21, 2006, also address the subject of this AD.

Issued in Renton, Washington, on December 19, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6-22111 Filed 12-26-06; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084-0098

Telemarketing Sales Rule; Extension Beyond January 2, 2007, of the Previously Announced Forbearance Policy in Enforcement of the Prohibition of Prerecorded Calls in the Telemarketing Sales Rule ("TSR")

AGENCY: Federal Trade Commission.

ACTION: Proposed rule.

SUMMARY: In a *Federal Register* document published on October 4, 2006, 71 FR 58716, the FTC denied a request for creation of a new safe harbor in the TSR for prerecorded calls by sellers and their telemarketers to consumers with whom the seller has an "established business relationship," and proposed an amendment to the TSR that would make explicit the prohibition on prerecorded calls that is now implicit in the TSR's call abandonment provisions. The Commission accordingly also announced the revocation of a previously announced policy of forbearing from enforcement of the TSR's call abandonment prohibition effective January 2, 2007. In response to a request for an extension of the forbearance policy, the Commission has determined that the forbearance policy should remain in effect until the conclusion of the prerecorded call amendment proceeding.

DATES: Effective January 2, 2007, the Commission will continue its previously announced policy of forbearing from enforcing the prohibition of prerecorded calls in the TSR's call abandonment provisions, until the conclusion of the prerecorded call amendment proceeding.

FOR FURTHER INFORMATION CONTACT:

Craig Tregillus, (202) 326-2970, Division of Marketing Practices, Bureau of Consumer Protection, Room H-288, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In a *Federal Register* document published on October 4, 2006, 71 FR 58716, the FTC denied a request for creation of a new safe harbor in the TSR for prerecorded calls by sellers and their telemarketers to consumers with whom the seller has an "established business relationship," and proposed an amendment to the TSR that would make explicit the prohibition on prerecorded calls that is now implicit in the TSR's call abandonment provisions. The Commission accordingly also announced the revocation of a previously announced policy of forbearing from enforcement of the TSR's call abandonment prohibition effective January 2, 2007.

On November 29, 2006, the Direct Marketing Association ("DMA") filed a petition seeking an extension of the Commission's enforcement forbearance policy on prerecorded calls beyond the announced revocation date of January 2, 2007. A petition filed by medSage Technologies LLC on November 30, and petitions filed by Minutepoll, LLC ("Minutepoll petition") and jointly by Silverlink Communications Inc. and the Eliza Corporation ("Silverlink petition") on December 1, also requested extensions of the revocation date. Both the DMA and Silverlink petitions ask for an extension until the conclusion of the rulemaking proceeding, while the medSage and Minutepoll petitions seek an extension until six months after the conclusion of the rulemaking to allow companies sufficient time to comply.¹

DMA argues that, if the policy were revoked as announced effective January 2, 2007, even prerecorded messages that consumers "affirmatively requested would need to be discontinued" because businesses would not have had sufficient time during their busy holiday

season "to obtain the proposed prior written consents."² Moreover, DMA believes that because the TSR's present call abandonment provisions, unlike the proposed amendment, lack any express provision allowing prerecorded calls to established customers who have given their written consent, that failure to extend the forbearance policy would have the effect of "a flat prohibition on prerecorded messages."³

DMA advances two additional reasons for extending the forbearance policy until completion of the amendment proceeding. The first is that failure to continue the forbearance policy "effectively prejudices the outcome of the proceeding," contrary to the intended statutory purpose "of the Notice and Comment process."⁴ The second is that an extension will maintain the status quo for consumers who have listed their numbers on the Do Not Call Registry because it simply continues the existing forbearance policy.⁵

The Minutepoll petition emphasizes the "irreparable harm smaller businesses" engaged in telemarketing would incur unless the forbearance policy is extended.⁶ Minutepoll says that it and many other small telemarketers that place prerecorded calls otherwise would be forced to shut down their operations on January 2, 2007, since they cannot be "cost competitive" with large call centers in placing live telemarketing calls.⁷

The medSage and Silverlink petitions come from companies under contract with HMO's and other health care providers, pursuant to regulations issued by the Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996, to place interactive "reminder" calls to the providers' medical patients, urging them to get flu shots, childhood immunizations, routine mammograms and colonoscopies, prescription refills, and the like.⁸ Both petitions argue that there is insufficient time before January 2 for the providers they serve to obtain written consent from the 10 to 20 million patients the Silverlink petition estimates receive such calls annually.⁹

Thus, the medSage petition contends that the company would be faced with

² DMA petition at 1-2.

³ *Id.* at 1.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

⁶ Minutepoll petition at 2.

⁷ *Id.*

⁸ These calls are "telemarketing" calls covered by the TSR because they induce the purchase of medical goods or services.

⁹ Silverlink petition at 2; medSage petition at 3.

¹ The Commission believes that the medSage and Minutepoll requests for additional time after a final rule is promulgated for businesses to bring themselves into compliance is premature, since this issue can be addressed best when the final rule is issued.

“a Hobson’s choice” of violating the TSR or failing to deliver “medically necessary prerecorded messages,” and that “[n]either choice makes any sense.”¹⁰ Similarly, the Silverlink petition argues that if an extension is not granted, patients would be deprived of calls that improve healthcare services and patient outcomes.¹¹

The Commission rejects DMA’s argument that revoking its previously announced non-enforcement policy can reasonably be seen as in any way prejudging the outcome of the amendment proceeding. Nevertheless, in recognition of the reasons presented by the petitions and in order to preserve the *status quo*, the Commission has determined that, pending completion of this proceeding, the Commission will continue “to forbear from bringing any enforcement action for violation of the TSR’s call abandonment prohibition, 16 CFR 310.4(b)(1)(iv), against a seller or telemarketer that places telephone calls to deliver prerecorded telemarketing messages to consumers with whom the seller on whose behalf the telemarketing call is placed has an established business relationship, as defined in the TSR, provided the seller or telemarketer conducts this activity in conformity with the [following] terms:”¹²

- (i) The seller or telemarketer, for each such telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

- (ii) Within two (2) seconds after the person’s completed greeting, the seller or telemarketer promptly plays a prerecorded message that:

- (A) Presents an opportunity to assert an entity-specific Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at the outset of the message, with only the prompt disclosures required by § 310.4(d) or (e) preceding such opportunity; and

- (B) Complies with all other requirements of this Part [16 CFR Part 310] and other applicable federal and state laws.”¹³

The Commission has stated its belief that, as the foregoing criteria indicate, “an interactive feature (pressing a button during the message to connect to a sales representative or an automated system to make a Do Not Call request) would be ideal . . . to protect consumers’ Do Not Call rights under the TSR.”¹⁴ The Commission emphasizes that its forbearance policy applies only

to prerecorded telemarketing calls that comply completely with all of the foregoing criteria.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. E6–22144 Filed 12–26–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 240 and 241

[Release Nos. 33–8762; 34–54976; File No. S7–24–06]

RIN 3235–AJ58

Management’s Report on Internal Control Over Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed interpretation; Proposed rule.

SUMMARY: We are proposing interpretive guidance for management regarding its evaluation of internal control over financial reporting. The interpretive guidance sets forth an approach by which management can conduct a top-down, risk-based evaluation of internal control over financial reporting. The proposed guidance is intended to assist companies of all sizes to complete their annual evaluation in an effective and efficient manner and it provides guidance on a number of areas commonly cited as concerns over the past two years. In addition, we are proposing an amendment to our rules requiring management’s annual evaluation of internal control over financial reporting to make it clear that an evaluation that complies with the interpretive guidance is one way to satisfy those rules. Further, we are proposing an amendment to our rules to revise the requirements regarding the auditor’s attestation report on the assessment of internal control over financial reporting.

DATES: *Comment Date:* Comments should be received on or before February 26, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7–24–06 on the subject line; or

- Use the Federal eRulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–24–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments are also available for public inspection and copying in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michael G. Gaynor, Professional Accounting Fellow, Office of the Chief Accountant, at (202) 551–5300, or N. Sean Harrison, Special Counsel, Division of Corporation Finance, at (202) 551–3430 U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 13a–15(c),¹ and Rule 15d–15(c)² under the Securities Exchange Act of 1934 (the “Exchange Act”);³ and Rules 1–02(a)(2)⁴ and 2–02(f)⁵ of Regulation S–X.⁶

I. Background

Section 404(a) of the Sarbanes-Oxley Act of 2002⁷ (“Sarbanes-Oxley”) directed the Commission to prescribe rules that require each annual report that a company, other than a registered investment company, files pursuant to Section 13(a) or 15(d)⁸ of the Exchange Act to contain an internal control report: (1) Stating management’s responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) containing an assessment, as of the

¹⁰ medSage petition at 4.

¹¹ Silverlink petition at 6–7 & nn.14–16.

¹² 69 FR 67287, 67290 (Nov. 17, 2004).

¹³ 69 FR at 67294 (noting that “This provision does not affect any seller’s or telemarketer’s obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.”)

¹⁴ 69 FR 67289.

¹ 17 CFR 240.13a–15(c).

² 17 CFR 240.15d–15(c).

³ 15 U.S.C. 78a *et seq.*

⁴ 17 CFR 210.1–02.

⁵ 17 CFR 210.2–02(f).

⁶ 17 CFR 210.1–01 *et seq.*

⁷ 15 U.S.C. 7262.

⁸ 15 U.S.C. 78m(a) or 78o(d).