

VIA ELECTRONIC MAIL

February 20, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

RE: FINRA Regulatory Notice 09-02: Information and Data Reporting and Filing Requirements

Dear Ms. Asquith:

On January 6, 2009, the Financial Industry Regulatory Authority, Inc. (FINRA) requested comment on a proposal relating to information and data reporting and filing requirements. As part of the ongoing consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, the proposed rule is intended to establish a new information reporting requirement; require broker-dealer firms to report additional applicable contact information; and consolidate, streamline, and modify into one rule several separate reporting and filing requirements (Proposed Rule).¹ The information gathered through these data reporting and filing requirements is intended to facilitate FINRA's collection of critical business information, verification of whether firms engage in certain business activities, and identification of different firm types and business models.

The Financial Services Institute² (FSI) recognizes that combining the rulebooks of the predecessor regulatory authorities represents a significant challenge. With so many changes in the structure and substance of the rulebook being considered, we believe industry input is more important than ever. We, therefore, commend FINRA for seeking industry comment on the Proposed Rule prior to submitting it to the SEC. In addition, we recognize and appreciate FINRA's need for timely and accurate information concerning broker-dealer firms in order to carry out its customer protection obligations. Nevertheless, we have significant concerns about the ambiguity inherent in the Proposed Rule. These concerns are discussed in detail in this letter.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered

¹ See the Proposed Rule and FINRA's request for comment in FINRA Regulatory Notice 09-02 at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p117676.pdf>.

² The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 116 Broker-Dealer member firms that have more than 142,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 12,000 Financial Advisor members.

investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 98,000 independent financial advisors – or approximately 42.3% percent of all practicing registered representatives – operate in the IBD channel.³ These financial advisors are self-employed independent contractors, rather than employees of the IBD firms. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisors affiliated with IBDs is clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁴ Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients’ investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisors. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisors play in helping Americans plan for and achieve their financial goals. FSI’s mission is to ensure our members operate in a regulatory environment that is fair and balanced. FSI’s advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments

The following is a summary of FSI’s specific comments on the Proposed Rule:

- Annual Form Reporting Requirements and Additional Contact Information – Section 4540(a)(1) of the Proposed Rule states that broker-dealer firms are “required to report, update and review in such format, time frame and manner as FINRA may require, all specified data or information.” FINRA indicates that the Proposed Rule’s text is intentionally broad and ambiguous to provide it with the necessary flexibility to collect desired data via an Annual Form whose content will be announced through a future Regulatory Notice. While we appreciate FINRA’s acknowledgement of the lack of specificity inherent in the Proposed Rule and recognize their desire to develop and refine the Annual Form at a future point in time, we are uncomfortable with supporting the Annual Form sight unseen and without clearly defined timeframes for submission. As a result, we urge FINRA to withdraw the Proposed Rule until they are able to provide the

³ Cerulli Associates Quantitative Update: Advisor Metrics 2007, Exhibit 2.04. Please note that this figure represents a subset of independent contractor financial advisors. In fact, more than 142,000 financial advisors are affiliated with FSI member firms. Cerulli Associates categorizes the majority of these additional advisors as part of the bank or insurance channel.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

necessary specificity for firms and industry groups to analyze properly its requirements. Should FINRA choose to pursue the Proposed Rule in its current form, we urge it to facilitate industry understanding of this section by providing a list of general categories of information FINRA intends to include in the Annual Form. In addition, we strongly recommend the formation of an industry task force to offer input and guidance to FINRA in the development of the Annual Form. The creation of this task force would assist FINRA in developing an Annual Form that meets FINRA's needs without creating unintended consequences or unreasonable burdens on broker-dealer firms. We are certain our members would be interested in participating in such a task force and would be happy to recommend appropriate individuals to serve in this role.

- **Mandatory Filing Requirements – Section 4540(a)(2) of the Proposed Rule would require broker-dealer firms to file with FINRA “in such manner and format” as required, “all regulatory notices or other documents required to be filed or submitted to FINRA.”** FINRA explains the ambiguity inherent in this provision as necessary to allow them the flexibility to use a variety of filing and submission tools, including electronic means. We commend FINRA for its effort to use technology to streamline and simplify the data collection process. However, we are once again concerned that the broad nature of the Proposed Rule's language requires broker-dealers to comment without sufficient information to analyze the reasonableness of the proposal. As a result, we urge FINRA to withdraw the proposal until greater clarity can be provided to broker-dealer firms. In the alternative, we recommend the following amendment to Section 4540(a)(2):

(2) Each member is required to file with FINRA in such manner and format as FINRA may reasonably require, all regulatory notices or other documents required to be filed or submitted to FINRA.

In addition, we again would request the formation of an industry task force to offer input and guidance to FINRA in the development of standards for appropriate formats for the submission of required data. We believe the creation of this task force will help to insure that FINRA selects technology for data submissions that is generally accepted and in use by the industry, thereby reducing the cost and delay associated with member firms' efforts to provide data in the required format. We would be happy to recommend appropriate industry members to serve on such a task force.

- **Contact Information Reporting Requirements – Section 4540(a)(3) and Supplementary Material .01 would require firms to report to and promptly update FINRA on changes to certain designated persons' contact information. The Supplementary Material would require firms to update their contact information promptly, but in any event not later than 30 days following any change in such information. In addition, broker-dealers would be required to update their contact information within 17 business days after the end of the calendar year. FINRA indicates that it intends to develop a single electronic Firm Gateway to facilitate the ongoing collection of the required contact information. Once again, we commend FINRA for its effort to use technology to streamline and simplify the data collection process. However, we would encourage FINRA to change the timeframe for the annual update of contact information to 30 days in order to avoid a proliferation of confusing information submission timeframes.**
- **Opportunity to Reduce Data Production Burden on Broker-Dealer Firms – Finally, the Proposed Rule provides FINRA with the ability to request, obtain, and utilize significant amounts of electronic documentation and data from broker-dealer firms. We encourage**

FINRA to leverage the technology by providing such information to its exam staff in an effort to reduce the burden on broker-dealer firms to provide the same or similar information during on-site inspections.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with you to achieve further efficiency in the information and data reporting and filing requirements while maintaining investor protection.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dale Brown", written in a cursive style.

Dale E. Brown, CAE
President & CEO