



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

April 1, 2013

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 13-07 — Proposed Rules Governing Markups, Commissions, and Fees

Ms. Asquith:

On January 31, 2013, the Financial Industry Regulatory Authority (FINRA) released Regulatory Notice 13-07,¹ a request for comment on proposed rules governing markups, markdowns, commissions, and fees. The proposed rules include 1) retention of the 5% markup policy in NASD IM-2440-1; 2) revising certain of the relevant factors used to determine the unreasonableness of markups and commissions; 3) elimination of the requirement to provide commission schedules for equity securities transactions to retail customers; and 4) extension of the proposed markup rules to transactions in certain government securities. This Notice revises the proposed rule changes included in Regulatory Notice 11-08.² The Financial Services Institute³ (FSI) appreciates the opportunity to comment on this important proposal.

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

¹ Regulatory Notice 13-07 (Jan. 31, 2013), *available at* <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p197796.pdf>.

² See Regulatory Notice 11-08 (Feb. 10, 2011), *available at* <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p122918.pdf>.

³ 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 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

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 investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers 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 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.⁴ These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers 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 advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers 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.⁵ Independent financial advisers 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 advisers 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 advisers. 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 advisers play in helping Americans plan for and achieve their financial

⁴ Cerulli Associates at <http://www.cerulli.com/>.

⁵ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

goals. FSI's primary goal 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

We applaud FINRA for incorporating the comments received in response to Notice 11-08 and for making appropriate revisions to the proposed rule changes. In our previous comments, we indicated our support for FINRA's consolidation of the NASD and NYSE Rulebook, however, we had serious concerns related to the lack of specific guidance related to caps on markups, markdowns, or commissions. FSI, as a result, is generally supportive of the changes made in the new proposal.

- 1. The Proposed Retention of the 5% Policy Provides Adequate Guidance for Firms:** FINRA's decision to retain the 5% Policy establishes clear guidance to firms with regard to appropriate standards. Although the 5% Policy is significantly higher than the average markups, markdowns, or commissions charged by most firms, it remains the best alternative to provide compliance professionals with an explicit point of reference to guide their assessments. Moreover, FINRA's decision avoids the pitfalls of issuing subsequent guidance in the absence of an evidentiary basis to provide a substitute benchmark.
- 2. FSI Supports the Inclusion of General Considerations and Relevant Factors into Rule 2121:** The general considerations of NASD IM-2440-1(a)(2), a(a)(3), (c)(2), and a(5) for justifying markups, markdowns, or commissions are properly consolidated and included in the proposed rule. FSI also supports FINRA's decision to transfer the non-exclusive list of relevant factors in NASD IM-2440-1(b) into FINRA Rule 2121(c). These factors and guidance will ensure that firms have the necessary clarity to continue offering financial products and services to clients at fair prices. By incorporating the factors and considerations firms have already been relying upon for assessing proper markups, markdown, and commissions, the proposed rule will continue to protect investors.
- 3. FSI Applauds FINRA for Eliminating the Proposed Fee Schedule Requirement:** FINRA's decision to eliminate the requirement for members to

establish and make available the schedules of standard commission charges for transactions in equity securities to retail customers reflects the proper balancing of providing effective disclosure as opposed to providing comprehensive disclosure. As we discussed in our prior comments, the information would be duplicative and unnecessary. While we support measures to enhance disclosure regarding commissions that customers are charged, making available the commissions schedule as previously contemplated in the original proposal would have provided no additional benefit to customers. We further recommend that FINRA continue to study the issue with regard to disclosures for retail customers to determine additional instances where the delivery of excessive disclosure documents further confuse investors rather than assist them in making better decisions in the investment process.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with the SEC and FINRA on important developments in the future.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 202 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" and a stylized "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel