

THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy



March 23, 2012

Via e-mail to rule-comments@sec.gov

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

**Re: *Comment Request for Study Regarding Financial Literacy Among Investors
[Release No. 34-66164; File No. 4-645]***¹

Dear Ms. Murphy:

The Financial Services Roundtable (the “Roundtable” or “we”) respectfully submits this letter in response to the request for comment by the Securities and Exchange Commission (the “Commission”) in connection with its study (the “Study”) regarding financial literacy among investors.² We and our members appreciate the opportunity to provide feedback on the various investor disclosure issues identified in Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”), pursuant to which the Study is mandated.³ We and our members are committed to improving the financial literacy of investors. As noted in the Roundtable’s prior response to the Commission’s request for comment relating to private and public efforts to educate investors, our members devote considerable resources and effort to financial education programs in the communities they serve.⁴

I. Executive Summary

Pursuant to Section 917(a)(2)-(4) of the Dodd-Frank Act, the Commission is directed to identify in its Study:

¹ See Release No. 34-66164 (Jan. 17, 2012), 77 Fed. Reg. 3294 (Jan. 23, 2012).

² The Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives named by the CEO. Roundtable member companies provide fuel for America’s economic engine, accounting directly for \$92.7 trillion in managed assets, \$1.2 trillion in revenue, and 2.3 million jobs.

³ Pub. Law No. 111-203 (2010).

⁴ See Letter of the Roundtable to the Commission, dated June 22, 2011, available at <http://www.sec.gov/comments/4-626/4-626.shtml>.

- (i) methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment services;
- (ii) the most useful and understandable relevant information that retail investors need to make informed financial decisions before engaging a financial intermediary or purchasing an investment product or service that is typically sold to retail investors, including shares of registered open-end investment companies (“mutual funds”); and
- (iii) methods to increase the transparency of expenses and conflicts of interest in transactions involving investment services and products, including shares of mutual funds.⁵

The goals underlying the Study—facilitating and enhancing the timing, manner, method, format, and scope of disclosure to retail investors—are laudable, and they are fully supported by the Roundtable and our members. Nevertheless, the goals underlying the Study are also the focus of concurrent regulatory initiatives of not only the Commission, but the Department of Labor (the “Department”) and the Financial Industry Regulatory Authority (“FINRA”). As discussed more fully below, the Roundtable and our members urge the Commission to work with the Department, FINRA and other financial regulators to develop a unified approach to investor disclosure. We believe harmonized disclosure requirements are integral to a balanced costs/benefits approach to regulation and necessary for providing investors with useful and understandable disclosures.

In summary, the Roundtable’s key comments are:

- Regulators should collaborate on a uniform disclosure framework that provides retail investors with the information that they need in the most cost-effective manner possible.
- Disclosure requirements should be drafted from the investor’s perspective to ensure plain English and meaningful disclosures, and to avoid redundant and overlapping disclosures from the same financial services provider.
- Electronic media should be more fully recognized as an effective tool for communicating with investors and for providing the tools that investors need to receive and access information from time to time, to learn about different types of investment products, and to compare the products and services of different financial services providers across investment objectives, risks, and fees.

⁵ 77 Fed. Reg. at 3294.

II. Regulators Should Collaborate on a Uniform Disclosure Framework

Multiple regulatory initiatives addressing investor disclosure are currently pending. In many cases, these initiatives overlap in terms of disclosures, disclosees, and disclosers. Absent increased collaboration among regulators, the end result very likely would be greater investor confusion and less effective disclosure, notwithstanding the substantial expense likely to be incurred in developing and implementing new investor disclosures.

As illustrated below, since 2005, the financial services industry has been the subject of several new regulatory initiatives concerning investor disclosure:

1. In February 2005, the Commission republished for comment a package of point of sale disclosures related to sales of mutual funds and other securities.⁶
2. In July 2010, the Commission proposed rescinding Rule 12b-1 under the Securities Exchange Act of 1934 (the “Exchange Act”) and replacing it with new Exchange Act Rule 12b-2, which, among other things, would require the inclusion in mutual fund prospectuses of additional disclosures about sales charges.⁷
3. In October 2010, FINRA published a concept proposal relating to disclosures to be provided by member firms to retail customers, at or prior to commencing a business relationship, about the services provided and any conflicts of interest.⁸
4. In January 2011, the Commission’s staff submitted to Congress, as required by Section 913 of the Dodd-Frank Act, a cross-divisional *Study on Investment Advisers and Broker Dealers*, which made recommendations for changes to the regulatory schemes for broker-dealers and investment advisers, including a number of new disclosure requirements.⁹
5. In February 2011, FINRA published a request for comment on pending new FINRA Rule 2121, which, among other things, would require different

⁶ See Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, College Savings Plans, and Certain Other Securities, and Amendments to the Registration Form for Mutual Funds, Release No. 33-8544 (Feb. 28, 2005), 70 Fed. Reg. 10,521 (Mar. 4, 2005); Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds, Release No. 33-8358 (Jan. 29, 2004), 69 Fed. Reg. 6438 (Feb. 10, 2004).

⁷ See Mutual Fund Distribution Fees; Confirmations, Release No. 33-9128 (July 21, 2010), 75 Fed. Reg. 47,064 (Aug. 4, 2010).

⁸ See FINRA Regulatory Notice 10-54 (Oct. 2010).

⁹ See Study on Investment Advisers and Broker Dealers (Jan. 21, 2011), available at <http://www.sec.gov/news/studies/2011/913studyfinal.pdf>.

disclosures to be made to retail investors regarding commissions and other fees and charges for services.¹⁰

In addition to these proposals, the Commission and the Department also adopted a number of new requirements, including:

- a. amendments to Form ADV that require investment advisers to provide information to investors and prospective investors, in a narrative plain English brochure, regarding their business, conflicts of interest, disciplinary history, and fees;¹¹
- b. increased disclosures that pension plan fiduciaries must make about compensation and conflicts of interest to participants in participant-directed individual accounts, such as 401(k) plans;¹² and
- c. amended disclosures that pension plan service providers must provide to pension plan fiduciaries regarding their compensation and conflicts of interest relating to the services that they provide.¹³

Due to the number of U.S. federal and state regulators with investor and consumer protection mandates, it is not surprising that financial intermediaries that provide services to investors are faced with multiple regulatory regimes containing information disclosure mandates. Unfortunately, however, this has resulted in investor confusion based on the volume of information provided to them, seemingly covering the same topics. Multiple, serially effective regulatory disclosure requirements have also unnecessarily increased the operational compliance costs of financial intermediaries without providing offsetting benefits to investors receiving such information.

The Roundtable and its members strongly urge the Commission and other regulatory authorities to work together to develop and establish a uniform disclosure framework that provides investors with the type of clear, concise, and meaningful information that they need in the most cost-effective manner possible. For example, simply coordinating the effective dates for new disclosure requirements could greatly reduce the costs for financial intermediaries of implementing such requirements. A more holistic approach to investor disclosure will help to ensure that the net costs to financial intermediaries do not exceed the overall benefits to

¹⁰ See FINRA Regulatory Notice 11-08 (Feb. 2011).

¹¹ See Amendments to Form ADV, Release No. IA-3060 (July 28, 2010), 75 Fed. Reg. 49,234 (Aug. 12, 2010).

¹² See Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans (Oct. 7, 2010), 75 Fed. Reg. 64,910 (Oct. 20, 2010).

¹³ See Reasonable Contract or Arrangement Under Section 408(b)(2) (Jan. 25, 2012), 77 Fed. Reg. 6632 (Feb. 3, 2012).

investors. Joint agency coordination also would be consistent with President Barack Obama's directive that agencies promote "coordination, simplification, and harmonization."¹⁴

III. Uniform Disclosure Would Benefit Investors

Even as regulators have made efforts to improve and increase disclosure to investors, a 2008 study has shown that investors do not read such materials to inform their investment decisions.¹⁵ Investors complain that current disclosure materials are too verbose, too difficult to understand, and contain too much legal jargon. Investors also have expressed frustration with not being able to locate in such disclosure materials the key information that they need to make informed investment decisions.¹⁶ We believe disclosure requirements should be drafted from the investor's perspective to ensure plain English and meaningful disclosures, and to avoid redundant and overlapping disclosures from the same financial services provider.

The two main reasons for the complexity of current disclosures are that financial intermediaries must comply with multiple disclosure regimes, and that they include lengthier disclosures in order to mitigate potential liability with respect to information that, in hindsight, might otherwise be found to be inaccurate or incomplete. Even the new "summary prospectus" disclosure, adopted by the Commission in 2009 to provide investors with key information in a more concise manner, is becoming quite cumbersome as market participants seek to manage their litigation risks.¹⁷ Some measure of liability relief, whether by enacting a safe-harbor for information presented to investors in summary form, or through some other means, would go far in allowing financial intermediaries to present disclosure in a more concise and meaningful manner.

A simpler, uniform disclosure framework would also improve the usefulness of information to investors. For example, similar categories of expenses should be required to be calculated and reported in the same manner, whether they relate to mutual funds or 401(k) plans. Uniform disclosure requirements will help investors compare information across different types of financial intermediaries, investment products, and investment services. By contrast,

¹⁴ See, Executive Order 13563, "Improving Regulation and Regulatory Review" (Jan. 18, 2011). More recently, the Office of Management and Budget directed agencies to consider the "cumulative effects of new and existing rules and to identify opportunities to harmonize and streamline multiple rules." See "Cumulative Effects of Regulations," (Mar. 20, 2012), at 1, available at <http://www.whitehouse.gov/sites/default/files/omb/assets/infogeg/cumulative-effects-guidance.pdf>.

¹⁵ See Abt SRBI, Mandatory Disclosure Documents Telephone Survey, Submitted to the Securities and Exchange Commission Office of Investor Education and Advocacy (July 30, 2008), at iv, available at <http://www.sec.gov/pdf/disclosuredocs.pdf>. According to the survey, only five percent (5%) of respondents cited the statutory prospectus as among the main sources used to guide their investment decisions. *Id.* at 4.

¹⁶ *Id.* at iv.

¹⁷ See Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Release. No. 33-8998 (Jan. 13, 2009), 74 Fed. Reg. 4546 (Jan. 26, 2009) (permitting a fund to incorporate by reference into the summary prospectus information from its statutory prospectus, statement of additional information, and shareholder reports).

inconsistent, unnecessary, or duplicative disclosure requirements only add to the confusion of retail investors, and make their investment decisions more difficult.

Even if disclosure requirements cannot be fully uniform across all regulatory authorities, where the information required by different regulators is substantially similar, financial intermediaries should only be required to comply with one regulator's requirements. Although the development of fully uniform disclosure requirements would be preferable, this mutual recognition approach would similarly reduce confusion among investors and minimize the expense associated with compliance with multiple regulatory frameworks. One recent example of a successful application of this mutual recognition approach is the October 26, 2011 no-action letter from the Commission's staff providing that, in the context of retirement savings plans, disclosure complying with certain Department disclosure rules will satisfy the requirements of Rule 482 under the Securities Act of 1933 (the "Securities Act").¹⁸ We applaud the Commission's approach in its no-action letter and urge it to continue to make similar efforts to recognize comparable disclosure obligations.

IV. Regulators Should More Fully Recognize the Effectiveness of Electronic Media

It has been nearly two decades since the Commission last issued comprehensive guidance regarding the use of electronic media by broker-dealers and investment advisers.¹⁹ Since that time, electronic communications have become the most efficient means of delivering useful and relevant information to investors, and many investors now prefer obtaining their information online.²⁰

Electronic media can be used to deliver information at the time and in the manner most convenient to individual retail investors. Moreover, electronic media enables retail investors to seek out the information that is most useful and relevant to them. By using drop-down menus

¹⁸ See Department of Labor, Commission No-Action Letter (October 26, 2011), available at <http://www.sec.gov/divisions/investment/noaction/2011/dol102611-482.htm>. Securities Act Rule 482 relates to investment company advertisements' compliance with the informational requirements of Section 10 of the Securities Act. Similarly, the Department's rules generally require periodic disclosures to plan beneficiaries and plan participants regarding fee information, investment performance, and benchmarking for each investment option available under the retirement plan. See Fiduciary Requirements for Disclosure in Participant-Directed Individual Account Plans (Oct. 7, 2010), 75 Fed. Reg. 64,910 (Oct. 20, 2010). Notwithstanding several discrepancies between the Department's requirements and Rule 482 noted in the no-action letter (e.g., the timeliness of information presented with respect to past performance), the staff of the Commission's Division of Investment Management recognized compliance with the Department's rules as compliance with Rule 482.

¹⁹ See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples under the Securities Act of 1933, Securities Exchange Act of 1934 and Investment Company Act of 1940, Release No. 34-37182 (May 9, 1996), 61 Fed. Reg. 24,644, 24,646 (May 15, 1996); Use of Electronic Media for Delivery Purposes, Release No. 34-36345 (Oct. 6, 1995), 61 Fed. Reg. 53,458, 53,460 (Oct. 13, 1995).

²⁰ See Abt SRBI, Mandatory Disclosure Documents Telephone Survey, Submitted to the Securities and Exchange Commission Office of Investor Education and Advocacy (July 30, 2008) at iv, available at <http://www.sec.gov/pdf/disclosuredocs.pdf>.

and hyperlinks to information collected in a central database, electronic media can provide clients with customized access to different levels and amounts of information as they need it. Such tools can also help investors manage the amount of information that financial intermediaries are required to provide to them. If financial intermediaries were allowed to present information in this manner, it might increase the likelihood that investors would read it in order to inform their investment decisions.

Existing guidelines, however, operate from the fundamental premise that the use of electronic media is satisfactory only if it results in delivery of “substantially equivalent information” as recipients would have received if the required information was delivered in paper form.²¹ Accordingly, the limits of the existing guidance fail to recognize the extent to which electronic media can be used as more than a stand-in for paper documents. Unlike paper documents, electronic media can be used interactively to tailor information to the needs of the relevant user and to facilitate comparisons among different types of investments and objectives.

We strongly believe that modernizing existing guidelines relating to the use of electronic media would greatly increase the transparency and usefulness of the information provided to these investors. Accordingly, the Roundtable encourages the Commission and other regulators to incorporate the interactive benefits of electronic media in their current investor disclosure initiatives in order to improve the effectiveness of information provided to retail investors. For example, a generic disclosure could initially be presented to prospective clients, with additional detail available through the firm’s website when, and if, an investor seeks to purchase a financial product. Broader adoption of the “notice and access” model of electronic delivery would facilitate this method of disclosing information to investors.

In light of the Department’s current consideration of the use of electronic media by financial intermediaries to make disclosures related to employee benefit plans, we respectfully request that the Commission and Department coordinate their efforts relating to investor disclosure with an eye toward embracing the disclosure enhancements available through electronic media.²²

V. Conclusion

A great opportunity exists to improve investors’ understanding of the financial products and services that they consume. Rather than serially revising disclosure requirements to respond to perceived shortfalls, we can now evaluate holistically the types of information and methods of delivery that investors find most useful. We look forward to working with Commission to

²¹ See Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples under the Securities Act of 1933, Securities Exchange Act of 1934 and Investment Company Act of 1940, Release No. 34-37182 (May 9, 1996), 61 Fed. Reg. 24,644, 24,646 (May 15, 1996); Use of Electronic Media for Delivery Purposes, Release No. 34-36345 (Oct. 6, 1995), 61 Fed. Reg. 53,458, 53,460 (Oct. 13, 1995).

²² See Request for Information Regarding Electronic Disclosure by Employee Benefit Plans (Apr. 1, 2011), 76 Fed. Reg. 19285 (Apr. 7, 2011).

Ms. Elizabeth M. Murphy

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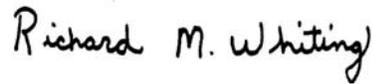
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develop a set of uniform disclosure standards that meets the needs of investors and also achieves the goals of the Commission.

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The Roundtable and its members appreciate the opportunity to submit comments to the Commission relating to the study regarding financial literacy among investors mandated by Section 917 of the Dodd-Frank Act. If it would be helpful to discuss the Roundtable's specific comments or general views on this issue, please contact me at Rich@fsround.org or Rich Foster at Richard.Foster@fsround.org.

Sincerely yours,



Richard M. Whiting
Executive Director and General Counsel
The Financial Services Roundtable

With a copy to:

The Honorable Mary L. Schapiro, Chairman
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
The Honorable Daniel M. Gallagher, Commissioner

Lori J. Schock, Director, Office of Investor Education and Advocacy
Mary S. Head, Deputy Director, Office of Investor Education and Advocacy

Eileen Rominger, Director, Division of Investment Management
Robert W. Cook, Director, Division of Trading and Markets

Richard G. Ketchum, Chairman and Chief Executive Officer,
Financial Industry Regulatory Authority

The Honorable Phyllis C. Borzi, Assistant Secretary of Labor,
Employee Benefits Security Administration, Department of Labor