FINANCIAL SERVICES INSTITUTE

VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

March 23, 2012

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090

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

Dear Ms. Murphy:

On January 18, 2012, the Securities and Exchange Commission (SEC) published a request for comment regarding financial literacy among investors. This request for comment proceeds from a mandate in Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[1] (Dodd-Frank Act). Under Section 917 of the Dodd-Frank Act, the SEC is directed by Congress to conduct a study designed to identify, among other things, the current level of financial literacy among retail investors, methods to improve disclosures provided to investors, the most salient information to retail investors, and methods to increase the transparency of expenses and conflicts of interest. The SEC is required to provide the results of the study to the House Committee on Financial Services and the Senate Committee on Banking, Housing and Urban Affairs within two years of the enactment of the Dodd-Frank Act.

The Financial Services Institute[2] (FSI) welcomes the opportunity to provide comments in connection with this study. Our comments regarding methods to improve disclosures by financial intermediaries to investors are outlined in detail below.

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 investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their

[1] Available at http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf.

[2] The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind – FSI is the voice of independent broker-dealers and independent financial advisors in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 100 independent broker-dealers and more than 35,000 independent financial advisors, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, D.C.

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 201,000 independent financial advisors – or approximately 64 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 comprised of 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 primary goal is to insure 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

As noted above, FSI welcomes the opportunity to comment on this issue. As directed by Section 917 of the Dodd-Frank Act, the SEC has requested comment on the following topics:

- Methods to improve the timing, content, and format of disclosures to investors with respect to financial intermediaries, investment products, and investment services;
- 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; and
- Methods to increase the transparency of expenses and conflicts of interests in transactions involving investment services and products, including shares of registered open-end investment companies.[5]

FSI supports an effective disclosure regime. Investors can make better choices when they are properly informed about the advice and services being offered. To provide investors with

[3] Cerulli Associates at http://www.cerulli.com/.
[4] These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisors.
[5] 77 Fed. Reg. 3294 (January 23, 2012).

the information they need, financial intermediaries should provide investors with concise, consolidated disclosure documents written in plain English. To implement such disclosures, we offer the following comments:

- **Electronic Delivery of Disclosure** – The SEC should permit broker-dealers the option of providing required disclosures in electronic format. A study by the Investment Company Institute (ICI) found that 95% of investors surveyed used the internet and that 90% of those surveyed "agree or strongly agree with the statement that getting investment information online is the wave of the future."[6] The study also showed that 88% of those who held investments in mutual funds and who accessed the internet, used the internet to obtain financial information.[7]

  In addition to the results of this survey, the use of electronic delivery of required disclosure has not gone unnoticed by the SEC. To wit, in a statement offering support for amendments to form ADV, Commissioner Paredes noted that in recent years significant changes have occurred not only in terms of having more widespread access to the internet, but also in how investors access the internet, including through the use of a variety of mobile devices. This increased access and use of multiple devices has resulted in increased use of the internet to communicate via email and even to engage in commercial interactions online.[8]

  Furthermore, the SEC has made use of electronic disclosure in other areas. Under reforms adopted to improve the securities offering process, the SEC has adopted the approach that "access equals delivery" with respect to providing investors with a prospectus, permitting issuers to satisfy the delivery requirements of Section 5 of the Securities Act of 1933 by posting the prospectus to EDGAR on the SEC's website.[9]

  The SEC should use this opportunity to satisfy clear investor demand for electronic delivery of disclosure documents by permitting broker-dealers to provide required disclosures in electronic format. Investors who wish to receive disclosures in a different format could opt out of receiving electronic disclosures and obtain hard copies free of charge.

- **Adopt a Two-Tiered Approach** - With respect to the timing, content and format of pre-engagement disclosures by broker-dealers to investors, we support a two-tiered approach. Such an approach would involve the following:

  1. First Tier – The first tier disclosure would be limited to a short form disclosure document in the style of the mutual fund "summary prospectus" and would be provided in electronic form at the point of engagement, prior to the establishment of a brokerage account or no later than 10 days after a person becomes a client of a broker-dealer provider. The short-form disclosure would focus on the issues that are of greatest importance to investors, including:
     a. The standard of care owed by the broker-dealer to each client;

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[6] "Investor View on U.S. Securities and Exchange Commission's Proposed Summary Prospectus" at 19 (March 14, 2008), available at http://www.ici.org/pdf/ppr_08_summary_prospectus.pdf.
[7] Id.
[8] See Speech by Troy A. Paredes, Commissioner, Securities and Exchange Commission,: Statement at Open Meeting to Adopt Amendments Regarding Part 2 of Form ADV (July 21, 2010), *available at* http://sec.gov/news/speech/2010/spch072110tap-adv.htm
[9] Securities Offering Reform, Rel. No. 33-8591 (July 19, 2005).

b. The nature and scope of the business relationship between the parties, the services and/or products to be provided, and the duration of the engagement;
c. A general description of the nature and form of compensation to be received by the broker-dealer;
d. A general description of any material conflicts of interest that may exist;
e. An explanation of the investor's obligation to provide the broker-dealer with relevant information. Such information should include the investor's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose;
f. An explanation of the investor's obligation to inform the broker-dealer of any changes in the investor's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose;
g. A phone number and/or e-mail address the investor can use to contact the broker-dealer regarding any concerns about the advice or service they have received; and
h. A description of the means by which a customer can obtain more detailed information regarding these issues, free of charge.

2. Second Tier – The second tier disclosure would provide investors with access to full details via the broker-dealer's website or brochures to be provided free of cost. Utilizing hyperlinks and other internet functionality, investors will be able to drill down in areas where they desire additional detail. The expanded disclosure would include:
    a. A detailed schedule of typical fees and service charges;
    b. The specific details of all arrangements in which the firm receives an economic benefit for providing a particular product, investment strategy or service to a customer; and
    c. Other information necessary to disclose material conflicts of interest.

- **Limit Post-Engagement Disclosure** - The SEC should seek to limit the volume of post-engagement disclosures. The amount and frequency of post-engagement should be limited in an effort to reduce the likelihood of information overload. Investors should also be provided with the opportunity to opt out of additional disclosures. However, investors may always reverse this decision by opting in to future disclosures or by visiting the broker-dealer's website to obtain the most up-to-date information.

- **Permit Integration of Required Disclosures** – To facilitate disclosure requirements and reduce costs to broker-dealers, and to investors as well, the SEC should permit disclosures required by the SEC to be integrated with other required disclosures, such as information required by state insurance laws regulating insurance products.

- **Review Disclosures with Focus Groups to Ensure Effectiveness** – To ensure that electronic disclosures are effective, the SEC should seek to involve investors in the process of developing such disclosures. Use of model pre-engagement disclosure documents that have been thoroughly tested by investor focus groups will allow investors to inform the process of developing disclosures and will assist the SEC in

understanding what information is most relevant to investors and the format that is most useful.

- **Development of a Uniform Disclosure System** – With several regulatory measures currently outstanding that are aimed at amending disclosure requirements, the potential for creating a disclosure regime that has overlapping and potentially conflicting requirements has never been greater.[10] Absent coordination among these competing proposals, the likely result is increased, rather than decreased, investor confusion and significantly less effective disclosure.

  In addition to pending regulatory measures, broker-dealers and investment advisers are also subject to a series requirements meted out by state regulatory agencies. The result is a complex maze of regulatory requirements that call for a large volume of disclosure that is not necessarily beneficial to investors. Instead, we urge the SEC to work with federal, state and self-regulatory organizations to develop a uniform disclosure system that would incorporate the elements listed above.

  Such a system would provide all investors, regardless of location, access to clear and concise information that is more meaningful than the high-volume disclosure currently required. Furthermore, such a system would significantly lower compliance costs for broker-dealers, with savings likely being passed on to clients.

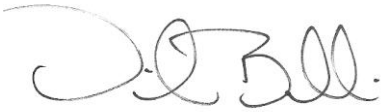
The elements outlined above, if followed, will result in a layered and measured approach to disclosure that will facilitate customer understanding, allowing investors to make wise choices about the investment products and services they choose to purchase, and will also lower costs for broker-dealers, and ultimately, investors.

Conclusion

We remain committed to constructive engagement in the regulatory process and welcome the opportunity to work with the SEC to enhance investor protection through more effective disclosure requirements.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8488.

Respectfully submitted,



David T. Bellaire, Esq.
General Counsel and Director of Government Affairs

[10] See e.g., in 2011, FINRA issued a request for comment on FINRA Rule 2121 which would revamp regulations governing broker-dealer communications with the public (Regulatory Notice 11-08 (February 2011)).