PFS Investments Inc.
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MEMBER FINRA

July 20, 2012

Via Electronic Mail to rule-comments@sec.gov
Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: SR-FINRA-2012-030 (Release No. 34-67247)

Dear Ms. Murphy:

PFS Investments ("PFSI") is writing to comment on FINRA's proposal to amend Sections 4 and 6 of Schedule A to its By-Laws to institute substantially increased fees relating to the Central Registration Depository ("CRD") system.[1] PFSI appreciates the opportunity to comment on the proposal. We strongly believe that FINRA has failed to adequately establish the need for the requested fee increases and, moreover, that the proposed fee increases are inconsistent with the provisions of Section 15A(b)(5) of the Securities Exchange Act of 1934 ("Act"), which requires that FINRA provide for the equitable allocation of *reasonable* fees among its members. For the following reasons, PFSI respectfully requests that the Commission reject the proposed amendment.

FINRA believes that the increased fees "are reasonable based on the increased costs associated with operating and maintaining its registration and disclosure programs, specifically the CRD system and BrokerCheck." Furthermore, FINRA states that the "proposed fees also contribute to the general funding of FINRA's overall regulatory program and serve to ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities." FINRA has failed to substantiate both its need for the proposed fee increases and its belief that the fee increases are likely to improve its long-term financial position. In fact, it is unclear what consideration, if any, was given to the likelihood that the fee increases will drive some firms and registered representatives out of the business, further eroding FINRA's revenue base.

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[1] PFSI is an introducing broker-dealer that operates a limited-securities business and offers only mutual funds, variable annuities and college savings plans. PFSI is a member of the Primerica group of companies that promote the "buy term and invest the difference" approach to life insurance and investing.

Of particular concern, is the dramatic, five-fold increase in the maximum fee for a late Form U4 or U5 filing, from the existing $300 per late filing to $1,575 per late filing.[2] As justification, FINRA claims the enormous increase is needed ". . . to help ensure that disclosure events are reported and updated in a timely manner." FINRA, however, offers no study or research supporting its position that such a large increase in the late filing fee will help ensure that disclosure events are reported in a timely manner. The proposal merely assumes that a cause-and-effect relationship exists between the current late filing fee and the perceived lack of compliance with the reporting requirements. In fact, it is just as reasonable to believe that the proposed fee increase will result in less disclosure, as a disproportionately high late fee will create a perverse, but foreseeable, incentive for representatives to conceal already-late reportable events in order to avoid the onerous late fee. As such, we have serious doubts that the proposed increase will advance the goals stated in the proposal.

Moreover, as we considered the impact of the proposal on our firm and the industry, we became concerned that underlying issues exist with a reporting regimen that consistently results in such a high number of late U4 disclosure filings; issues that will not adequately be addressed by a filing fee increase, no matter how large. In particular, our attention was drawn to FINRA's Web CRD Late Filing Fee Reports for the 60 month period of June 2007 through May 2012. Using the information in those reports on the industry at-large, we calculated the average percent of U4 disclosure late filings in each of the 12-month periods running from June through the following May. The results are as follows:

12-Month Period	Average % U4 Disclosure Filings Incurring a Late Fee
June 2007 – May 2008	24.68%
June 2008 – May 2009	20.425%
June 2009 – May 2010	25.24%
June 2010 – May 2011	25.86%
June 2011 – May 2012	26.55%

These results show that for the last three years one in every four U4 disclosure amendments was charged a late fee. PFSI understands that FINRA finds these statistics troubling, as does our firm; however, an average late filing percentage of 25% for such a long period of time suggests that a problem may exist unrelated to the amount of the late filing fee. Before approving a proposal that includes a five-fold increase in late filing fees, we strongly urge the Commission to give careful consideration to the possibility that systemic problems may exist within the reporting regimen. We believe that we have identified one area of the reporting regimen that deserves careful consideration by the Commission.

[2] In addition, the new late fee structure assesses higher fees earlier in the period as the fee for the first late day will go from $10 to $100, a ten-fold increase.

Article III, Section 2 of FINRA's by-laws states that amendments to Form U4 "shall be filed with the Corporation not later than 30 days after learning of the facts or circumstances giving rise to the amendment." This provision establishes an "actual notice" standard for determining when an amendment to Form U4 must be filed. In other words, a registered representative has 30 days from the date of "actual notice" of the reportable event to file the Form U4 amendment. It appears, however, that the actual notice standard dictated by the FINRA by-laws is ***not*** followed in the context of judgment/lien disclosures. Rather, it appears that FINRA has adopted a "presumptive" or "constructive notice" standard by relying on the filing date of the judgment/lien to determine the timeliness of the filing. In fact, despite the actual notice standard established by FINRA's by-laws, the Judgment/Lien Disclosure Reporting Page, which is to be used when a representative answers "yes" to question 14M, does not even ask the representative to identify the date she received actual notice of the reportable event. Instead, the Judgment/Lien DRP only requires that the representative supply the date the judgment or lien was filed (Item #4).

Anecdotally, our Special Registration Review ("SRR") department reports that, in the great majority of judgment/lien amendments that pass through our firm, FINRA assesses late filing fees based on the date the judgment or lien was filed, not the date the representative actually learned of the judgment or lien. As a result, if the disclosure is made more than 30 days after the date the judgment/lien was ***filed***, the representative pays a late fee. This methodology appears to be used even if the representative affirmatively states in Item 8 of the Judgment/Lien DRP that actual notice was received sometime after the filing date. This practice seems wholly inconsistent with the actual notice standard established in Article III, Section 2.

PFSI has not yet conducted exhaustive research of this issue: however, based on a preliminary review of these types of amendments filed by our SRR department, we found instances in which representatives stated in the DRP that they had received actual notice after the date on which the judgment/lien was filed. Measured from the stated date of actual notice received by the representative, the amendments were filed within 30 days and were timely. However, it appears that FINRA did not consider the representatives' statements as to actual notice and assessed late fees based on the filing dates of the judgment/lien. To our knowledge, FINRA did not have evidence to contravene the representatives' statements as to actual notice. Additionally, on just a cursory review of the issue, we discovered evidence suggesting that it is not unusual for a taxpayer to receive actual notice of a lien well after the lien has been filed. [3]

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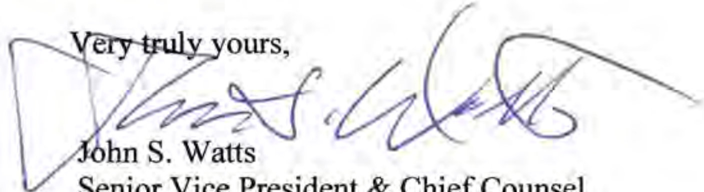
[3] After filing a Notice of Federal Tax Lien, the IRS is required to mail a notice of lien to the taxpayer but only within five business days of the date of the lien filing. Additionally, the IRS is experiencing problems in dealing with initial lien notices that are returned undelivered. See Report of The Treasury Inspector General for Tax Administration, *Problems Persist When Processing Undelivered Lien Notices and Notifying Taxpayers' Representatives* (May 29, 2012). The California Franchise Tax Board ("FTB") is responsible for collecting California state income tax from California's residents. According to the California Taxpayers' Bill of Rights, at www.ftb.ca.gov/forms/misc/4058C.pdf., the FTB will send a taxpayer notice of a lien at least 30 days prior to filing the lien. However, the FTB acknowledges, in the Bill of Rights, that it doesn't always follow its own procedures and that it sometimes files liens in error.

During this persistent economic downturn, we would anticipate that the number of judgments/liens being reported by representatives has ballooned. However, we are concerned that the presumptive notice standard employed by FINRA in this area deprives representatives of their rights under the By-Laws. Moreover, the judgments and liens question is not subject to any dollar threshold or time requirements, and requires the reporting of events that are not reasonably correlated to a representative's financial distress. The U4 treats a $100 lien the same as a $100,000 lien. A lien that was outstanding for only 30 days is more indicative of a dispute than financial distress, yet FINRA requires that such person make two U4 filings, one to disclose the lien and then another to disclose its satisfaction.

For these reasons, we request that the Commission take a closer look at FINRA's reporting regimen, before you consider approving its fee increases. By applying the appropriate standard in the reporting of judgments and liens, we expect that the industry's late filing percentages will drop dramatically - without having to raise the late filing fees.

Thank you for your consideration of these comments.

Very truly yours,



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The Nevada Taxpayers' Bill of Rights states that "[t]he taxpayer is entitled, ***in most cases***, to notification before a lien is filed against them (emphasis added)." Publication 125 of the New York Department of Taxation and Finance states that the department may terminate an installment payment agreement at any time ***without notice*** if it believes collection of the tax pursuant to the agreement is in jeopardy.