

VIA ELECTRONIC MAIL

September 17, 2014

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

Re: Temporary Rule Regarding Principal Trades With Certain Advisory Clients

Dear Ms. Murphy:

On August 12, 2014, the Securities and Exchange Commission (SEC) proposed to amend rule 206(3)-3T under the Investment Advisers Act (“Advisers Act”), a temporary rule that provides an alternative means for investment advisers that are registered as broker-dealers to meet the requirements of section 206(3) of the Advisers Act when they act in a principal capacity in transactions with certain advisory clients (“Proposed Amendment”).¹ The Proposed Amendment would extend the date on which rule 206(3)-3T will sunset from December 31, 2014 to December 31, 2016.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI supports the extension of Rule 206(3)-3T for two additional years. In addition, FSI suggests that the SEC consider establishing Rule 206(3)-3T as a permanent rule within the context of a broader effort to harmonize the regulatory requirements applicable to investment advisers and broker-dealers.

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 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.

¹ Temporary Rule Regarding Principal Trades With Certain Advisory Clients, 79 Fed. Reg. 48,709 (August 18, 2014).

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 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.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.³ 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.⁴ 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 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

FSI appreciates the opportunity to comment on the Proposed Amendment, and supports its extension for an additional two years. The adoption of Rule 206(3)-3T has allowed firms to maintain client relationships and avoid restructuring of their operations while providing adequate protection to investors from conflicts of interest that may arise from principal transactions. As noted in FSI’s previous comment letters on the extension of the rule’s sunset date,⁵ no evidence has been presented regarding an uptick in securities “dumping” as a result of Rule 206(3)-3T’s adoption in 2007. Absent the rule, investors may be subject to a lag time where favorable pricing is lost in the time required for advisers to comply with transaction-by-transaction disclosure and consent requirement.

The vast majority of FSI member firms are dually registered with the SEC as broker-dealers and registered investment advisors, and are intimately familiar with the compliance burden associated with applying overlapping standards and compliance requirements to their businesses. To address the overlapping requirements and to address confusion in the marketplace for financial advice and services, FSI continues to support a uniform fiduciary standard of care as a critical component to achieving

³ Cerulli Associates at <http://www.cerulli.com/>.

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

⁵ See, e.g., Letter from David T. Bellaire to Elizabeth M. Murphy, (November 6, 2012), available at <http://www.sec.gov/comments/s7-23-07/s72307-40.pdf>.

regulatory harmonization. The standard should apply to all financial advisors when providing personalized investment advice concerning securities to retail customers, and require advisors to:

- 1) Act in the best interest of the customer, without regard to the financial or other interest of the broker, dealer, or investment advisor providing the advice;
- 2) Disclose material conflicts of interest, avoid them when possible, and obtain informed customer consent to act when such conflicts cannot be reasonably avoided; and
- 3) Provide advice with skill, care, and diligence based upon information that is known, or should be known, about the customer's investment objectives, risk tolerance, financial situation, and other needs.

As the SEC continues to consider the regulatory requirements applicable to broker-dealers and investment advisers, the results observed following the adoption of Rule 206(3)-3T may serve as a useful benchmark for achieving successful regulatory harmonization.

Conclusion

We remain committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with the SEC on this and other important regulatory efforts.

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