

VIA ELECTRONIC MAIL

October 11, 2011

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

RE: File No. S7-36-11- Retrospective Review of Existing Regulations

Dear Ms. Murphy:

The Financial Services Institute (FSI) is submitting this letter in response to the Request for Information: Retrospective Review of Existing Regulations (Request for Information), issued by the Securities and Exchange Commission (SEC) on September 6, 2011.¹

The Request for Information solicits comment on assisting the SEC in developing a plan for the retrospective review of its regulations. The request for information is in response to Executive Order 13579, signed by the President on July 11, 2011.² Under Executive Order 13579, independent regulatory agencies are directed to consider how to best conduct a review of existing regulations that may be outdated, ineffective or overly burdensome, among other things. The Executive Order also directs independent regulatory agencies to develop and release a public plan designed to implement a process under which the agency will periodically review its regulations, and determine whether such regulations should be amended or repealed. In addition to the general request for comments regarding the development of a plan to review existing regulations, the SEC has also requested responses to a series of specific questions.

FSI recognizes that conducting a retrospective review of existing regulations is a significant undertaking. We commend the SEC for its efforts to conduct a meaningful review of existing regulations and welcome the opportunity to comment on the review process.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors far 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 advisors are especially well positioned to provide middle-class Americans with the financial advice,

¹ Retrospective Review of Existing Regulations, Securities Act Release No. 9257, 76 Fed. Reg. 56128 (September 12, 2011).

² 76 Fed. Reg. 41587, available at <http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf>.

products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 193,000 independent financial advisors - or approximately 65% 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

Currently, the SEC has in place both formal and informal procedures for review of existing rules in order to evaluate the continuing effectiveness of those rules. These procedures include: the review of existing regulations as part of studies of broad program areas; annual reviews in accordance with Section 610(a) of the Regulatory Flexibility Act⁵ of each rule that has become final within the past 10 years; as well as the consideration of suggestions received from investors and industry groups identifying areas in need of review via the examination process.⁶

Going forward, FSI calls on the SEC to institute a retrospective review process to identify and remove rules that create redundant layers of regulation, impose costs that outweigh the benefits obtained from such regulations or prove overly complex and fail to enhance investor protection. Finally, we urge the SEC to establish opportunities for market participants to actively participate in the review process and require self-regulatory organizations (SROs) to conduct a similar review. We discuss each of these suggestions below:

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 5 U.S.C. 601, et. seq.

⁶ Retrospective Review of Existing Regulations, Securities Act Release No. 9257, 76 Fed. Reg. 56128 (September 12, 2011).

- Eliminate Redundant Regulations - The SEC should include in its retrospective review an analysis of whether currently existing rules impose redundant and unnecessary layers of regulation on market participants. Such duplicative layers of regulation add costs to conducting business, which are ultimately passed on to the consumers of financial products and services without enhancing investor protection.

In addition, to performing a periodic retrospective review for redundancies, the SEC should conduct such a review whenever a new rule is being considered. In this way, the SEC can identify areas where pre-existing rules would require modification or elimination in order to avoid unnecessary duplication. In the alternative, the SEC may conclude that a new regulatory proposal should be pared back to avoid overlap and duplication of current regulatory requirements.

As one example, rulemaking resulting from the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)⁷ creates a significant risk of redundant regulatory burdens. More specifically, we argue that the proposed registration regime for municipal advisors will unnecessarily cover broker-dealers engaged in ordinary brokerage business.⁸ Within the context of ordinary brokerage relationships, broker-dealers may provide to their municipal entity clients advice regarding investment of municipal funds that is solely incidental to effecting securities transactions in the course of their business as broker-dealers. The result would be that broker-dealers, who are already subject to significant regulatory oversight, would be swept into the registration regime for municipal advisors.

Though this is just one example, the potential for additional unnecessary layers of regulation exists, and the periodic retrospective review of SEC rules and regulations should include a thorough examination for other instances of unnecessarily redundant regulation.

- Cost and Benefit Analysis - FSI supports H.R. 2308, also known as the "SEC Regulatory Accountability Act." This bill would require the SEC to:
 - Clearly identify the problem that a proposed rule is designed to address,
 - Conduct an initial cost-benefit analysis, and
 - Consider the proposals impact on investor choice and capital formation.⁹

While the proposed legislation is designed to create a new framework under which the SEC will propose future rules, the principles outlined in the legislation should be adapted to the retrospective review process.

In addition, we encourage the SEC to incorporate principles used by the Office of Management and Budget in reviewing proposed rules. Such an approach would require the SEC to also consider:

- Whether other existing rules have contributed to the problem,
- Whether there are any available alternatives to the existing rule, and
- All relevant available economic and other data.¹⁰

⁷ Pub. Law No. 111-203.

⁸ Registration of Municipal Advisors, Exch. Act Release No. 64576, 76 Fed. Reg. 824 (Jan. 6, 2011).

⁹ H.R. 2308, 112th Cong. (2011).

While such studies may have been conducted initially in connection with the adoption of rules and regulations, changes in economic and market conditions may have rendered such cost-benefit analyses outdated. In order to determine whether existing regulations continue to provide regulatory benefits while minimizing the cost to the regulated entity, any procedure or program adopted by the SEC to review existing regulations must include a new cost-benefit analysis that incorporates the principles discussed above.

- Eliminate or Modify Rules that Do Not Enhance Investor Protections - In its retrospective review of rules, the SEC should seek to identify rules that provide little or no investor protection benefits, but for which there appear to be considerable compliance challenges. An example of one such rule would be the requirement to report transactions to the Trace Reporting and Compliance Engine (TRACE). FINRA may impose substantial fines on member firms that are in technical violation of the requirements, yet these rules do not provide investors with additional protection as technical violations of the rule do not place investors in harm's way. The SEC should seek to identify these rules and eliminate them or simplify them to insure higher levels of broker-dealer compliance.
- Stakeholder Participation - In conducting a review of existing regulations we urge the SEC to gather input from stakeholders that are subject to the rule, practitioners and educators in those areas, as well as those that are intended to be protected by the rule, in order to discuss the relevant issues and impact. Stakeholders are in a position to provide substantial insight and data on the effects of regulations and can be used as sources of information to aid in the development of more efficient, less-burdensome regulations.

Once the SEC has received information from stakeholders regarding areas of concern, it should share with stakeholders the results of the retrospective review and solicit comments on its findings. Allowing stakeholders to see and comment on the results of the retrospective review will create additional opportunities to create an efficient and effective regulatory structure.

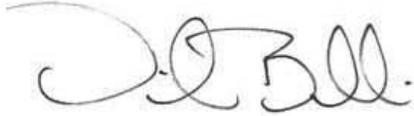
- Require SROs to Conduct a Retrospective Review – As the SEC refines its retrospective review process, it should also seek to require SROs, such as FINRA, to conduct a similar review. SROs also have in place regulations that may be outdated, or that impose costs that are not justified given that they do not provide for additional investor protections. It is not enough that the SEC review and remove unnecessary rules. SROs must also conduct a thorough review using the principles outlined above.

¹⁰ See Exec. Order 12866, available at <http://www.archives.gov/federal-register/executive-orders/pdf/12866.pdf>.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore welcome the opportunity to work with you to improve the review process. We support the SEC's ongoing efforts to improve the regulatory structure and also support legislation designed to improve the efficiency of the SEC.

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" followed by "Bellaire".

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

Cc: Sponsor of H.R. 2308, 112th Cong. (2011).