

VIA ELECTRONIC MAIL

October 22, 2008

Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

RE: File Number SR-FINRA-2008-044 – Change Relating to Supervision of Market Letters

Dear Secretary:

On September 25, 2008, the Financial Industry Regulatory Authority, Inc. (FINRA) filed an amendment to NASD Rules 2210 and 2211 (Proposed Amendment).<sup>1</sup> If adopted, the Proposed Amendment would change the definition of “sales literature” to exclude market letters that qualify as correspondence. In addition, the Proposed Amendment would define “correspondence” to include market letters distributed by a member to one or more of its retail customers and fewer than 25 prospective retail customers within any 30 calendar-day period. Thus, under the Proposed Amendment financial advisors and firms could distribute market letters to existing retail customers without prior approval by a registered principal. The Financial Services Institute<sup>2</sup> (FSI) commends FINRA for this proposal because we believe it will promote more timely communications between financial advisors and their clients, particularly in this time of extreme market volatility. The proposal will also support greater efficiency in broker-dealer compliance departments while maintaining important investor protections.

#### Background on FSI Members

The Proposed Amendment is of particular interest to 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 members 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, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 98,000 independent financial advisors – or approximately 42.3% percent of all practicing registered representatives – operate in the IBD channel.<sup>3</sup> These financial

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<sup>1</sup> See the proposing release at <http://www.sec.gov/rules/sro/finra/2008/34-58648.pdf>.

<sup>2</sup> 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 118 Broker-Dealer member firms that have more than 130,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 12,000 Financial Advisor members.

<sup>3</sup> Cerulli Associates Quantitative Update: Advisor Metrics 2007, Exhibit 2.04. Please note that this figure represents a subset of independent contractor financial advisors. In fact, more than 138,000 financial advisors are affiliated

advisors are independent contractors, rather than employees of the IBD firms. Independent 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 for advisors affiliated with IBDs is clients with a net worth of \$250,000. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Financial advisors offer their services to investors residing in multiple states through the use of a variety of marketing materials. Most of their new clients come through referrals from existing clients or other centers of influence.<sup>4</sup> 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

The public has become accustomed to near instantaneous communications from their service providers. Merchants and service providers of all types communicate in real time with their customers about their services. However, the financial services industry has lagged behind due to concerns about investor protection. Broker-dealers and financial advisors have long lamented their inability to distribute timely market data to their clients and prospects. Recent turmoil in the financial markets has only heightened these concerns by clearly demonstrating the need for timely communication between financial advisors and their clients.

While investor protection is paramount, the current requirements actually harm investors by depriving them of timely communications about economic and political conditions, the performance of market indices, and other data necessary to understand current market conditions. The Proposed Amendment would alleviate these concerns by permitting firms and financial advisors to distribute market letters to existing retail customers and a small number of prospective customers without the prior approval of a registered principal. The elimination of the current NASD requirement for prior registered principal review of such communications would allow market letters to be distributed in a timely manner thus increasing their relevance to investors.

If the Proposed Amendment is adopted, investor protection will be maintained. Market letters would remain subject to the supervision and review requirements of NASD Rule 3010, which require firms to establish reasonable procedures to supervise outgoing correspondence. IBD firms

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with FSI member firms. Cerulli Associates categorizes the majority of these additional advisors as part of the bank or insurance channel.

<sup>4</sup> These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

have well established correspondence review policies and procedures that will facilitate the reasonable and effective supervision of market letter correspondence. The Proposed Amendment would maintain investor protection by requiring market letters to be subject to the firm's supervisory policies and procedures. Therefore, we commend FINRA for offering the Proposed Amendment and encourage its prompt adoption.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with you to achieve further efficiency while maintaining investor protection.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dale Brown", written in a cursive style.

Dale E. Brown, CAE  
President & CEO