

# PFS INVESTMENTS INC.

Member FINRA®

January 26, 2009

*Via Electronic Mail to rule-comments@sec.gov*

Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE.  
Washington, DC 20549-1090

Re: File Number SR-FINRA-2008-062

Dear Ms. Harmon:

This letter is submitted on behalf of PFS Investments Inc. (“PFSI”). PFSI appreciates the opportunity to comment on FINRA’s Proposed Rule 2267 (the “Proposed Rule”), which requires most firms to provide their customers with FINRA’s web site address and information regarding FINRA’s BrokerCheck program on an annual basis. The Proposed Rule appears to eradicate a very important exemption from the current NASD Rule 2280 for firms like ours. We write to express our view that the significant additional burden the Proposed Rule would place on PFSI and other similar firms is unnecessary, and that this additional burden would place PFSI, and possibly other firms, at a competitive disadvantage. Moreover, we do believe this issue was raised by comments to the initial proposal and has yet to be adequately addressed.

PFSI is an introducing broker-dealer that markets primarily mutual funds, variable annuities and college savings plans to “middle-America.” All of our business is done 100% application-way direct with the mutual fund or other product issuer, and no clearing broker-dealer is involved. PFSI does not carry customer accounts or hold customer funds or securities and, therefore, we do not send periodic account statements, trade confirmations, or year-end tax forms to our customers. Our customers receive their account statements, trade confirmations and tax information from the product issuer (or its transfer agent) which holds the customers’ funds and securities. For many years, this model has been a cost-effective way of providing services to our target market.

Because we do not carry customer accounts or hold customer funds or securities, we are not required by current NASD Rule 2280 to incur the expense of annually sending information regarding FINRA’s BrokerCheck program to our customers. In a 1999

Regulatory & Compliance Alert, NASD Regulation explained its position regarding the application of Rule 2280 to firms like ours and stated the following:

“These firms neither “carry” customer accounts, nor do they introduce their business to another NASD member. Typically, they introduce their customers to the mutual fund directly, the program sponsor, or a transfer agent. These members do not provide customer account statements or correspond directly with their customers after completing the initial transaction. Thus, compliance with the Rule by these firms would involve a special annual mailing with possible significant costs to the firm. . . NASD Regulation does not believe that these firms should be required to bear the potentially significant costs of an annual mailing.” *NASDR Regulatory and Compliance Alert, Summer 1999 at page 24.*

We believe the reasoning of NASDR was sound. Because PFSI does not send statements or trade confirmations, we do not have an easy method by which to provide the information regarding BrokerCheck to our customers. If the current exemption is removed, our firm would have to undertake a special mailing on an annual basis, the costs of which could be substantial.<sup>1</sup>

The Proposed Rule suggests that FINRA is prepared to jettison this well-reasoned application of NASD 2280. FINRA has not demonstrated the existing rule to be inadequate or addressed why now imposing these “significant costs” on firms is warranted. Moreover, FINRA’s approach fails to account for the advances in information technology and investor education that have occurred in the almost 10 years since NASDR published the above guidance. It seems reasonable that customers’ increased access to information via the internet and widely distributed investor education information from the SEC and other regulators should alleviate the need for firms to supply this type of information in an annual mailing when it is otherwise readily available. In this regard, investors can easily locate FINRA’s BrokerCheck program by using a simple internet search.<sup>2</sup>

Accordingly, in order to avoid placing the unnecessary burden and “significant costs” of an annual mailing on PFSI and similarly situated firms, we respectfully urge the Commission to require FINRA to maintain the well-reasoned approach of NASD Rule 2280 or, in the alternative, require that FINRA provide a cost benefit analysis justifying

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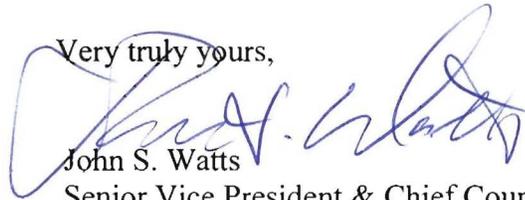
<sup>1</sup> We understand that other firms may avoid a special annual mailing by including the required information in the annual mailing of the firm’s privacy statement. Though PFSI may employ a similar approach, it would not eliminate our need for a special mailing because our privacy statement applies across a group of affiliated companies and, to prevent duplicate mailings, the broker-dealer subtracts from its mailing list customers that have received the privacy statement from an affiliated company. Therefore PFSI would still incur a significant expense, the burden of which has not been justified in the current proposal.

<sup>2</sup> For example, each of the following *Google* searches returns the FINRA BrokerCheck program on the first page of results: “securities background check”, “broker background check”, “investment background check”, “investor background check”, “financial advisor background check”, and “investment advisor background check.” The following searches return on the first page an SEC webpage that references the BrokerCheck program: “check my broker”, “check out my broker”, and “check out my registered representative.”

the removal of the exemption for firms that do not “carry” customer accounts or introduce business to another FINRA member and the imposition of these additional costs on limited-business firms.

Thank you for your consideration of these comments.

Very truly yours,



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