

VIA ELECTRONIC MAIL

June 11, 2009

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

RE: SR-FINRA-2009-028 – Customer Account Statements

Dear Ms. Murphy:

On April 22, the Financial Industry Regulatory Authority, Inc. (FINRA) filed with the Securities and Exchange Commission (SEC) a proposal to adopt an amended version of NASD Rule 2340 as FINRA Rule 2231 of the Consolidated FINRA Rulebook (Proposed Rule).¹ NASD Rule 2340 generally requires each general securities member to send customers at least once each calendar quarter account statements containing a description of any securities positions, money balances or account activity in the accounts since the prior account statements were sent.² The Proposed Rule would alter these existing account statement delivery requirements by requiring each general securities member to send account statements at least once every calendar month to each customer whose account had account activity during the period since the last statement was sent to the customer.³ The Proposed Rule would continue to require that a statement be sent at least once every calendar quarter to each customer whose account had a security position or money balance during the period since the last statement was sent to the customer. FINRA's filing states its belief that the Proposed Rule "better reflects current industry practice as a significant number of members already send customers monthly account statements through their clearing firms. FINRA believes that receipt of monthly statements will allow customers to review their statements in a timely manner for errors, possible identify theft or other potential problems."⁴

The Financial Services Institute⁵ (FSI) is concerned about the potential unintended consequences of the Proposed Rule. While we understand FINRA's desire to provide investors with the tools necessary to detect trading errors, combat identity theft, and uncover misappropriation, we believe the Proposed Rule will actually undermine these efforts by overwhelming investors with unwanted statements reflecting inconsequential account activity. As a result, we suggest that

¹ See the proposing release at <http://www.finra.org/Industry/Regulation/RuleFilings/2009/P118757>.

² FINRA Rule 2231 would retain NASD Rule 2340's definition of "general securities member." A "general securities member" would be any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEA Rule 15c3-1(a). However, a member that does not carry customer accounts and does not hold customer funds or securities would continue to be exempt from the provisions of FINRA Rule 2231.

³ "Account activity" would continue to be defined broadly and would include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries and/or journal entries relating to securities or funds in the possession or control of the member.

⁴ See at 74 FR 23912-01.

⁵ 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 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 10,000 Financial Advisor members.

FINRA retain the current terms of NASD Rule 2340 in the Proposed Rule. Our specific comments are contained in this letter.

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 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.⁶ 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 for financial advisors affiliated with IBDs is 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.⁷ 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 mission 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 on the Proposed Rule

The Proposed Rule is of particular interest to FSI because we believe it will significantly increase the cost of investing for small investors without providing corresponding investor protection benefits. Our specific comments are detailed below:

⁶ 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 with FSI member firms. Cerulli Associates categorizes the majority of these additional advisors as part of the bank or insurance channel.

⁷ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

- FINRA's Underlying Assumptions are of Questionable Merit – As described above, the Proposed Rule will increase the frequency of customer account statement delivery by requiring each general securities member to send account statements at least once every calendar month to each customer whose account had account activity. FINRA offers little explanation for this change, merely citing its belief that this reflects current industry practice and “that the receipt of monthly statements will allow customers to review their statements in a timely manner for errors, possible identity theft, or other potential problems.” We suspect that another unstated reason for the proposed change is a belief that monthly statements will provide investors with better protection from Ponzi schemes. However, we believe these assumptions are faulty for the following reasons:
 - FINRA is mistaken about the current industry practice. Many of the clearing firms utilized by IBD firms comply with the current NASD rule by forwarding quarterly account statements to investors. Therefore, the Proposed Rule represents a significant change to existing regulatory requirements. The impact of this change on broker-dealer firms should not be minimized or overlooked by regulators.
 - IBD firms hold client accounts at clearing firms whose role is to custody the client's assets for safekeeping. Clearing firms have no incentive to mislead their customers in furtherance of a fraudulent scheme. Since clearing firms do not make investment recommendations, they have no reason to mislead customers with inaccurate investment returns information. They also have effective systems in place to detect identify theft and correct trading errors. As a result, we believe the Proposed Rule adds little in the way of investor protection.
 - Most Ponzi schemes appear to involve consolidated statements designed by an unscrupulous financial advisor, investment adviser, or broker-dealer firm to conceal their fraud. Unfortunately, these fraudulent statements can just as easily be created by those perpetrating fraud on a monthly basis as they can on a quarterly basis. Therefore, the Proposed Rule will burden legitimate broker-dealer firms while having little or no impact on firms engaging in fraud.
- Proposed Rule Contradicts Current Understanding of Effective Disclosure – FINRA's proposal runs contrary to the clear regulatory theme of the past several years -- more streamlined disclosure leads to better informed investors. Financial advisors frequently report that their clients are overwhelmed with the account paperwork and disclosure documents they currently receive. As stated in the RAND Corporation's Study of Investment Advisers and Broker-Dealers “investors rarely read the disclosures they provide, regardless of how digestible they make these documents.”⁸ These sentiments also appear to have motivated the SEC's recent Summary Prospectus rulemaking. After all, the Summary Prospectus is, in part, meant to enhance investor understanding reducing the amount of documentation received by investors.⁹ In light of these recent efforts to streamline investor communications, it seems counterintuitive to increase the frequency of account statement delivery under the assumption that investors will review them more carefully simply because they arrive more often. We believe an investor is more likely to closely scrutinize a quarterly statement reflecting significant account activity than one that arrives every month but reflects inconsequential activity. As a result, we encourage FINRA to retain NASD Rule 2340's quarterly statement requirement.

⁸ See page 117 of *Investor and industry perspectives on investment advisers and broker-dealers* at http://sec.gov/news/press/2008/2008-1_randiabdreport.pdf.

⁹ 74 FR 4546-01. See the adopting release at <http://sec.gov/rules/final/2009/33-8998.pdf>.

- **Customers will Bear the Costs Associated with Monthly Statements – The Proposed Rule** will have financial consequences for investors. The additional costs associated with the generation of monthly account statements will be passed on to clients by their broker-dealer firm. These costs will be substantial in light of the required system updates, the associated production costs, and the additional postage charges. The unfortunate reality is that these additional costs will fall most heavily on small investor accounts which often involve periodic investment plans. FINRA appears to have anticipated this concern in their proposal by allowing firms to meet their statement delivery requirements by using electronic media. However, our members report that while their clients are comfortable reviewing discreet transaction data online, they prefer hard copy to review more lengthy and detailed account statements. As a result, we believe the electronic delivery of statements will do little to control the costs of the Proposed Rule. Once again, we urge FINRA to retain the existing quarterly statement requirement.
- **Account Activity Definition Should be Narrowed –** If the SEC chooses to ratify the Proposed Rule's monthly statement requirement, we urge a more narrow definition of "account activity" be adopted. We believe the definition of account activity should not conflict with or supersede the Rule 10b-10(b) exemption for periodic plans and investment company plans (i.e., "systematic investment plan exemption") or other passive investment activity.¹⁰ Providing monthly statements to customers utilizing systematic investment plans will add little or no value since their statement will merely reflect routine monthly activity that they have previously authorized. Instead, the more frequent statement delivery requirement will merely erode their returns by increasing the effective cost of investing. At the very least, the SEC should allow clients the ability to opt out of more frequent statement delivery to avoid unnecessary fees.
- **Implementation Period Must Be Extended –** If the SEC chooses to adopt the Proposed Rule as currently written, the industry will need an extended implementation period to reprogram systems, test and verify such reprogramming, encourage customers to use electronic delivery of account statements, assess and implement the necessary fee increases to defray costs, and ramp up the modes of production necessary to comply. Under the circumstances, we believe the appropriate implementation period for the Proposed Rule would be 12 months.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with you to enhance investor protection through effective and cost efficient means.

¹⁰ Passive investment activity would include dividend or interest payments, interest paid on free credit balances, assessment of interest charges on margin balances, journaling position between cash and margin accounts, and similar activities.

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". The signature is fluid and cursive, with the first name "Dale" and the last name "Brown" clearly distinguishable.

Dale E. Brown, CAE
President & CEO