

VIA ELECTRONIC MAIL

September 8, 2009

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

RE: File Number SR-FINRA-2009-047 – Bank Broker-Dealer Rule Proposal

Dear Ms. Murphy:

On July 21, 2009, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission (SEC) a proposal to adopt an amended version of NASD Rule 2350 into the consolidated rulebook as Rule 3160 (Proposed Rule).¹ NASD Rule 2350 governs the activities of broker-dealers on the premises of financial institutions.² The Proposed Rule seeks to streamline the requirements of the NASD Rule and make other amendments necessary to insure consistency with relevant provisions of the Gramm-Leach Bliley Act of 1999 (GLB) and Regulation R.³ Specifically, the Proposed Rule would make the following changes to the existing requirements:

- Amend the scope of the NASD Rule to conform to the networking exception in GLB which allows a broker-dealer to offer brokerage services on or off the premises of the financial institution;
- Make minor changes to the provisions addressing the setting in which securities activities occur to better align with the GLB networking exception;
- Make changes to the networking agreement requirements to reference certain requirements of GLB and Regulation R that allow the payment of contingent referral fees to financial institution employees who refer institutional or high net worth clients to the broker-dealer;
- Modify the customer disclosure and acknowledgement requirements to eliminate the need for a client's written acknowledgement of receipt of bank broker-dealer disclosures; and
- Amend provisions addressing communications with the public to extend the requirements to all broker-dealer materials that reference the financial institution or are distributed at locations where the financial institution is represented.

The Financial Services Institute⁴ (FSI) supports FINRA's Proposed Rule as a helpful improvement

¹ See the Proposed Rule at <http://www.finra.org/Industry/Regulation/RuleFilings/2009/P119401> and Federal Register Notice at <http://www.finra.org/Industry/Regulation/RuleFilings/2009/P119821>.

² See NASD Rule 2350 at http://finra.complinet.com/en/display/display.html?rbid=2403&record_id=4327&element_id=3650&highlight=2350#r4327.

³ See GLB at 15 USC, Subchapter I, § 6801-6809 and Regulation R at 17 CFR 247.700-781.

⁴ 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 114 Broker-Dealer member firms that

to the existing requirements. However, we do offer two minor amendments designed to provide greater clarity to certain of the Proposed Rule's provisions. We discuss these suggested edits in detail below.

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.⁵ 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 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.⁶ 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.

have more than 152,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 10,000 Financial Advisor members.

⁵ 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.

⁶ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

Comments on the Proposed Rule

As stated above, FSI supports FINRA's Proposed Rule as a meaningful effort to consolidate and streamline the existing requirements. However, we offer the following suggested amendments to improve the clarity of certain provisions of the Proposed Rule:

- **Clarify Section 3160(a)(2)(A) of the Proposed Rule** – The last sentence of Section (a)(2)(A) begins with the phrase "[i]ndependent of their contractual obligations..." We find this phrase misleading in that it suggests broker-dealers and financial institutions are bound by the requirements of Regulation R only when their own contract is silent on a relevant issue. We suggest that the section be rewritten as follows:

(2) Networking Agreements

(A) Networking arrangements between a member and a financial institution shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements and include all broker-dealer obligations, as applicable, set forth in Rule 701 of Regulation R. Independent of Notwithstanding their contractual obligations, members shall comply with all broker-dealer obligations, as applicable, under Rule 701 of Regulation R.

- **Clarify Section 3160(a)(4)(B) of the Proposed Rule** – The amendment to NASD Rule 2350 contained in Section (a)(4)(B) of the Proposed Rule appears to be broader than FINRA intends. The Section states in relevant part: "Advertisements and sales literature...that...promote the name or services of the financial institution" must include the specified disclosures. FINRA clearly does not mean to require financial institutions to include these disclosures within advertisements that do not reference a broker-dealer or its services. Unfortunately, we believe this section could be fairly read to require just that. As a result, we suggest the Section be rewritten as follows:

(4) Communications with the Public

(B) Advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, Automated Teller Machine ("ATM") screens, billboards, signs, posters and brochures, that announce the location of a financial institution where broker-dealer services are provided by the member or promote the name or services of the financial institution member or that are distributed by the member on the premises of a financial institution or at such other location where the financial institution is present or represented shall include the disclosures required by paragraph (a)(3) of this Rule. The following legend may be used to provide these disclosures in advertisements and sales literature...

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with you to enhance investor protection and broker-dealer compliance efforts.

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 last name "Brown" clearly distinguishable.

Dale E. Brown, CAE
President & CEO