File No. SR-FINRA-2009-057

Dear Sir:

The Securities and Exchange Commission should reject the FINRA proposal in its entirety. At the very least, additional time should be provided for public commentary on an important policy matter. There is no need to rush to judgment on an important issue after a brief comment period which barely allows people to think, write commentaries, make copies, and mail them to the SEC.

The FINRA proposal is deficient in many respects. It lacks substantiation, contains contradictory elements, represents poor public policy, and does not consider better alternatives that can be devised.

The FINRA wish list includes a 100% increase in personnel assessments. Have any of FINRA's costs gone up by 100%? Which ones? Is the inflation rate in the economy 100%? Are other government bodies proposing 100% increases to cope with economic conditions?

The purported justification for a <u>permanent</u> 100% increase in personnel assessments would seem to be a <u>transient</u> 37% drop in another revenue category ". . . due to 2008 fourth quarter write-offs taken by members, particularly the largest security firms." While it may seem like inescapable logic to FINRA that a <u>transient</u> 37% decrease in one revenue category should lead to a <u>permanent</u> 100% increase in another category, one can respectfully disagree with that conclusion.

Moreover, FINRA cagily avoids telling us the dollar magnitude of the transient 37% drop? 37% of what? How much was it? The math-challenged FINRA also avoids fourth-grade multiplication to calculate the amount of the proposed increase in personnel assessments. But one can do the arithmetic for FINRA. Applying a $70 increase to about 700,000 individuals, one gets $49 million as the rough magnitude of the <u>increase</u>. Does FINRA show that it needs a permanent $49 million increase for a transient 37% drop of unknowable magnitude? As I stated, the proposal lacks rudimentary substantiation and, on that basis alone, should be turned down. FINRA should at least submit some budget figures and argue that $49 million is some percentage increase of its overall budget and that a budget increase is appropriate. This could be the starting point for discussion and analysis.

The second component of the FINRA proposal is the GIA assessment and three-year averaging. Here again, no dollar estimates or figures are provided and one is left to guess at what the amounts are and what will be accomplished. After some discussion on the GIA assessment and three-year averaging, one reads:

> "The proposed rule change would have replaced 90% of the revenue shortfall that resulted primarily from the significant drop in GIA revenues. In general, those replacement revenues would come from several larger firms whose steep decline in 2008 primarily account for FINRA current revenue deficit."

While transparency is not a hallmark of the proposal, one can respond as follows: If the replacement revenues generally come from several larger firms and that replaces 90% of the shortfall, why do you need a further $49 million increase from all the firms?

This apparent contradiction arises since the proposal lacks clarity and precision. How much is coming from several larger firms? Is the $49 million in addition to that? Nothing is clear. But if FINRA gets $49 million from the personnel assessment and more from GIA and averaging, what is the total dollar amount involved in the proposal? Take a guess.

By talking about revenue deficits and revenue shortfall, FINRA totally avoids any discussion of expenses and, perish the thought, expense control. While American households, American companies, and government units are cutting costs, FINRA doesn't even offer a token dime or dollar of expense reduction or any discussion related thereto. The old days of lavish compensation for Richard Grasso and other heads of regulatory bodies should come to an end, but FINRA seems impervious to such concerns. And there is absolutely no information about FINRA's current 2009 balance sheet, cash flows, cash balances, and other data that would permit an assessment of FINRA's overall financial condition. Does FINRA know what financial reporting is? How does anyone get away with making a proposal and not providing current financial information?

With its three-year averaging approach, FINRA has devised an ingenious scheme to immunize itself from the vagaries of the economy and financial downturns. One can call it double jeopardy. Have a good year and pay your assessment. And then you get to pay it again. More charitably, one can say that FINRA has the privilege of "creative assessing." After endorsement by the SEC, one can see how this will be embraced in many situations, far and wide. To wit:

> Dear California resident,
>
> The poor economy and high unemployment rates have resulted in a deficit for our state. Programs have been curtailed, layoffs have occurred, and we have issued IOU's. We have battled forest fires, mudslides, and drought. I understand that many of you are suffering and your incomes have dropped.
>
> For 2010 please calculate your California income tax in the regular way. Then, calculate your average income tax for the three prior years. Send the higher figure.
>
> I'll be back,
> The Governator

Fifteen million Americans will write:

> Dear unemployment office,
>
> After my unemployment benefits are exhausted, take my full-time earnings for the three prior years. Please calculate the average and mail it to me.
>
> Thank you.

Burden on Competition and Public Policy

> "FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act."

Oh yeah? Under what criteria? Kindly show us the analysis you conducted to reach this belief or conclusion.

The existing GIA seven-tier rate structure is palpably regressive and results in a disproportionate burden on small and medium firms. The marginal assessment rate in tier (5) is only 14% of the marginal assessment rate in tier (7). Using tier (6) as compared to tier (3), the ratio is almost as egregious. What is the basis for imposing a marginal rate on large firms that is only 14% of the rate on smaller firms? Why the huge disparity? This is anti-competitive.

A recent study by the Bank for International Settlements argues that larger firms pose a proportionately greater systemic risk than smaller firms. By this logic and to maintain competition, FINRA should shift to a flat rate structure or a progressive one where the burden is greater on larger firms. What is the basis for the extreme regressiveness of the rate structure?

To encourage competition and small firms, FINRA should institute a "cash for members" program. In any year, the two thousand smallest firms should get a $1,000 rebate and the minimum GIA should be $200. This would have the salutary public policy effect of maintaining or increasing FINRA membership, encouraging small businesses and the jobs they provide, and maintaining competition. From FINRA that would truly be "change we can believe in."

The entire "cash for members" program will only cost $2 million annually and should be easily absorbed within FINRA's budget. It is a small price to achieve the beneficial effects of the program. FINRA should just eliminate "toxic waste" of which the effort to draft and submit this proposal is an example.

Conclusion

Per FINRA's wont: Written comments were neither solicited nor received.

The FINRA proposal is deficient in many respects and warrants more extensive consideration and the chance for additional commentary and discussion. Financial information on FINRA's 2009 condition is not provided and the dollar impact of the proposal is not calculated by FINRA. The logic behind the specific changes proposed is poor as a "transient" factor is being used to justify a permanent revenue increase which is being proposed with no reference to a budgetary framework. FINRA is requesting "insulation from fluctuations" while the rest of the world doesn't get that privilege. There is no substantive analysis regarding the burden on competition and no substantive consideration of alternative solutions to a problem which might be fleeting or may even have passed.

While one can react to the proposal by utilizing imaginative and colorful language, I have decided to be a statesman à la Jim Cramer. Therefore, please take the entire FINRA proposal and displace it to another location. Better yet, please consider instituting proceedings to determine whether the proposed rule change should be disapproved and better rules devised.