SIFMA
Securities Industry and
Financial Markets Association

October 2, 2009

Via: Electronic Delivery

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Release No. 34-60624; File No. SR-FINRA-2009-057;
Proposed Rule Change Relating to Increase the Personnel Assessment and Gross Income Assessment Paid by Member Firms

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the referenced rule change filed by the Financial Regulatory Authority ("FINRA") with the Securities and Exchange Commission (the "SEC" or "Commission") to increase the Personnel Assessment (PA) and Gross Income Assessment (GIA) paid by each FINRA member. As proposed, the rule filing would *double* the PA for registered persons and alter the formula for calculating the GIA applied to broker-dealer gross revenues. In its filing, FINRA explains that "[t]he economic and industry downturns experienced in 2008 and 2009 have strained FINRA's resources, yet its regulatory responsibilities remain constant and its programs robust. FINRA believes the proposed rule change is needed to stabilize its revenues and provide protection against future industry downturns."

SIFMA has several concerns about the proposed increase, not the least of which is the considerable financial impact the assessment will have on member firms during a

[1] The Securities Industry and Financial Markets Association brings together the shared interests of more than 600 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

time when the industry as a whole is experiencing a profound downturn. As noted in a recent SIFMA research report:

> U.S. broker-dealers reported a pre-tax loss of $8.7 billion in third quarter 2008 amidst the financial market meltdown, credit market freeze and global economic weakness. Gross revenues were $70.4 billion in 3Q'08, a 20.8 percent decline from the prior quarter and 35.3 percent below the same year-earlier period level of $108.7 billion. Net revenues (total revenues minus interest expense), which provide a better summary gauge of industry performance, were $39.5 billion, down 29.0 percent from $55.5 billion in the second quarter and 11.1 percent below the $44.4 billion recorded in the third quarter of 2007.[2]

The timing of these increases is even more difficult in light of other fee increases imposed on member firms. For example, the Securities Investor Protection Corporation (SIPC) increased its annual assessment to broker-dealers from $150 per year to *one-quarter of one percent of gross revenue* effective April 2009.[3] Additionally, the NASDAQ OMX BX,[4] Municipal Securities Rulemaking Board (MSRB),[5, 6] and several states[7] also increased their fees this fiscal year. Finally, the Federal Deposit Insurance Corporation (FDIC) proposes to require insured institutions to prepay their estimated quarterly risk-based assessments for the fourth quarter of 2009, and for all of 2010, 2011, and 2012. If approved, this would place additional financial burdens on SIFMA bank-affiliated members.[8] Many of these increases were unanticipated and represented significant costs to firms, many of which are already operating with strained resources.

Small firms particularly will be hit hard by the proposed increases because of the additional burden of other assessment increases noted above, coupled with the anticipated increases in financial audit fees due to the loss of the PCAOB audit exemption[9] and the elimination of the independent testing exception for AML audits[10] for smaller broker-dealers. Similarly, independent broker-dealer firms will also be adversely affected

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[2] http://www.sifma.org/research/pdf/RRVol4-1.pdf
[3] http://www.sipc.org/media/release02Mar09.cfm
[4] http://www.sec.gov/rules/sro/bx/2009/34-60668.pdf
[5] http://www.msrb.org/msrb1/whatsnew/2009-48.asp
[6] http://www.msrb.org/msrb1/whatsnew/2009-56.asp
[7] Alabama, Wisconsin, and North Carolina all raised their fees this year. Wisconsin fee became effective July 1, 2009 (http://www.nasaa.org/content/Files/WI_Fee_Increase_Notice.pdf. Alabama raised fee effective August 1, 2009 (http://www.asc.state.al.us/Registration%20Filing%20Req/ASC%20Rate%20Increases.pdf); and North Carolina raised fee became effective August 15, 2009 (http://www.secretary.state.nc.us/sec/statutes.aspx#RULES)
[8] http://www.fdic.gov/news/board/Sept29no3.pdf
[9] http://www.sec.gov/rules/other/34-48281.htm
[10] http://www.sec.gov/rules/sro/finra/2009/34-60645.pdf

because of the nature of the independent model, which typically involves narrower profit margins due to their higher pay-out structure.

It should also be noted that FINRA, working with SEC staff, intends to significantly expand the universe of registered persons by requiring certain persons that perform back-office functions at broker-dealer firms to obtain a license.[11] If approved, this new registration regime would result in tens of thousands of newly registered persons who would fall under the proposed PA increase.

While we recognize that these are the first assessment increases that FINRA has proposed in approximately five years, we respectfully suggest that FINRA consider other alternatives. Specifically, SIFMA requests that FINRA alleviate the impact of the PA by imposing a cap on the fees paid by a firm over their prior year payment, as FINRA is proposing with the GIA. Alternatively, FINRA could consider phasing-in the PA and GIA increases over multiple years. These approaches will better enable firms to budget appropriately and would temper the cumulative effect of the recent fee increases noted above. Indeed, when FINRA proposed its last PA and GIA fee increases in 2002, FINRA noted:

> Although this proposal would be revenue neutral, there are impacts, both negative and positive, to individual firms due to the realignment of revenues with services rendered. The impact of restructuring these fees would be phased-in over a three-year period in order to alleviate significant variances experienced by various member firms.[12]

SIFMA members, therefore, request that FINRA adopt a similar phase-in approach in this instance.

We also note that FINRA has "a long history of providing rebates to members when revenues exceed the expenditures necessary to discharge its regulatory obligations and is committed to continuing that practice in the future."[13] SIFMA supports FINRA's commitment to providing rebates to members and requests that FINRA revisit its assessment rate structure periodically should revenues exceed expenses.

In all events, we respectfully request that FINRA provide a more complete rationale for the proposed increases so that members could better understand FINRA's financial condition and the basis for these higher assessments.

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[11] http://www.sec.gov/news/testimony/2009/ts091009rk-jw.htm
[12] http://www.finra.org/Industry/Regulation/Notices/2002/P003615
[13] http://www.sec.gov/rules/sro/finra/2009/34-60624.pdf

SIFMA appreciates the opportunity to provide comments. If you have any questions or require additional information, please do not hesitate to contact the undersigned or Robert Gannon, SIFMA Vice President, Private Client Group at 212-313-1287. Thank you for your attention to this request.

Sincerely,

EJ Moloney

E. John Moloney
President and CEO
Moloney Securities Company, Inc.
Chairman, SIFMA Small Firms Committee

cc: Richard G. Ketchum, Chairman and Chief Executive Officer, FINRA