PFS INVESTMENTS INC.

Member FINRA®

October 2, 2009

Via Electronic Mail to rule-comments@sec.gov

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

Re: SR-FINRA-2009-057

Dear Ms. Harmon:

PFS Investments ("PFSI") is writing to comment on FINRA's proposal to amend Section 1(c) of Schedule A to the By-Laws in order to increase the Personnel Assessment ("PA") and the Gross Income Assessment ("GIA") paid by each FINRA member.[1] PFSI appreciates the opportunity to comment of the proposed amendment. We believe that FINRA has failed to adequately establish the need for the requested fee increase and, moreover, that the proposed fee increase is inconsistent with the provisions of Section 15A(b)(5) of the Securities Exchange Act of 1934 ("Act"), which requires that FINRA provide for the *equitable* allocation of reasonable fees among its members. For these reasons, PFSI respectfully requests that the Commission reject the proposed amendment.

FINRA seeks to alter its fee structure and effectively impose a fee increase on its member firms at a time when the industry is experiencing the largest downturn in incomes since the Great Depression. FINRA attributes the need for the fee increase to a 37% decline in revenues from the GIA in 2009, which is due to "2008 fourth quarter write-offs taken by members, particularly the largest securities firms."[2] To achieve a 'less volatile' revenue stream, FINRA proposes to (i) ***double*** the amount of the PA which is based solely on the number of registered persons a firm has, and (ii) change the way the GIA is calculated to lessen the corresponding decrease in a firm's fees that results from a downturn in its income. FINRA has failed to substantiate its need for the proposed fee increase.

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[1] PFSI is an introducing broker-dealer that operates a limited-securities business and offers only mutual funds, variable annuities and college savings plans. PFSI is a member of the Primerica group of companies that promote the "buy term and invest the difference" approach to life insurance and investing.

[2] See SR-FINRA-2009-057 at page 6 of 18.

FINRA's 2008 Annual Financial Report ("2008 Report") indicates that it has more than enough in liquid assets to weather the current downturn in member incomes.[3] As of December 31, 2008, FINRA had net equity of $1.344 billion, most of which was held in cash, cash equivalents and investments totaling over $1.077 billion.[4] This amount is over ***ten*** times what FINRA has recently stated to be its 2009 revenue shortfall.[5] Based on its financial position at the end of 2008, therefore, FINRA appears to have more than enough resources to weather not only the current revenue shortfall, but similar shortfalls for several more years, should the current downturn continue. Accordingly, FINRA's financial position does not support its need for the proposed fee increase.

Moreover, FINRA's proposed fee increase places an unfair burden on some firms and therefore is "inequitable" in contravention of Section 15A(b)(5) of the Act. FINRA seeks a 100% increase in the PA and attempts to justify this increase by citing a tentative correlation between the costs of its regulatory programs and the number of registered persons associated with a firm. We believe, however, that a closer analysis reveals a much stronger correlation that would allow for an equitable distribution of regulatory costs. It is not only the number of representatives per firm that causes FINRA to expend resources, but the type of securities business in which each representative engages and the amount of production revenues that each representative generates. Assuming equal production levels, a representative that engages in a limited-securities business, such as ours, and offers only mutual funds, variable annuities and college savings plans, requires much less regulatory attention than a representative that engages in a general securities business and offers stocks, bonds, options, limited partnerships, exchange traded funds, collateralized mortgage obligations, initial public offerings, short sales, margin accounts, discretionary trading, option strategies, and all other products and services permitted by a general securities registration. In fact, FINRA has already acknowledged this disparity in required regulatory effort – the fee for the Series 7 exam is ***over three times*** the fee for the Series 6 exam.[6] Likewise, it is almost certain that a $3 million per year producer would require much more of FINRA's time and effort than a $30,000 per year producer. A 100% increase in the PA will unfairly shift regulatory costs to those firms that retain a large number of lower-producing representatives, which generally means firms, like ours, that primarily serve the middle-income investor. As a result of the proposed fee increase, PFSI's total fees to FINRA in 2010 would soar by 88%.[7] Because PFSI passes the PA fee through to its independent contractor representatives, under FINRA's proposal, our

[3] The 2008 Report is available at www.finra.org/AboutFINRA/AnnualReports/index.htm.

[4] See FINRA Consolidated Balance Sheets on pages 33-34 of the 2008 Report.

[5] On September 21, 2009 FINRA published Regulatory Notice 09-56, which states that FINRA absorbed a $100 million revenue shortfall in the GIA for 2009.

[6] The exam fee for a Series 6 – Investment Company and Variable Products Representative is only $85, while the exam fee for the Series 7 – General Securities Representative is $285.

[7] Based on 2009 revenue numbers, the proposed fee increases would result in PFSI paying an additional $1.218 million in fees to FINRA in 2010. Yet, PFSI's 2009 GIA fees are down just $7,179.64 from the prior year. We request, therefore, that FINRA reexamine its assertion that the proposal would cause replacement revenues to "come from several larger firms whose steep income declines in 2008 primarily account for FINRA's current revenue deficit. " See SR-FINRA-2009-057 at page 7 of 18.

limited-service representative that produces $30,000 per year in revenues in Fairfield, Iowa, would be subsidizing the regulatory oversight required for the $3 million per year Wall Street broker. Certainly, this can't be what Congress intended when it wrote Section 15A(b)(5) of the Act.[8] FINRA's proposal is inconsistent with Section 15A(b)(5) of the Act because it fails to achieve an equitable distribution of regulatory costs.

Faced with a temporary revenue short fall, FINRA proposes a substantial and permanent fee increase. FINRA's enviable financial position belies its need for the requested fee increase. Moreover, the proposed fee increase is inequitable, assessing an equal fee increase on all firms based on the number of their representatives without regard to the type or amount of securities business those representatives conduct. PFSI respectfully requests, therefore, that the Commission reject FINRA's proposed rule amendment. At a minimum, the Commission should require FINRA to submit a detailed analysis to substantiate the claims contained in the proposal.

Thank you for your consideration of these comments.

Very truly yours,

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[8] Tying the PA to production revenues generated or compensation earned by each representative would have helped to ameliorate the current situation, where it appears that several of the larger firms booked write-offs that completely wiped-out their 2008 net incomes, and presumably, most if not all of their 2009 GIA liability, while paying market compensation and bonuses to their registered persons.