VIA ELECTRONIC MAIL

October 2, 2009

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

RE: File Number SR–FINRA–2009–057 –Personnel and Gross Income Assessments

Dear Ms. Murphy:

On August 20, 2009, the Financial Industry Regulatory Association (FINRA) filed with the Securities and Exchange Commission (SEC) a proposal to double personnel assessments and alter the method of calculation for gross income assessments (Proposed Amendment).[1] FINRA's current regulatory funding structure consists of several fees including the Personnel Assessment (PA) and the Gross Income Assessment (GIA). These fees fund FINRA's regulatory activities; including rulemaking, examination, and enforcement programs. The Proposed Amendment would change the PA and GIA in an effort to achieve a more consistent and predictable funding stream to carry out FINRA's regulatory mandate. FINRA explains the need for these changes by stating "[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."[2]

The Financial Services Institute[3] (FSI) appreciates FINRA's need for adequate resources to carry out its mission of regulating broker-dealers and protecting investors. We recognize that the successful completion of this mission requires significant resources in both up and down market cycles. However, we have concerns about the timing and context of the Proposed Amendment. Independent broker-dealers, independent financial advisors, and their clients have all been impacted by the market downturn and continued increases in compliance costs. Moreover, this fee increase comes on top of astronomical increases in SIPC fees, SEC fees, fidelity bond premiums, other costly additional compliance requirements, and the significant uncertainty concerning the financial markets and future financial services regulatory structure. We believe the Proposed Amendment places too heavy a burden on financial advisors and independent broker-dealer firms at the time when they are most vulnerable. As a result, we urge FINRA to phase in any changes to the PA and GIA to allow firms the opportunity to recover from this deep recession and budget appropriately for the additional expense. We discuss our concerns in detail below.

[1] See Proposing Release at http://sec.gov/rules/sro/finra/2009/34-60624.pdf.
[2] See page 2 of the Proposing Release.
[3] 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 113 Broker-Dealer member firms that 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.

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.[4] 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.[5] 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.

Summary of the Proposed Amendments
The Proposed Amendment would increase the PA for all broker-dealers as summarized below:

- Broker-dealers with 1–5 registered representatives and principals are currently assessed $75 for each such registered person. The PA would be increased to $150 for each registered person;

[4] 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.
[5] These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisors.

- Broker-dealers with 6–25 registered persons would have the PA increased from $70 for each registered person to $140 for each registered person; and
- Broker-dealers with 26 or more registered persons would see the PA increase from $65 for each registered person to $130 for each registered person.

In addition to these changes to the PA, the GIA paid by broker-dealer firms would also undergo changes. Currently the GIA is calculated as a percentage of annual gross revenues based upon a seven-tier schedule. The Proposed Amendment would change this calculation by assessing a GIA equal to the greater of:

- The assessment that would be due based on the GIA's existing rate structure; or
- A three-year average of the GIA to be calculated by adding the current year GIA to the GIA assessed on the member over the previous two calendar years and dividing this sum by three.

If adopted, the Proposed Amendment would become effective on January 1, 2010. The full impact of the GIA amendment would be delayed until 2011. The delay is the result of a 10% cap on GIA increases that was previously announced by FINRA in Regulatory Notice 08-07.[6]

Comments on the Proposed Amendments

The Proposed Amendment asks independent financial advisors and broker-dealers to shoulder a significant additional financial burden. FINRA argues that an increase in the PA is justified because the fee has not been altered in the past five years. While this is true, we do not believe a reasonable calculation of inflation over this period justifies a 100% increase in the PA.[7] Meanwhile, FINRA's stated intent for the GIA changes is to smooth out the unpredictable nature of this revenue stream. However, the GIA changes could result in a significant increase in the fee at a time when broker-dealers are just emerging from a prolonged downturn in revenue. The changes will fall particularly heavily on independent broker-dealer firms because these firms pass through such a high percentage of their gross revenues as commission dollars to their financial advisors.

FINRA argues that the Proposed Amendment is necessary to "stabilize its operating cash flows by augmenting revenues based on the registered person population, where FINRA's costs are more closely aligned, and reducing dependency on, and exposure to, less predictable industry revenues."[8] There is no doubt that FINRA's revenues have been impacted by the recent bear market, but this was certainly a predictable and should have been contemplated in their annual budgets.[9] FINRA's Proposed Amendment would increase the financial burden on broker-dealers and financial advisors at, what appears to be, the tail end of a significant recession – a period when they are most vulnerable. Independent broker-dealers and financial advisors would like to enjoy the stability in their operating cash flows that FINRA is seeking, but the market offers them no such guarantees.

These burdens become unreasonable when they are added to the significant increases in SIPC assessments, SEC fees, fidelity bond premiums, costly additional compliance requirements, and significant uncertainty concerning the financial markets and future regulatory structure. We have significant concerns about the ability of small broker-dealer firms and the small businesses

[6] See FINRA Regulatory Notice 08-07 at http://www.finra.org/Industry/Regulation/Notices/2008/P038008.
[7] According to the U.S. Bureau of Labor Statistics the Consumer Price Index has averaged 3.18% from 2004-2008. See at http://data.bls.gov/PDQ/servlet/SurveyOutputServlet.
[8] See page 2 of the Proposing Release.
[9] See 09/25/09 Wall St. J. article entitled *AFTER 27% FALL, FINRA PLAYS IT SAFE* on page C1.

operated by independent financial advisors to survive the crush of these additional expenses at this time. As a result, we believe the Proposed Amendment places too heavy a burden on financial advisors and independent broker-dealer firms at the time when they are most vulnerable.

Because of the foregoing concerns, we urge FINRA to reconsider the Proposed Amendment and instead gradually phase in the the proposed increases to the PA and GIA over a three-year period. Specifically, we ask that the GIA changes be implemented on January 1, 2012 (i.e., the GIA figures for 2010, 2011 and 2012 be used to calculate the alternate GIA figure) while the PA is increased incrementally over the next three years (e.g., for firms with 26 or more registered persons, the fee would be $85 for 2010, $110 for 2011, and $130 for 2012). We believe this approach to the fee increases will allow broker-dealer firms and their affiliated financial advisors the time necessary to budget for what will be predictable changes to their operating expenses. In addition, the phase in will allow more time for broker-dealer firms, financial advisors, and their clients to recover from the impact of the current recession without the additional burden of another fee increase.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with you to insure FINRA has the resources necessary to fulfill its mission of investor protection while maintaining a healthy business environment.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,

Dale E. Brown, CAE
President & CEO