

VIA ELECTRONIC MAIL

May 31, 2011

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

RE: SR- FINRA-2011-018 - Proposed Rule Change to Adopt NASD Rule 2830 as FINRA Rule 2341

Dear Ms. Murphy:

On April 19, 2011, the Financial Industry Regulatory Authority, Inc. (FINRA) filed SR-FINRA-2011-018¹ (Proposed Rule) with the Securities and Exchange Commission (SEC). The Proposed Rule sets forth FINRA's proposal to adopt NASD Rule 2830² as FINRA Rule 2341. The Proposed Rule would revise the existing NASD rule in four areas by:

- requiring a member firm to make disclosures to investors regarding its receipt or contractual arrangement to receive cash compensation;
- making a change to the recordkeeping requirements for non-cash compensation;
- eliminating a condition regarding discounted sales of investment company securities to dealers; and
- codifying past FINRA staff interpretations regarding the purchases and sales of exchange-traded funds.

The Financial Services Institute (FSI)³ welcomes this opportunity to comment on the Proposed Rule. As indicated in our comment letter⁴ in response to the first iteration of proposed FINRA rule 2341 offered in FINRA Regulatory Notice 09-34⁵, we commend FINRA for recognizing in the rulebook consolidation process an opportunity to develop a new organizational framework for the rules, consider new approaches to regulatory concerns, and delete obsolete rules. We believe

¹ SR-FINRA-2011-018, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p123527.pdf>, <http://www.gpo.gov/fdsys/pkg/FR-2011-05-09/pdf/2011-11190.pdf>

² See NASD Rule 2830, available at http://finra.complinet.com/en/display/display.html?rbid=2403&record_id=4368&element_id=3691&highlight=28

³ The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind – FSI is the voice of independent broker-dealers and independent financial advisors in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 125 independent broker-dealers and more than 16,000 independent financial advisors, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, D.C.

⁴ FSI Comment Letter in response to Regulatory Notice 09-34, August 7, 2009, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticereports/p120357.pdf>

⁵ FINRA Regulatory Notice 09-34, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p119013.pdf>

industry input is more important than ever given the high volume and pace of regulatory change, and appreciate the opportunity to comment on the Proposed Rule.

Nevertheless, we have significant concerns with certain aspects of the Proposed Rule. We believe that the Proposed Rule is premature in light of other pending regulatory changes that will affect broker-dealer disclosure obligations. We also believe that the Proposed Rule will create a comprehensive, but fragmented and ineffective disclosure system. In addition, we anticipate significant operational issues related to the timing of the disclosure obligations called for under the Proposed Rule, and believe our members would benefit from additional guidance related to specific terms used in the Proposed Rule. Finally, we argue that the Proposed Rule will create an unlevel playing field by subjecting mutual funds shares to disclosure requirements not imposed on other securities products. These concerns are addressed in more 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 180,000 financial advisors – or approximately 61.7% percent of all practicing registered representatives – operate as self-employed independent contractors, rather than employees, of their affiliated broker-dealer firm.⁶ 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.⁷ 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

⁶ Cerulli Associates at <http://www.cerulli.com/>.

⁷ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

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.

Comments on the Proposed Rule

As stated above, FSI welcomes this opportunity to comment on the Proposed Rule. However, we believe that the Proposed Rule is premature in light of other pending regulatory changes that will affect broker-dealer disclosure obligations. We also believe that the Proposed Rule will create a comprehensive, but fragmented and ineffective disclosure system. In addition, we anticipate significant operational issues related to the timing of the disclosure obligations called for under the Proposed Rule, and believe our members would benefit from additional guidance related to specific terms used in the Proposed Rule. Finally, we argue that the Proposed Rule will create an unlevel playing field by subjecting mutual funds shares to disclosure requirements not imposed on other securities products. These concerns are addressed in more detail below.

- **Rulemaking is Offered Prematurely** – Section (l)(4) (i), (ii), and (iii) of Proposed FINRA Rule 2341 would modify the disclosure requirements for cash compensation arrangements related to the sale of investment company securities. Under the Proposed Rule, disclosure of cash compensation arrangements would no longer be required in an investment company’s prospectus. Instead, if within the previous calendar year a FINRA member firm received, or entered into an arrangement to receive, any cash compensation other than sales charges and service fees disclosed in the prospectus fee tables of investment companies sold by the firm, the firm would have to make certain disclosures. The Proposed Rule provides that the firm would be obligated to:

“(i) prominently disclose that the member has received, or entered into an arrangement to receive, cash compensation from investment companies and their affiliates, in addition to the sales charges and service fees disclosed in the prospectus fee table;
(ii) prominently disclose that this additional cash compensation may influence the selection of investment company securities that the member and its associated persons offer or recommend to investors; and
(iii) provide a prominent reference (or in the case of electronically delivered documents, a hyperlink) to the web page or toll-free telephone number ... for more information concerning these arrangements.”⁸

While we support effective customer disclosure, we believe that the disclosure obligations outlined in the Proposed Rule are premature, duplicative, and unnecessary given pending regulatory proposals that have been offered by FINRA and the SEC, and potential changes to the securities regulatory scheme that will occur as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)⁹. Below is a listing of just some of the significant pending regulatory proposals and provisions of the Dodd-Frank Act that will address the contemplated disclosures contained in the Proposed Rule.

- **Regulatory Notice 10-54** – On October 27, 2010, FINRA published Regulatory Notice 10-54 (RN 10-54) requesting comment on a concept proposal that would

⁸ Proposed FINRA Rule 2341(l)(4)(i – iii).

⁹ The Dodd-Frank Wall Street Reform and Consumer Protection Act. Public Law No: 111-20, *available at* http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf.

require member firms, at or prior to commencing a business relationship with a retail customer, to provide a written statement to the customer describing the types of accounts and services it provides, as well as conflicts associated with such services, and any limitations on the duties the firm otherwise owes to retail customers.¹⁰ FINRA received 54 comment letters in response to this concept release and the proposal is currently pending and has not been filed with the SEC. We believe that the disclosures contemplated in RN 10-54 could effectively address the items outlined in the Proposed Rule. Firms will be required to spend millions of dollars to implement the Proposed Rule, while there is a significant risk that RN 10-54 (or other proposals discussed below) will render those efforts worthless, or at least require substantial additional resources to implement changes in response to future regulations. The SEC should not allow the Proposed Rule to go into effect until the broader issues regarding point of sale disclosure are addressed and resolved.

- **Pending Rule 12b-2** – On July 21, 2010, the SEC proposed SEC rule 12b-2, and other amendments to SEC Rule 12b-1, designed to reform mutual fund distribution fee practices.¹¹ The mutual fund distribution fee proposal attempts to accomplish reform by replacing Rule 12b-1 with a new Rule, 12b-2, and make other changes to the securities laws in an effort to, among other things, improve transparency through disclosure to customers. Over two thousand four hundred (2,400) comment letters were filed with the SEC in response to this proposal. As of the writing of this comment letter, the next iteration of this rule proposal has not been issued. However, Chairman Schapiro and other members of the SEC's senior management have indicated that they are likely to respond to these comments as early as July 2011. We believe that the disclosures contemplated in the reform of mutual fund distribution fee practices can, and will, address some of the items outlined in the Proposed Rule.

- **Pending SEC Point-Of-Sale Rule Making** –The SEC has a point-of-sale proposal that was initially published for comment in 2004, and republished for comment in 2005.¹² This proposal would address many, if not all of the disclosure issues raised in the Proposed Rule. As of the writing of this comment letter, the next iteration of this rule proposal has not been issued by the SEC. Moreover, only the SEC can address these issues effectively and comprehensively because FINRA does not have jurisdiction to determine what must be disclosed by an investment company. Accordingly, any rulemaking should be conducted by the SEC to address mutual fund disclosure issues – in the prospectus or at the point of sale – in a comprehensive and rational manner.

¹⁰ See FINRA Regulatory Notice 10-54, available at

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p122361.pdf>.

¹¹ *Mutual Fund Distribution Fees; Confirmations*, SEC Release Nos. 33-9128; 34-62544; IC-29367 (July 21, 2010), 75 FR 47064 (August 4, 2010).

¹² See Securities Act Release No. 8358 (January 29, 2004), 69 FR 6438 (February 10, 2004) (Proposed Rule Change by SEC Relating to the Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds), and Securities Act Release No. 8544 (February 28, 2005), 70 FR 10521 (March 4, 2005) (Notice of Filing by SEC to reopen the comment period on proposed rules, published in January 2004, that would require broker-dealers to provide their customers with information regarding the costs and conflicts of interest that arise from the distribution of mutual fund shares, 529 college savings plan interests, and variable insurance products).

- **DOL Proposed Revision to the Definition of Fiduciary** – On October 22, 2010, the Department of Labor’s (DOL) Employee Benefits Security Administration proposed a rule that would amend the definition of fiduciary for purposes of ERISA and section 4975 of the Internal Revenue Code of 1986. The DOL proposal does so in an effort to ensure that IRA investors and participants in ERISA retirement plans receive advice based on reliable information that protects their interests. As of the writing of this comment letter, the DOL has not finalized its proposed rule on fiduciary. If approved, and enacted as written, we believe that the disclosures contemplated in the DOL’s proposed definition of fiduciary will address the items outlined in the Proposed Rule with respect to these accounts.
- **Section 913 Study under the Dodd-Frank Act** – Section 913¹³ of the Dodd-Frank Act required the SEC to conduct a study on the gaps in regulation of brokers, dealers, and investment advisers, and grants the SEC authority to establish a harmonized fiduciary duty for brokers, dealers, and investment advisers. On January 21, 2011, the SEC issued the results from its 6-month study, and recommended that the SEC should engage in rulemaking to implement a uniform fiduciary standard of conduct for broker-dealers and investment advisers when providing personalized investment advice about securities to retail customers. Specifically, the Staff recommended that the uniform fiduciary standard of conduct established by the SEC should provide that “the standard of conduct for all brokers, dealers, and investment advisers, when providing personalized investment advice about securities to retail customers (and such other customers as the Commission may by rule provide), shall be to act in the best interest of the customer without regard to the financial or other interest of the broker, dealer, or investment adviser providing the advice.” As of the writing of this comment letter, no further steps have taken place in furtherance of this recommendation. However, Congressional hearings are expected on this issue during the summer of 2011. If adopted, we believe that the disclosures required under a fiduciary duty would address the items outlined in the Proposed Rule.
- **Section 919 Study under the Dodd-Frank Act** – Section 919¹⁴ of the Dodd-Frank Act clarifies the SEC’s authority to issue rules that require broker-dealers to provide information to retail investors before purchasing an investment product or service from the broker-dealer. Given the rulemaking anticipated under this Section of Dodd-Frank, we believe FINRA’s Proposed Rule is offered prematurely.

Given the implications and pending status of the proposals outlined above, we urge the SEC to instruct FINRA to delay the Proposed Rule.

- **Effective Disclosure v. Additional Disclosure** – Clients of broker-dealers currently receive a large amount of disclosure from their registered representative and their broker-dealer. For example, clients receive disclosure documents:

¹³ Study and Rulemaking regarding Obligations of Broker, Dealers, and Investment Advisors, Section 913, The Dodd-Frank Wall Street Reform and Consumer Protection Act. Public Law No: 111-20, *available at* http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf

¹⁴ Clarification of Commission Authority to Require Investor Disclosures Before Purchase of Investment Products and Services, Section 919, The Dodd-Frank Wall Street Reform and Consumer Protection Act. Public Law No: 111-20, *available at* http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf.

- o at the time of account opening,
- o thirty (30) days after account opening,
- o annually, and
- o thirty-six (36) months after certain events.

Dual registrant firms comply with various disclosure requirements required by the states, and SEC, related to Form ADV. Moreover, and as discussed above, FINRA is currently contemplating a concept proposal that would require member firms, at or prior to commencing a business relationship with a retail customer, to provide a written statement to the customer describing the types of accounts and services it provides, as well as conflicts associated with such services, and any limitations on the duties the firm otherwise owes to retail customers.¹⁵ Compounding these existing and contemplated disclosure requirements with the disclosure of cash compensation arrangements called for in the Proposed Rule is excessive and does not benefit the retail customer in any meaningful way.

We believe that the effectiveness of the disclosures will be enhanced by insuring investors receive concise, consolidated disclosure documents focused on information that is material to the typical investor's decision-making process.¹⁶ As such, requiring a broker-dealer to make the additional client disclosure called for in the Proposed Rule is unduly burdensome and unnecessary when clients can currently obtain this information in the mutual fund prospectus and it is also already widely available from broker-dealers via their websites. In particular, as a result of disclosure standards FINRA imposed through its enforcement process¹⁷, firms that receive revenue sharing already provide disclosure and post information on their websites about these practices.

On the other hand, despite the broad public availability of information about revenue sharing, there is no evidence that clients view revenue sharing practices as information material to their investment decision-making process. There is no evidence that registered representatives consider or even know about the terms of revenue sharing agreements entered into by their firms. Moreover, most revenue sharing arrangements are at the firm level, and registered representatives generally do not receive any additional compensation as a result of revenue sharing that might influence their recommendations. FINRA itself legitimately questioned the need for additional disclosure under these circumstances 14 years ago when it discussed in detail the practice of revenue sharing, and whether additional disclosure of revenue sharing arrangements was necessary. As NASD stated:

"Investors may find that information on cash compensation arrangements would be important in determining whether an RR's particular

¹⁵ See FINRA Regulatory Notice 10-54, available at

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p122361.pdf>.

¹⁶ Please see FSI's Comment Letter related to Regulatory Notice 10-54, and our discussion about effective disclosure.

FSI's comment letter can be accessed here:

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticerecommendations/p122722.pdf>

¹⁷ See generally, Admin. Proc. File No. 3-11780, Order Instituting Administrative and Cease and Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease and Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934,

<http://www.sec.gov/litigation/admin/33-8520.htm>; See also, Edward Jones to Pay \$75 Million to Settle Revenue Sharing Charges, available at <http://www.sec.gov/news/press/2004-177.htm>

product recommendation was influenced by such arrangements. Yet some of the cash compensation arrangements described above may be of so little interest to investors or so far removed from any effective point-of-sale influence that disclosure of such information would not serve a significant customer protection or other regulatory purpose.”¹⁸

Additionally, as FINRA itself observed 12 year ago in evaluating potential disclosure of compensation arrangements, “customers are rarely in a position to evaluate the impact of a compensation arrangement on the ultimate recommendation.”¹⁹ Under these circumstances, elevating revenue sharing to the status of “prominent” disclosure at the point of sale – even more prominent than sales loads which will remain in the prospectus – does not make sense. In this regard, the SEC’s point of sale proposal, which included more inclusive information – including general information about revenue sharing as one piece of the overall disclosure – is much more rational.

Disclosure of revenue sharing has increased substantially over the last 14 years, since Notice to Members 97-50 was issued, to the point where meaningful information on the topic is readily available to anyone who deems it important. The questions raised in NASD NTM 97-50 have not been answered adequately to justify adopting the Proposed Rule, in its current form, at this time. Accordingly, we urge the SEC to instruct FINRA to delay the Proposed Rule, or at a minimum instruct FINRA to delay the Proposed Rule and provide a meaningful analysis of the issues raised in NTM 97-50 and other proposals that have been made since then.

- **Timing of the Contemplated Disclosure** – For new customers, the Proposed Rule would require the broker-dealer to provide the contemplated disclosures in paper or electronic form prior to the time that the customer first purchases shares of an investment company through the broker-dealer. For existing customers, the broker-dealer would have to provide these disclosures in paper or electronic form to each customer by the later of either: (a) 90 days after the effective date of the proposed rule change, or (b) prior to the time the customer first purchases shares of an investment company through the member after the effective date.
 - New Clients – While we understand the desire for FINRA to ensure that clients have all material information available to them prior to making an investment decision, FINRA has provided no evidence that revenue sharing actually influences representative recommendations at the point of sale, or that customers view revenue sharing as material in the decision making process of selecting and purchasing shares of an investment company. Moreover, there has been no evidence presented to suggest that this information is not already broadly disseminated, and widely available, to those customers who do view it as important in their selection process. While items related to these issues were

¹⁸ NASD Notice to Members 97-50, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p004655.pdf>

¹⁹ NASD Notice to Member 99-81, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p004080.pdf>

studied in 2005 by NASD through its Mutual Fund Task Force²⁰ related to the Point-of-Sale Disclosures and the “Profile Plus” document, these specific questions still remain unanswered.

Moreover, in response to a joint New York Stock Exchange (NYSE), SEC and NASD enforcement action against Edward Jones in late 2004 for allegations of failing to disclose adequately revenue sharing payments²¹, broker-dealers responded with broad disclosures of their revenue sharing practices. Many firms make available, and many clients can currently obtain, revenue sharing information on the website of their broker-dealer.

However, we believe that FINRA and the SEC should work together on a single, concise disclosure document that provides the information investors desire in making their investment decisions. We urge FINRA to take the time to test their assumptions about what information should be contained in this disclosure document. Accordingly, we urge the SEC to instruct FINRA to delay the Proposed Rule.

- Existing Direct-to-Fund and Application Way Clients – Many FSI members service smaller accounts, many of which are Individual Retirement Accounts (IRAs). These investors utilize direct-to-fund accounts specifically because they make relatively small purchases and typically hold shares long-term, and do not want to incur the fees often associated with a full service brokerage account.

With respect to application way investors, mutual fund purchases are not conducted “through the member.” This raises a number of interpretive and operational issues with the Proposed Rule. Application way investors typically fill out an application and either send it along with their check either directly to the fund company, or to a broker-dealer which forwards them to the fund company or its designee. All transactions are processed directly by the fund company or its transfer agent, and communications regarding the investments are sent directly to the investor by the fund company. For example, the fund company sends the trade confirmation, periodic statements, and all periodic reports required by the Commission. At no time does the member firm carry the investor’s account or custody funds or securities, and the member does not typically have ongoing written correspondence with the investor after the account is established.

Moreover, the broker-dealer often will not know if, or when, a direct-to-fund customer will place their next order. Accordingly, it would be impossible for firms to provide the disclosure document “prior to” the next purchase by the customer. The only practical way to comply with the Proposed Rule for these existing accounts would be to mail a disclosure document to every single direct-to-fund account holder, regardless of the level of business they do, the amount or volume of activity in their account, or the last time they actually made a purchase.

²⁰ Mutual Fund Point of Sale Disclosure Investor Research Findings, March 23, 2005, available at <http://www.finra.org/web/groups/industry/@ip/@issues/@mf/documents/industry/p013692.pdf>

²¹ Admin. Proc. File No. 3-11780, Order Instituting Administrative and Cease and Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease and Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, <http://www.sec.gov/litigation/admin/33-8520.htm>; See also, Edward Jones to Pay \$75 Million to Settle Revenue Sharing Charges, available at <http://www.sec.gov/news/press/2004-177.htm>

Mailing millions of these disclosures – most of which would be summarily disregarded by clients who may not have even contributed funds or placed a trade in their fund account in several years – is an extremely costly and time-consuming venture for the broker-dealer which will provide no significant benefit to investors.

We believe that by requiring disclosure to investors who purchase investment company shares “through a member,” FINRA intended to include only brokerage platform customers. However, to the extent the Proposed Rule is intended to apply to application way customers, it imposes a discriminatory and undue burden on member firms and investors who choose to conduct business in this manner. The Proposed Rule would impose a significant additional burden on these firms and investors that has not been – and cannot be – justified by FINRA. Accordingly, we urge the SEC to instruct FINRA to delay the Proposed Rule. Alternatively, the SEC should direct FINRA to apply the Proposed Rule prospectively to investors who establish new direct-to-fund accounts after the effective date, since Firms could provide the disclosure at the time of account opening.

- **Implications of the DOL Fiduciary Proposed on Direct-to-Fund IRA Accounts -** On October 22, 2010, the Department of Labor’s (DOL) Employee Benefits Security Administration proposed a rule that would amend the definition of fiduciary for purposes of ERISA and section 4975 of the Internal Revenue Code of 1986. The DOL proposal does so in an effort to ensure that IRA investors and participants in ERISA retirement plans receive advice based on reliable information that protects their interests. If the DOL’s proposed fiduciary rule is approved, and the Proposed Rule is approved as written, it would create a redundant and unnecessary disclosure regime for IRA accounts.

Given the potential implications to IRA accounts under the DOL’s proposal, we believe that IRA accounts should be excluded from the Proposed Rule. Alternatively, the Proposed Rule should provide that, to the extent a broker-dealer meets the DOL disclosure requirements, it will satisfy the disclosure requirements of the Proposed Rule. Moreover, FINRA should solicit additional comment on this issue so that it can ensure that its Proposed Rule is consistent with the DOL rules, and will not create redundant and confusing disclosure regime for IRA accounts.

- **Greater Clarity of the Term “Prominent”** – The Proposed Rule introduces new terms and requirements, eliminates longstanding and well-understood terms, and makes other changes to existing requirements under NASD Rule 2830. A lack of clarity deprives a broker-dealer the ability to develop policies and procedures with confidence that they are properly designed to achieve compliance with the Proposed Rule. As a result, we encourage FINRA to provide greater clarity with respect to the concept of prominent disclosure, as called for in Section (l)(4) (i) and (ii) of Proposed FINRA Rule 2341. We believe that this will assist firms in compliance with the Proposed Rule if it is ultimately adopted.

As a preliminary matter, we suggest that FINRA provide that the contemplated disclosure is prominent if: it is a standalone document; or if contained in a document with other information, the disclosure is capitalized, underlined, italicized, or in a different font or font color.

- **Unlevel Playing Field for Mutual Funds** – We believe that the Proposed Rule is discriminatory against investment company securities. The Proposed Rule would only apply to investment company securities and would not require other products or investments sold or distributed through a broker-dealer to disclose similar information. These enhanced disclosure obligations solely related to investment company securities will likely put investment company securities at a competitive disadvantage if/when customers compare them to other investment products available through their broker-dealer. Accordingly, we urge the SEC to instruct FINRA to delay the Proposed Rule.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to comment on the Proposed Rule aimed at enhancing investor protection.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8488.

Respectfully submitted,

Sincerely,

A handwritten signature in black ink, appearing to read "D. T. Bellaire". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
General Counsel and Director of Government Affairs