FINRA
Financial Industry Regulatory Authority

Philip Shaikun
Associate Vice President and
Associate General Counsel

Direct: [redacted]
Fax:

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

Re: File Nos. SR-FINRA-2012-028; SR-FINRA-2012-029; SR-FINRA-2012-030; and SR-FINRA-2012-031– Response to Comments

Dear Ms. Murphy:

This letter responds to comments received by the Securities and Exchange Commission ("SEC" or "Commission") to the above-referenced rule filings related to fees for review of advertising materials ("advertising fee filing") and underwriting terms and arrangements ("corporate financing fee filing"); CRD system filings ("CRD fee filing"); and branch office registration and new and continuing membership applications ("membership fee filing"). As noted in each filing, the fee changes are a response to rising costs associated with operating FINRA's regulatory programs and are intended to help ensure that FINRA is sufficiently funded to meet its regulatory responsibilities. The proposed rule changes were filed for immediate effectiveness on June 22, 2012 (SR-FINRA-2012-028, -029 and -031) and June 25, 2012 (SR-FINRA-2012-030) and published for comment in the Federal Register on June 28, 2012 and June 29, 2012, respectively.[1]

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[1] See Securities Exchange Act Release No. 67239 (June 22, 2012), 77 FR 38692 (June 28, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-028); Securities Exchange Act Release No. 67241 (June 22, 2012), 77 FR 38698 (June 28, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-029); Securities Exchange Act Release No. 67240 (June 22, 2012), 77 FR 38694 (June 28, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-031); and Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-030).

The Commission received 27 comments, with 13 comments directed to all of the filings, one specific comment addressed to the advertising fee filing, one specific comment addressed to the CRD fee filing, and 12 comments addressed to the membership fee filing.[2] There were no dedicated comments on the corporate financing fee filing or the branch office registration fee.

The comments directed to all the filings collectively question the need, justification and timing of the fee changes. More specifically, several commenters suggest that the fee increases would be unnecessary if FINRA more effectively managed its expenses.[3] Commenters also assert that the fees are unreasonable and will have a deleterious and disproportionate impact on small or independent firms,[4] particularly during difficult economic times[5] and on top of increases by other regulators.[6] Certain commenters further assert that one or more of the fees create a barrier to entry in the broker-dealer market[7] and reduce access to financial advice for customers.[8] One commenter suggests that implementation of the new fees should be delayed.[9]

FINRA disagrees with these comments and believes that the proposed fee changes are necessary, reasonable and equitably allocated among its members. Section 15A(b)(5) of the Securities Exchange Act of 1934 ("Exchange Act" or "SEA") requires that FINRA's rules provide for "equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any

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2 See Exhibit A for a list of commenters.

3 See CFD, Searle, Centaurus, BG Strategic, International Assets, Univest, Selkirk, Thrasher, C.W. Downer, McNally and PHD; see also Mumaw (stating, without further explanation, that there should be "no raise in fees").

4 See FSI, Cetera, Financial Network, Genworth, Multi-Financial, GBS, Centaurus, Searle, Fiser, Advanced Planning, BG Strategic, International Assets, Madison Avenue, Sutter, Thrasher and Westrock.

5 See Madison Avenue, Selkirk, CFD, Univest, FSI, Cetera, Centaurus, Financial Network, Genworth Searle and Multi-Financial.

6 See FSI, Cetera, Financial Network, Genworth, Multi-Financial, BG Strategic, CFD and GBS.

7 See FSI, Cetera, Financial Network, Genworth, Multi-Financial and GBS.

8 See FSI, Cetera, Financial Network, Genworth, Multi-Financial, Madison Avenue, CFD, Centaurus, GBS and Thrasher.

9 See CAI.

facility or system which [FINRA] operates or controls." The Commission has previously found FINRA's overall pricing structure to be consistent with the Exchange Act, and FINRA believes that with the proposed increases resulting from these fee filings that scheme continues to be reasonable and equitable.

As discussed below, FINRA also disagrees with the comments specifically directed to the advertising, membership and CRD fee filings, some of which are based on the mistaken premise that fee increases for certain programs may only be justified if there is a proportionate increase in cost to operate those specific programs. While there have, in fact, been significant increased costs to operate the relevant programs, FINRA appropriately relies on those, among other fees, to fund its general regulatory operations.

Also, as discussed in more detail below, FINRA has been aggressively cutting its expenses where consistent with its investor protection duties. And while FINRA is sensitive to the economic stress securities firms may be experiencing, FINRA's paramount responsibility is to protect the investing public by administering an effective and sustainable regulatory program. The additional revenues generated by these fees are needed for FINRA to responsibly carry out its obligations. FINRA does not believe the proposed fee increases will significantly reduce broker-dealer's securities activities. FINRA further believes the fees are justifiable and satisfy the statutory requirements. Finally, FINRA believes the implementation dates are reasonable. In particular, FINRA notes that the fees with the largest volume of fee activity – CRD-related fees (including branch office registration) – will not go into effect until January 2, 2013.

Background

In considering the comments, it is important to understand generally the nature and sources of revenue that fund FINRA's regulatory operations. FINRA funds those operations from a combination of general assessments – the Personnel Assessment (PA), Gross Income Assessment (GIA), Trading Activity Fee (TAF) and Branch Office Assessment – and various user fees, such as those contained in the current fee filings. There is not a direct affiliated revenue stream for each program within FINRA. Thus, numerous operations and services must be funded by other revenue sources, which include both the general assessments and user fees. Although user fees are an important funding source for non-revenue producing operations and services, as set out in each of the fee filings, FINRA generally closely correlates increases in user fees with the cost of providing the corresponding services.

The broader economic downturn continues to affect trading volumes and securities firms' revenues, resulting in a decrease in FINRA's revenues. Contrary to the assertions of some of the comments, FINRA regularly reviews its spending to ensure that it is operating as effectively and efficiently as possible. These efforts have resulted in significant cost savings over the past few years, even though FINRA's regulatory responsibilities have grown. The most recent review has resulted in

spending reductions of $36 million that were implemented as part of FINRA's 2012 budget, and cumulative savings from this effort are expected to reach nearly $60 million by the end of 2013. Prior to raising the PA and revising the GIA fee structure in 2009, FINRA reduced expenses by $70 million. Thus, FINRA has taken significant steps to minimize fee increases and continues to look for opportunities to more effectively manage costs without compromising its regulatory mission.

Unfortunately, these cost savings efforts alone are no longer sufficient to offset continued revenue declines; the costs to properly meet FINRA's regulatory mandate are expected to outpace revenues. Accordingly, with input from FINRA's Small Firm Advisory Board and a new Board of Governors pricing working group, FINRA determined to adjust several user-based fees, all of which had remained static for more than five years. FINRA believes these fee adjustments offer the fairest approach to modernizing FINRA's revenue structure, taking into consideration recent adjustments to the PA, GIA and TAF. If the proposed fees were in place for all of 2012, FINRA projects its total revenues for the year would amount only to a 1% per annum increase since 2008. The fees fall on those industry participants whose activities result in direct costs to FINRA, and the fee increases are correlated to the costs of operating the corresponding regulatory programs. In the case of advertising fees, the increases reflect increased complexity of sales material filed with FINRA, increased investor protection concerns and ongoing technology enhancements. Similarly, the adjustments to the branch office and member application fees reflect the expansion of these programs and are necessary to keep pace with the cost of conducting branch exams and application reviews.

Given FINRA's cost control efforts and mission requirements, the comments suggesting fee increases would be unnecessary if FINRA better managed its budget are incorrect. In addition, the assertions by several commenters that the fee increases are unreasonable in light of current economic conditions, fee increases imposed by other regulators and increases in bond and insurance premiums are not correct. While FINRA is sympathetic to the hardships caused by the current economy, FINRA must maintain the resources needed to satisfy its statutory obligations and cannot let fees assessed by other entities determine its funding requirements. FINRA is required to maintain a comprehensive regulatory program through all market cycles and conditions.

Equitable Allocation of Fees

Several commenters assert that the fee changes disproportionately impact small and independent broker-dealer firms.[10] FINRA believes that these fees are equitably

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[10] See FSI, Cetera, Financial Network, Genworth, Multi-Financial, BG Strategic, International Assets, Madison Avenue, Sutter, Thrasher, Westrock, Centaurus, GBS and Searle.

allocated. The fees at issue are user fees triggered by activities that result in direct costs to FINRA to provide a regulatory service or use of a facility. FINRA recognizes that certain user fees, such as the new membership application fee, cannot be avoided. That is why FINRA has carefully considered its costs to administer such programs and the revenues generated from other sources in determining the user fees. As discussed below, in the case of membership fees, smaller firms actually account for the vast majority of staff resources dedicated to processing applications.

Comments to Advertising Fee Filing

FINRA amended Section 13 of Schedule A to its By-Laws to raise the fee charged for the review of certain types of sales material.[11] The Commission has effectively delegated to FINRA the responsibility to review this sales material, which otherwise would have to be filed with the Commission. Section 24(b) of the Investment Company Act of 1940 requires that investment company underwriters file certain types of sales material with the Commission. However, Commission Rule 24b-3 provides that sales material that is filed with FINRA is deemed to be filed with the Commission, and as matter of practice this sales material is filed only with FINRA. In 2011, of the 99,926 sales material filings reviewed by FINRA, approximately 98 percent concerned registered investment companies. FINRA's advertising review program thus frees up Commission resources that otherwise would be used to review investment company sales material.

Despite rising costs to administer the filing program, FINRA has not increased the fees for this review since 2005. Since that time, the filing volume for communications concerning complex retail investment products has increased significantly, as has the related investor protection concerns.[12] Moreover, FINRA has implemented dramatic enhancements to its technology that have improved the convenience of filing by members.

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11 See Securities Exchange Act Release No. 67239 (June 22, 2012), 77 FR 38692 (June 28, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-028). FINRA raised the fee charged for the review of printed material and video or audio media from $100 to $125 for the first ten pages of printed material reviewed or the first ten minutes of video or audio media reviewed. The surcharge for filed material or media that exceeds these limits remains $10 per page of printed material or $10 per minute for video or audio media. FINRA increased the fee for expedited review from $500 to $600 per item and increased the fee for each page of an expedited filing that exceeds ten pages from $25 to $50 per page.

12 For example, since 2008, the volume of communications filed with FINRA concerning exchange-traded funds (ETFs) and real estate investment trusts (REITs) has increased approximately 56 percent.

One commenter asserts that, to the extent advertising filing fees are used to subsidize FINRA's overall regulatory program, they are not equitably allocated among all users of the regulatory program.[13] The commenter states that "it is inappropriate for members that participate in the filings program to subsidize the costs of FINRA's *other* regulatory efforts" and that this approach is not consistent with statutory obligations under the Exchange Act and Commission rules.

The commenter also states that while the volume of FINRA advertising filings has increased since the last filing fee increase in 2005, this volume increase has resulted in greater revenues because FINRA imposes its fees on a per-filing basis. The commenter asserts that the filing volume increase should result in greater efficiencies or economies of scale, resulting in a lower cost to review each filing. The commenter also rejects FINRA's justification for the fee increase based on increased technology costs. The commenter argues that "technology should represent a one-time cost that *improves* a program's efficiency and cost-effectiveness," commenting that the level of the fee increases "seems extremely high."

As discussed above, user fees are a means of fairly allocating fees to the activities of the members that use a particular facility or service. Under Exchange Act Section 15A(b)(5), FINRA could have financed its advertising review program by imposing a general surcharge on all members, including mutual fund underwriters. FINRA has instead chosen to finance the program through charges upon those who use it. The fact that the advertising fees might support other regulatory programs does not render them inequitable, just as a general surcharge on members to support the advertising program would not be inherently inequitable.

Moreover, the commenter's objection fails to consider the nature of these other regulatory programs. Only 30 of the 60 current employees of the Advertising Regulation Department are analysts who review filings every day. The Department's staff also provides guidance to persons, including mutual fund underwriters and distributors. For example, the staff frequently receives requests from such persons for interpretative guidance concerning application of the advertising rules.

FINRA also regularly publishes guidance on the advertising rules to assist members in meeting standards applicable to their communications with the public. For example, in recent years, FINRA has taken a leading role in publishing guidance that allows broker-dealers to use social media to communicate with clients and the

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13 See ICI. The Commission also received six substantially similar letters from other commenters that objected to the advertising filing fee increase on some of the same grounds raised in the ICI letter. See FSI, Cetera, Financial Network, GBS, Genworth and Multi-Financial.

general public.[14] FINRA also recently published guidance on the application of the communications rules to other scenarios.[15]

Department employees also help protect the customers of the commenter's members by investigating possible violations of the advertising rules, assisting FINRA's examiners in the review of sales material and helping the Enforcement Department develop cases involving violations of the advertising rules.

FINRA also disagrees with the commenter's assertion that the costs of the necessary growth of the advertising filings program can be met simply through existing fees from additional filings. These existing fees do not fully apprehend the additional costs of hiring new staff for training, supervising and managing new employees for the Advertising Regulation Department. In addition, they do not respond to FINRA's advertising-related expenses resulting from the increased number of filings concerning complex retail investment products. In recent years, FINRA has experienced a rise in the number of filings concerning mutual funds with complex investment strategies, such as target-date funds, floating-rate funds and funds that invest in alternative instruments such as master limited partnerships. FINRA also has seen greater numbers of filings concerning other types of complex products, such as leveraged and inverse ETFs, exchange-traded notes, structured notes, non-traded REITs, business development companies and market-linked certificates of deposit. Members are employing more complex means to deliver communications to investors, such as new software programs and social media websites. All of these industry innovations have led to the need not only to hire more staff to meet filings review demands, but also more experienced staff with the backgrounds necessary to review complex material. Moreover, the complexity of the products and means of distribution also result in increased time to complete reviews.

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14 See Regulatory Notice 10-06 (Guidance on Blogs and Social Networking Web Sites) (January 2010) and Regulatory Notice 11-39 (Guidance on Social Networking Websites and Business Communications) (August 2011).

15 See, e.g., Regulatory Notice 11-49 (FINRA Provides Guidance on Advertising Regulation Issues) (October 2011) and Regulatory Notice 12-02 (FINRA Provides Guidance on Application of Communications Rules to Disclosures Required by Department of Labor) (January 2012). In July 2011, the General Accountability Office issued a report that recommended that the Commission require FINRA to "adopt mechanisms to notify all fund companies about any changes in interpretations of existing rules for fund advertising." FINRA has committed to provide regular notification. See "Mutual Funds: Improving How Regulators Communicate New Rule Interpretations to Industry Would Further Protect Investors" (GAO, July 2011).

Finally, the commenter's assertion that technology costs should be a "one-time expense" is inaccurate. FINRA regularly upgrades its technology to take into account new software, changes in how firms communicate new filing requirements and changes to FINRA's internal systems. For example, FINRA has made substantial improvements to its Advertising Regulation Electronic Filing system to make it easier for members to file sales material and to allow FINRA staff to respond more quickly and efficiently. These improvements also have reduced member costs associated with past paper-based filings, such as copying, fax and postage costs. However, as the filings review program is highly technology-dependent, FINRA must devote substantial resources to maintain and improve existing systems. Technology costs are an ongoing expense that FINRA does not see falling any time soon.[16]

Membership Fee Filing Comments

FINRA amended Section 4 of Schedule A to its By-Laws to, among other things, increase the new membership application ("NMA") fee and assess a new fee for continuing membership applications ("CMA").[17] As revised, the NMA fee structure assesses fees ranging from $7,500 to $55,000 depending on the size of the new member applicant. The revised fee structure also assesses an additional $5,000 surcharge for a new member applicant that intends to engage in any clearing and carrying activities. The new CMA fee structure assesses fees ranging from $5,000 to $100,000 depending on the number of registered persons associated (or to be associated) with the applicant and the type of change in ownership, control or business operations being contemplated (merger, material change, ownership change, transfer of assets or acquisition).

Several commenters question the rationale or support for the revised NMA and new CMA fees,[18] with some commenters suggesting that the additional fees would negatively impact the investing public's access to financial advice, products, and services by creating a significant entry barrier for potential advisers and independent broker-dealer ("IBD") firms,[19] as well as "result in additional IBD firm failures."[20]

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16 The ICI also offers several suggestions to make the filings program more cost-efficient. FINRA will consider these suggestions, some of which would require a change to existing FINRA rules.

17 See Securities Exchange Act Release No. 67240 (June 22, 2012), 77 FR 38694 (June 28, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-031).

18 See CAI, FSI, Cetera, Financial Network, Genworth, Multi-Financial, Madison Avenue, Centaurus and GBS.

19 See FSI, GBS, Cetera, Financial Network, Genworth and Multi-Financial; see also Madison Avenue (stating that the fee increases would have the unintended

Commenters also suggest that the additional compliance and regulatory costs from the revised NMA fee and new CMA fee will detrimentally affect small broker-dealer firms,[21] with some commenters specifically stating that the new CMA fee will burden small broker-dealer firms seeking to raise capital for expansion, while the revised NMA fee will significantly impact the creation of new member firms.[22]

FINRA understands these comments, but nonetheless believes that the revised NMA and new CMA fees are equitable and reasonable, especially considering that the current fee revenue for the membership application program falls far short of the program's operating costs. As FINRA explained in the membership fee filing, FINRA has not increased the NMA fee since 1994, notwithstanding the increase in the complexity of NMAs and related resource demands. Also, FINRA has not previously assessed a fee for submitting a CMA, despite incurring substantial costs in reviewing a CMA and its related materials and assessing whether the CMA meets the required standards. The annual estimated cost of running the membership application program is nearly $10 million. The existing NMA fee covered less than 10 percent of this cost, whereas the proposed NMA and CMA fees will cover nearly 95 percent of this cost.

In addition, although FINRA understands that these additional fees may have some impact on firms submitting membership applications, including increased compliance and regulatory costs for existing members and a possible decrease in the number of new member applicants, FINRA believes the revised NMA and new CMA fees are equitable and appropriate to defray the costs of the essential investor protection provided by these processes. Among other things, these programs give FINRA the means to identify potential weaknesses in an applicant's supervisory, operational, and financial controls, with the ultimate goal of ensuring that each applicant is capable of conducting its business in compliance with applicable rules and

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impact of restricting the availability of financial advice, products and services and push broker-dealer firms and advisers out of business).

20 See FSI, GBS, Cetera, Financial Network, Genworth and Multi-Financial.

21 See FSI, Cetera, Financial Network, Genworth, Multi-Financial, Madison Avenue, Centaurus, GBS, CFD, Searle, Fiser, Advanced Planning, BG Strategic, International Assets and Thrasher. Thrasher also stated, without further explanation, that the increased fees would "discourage members from interacting with FINRA, which would seem to be counter-productive to one of the basic reasons FINRA exists." Although FINRA is unable to respond fully to this bare assertion, FINRA disagrees with the commenter and notes that, in its experience, fee changes have never appeared to reduce or discourage its members from communicating their views or interacting with FINRA.

22 See BG Strategic and International Assets.

regulations, and that its business practices are consistent with just and equitable principles of trade as required by FINRA rules. For instance, reviews of CMAs submitted by applicants proposing to add new products or business lines have routinely identified inadequate supervisory procedures and controls addressing such new products or business lines and unqualified or inexperienced supervisory personnel responsible for supervising those products or business lines. In addition, NMA and CMA reviews have often identified other areas of concern, such as problematic applicant funding sources, inadequate net capital reserves, statutorily disqualified persons associated with an applicant, inadequate information regarding proposed products and deficient operational systems (e.g., recordkeeping, clearing activities, transaction surveillance).

Further, FINRA notes that the majority of NMAs and CMAs received and reviewed are submitted by small broker-dealer firms. Nevertheless, FINRA has taken into account the effect the membership application fee increases may have on small firm applicants by structuring the NMA and CMA fees to apply to broad categories of firms and then tiering the fees within those broad categories based on the number of registered persons associated or to be associated with the applicant firm.

One commenter suggests that the CMA fee should be restructured for smaller firms (firms with 1-150 registered representatives), because the minimum $5,000 CMA fee for smaller firms would be too high, especially for CMAs filed by smaller firms where there would be no significant change.[23] As an illustration, the commenter states that a firm with five employee shareholders where one shareholder retires would result in one or more of the existing shareholders owning 25 percent or more of the firm's stock and would require an ownership change CMA and $5,000 fee despite the fact that there would be no significant change to the firm's management or control. As an alternative, the commenter asks FINRA to consider a CMA fee structure for smaller firms that contemplates lower CMA fees by application type with additional charges based on a per-representative basis. While FINRA is not making changes to the current CMA fee structure, which was designed to recover a substantial portion of the costs of operating the membership program by charging fees directly to the users of the program, FINRA will separately consider adopting an exemption process for fees for CMAs that are filed to make less significant or controversial changes that do not require significant staff review.

In addition, FINRA notes that the size of the CMA applicant or apparent scope of the CMA application does not necessarily correlate to the amount of regulatory resources required to respond to the application. For instance, in CMAs submitted that are similar to the commenter's example, FINRA has previously identified concerns (e.g., recent adjudications, pending enforcement matters, questionable funding sources for acquiring the ownership interest) that required substantial staff resources. Further,

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[23] See Sutter.

the CMA fee already makes adjustments based on an applicant firm's size, by reducing the overall application fee, on a tiered-basis, depending on an applicant's firm's size. For instance, the CMA fee structure will assess a member with only one to ten registered persons a fee ranging between $5,000 and $7,500, depending on the type of continuing membership application, whereas a member with 301 to 500 registered persons will be assessed a fee ranging between $10,000 and $30,000 depending on the type of continuing membership application.

Another commenter suggests that FINRA implement a "fast-track" NMA and CMA processing fee for those applicants seeking faster approval of their applications.[24] The commenter states that such fees would "support the NMA and CMA process financially." FINRA does not believe that implementing a "fast-track" fee for NMAs or CMAs is appropriate or practical. FINRA works to complete application reviews as efficiently as circumstances permit. However, application reviews frequently need to be extended for a variety of reasons outside of FINRA's control, including the need for additional information from the applicant, evidence of enhanced procedures or systems, the absence of qualified or experienced personnel at the applicant and the need to address a firm's regulatory history. The time for review of any application is greatly dependent on the cooperation of the applicant (or its consultants or counsel) and an applicant's ability to demonstrate it meets rule requirements. Thus, a "fast-track" process could not be assured consistent with FINRA's investor protection responsibilities.

Two commenters also ask the SEC to consider a fee waiver for "any CMA submitted by a small firm once every two years."[25] These commenters contend that such a program would "remove a significant barrier to the continued growth and expansion of small firms." As discussed above, while FINRA will consider a waiver process for less significant changes, FINRA believes the waiver program as proposed by the commenters is so broad that it would substantially impair the fees' ability to recoup many of its costs associated with CMA reviews.

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24 See IMS. The commenter also suggests that FINRA reduce the 180-day time frame provided in NASD Rule 1017 for approving CMAs. Although FINRA considers this comment to be beyond the scope of the subject matter of the membership fee filing, as FINRA has previously noted, it continues to evaluate opportunities to streamline the application process or, where appropriate, consider revisions or amendments to FINRA's membership rules. See Letter from Patricia Albrecht, Associate General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, SEC (May 8, 2012) (File No. SR-FINRA-2012-018 – Response to Comments).

25 See BG Strategic and International Assets.

One commenter seeks clarification regarding the $5,000 surcharge for NMA applicants engaged in "any clearing and carrying" activities.[26] The commenter suggests that as written the fee "encompasses any firm that engages in clearing and carrying activities, including those operating under the (k)(2)(i) exemption." The commenter misunderstands the application of the surcharge, which expressly applies to applicants that conduct both clearing and carrying activities. The $5,000 would not apply to an applicant operating pursuant to the exemptive provisions of SEA Rule 15c3-3(k)(2)(i).

CRD Fee Filing Comments

In addition to general concerns about the increases in CRD fees, several commenters raise particular concerns about the increase in the late disclosure filing fee.[27] These commenters contend that firms fail to report disclosure events in a timely manner because they are unaware of the events despite considerable efforts to obtain the information from their registered personnel. These commenters conclude that the increase in the late disclosure fee therefore will not have any effect on the timeliness of these filings. One commenter asserts that, to the contrary, the increase in the late disclosure fee will result in less disclosure because it creates an incentive for registered personnel to conceal late reportable disclosure events to avoid payment of the late fee.[28]

FINRA respectfully disagrees with these commenters' assertions. Most significantly, the commenters rely on a mistaken assumption that most event disclosure originates from registered persons. However, from January 1, 2010 through July 15, 2012, the highest percentage of filings that incurred a late filing fee involved customer complaints, which firms generally learn of directly rather than from their registered personnel. FINRA believes that the increase in the late disclosure fee emphasizes the importance of reporting disclosure events in a timely manner and will lead to a decrease in late filings by firms and registered persons. In fact, contrary to the commenter's assertion, FINRA does not believe that the increase in the late disclosure fee will create an incentive for personnel to conceal reportable disclosure events, because such behavior puts the individual at risk of being subject to a regulatory action and presumably disciplinary action by the firm, as well.

One commenter posits that some disclosure filings involving judgments/liens may incorrectly be assessed a late fee due to a discrepancy between the date the

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26 See IMS.

27 See CAI, FSI, Multi-Financial, Financial Network, Cetera, PFSI, Genworth and GBS.

28 See PFSI.

judgment or lien was filed and the date the individual received notice of it.[29] Even assuming, without conceding,[30] that some judgment/lien filings are assessed a late disclosure fee in error, in such circumstances the firm making the filing can contact FINRA to seek a refund of the fee.[31]

FINRA believes that the integrity of the information in the CRD system is critically important, as the SEC, FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things. In addition, the information displayed in BrokerCheck, which investors use to help make informed choices about the individuals and firms with which they currently conduct or are considering conducting business, is derived from the CRD system. Therefore, FINRA is troubled by the percentage of U4 disclosure filings that incur a late fee, which, as noted by one of the commenters,[32] has averaged in the low to mid 20s in each of the past five years. Based on these percentages, FINRA has concluded that the current late disclosure fee, which has not changed since it was established in 2004, does not serve as a sufficient incentive for firms and registered persons to report disclosure matters in a timely manner. FINRA believes that the increase in the late disclosure fee is reasonable because it provides greater incentive for the timely reporting of important disclosure events without being punitive in nature. FINRA also notes that firms and registered persons control whether the late disclosure fee is assessed and can avoid the fee altogether by reporting disclosure events in a timely manner as required under the FINRA By-Laws.

Implementation Dates

One commenter asks FINRA to delay implementation of the new fees for some significant amount of time to allow firms "to better budget for their new and increased expenses."[33] FINRA declines to delay implementation of the new fees in light of their purpose in both covering costs of maintaining the specified programs as well as

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29 See PFSI.

30 PFSI admits that its statement "is based on a preliminary review of these types of amendments filed by [PFSI]" and that it has "not yet conducted exhaustive research on this issue."

31 Further information on requesting a late disclosure fee refund is available on FINRA's website at http://www.finra.org/Industry/Compliance/Registration/CRD/UserSupport/p005225.

32 See PFSI.

33 See CAI.

serving to ensure that FINRA is sufficiently funded to meets its regulatory responsibilities. FINRA however took into consideration firms' need to budget for increases in establishing the fees and therefore delayed implementation of the CRD-related fees (including the branch office registration fee), which have the most significant volume of fee activity, until January 2, 2013.

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FINRA believes that the foregoing responds to the material issues raised by the commenters to these rule filings. If you have any questions, please contact me at (202) 728-8451; email: philip.shaikun@finra.org. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Philip Shaikun
Associate Vice President and
Associate General Counsel