E-mail from CEO

Valerie Brown

Cetera FINANCIAL GROUP

To: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission

Subject: FINRA Proposed Fee Increases - File Numbers SR-FINRA-2012-028, SR-FINRA-2012-029, SR-FINRA-2012-030 and SR-FINRA-2012-031

Dear Ms. Murphy,

On June 28 and 29, the SEC published in the Federal Register requests for comment on a series of proposed FINRA fee increases. The proposals would increase the fees FINRA charges for branch office registrations, new member applications, continuing membership applications, Central Registration Depository filings and the review of advertising and sales literature. On behalf of Cetera Financial Group, I welcome the opportunity to comment on these proposed fee increases.

In short, we oppose the proposed fee increases and urge the SEC to do the same.[1] While we appreciate FINRA's need for adequate resources to carry out its mission of regulating broker-dealers and protecting investors, we have concerns about the timing, context and size of these fee increases. The fee increases will substantially increase the cost associated with basic broker-dealer operations and will disproportionately impact small broker-dealer firms. In addition, we believe the fee increases will have the unintended impact of restricting the availability of financial advice, products and services to investors. Furthermore, FINRA has failed to provide an appropriate justification for these significant fee increases, especially in light of the current economic climate. We discuss our objections in greater detail below.

Background

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 201,000 independent financial advisors—or approximately 64% percent of all practicing registered representatives—operate in the IBD channel.[2] 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 comprised of 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.[3] 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.

Comments

In an effort to ensure FINRA is sufficiently capitalized to meet its regulatory responsibilities, it has proposed a series of fee increases which, when fully implemented, will result in the following changes to the current fee structure:

Advertising and Sales Literature Fees

- The fee for reviews of printed material will be increased from $100 for the first 10 pages to $125 for the first 10 pages.
- The fee for expedited review of the first 10 pages will be increased from $500 per item to $600 per item.
- The fee for reviews in excess of 10 pages will be increased from $25 per page to $50 per page.

Membership Application Fees

- The fee for new-member applications will increase from the current range of $3,000 to $5,000 to a range of $7,500 to $55,000, with an additional $5,000 charge for new clearing firms.
- A new continuing-membership application fee will be implemented. The fee will be charged to firms seeking approval of materials changes to their business and will range from $5,000 to $100,000 depending on the size of the firm and changes being implemented.

CRD Filing Fees

- The fee for new Form U4 filings will increase from $85 to $100 per filing.
- The fee for amended Form U4s and U5s will increase from $95 to $110 per filing.
- The annual system processing charge for each financial advisor will increase from $30 to $45.
- Penalties for late U4 and U5 disclosures will increase from $10 per day to $100 for the first day, and $25 for each subsequent day, up to a maximum of 60 days. The resulting maximum penalty for late disclosures will increase to $1,575 from $300.
- The fee for processing fingerprints will increase from $13 to $15 for those submitted electronically and from $13 to $30 for those submitted in hardcopy.
- The exception allowing successor member firms to engage in a mass transfer of financial advisor licenses free of charge is being eliminated.

Branch Office Registrations

- The fee for annual branch-office registrations will increase from $75 per office to a sliding scale of $175 for the first 250 offices down to $75 for each office over 2,000.

The proposed fee increases follow recent significant increases in FINRA’s Personnel Assessment (PA) and the Gross Income Assessment (GIA). On August 20, 2009, FINRA filed with the SEC a proposal to double PAs and alter the method of calculation for GIAs for broker-dealer firms. At the time, FINRA cited the recent market downturn and its impact on FINRA’s investment portfolio as a reason to raise these fees. FINRA argued at the time that the proposed fee increases were 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."[4] In addition, FINRA argued that the proposed increases in the PA and GIA would "stabilize its revenues and provide protection against future industry downturns."[5] Unfortunately, neither of these statements proved true, as FINRA's latest fee increase proposals are designed to increase revenues derived from the industry and "contribute to the general funding of FINRA's overall regulatory program and…ensure that FINRA is sufficiently capitalized to meet its regulatory responsibilities."[6]

IBDs, independent financial advisors and their clients have all been impacted by the market downturn, recent recession, continued economic uncertainty and increases in compliance costs. Moreover, these fee increases come on top of astronomical increases in SIPC assessments, SEC fees, fidelity bond premiums, errors and omissions insurance premiums and significant uncertainty concerning the financial markets and future financial services regulatory requirements. IBD firms have responded by cutting costs, avoiding redundancies, investing in technology designed to improve efficiency and other similar measures. However, these measures have not been enough for many broker-dealer firms to remain profitable.

IBD firms operate on very slim profit margins. In fact, from 2004 to 2010, the average profit margin for IBD firms was 1.7%.[7] An unfortunate result of these rapid increases in broker-dealer operating costs during these difficult economic times has been the failure of IBDs and other broker-dealer firms. In 2008 there were more than 5,000 broker-dealer firms. By 2012 that number had fallen to approximately 4,400.[8] According to statistics on FINRA's website, the number of financial advisors has also declined in this time period by 6%. We believe that if FINRA's fee increase proposals are adopted, they will result in additional IBD firm failures.

The failure of IBD firms has a significant impact on the securities industry and investing public. IBD firms provide millions of Main Street investors access to affordable and unbiased financial advice, products and services. They are also a source of important industry innovations. IBD firms have incentives to consistently develop new methods to efficiently and effectively meet their regulatory obligations. These innovations often are adopted by others in the industry and become best practices. Increasing fees will reduce investment in new resources and innovation—including the hiring and training of new employees, acquisition of new equipment and development of technology—among remaining IBD firms. The result will be less employment, innovation and development in the securities industry.

The proposed fee increases will also negatively impact the investing public's access to financial advice, products and service. Increases in initial U4 filings, annual CRD and new member application fees create a significant barrier to entry for potential financial advisors and IBD firms. With the average age of the financial advisor population at nearly 49 years old, 14% of advisors over the age of 60 and less than 25% of all advisors ages 40 and younger, increasing the barriers to entry will have important real world implications. Fewer professionals entering the industry will reduce investor access to financial advice, products and services. The resulting reduction in the registration of persons and firms could also have a negative impact on FINRA future revenues and, therefore, may result in FINRA failing to reach its revenue targets.

In addition to our general concerns with the size and breadth of the fee increases, we have specific concerns with the following:

- *Advertising Fees.* FINRA's proposal would increase filing fees for the review of advertisements and sales literature by an estimated 20%. This represents a substantial fee increase for IBD firms. The impact of the proposed fee increase will be compounded by FINRA's recent adoption of new rules governing communications with the public as firms. These rules reorganize the categories of communications and broaden the universe of materials that must be filed with FINRA. FINRA's justification for the fee increases is that filings have increased substantially since the last fee increase. However, since the fees are paid per filing, the volume of filings should not impact FINRA's overall cost of performing the necessary reviews. In addition, FINRA notes that it has invested in technology in order to improve the turnaround time. We would expect the technology investments to be one-time expenditures that create efficiencies that would serve to control costs. However, the result of the proposed advertising and sales literature fees will be that IBDs, and their affiliated financial advisors, will pay higher fees more frequently for the same service.

- *Late Disclosure Fees*. The large proposed increase in late U4 and U5 disclosure filing fees is not justified on the grounds stated in the proposal. In general terms, broker-dealer firms do not file disclosable events on Form U4s and U5s late because they regard the current penalties as a cost of doing business. They file late because they are unaware of the disclosable events despite considerable efforts to obtain the information. The proposed late filing fees, which are often passed on to the financial advisor, will exacerbate this problem because they are excessive to the point of creating a disincentive for persons to disclose events. For these reasons, we conclude that the fee increases are not reasonable or equitable in that they create disparate effects on certain types of firms, particularly those operating an independent contractor model.

In summary, the proposed fee increases 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. These burdens become unreasonable when they are added to the significant increases in SIPC assessments, SEC fees, fidelity bond and E&O insurance premiums, costly additional compliance requirements and significant uncertainty in the financial markets and future regulatory structure. We have significant concerns about the ability of small broker-dealer firms and the small businesses operated by independent financial advisors to survive the crush of these additional expenses at this time. The failure of IBD firms has consequences for our industry, but more importantly, for the American public, who need access to the financial advice, products and services provided by IBDs and their affiliated financial advisors. As a result, we believe the fee increases place too heavy a burden on financial advisors and IBDs at this time and should be rejected by the SEC.

Conclusion
We remain committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with the SEC to ensure FINRA has the resources necessary to fulfill its mission of investor protection while maintaining an healthy business environment.

Thank you for your consideration of our comments.

Respectfully submitted,

Valerie G Brown

Valerie G. Brown
CEO

[1] Section 19(b)(3)(C) of the Securities Exchange Act of 1934 permits the SEC to "summarily…abrogate" a proposed rule change by FINRA, or another self-regulatory organization, that takes effect upon filing "if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title."

[2] Cerulli Associates at http://www.cerulli.com/.

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

[4] See page 2 of the Proposing Release at http://sec.gov/rules/sro/finra/2009/34-60624.pdf.

[5] *Id*.

[6] See FR Vol. 77, No. 124 at 38699.

[7] Reference the Financial Service Institute's B/D Performance Study (http://www.financialservices.org/bdstudy.aspx).

[8] See http://www.finra.org/AboutFINRA/.

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