



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS  
AND INDEPENDENT FINANCIAL ADVISORS

## VIA ELECTRONIC MAIL

March 15, 2013

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

**Re: File Number SR–FINRA–2013–015: Proposed Rule Change to Amend Section 4 of Schedule A to the FINRA By-Laws to Adopt a Waiver Process for the Continuing Membership Application Fee and Amend NASD Rules 1013 and 1017 to provide for a Refund of the Application Fee for the Withdrawal of a New Member or Continuing Membership Application**

Ms. Murphy:

On February 5, 2013, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission (SEC) a proposed rule change (Proposed Rule) amending Section 4 of Schedule A to the FINRA By-Laws to adopt a waiver process for the continuing membership application (CMA) fee where FINRA determines that the application is proposing less significant changes that do not require substantial staff review. The Proposed Rule would also amend NASD Rules 1013 and 1017 to provide for a refund of the new member application (NMA) and CMA fees if a NMA or CMA applicant withdraws their application within 30 days from filing. The Financial Services Institute<sup>1</sup> (FSI) appreciates the opportunity to comment on this important proposal.

### 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

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<sup>1</sup> 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 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

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 advisers 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 advisers – or approximately 64 percent of all practicing registered representatives – operate in the IBD channel.<sup>2</sup> These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers 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 advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers 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.<sup>3</sup> Independent financial advisers 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 advisers 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 advisers. 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 advisers play in helping Americans plan for and achieve their financial

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<sup>2</sup> Cerulli Associates at <http://www.cerulli.com/>.

<sup>3</sup> These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

goals. FSI's primary goal 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.

### Comments

As FSI previously indicated in comments responding to FINRA's proposed fee increases last July,<sup>4</sup> IBD firms operate on very slim profit margins. From 2005 to 2011, the average median operating profit margin for IBD firms was 1.9 percent.<sup>5</sup> Increased regulatory fees place a substantial burden on firms as they continue to recover from the negative consequences of the recent financial crisis and economic downturn. Firms have already responded by cutting costs and improving efficiencies, however many still struggle to remain profitable in the current environment. Firms have been saddled with fee increases in SIPC assessments, SEC fees, fidelity bond premiums, errors and omissions insurance premiums as well as significant uncertainty in the financial markets and the future of financial regulatory requirements. We applaud FINRA for recognizing these challenges and proposing these changes.

The Proposed Rule provides a waiver for broker dealers from CMA fees where FINRA determines that the changes proposed in their CMA do not require substantial staff review. The current FINRA By-Laws assess applicants a CMA fee ranging from \$5,000 to \$100,000 based on a number of factors. This change will provide much needed relief in instances where the operational costs to review CMA's require a minimal expenditure of agency resources. The Proposed Rule will also amend NASD Rule 1013 and 1017 to provide refunds for firms who withdraw a NMA or CMA within 30 days after filing. This change is consistent with FINRA's practice of tiering the fee structure for CMAs. This approach recognizes that firms should only be assessed fees proportionate to the complexity or additional staff resources involved.

FINRA's decision to propose these changes is a welcome development. By reviewing current policies and determining instances where firms can avoid unnecessary expenses, FINRA will continue to demonstrate a commitment to

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<sup>4</sup> See Comments by Financial Services Institute to SR-FINRA-2012-028, *available at* <https://www.sec.gov/comments/sr-finra-2012-028/finra2012028-5.pdf>.

<sup>5</sup> Financial Services Institute, 2012 Broker-Dealer Financial Performance Study at 1.  
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effective and efficient regulatory oversight. We suggest that FINRA review additional rules and policies to identify areas where firms are being charged fees disproportionate to the additional resources required of FINRA. We also suggest that FINRA review its internal policies and procedures with the goal of developing greater efficiencies. As member firms have been forced to redeploy resources and identify areas where they can operate more effectively with fewer resources, FINRA should make similar efforts.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with the SEC and FINRA on important developments in the future.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 202 803-6061.

Respectfully submitted,

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.  
Executive Vice President & General Counsel