



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

April 15, 2013

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

**Re: File Number SR-FINRA-2013-018: Proposed Rule Change Relating to
FINRA Rule 8313 (Release of Disciplinary Complaints, Decisions and
Other Information)**

Ms. Murphy:

On March 18, 2013, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission (SEC) a proposed rule change (Proposed Rule) amending FINRA Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information) which governs the release of disciplinary and other information by FINRA to the public. The Proposed Rule would also make conforming amendments to certain rules in the FINRA Rule 9000 Series (Code of Procedure) and various other provisions. The Financial Services Institute¹ (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 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

¹ 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.

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.² 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.³ 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 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.

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

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

Comments

The Proposed Rule would replace the thresholds in Rule 8313 related to the publication of specified actions and in their place adopt general standards for the release of disciplinary complaints and decisions. FINRA's decision to replace the current publicity thresholds in Rule 8313 is based upon a belief that members, associated persons, other regulators, and investors will benefit from greater access to information regarding FINRA's disciplinary actions. Firms may benefit from increased information that may help them in their compliance programs and training, while investors may consider the disciplinary histories of firms and their associated persons when deciding whether to engage in business with them. The Proposed Rule was crafted because FINRA believes that Rule 8313's publicity thresholds are inconsistent with the release of information currently made available through BrokerCheck. While FSI supports efforts to increase greater access to information for investors, we have serious concerns with the specifics and implementation of the Proposed Rule. These concerns include the following:

- *Dismissed or Withdrawn Disciplinary Complaints* - FINRA notes that disciplinary complaints and disciplinary decisions would be released through the FINRA Disciplinary Actions (FDA) online database and FINRA's monthly notice of Disciplinary and Other FINRA Actions. Under the proposal, if a disciplinary complaint posted in FDA is dismissed or withdrawn the order dismissing or withdrawing the complaint would accompany the complaint. FSI suggests that disciplinary complaints dismissed or withdrawn not be posted in the FDA, as we question the propriety of publicizing such complaints or decisions. While we support FINRA's diligence in informing investors regarding disciplinary complaints and disciplinary decisions, we question the appropriateness and purpose of drawing attention to actions that pose reputational harm to firms and advisors but were found lacking on the merits.
- *Continuing Membership Application Appeals* - We agree with FINRA's decision to continue the practice of redacting Continuing Membership Application appeal decisions. The appeal process introduces the required disclosure of information that could pose great harm to firms if un-redacted, while not providing for any material investor protection benefit. We applaud FINRA for retaining this practice in the Proposed Rule.
- *Release Specifications* - We support the retention of the disclosure statements for copies of, and information with respect to, disciplinary

complaints. Disciplinary complaints released to the public should clearly and prominently alert recipients that FINRA's complaint does not represent a decision with regard to the allegations, nor that it reflects any findings. We oppose the removal of language suggesting that a member of the public contact respondents before drawing any conclusions regarding the allegations in the complaint. The inclusion of this language provides notice to the public that firms are responsive to concerns related to disciplinary allegations and should be contacted with questions.

- *Discretion to Redact Certain Information or Waive Publication* – We support the changes in the Proposed Rule permitting a case-by-case basis for the redaction of information containing confidential customer information and other information raising privacy concerns. In addition, we support the expansion of Rule 8313(c)(1) which gives FINRA the discretion to waive the requirement to release disciplinary complaints and disciplinary decisions where the circumstances surrounding the release would violate fundamental notions of fairness or work an injustice. We suggest that FINRA provide more information to members through the implementing Regulatory Notice regarding the circumstances that would present such an exercise of discretion, and accept comment from members and the public on instances where the exercise of this discretion would be appropriate.

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,



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