



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

April 10, 2015

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Release No. 34-74512; File No. SR-FINRA-2015-005

Dear Mr. Fields,

On September 18, 2014 the Financial Industry Regulatory Authority (FINRA) filed a proposed rule change (Proposed Rule) to adopt NASD Rule 3010 (Qualifications Investigated) relating to background investigations as FINRA 3110(e) (Responsibility of Member to Investigate Applicants for Registration) in the consolidated FINRA Rulebook.¹ The rule change proposed to retain and clarify existing requirements related to member's responsibility to investigate applicants for registration and add a provision to require members to adopt written procedures that are reasonably designed to verify the accuracy and completeness of the information contained in an applicant's Form U4. The rule was proposed concurrently with a one-time public records search conducted by FINRA of specific financial public records, including bankruptcies, judgments, and liens, of all registered persons.

FINRA also proposed to establish a temporary program that would have issued a refund of late disclosure fees to members for late filings of unsatisfied judgments under certain conditions. FINRA also proposed Supplementary Material .15 (Temporary Program to Address Underreported Form U4 Information), a temporary program that would have issued a refund of Late Disclosure Fees to members for late filings of unsatisfied judgments if all three of the following conditions are met: 1) the U4 amendments are filed between April 24, 2014 and March 31, 2015; 2) the judgment or lien is under \$5,000 and more than five years old; and 3) the registered person was not employed by or otherwise associated with the firm filing the amended Form U4 on the date the judgment or lien was filed with the court. The Financial Services Institute (FSI) and several other commenters responded with comment letters, raising concerns with regard to the eligibility conditions under the refund program.

On December 8, 2014, FINRA issued a response to comments and amendments to the rule filing (Amended Filing).² The Amended Filing changed the conditions for issuing reimbursements for late Form U4 filings related to unsatisfied judgments or liens. The refunds would instead be issued if one of the following conditions is met: (1) the judgment or lien has been satisfied, and at the time it was unsatisfied, it was under \$5,000 and the date the judgment or lien was filed with a court

¹ See SR-FINRA-2014-038, 79 Fed. Reg. 59,884 (October 3, 2014).

² SR-FINRA-2014-038, Amendment No. 1 (dated December 8, 2014) [hereinafter "Amendment No. 1"].

(as reported on Form U4 Judgment/Lien DRP, Question 4.A.) was on or before August 13, 2012; or (2) the unsatisfied judgment or lien was satisfied within 30 days after the individual learned of the judgment or lien (as reported on Form U4 Judgment/Lien DRP, Question 4.B.). This program would have a retroactive effective date of April 24, 2014, and it would automatically sunset on July 31, 2015. On January 6, 2015, the SEC approved the amended rule.³

On March 3, 2015, FINRA filed a proposed rule change to extend the expiration date of the refund program under FINRA Rule 3110.15 (Temporary Program to Address Underreported Form U4 Information).⁴ The proposal would amend FINRA Rule 3110.15 to extend the sunset date of the program from its current scheduled date of July 15, 2015 to December 1, 2015.

FSI applauds FINRA for proposing this amendment, and supports the proposed change. The extension will provide firms with additional time to provide FINRA with the information necessary to identify instances where a judgment or lien that may have been unreported would meet the criteria to qualify for the refund program. However, FSI remains concerned with the implementation of the temporary refund program. We expand on these concerns 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 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.⁵ 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.⁶ 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

³ 80 Fed. Reg. 546 (Jan. 6, 2015).

⁴ 80 Fed. Reg. 15,041 (Mar. 20, 2015).

⁵ Cerulli Associates at <http://www.cerulli.com/>.

⁶ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

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.

Comments

FSI appreciates FINRA's decision to extend the expiration date of the refund program under FINRA Rule 3110.15. We fully support the proposal, and applaud FINRA for providing firms with additional time. FSI remains concerned, however, with the conditions to qualify for reimbursement under the temporary refund program, and the difficulty firms will have in establishing that an undisclosed event qualifies for reimbursement. Particularly for events that occurred over ten years ago and involved smaller amounts, we expect firms to experience difficulty in obtaining readily available information to submit to FINRA.

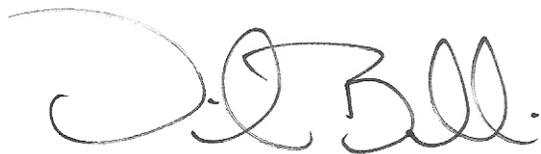
FSI fully supports effective disclosure of events that add additional transparency for investors. To better protect investors, however, FSI believes that, rather than focusing on events occurring over 10 years in the past and involving small amounts of money, resources will be better spent focused on cases involving significant dollar amounts or where firms or individuals willfully failed to disclose important information to regulators and investors.

Conclusion

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

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" and a stylized "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel