

VIA ELECTRONIC MAIL

August 23, 2011
Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: SR-FINRA-2009-028 – Customer Account Statements

Dear Ms. Murphy:

On April 22, 2009, the Financial Industry Regulatory Authority, Inc. (FINRA) filed with the Securities and Exchange Commission (SEC) a proposal to adopt an amended NASD Rule 2340 as FINRA Rule 2231 of the Consolidated FINRA Rulebook (Proposed Rule).¹ On May 14, 2009 the SEC published the Proposed Rule for comment.² Thereafter, the Proposed Rule was published in the Federal Register on May 21, 2009.³ On June 11, 2009, The Financial Services Institute (FSI) submitted a comment letter in response to the Proposed Rule.⁴ FINRA filed with the SEC Amendment No. 1 to the Proposed Rule on July 12, 2011.⁵ Finally on August 2, 2011, the SEC published Amendment No. 1 in the Federal Register for comment.⁶

FSI⁷ welcomes the opportunity to comment on the Proposed Rules. NASD Rule 2340 generally requires each FINRA member to send quarterly account statements to customers containing a description of any securities positions, money balance, or account activity in the accounts since the prior

¹ See Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook, Release No. 34-59921; File No. SR-FINRA-2009-08; 74 Fed. Reg. 23912, available at <http://www.finra.org/Industry/Regulation/RuleFilings/2009/P118757>.

² <http://www.sec.gov/rules/sro/finra/2009/34-59921.pdf>.

³ Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook, 74 Fed. Reg. 23912, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p118757.pdf>.

⁴ Letter from the Financial Services Institute to Elizabeth M. Murphy (June 11, 2009), available at <http://www.sec.gov/comments/sr-finra-2009-028/finra2009028-2.pdf>.

⁵ See Notice of Filing of Amendment No. 1 to Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook, available at <http://www.finra.org/Industry/Regulation/RuleFilings/2009/P124085>.

⁶ Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook, 76 Fed. Reg. 46340, available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p124085.pdf>.

⁷ The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind. FSI is the voice of independent broker-dealers and independent financial advisors in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 124 independent broker-dealers and more than 27,000 independent financial advisors, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, D.C.

account statements were sent. The Proposed Rule would require each FINRA member to send account statements at least once every calendar month to each customer whose account had account activity during the period since the last statement was sent. The Proposed Rule would continue to require that a statement be sent at least once every calendar quarter to each customer whose account had a security position or money balance during the period since the last statement was sent. In general terms, we support the Proposed Rule and applaud FINRA for addressing the concerns we raised in our June 2009 comment letter.

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 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.⁸ 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 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.⁹ 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.

FSI is the advocacy organization for IBDs and independent financial advisors. 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 advisors play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to insure 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.

⁸ Cerulli Associates at <http://www.cerulli.com/>

⁹ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

Comments

In our comment letter dated June 11, 2009¹⁰, FSI raised several concerns with the Proposed Rule.¹¹ Specifically, we commented that monthly customer account statements were not the industry standard and that customers would bear the costs associated with monthly statements which we believe would be substantial in light of the required system updates, the associated production costs, and the additional postage charges. We urged FINRA to adopt the current standard instead of adopting the proposed standard. In addition, we urged FINRA to narrow the definition of account activity in order to avoid conflict with the Rule 10b-10(b) exemption for periodic plans and investment company plans (i.e., "systematic investment plan exemption") or other passive investment activity.¹² Finally, we urged FINRA to provide an extended period of time for members to implement the rule to allow members time to reprogram systems, test and verify such reprogramming, encourage customers to use electronic delivery of account statements, assess and implement the necessary fee increases to defray costs, and ramp up the modes of production necessary to comply. We specifically requested an implementation period of 12 months.

In response to the concerns that FSI and other commenters raised, FINRA issued Amendment No. 1 to the Proposed Rule Change.¹³ Under Amendment No. 1 to the Proposed Rule, FINRA added new paragraph (c) to expressly provide for an exclusion from the monthly customer account statements for certain account activities. More specifically, under Proposed paragraph (c)(1), a member will be permitted to send quarterly customer account statements where "[t]he member relies on an appropriate rule, regulation, release, interpretation, 'no-action' position or exemption issued by the SEC or its staff that (A) specifically applies to the fact situation of the activity; (B) provides relief from the immediate transaction confirmation delivery requirements of SEA Rule 10b-10; and (C) permits quarterly delivery of customer account statements[.]"¹⁴ FINRA believes the proposed exclusions for these types of account activities are appropriate as they strike the correct balance between investor protection and the concerns raised by the commenters.

Additionally, with respect to our concern regarding the timeframe for implementation of the Proposed Rule, FINRA responded by stating that it appreciates the factors that must be considered in complying with the rule change and that it intends to give members "sufficient time to comply" with the new Rule. As such, FINRA states that the date for implementation will be no later than 365 days following approval by the SEC.

While we believe that maintaining the current standard would avoid imposing additional costs on customers, we applaud FINRA for its efforts to improve and clarify the requirements regarding customer account statements and are pleased that FINRA has addressed our other concerns. Since FINRA has adequately addressed the concerns that FSI raised in our initial comment letter regarding the Proposed Rule, we support adoption of Amendment No. 1 of the Proposed Rule.

¹⁰ Cit to the letter with a URL

¹¹ <http://www.sec.gov/comments/sr-finra-2009-028/finra2009028-2.pdf>.

¹² Passive investment activity would include dividend or interest payments, interest paid of free credit balances, assessment of interest charges on margin balances, journaling position between cash and margin accounts, and similar activities.

¹³ Notice of Filing of Amendment No. 1 to Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook, 76 Fed. Reg. 46340 available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p124085.pdf>

¹⁴ Notice of Filing of Amendment No. 1 to Proposed Rule Change To Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook 76 Fed. Reg. at 46344

Conclusion

We are committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA to enhance investor protection and broker-dealer compliance efforts. As a result, we support the Proposed Rule's adoption.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8488.

Respectfully submitted,

David T. Bellaire, Esq.
General Counsel and Director of Government Affairs