



VOICE OF INDEPENDENT BROKER-DEALERS
AND INDEPENDENT FINANCIAL ADVISORS

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VIA ELECTRONIC MAIL

November 14, 2011

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

RE: SR-FINRA-2011-052 - Proposed Rule Change to Adopt NASD Rule 2320 (Best Execution and Interpositioning) and IM-2320 as FINRA Rule 5310 in the Consolidated FINRA Rulebook

Dear Ms. Murphy:

On October 4, 2011, the Financial Industry Regulatory Authority (FINRA) filed with the Securities and Exchange Commission SR-FINRA-2011-052 (Proposed Rule).¹ Under the Proposed Rule, FINRA seeks to adopt NASD Rule 2320 (Best Execution and Interpositioning) and IM-2320 (Interpretive Guidance with Respect to Best Execution Requirements) as new FINRA Rule in the Consolidated FINRA Rulebook. The Proposed Rule would make several changes. First, the Proposed Rule will replace the "Three Quote Rule" with Supplementary Material designed to emphasize a member's best execution obligations with respect to securities with meager pricing information. Second, the Proposed Rule will codify a member's obligations with respect to conducting a regular and rigorous review of execution quality. Third, the Proposed Rule will include new Supplementary Material outlining members' best execution obligations regarding orders for foreign securities. Finally, FINRA proposes to include Supplementary Material that addresses members' obligations where, on an unsolicited basis, a customer has provided specific instructions for a member to route an order to a particular market.

The Financial Services Institute (FSI)² welcomes the opportunity to comment on the Proposed Amendments. We support FINRA's efforts in connection with the FINRA Rulebook consolidation process. However, we have concerns regarding the certain aspects of the Proposed Rule and seek clarification regarding these issues. These concerns are discussed in detail 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

¹ Available at <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p124496.pdf>.

² 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 125 independent broker-dealers and more than 31,000 independent financial advisors, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, D.C.

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.³ 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.⁴ 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.

Comments on the Proposed Amendments

As noted above, FSI welcomes the opportunity to comment on the Proposed Amendments. While we applaud FINRA's efforts to improve investor protection through the Proposed Rule, we have a concern that we urge FINRA to consider.

In Regulatory Notice 08-80 (Regulatory Notice)⁵, FINRA had initially proposed to adopt a new provision regarding member best execution obligations in connection with orders for foreign securities with no US market. Under the provisions proposed in the Regulatory Notice, FINRA would have deemed a member to have met its best execution obligations if the specified requirements had been met. These requirements included:

³ Cerulli Associates at <http://www.cerulli.com/>

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisors.

⁵ Available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p117553.pdf>.

1. Having written policies and procedures regarding the members handling of orders for non-U.S. traded securities, reasonably designed to obtain the most favorable terms;
2. Reviewing such written policies and procedures at least annually, to ascertain whether such policies and procedures needed to be updated;
3. Obtaining client consent to such policies and procedures; and
4. Handling orders for foreign securities in accordance with such policies and procedures.

In response to comments received regarding the proposed requirements in the Regulatory Notice, FINRA removed the provisions providing specific requirements and replaced them in the Proposed Rules with Supplementary Material that provides a general outline on member obligations.

While we understand that there are benefits to having broad principles that outline a member's obligations, providing specific requirements, such as those contained in the Regulatory Notice, provide a level of certainty that facilitates compliance with FINRA rules. In order to provide increased certainty, we urge FINRA to provide additional guidance regarding the manner in which a member firm may comply with its best execution obligations with respect to orders for foreign securities with no US market under the Proposed Rule. Specifically, we urge FINRA to amend the Supplementary Material to include the expectation that member firms draft and maintain written policies and procedures regarding these foreign securities that include the following elements:

1. Are reasonably designed to obtain favorable terms,
2. Provide reasonable notice to customers of the policies and procedures,
3. Require periodic review for compliance with policies, and
4. Require periodic review of the policies themselves to ensure that they meet the requirements of this rule.

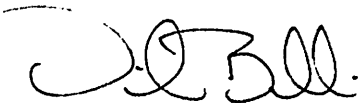
Such a requirement will allow firms to develop clear standards and facilitate compliance with the rule.

Conclusion

We remain 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.

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

Respectfully submitted,



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General Counsel and Director of Government Affairs