



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

October 31, 2014

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 14-35: Customer Account Statements

Dear Ms. Asquith:

On September 16, the Financial Industry Regulatory Authority (FINRA) published a request for comment on a revised proposal to transfer current NASD Rule 2340 (Customer Account Statements) and Incorporated NYSE Rule 409 (Statements of Accounts of Customers) into the consolidated FINRA rulebook as FINRA Rule 2231 (Customer Account Statements). The revised proposal would require firms to send account statements at least once each calendar quarter to each customer whose account had activity during the period since the last statement was sent to the customer. The proposal would also allow customers to direct transmission of customer account statements and other documents to third parties, provided the firm sends duplicate statements directly to the customer.

The Financial Services Institute¹ (FSI) appreciates the opportunity to comment on this Regulatory Notice. FSI applauds FINRA for revising its proposal in light of concerns from commenters to the earlier proposal. FSI previously expressed concerns regarding the proposed monthly delivery requirements, and supports the new approach that FINRA has proposed through this Regulatory Notice. While we appreciate and understand the concerns underlying the proposed requirement that firms send duplicate statements and other documents to customers in situations where customers have chosen to direct transmission to a third-party, under certain circumstances these requirements may lead to customers being exposed to additional risks. We expand on these comments 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

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.

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.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.

Comments

FSI appreciates the opportunity to submit comments on Regulatory Notice 14-35. FINRA's original proposal would have made significant changes to the existing rules, specifically with a requirement that the existing quarterly customer account statement delivery requirement be replaced with a monthly delivery requirement for each account that had activity during the monthly period. FSI commented on the costs that customers would bear under the requirement compared with proposed benefits from implementing the change. FSI also supported the adoption of the amended proposal, which would have made meaningful changes with respect to the types of account activities to be excluded from the monthly delivery requirements. FSI applauds FINRA for the revisions made to this rule in light of comments, specifically the decision to maintain the quarterly account statement delivery requirements. With regard to the proposed Supplementary Material limiting the customer's ability to decline to receive customer account statements, FSI provides the following comments:

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

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

- **Considerations for Elderly Customers:** FSI and its members are committed to the prevention of elder financial abuse and exploitation. To that end, we believe the proposed requirement regarding the transmission of duplicate statements or other communications may require additional guidance or clarification to avoid the potential unintended consequence of increasing risks to elderly clients. FSI suggests that FINRA provide specific exceptions for instances where clients can decline to receive duplicate statements because it would be against their best interest. Below FSI provides specific examples:
 - *Residential Care Facilities:* Where elderly clients are living in nursing homes, intermediate care facilities, or are provided ongoing in-home care, these customers will often not be able to keep these statements private from third-parties with whom they do not have a trusted relationship. If a client in this type of situation provides specific instruction to have statements and other documents sent to a third-party, FINRA could provide an exception from the requirement to send a duplicate statement to the client.
 - *Elderly Investors Who Raise Suspicions Regarding Potential Financial Abuse:* In some instances elderly or vulnerable people themselves may raise suspicions to their financial advisor or an authority, such as FINRA or a county or state body, that they are being taken advantage of or their accounts are being compromised by a caretaker or family member. This could also occur with investors under a conservatorship or guardianship. In these instances, FINRA could allow an exception from the requirement to send duplicate statements.

The issue of financial exploitation of the elderly is a major concern shared by the public, regulators, and the financial industry. Often, it is FSI member firms and financial advisors who are the first to notice early signs of diminished capacity or to identify and raise suspicions of situations where an older client is potentially being financially exploited by others. In response to this growing need, FSI created a resource center website to assist firms and financial advisors in identifying and reporting elder financial abuse, which includes reporting information for all 50 states.⁴ Given the importance of the issue and the concern shared across the board, we urge FINRA and the SEC to consider the above situations when finalizing this proposal.

- **Additional Considerations for Deceased or Impaired Customers:** In addition to considerations regarding elderly or incapacitated clients, FSI also notes an additional circumstance where it may be in the best interest of the client to be able to decline delivery of their statement:
 - *Executors of Estates and Letters of Testamentary:* The revised rule does not provide guidance or exception for legal executors of a decedent's estate and letters of testamentary. In instances where a legal representative of the estate requests that customer statements be sent to a third party, duplicates would still be sent to the decedent's address. FINRA should consider providing an exception from the requirement in these circumstances.
 - *Vision Impaired Clients:* Clients suffering from vision impairments such as blindness may justifiably worry about their ability to maintain the privacy of sensitive documents they receive. In these situations, having these documents sent only to a trusted third-party such as a relative or individual with power of attorney may be

⁴ <http://www.financialservices.org/elderabuse/>

the most appropriate method of maintaining privacy and avoiding potential misappropriation or abuse. FINRA should provide exceptions for these instances as well, including conditions where a signature is not required by the client.

These situations are just two examples of situations where it may be contrary to the investors' best interest that they receive duplicate statements. There are additional scenarios that would present the same concerns under slightly varying circumstances.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with FINRA 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" followed by "Bellaire".

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