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MAR 15 2011

FINRA
Notice to Members

March 11, 2011

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

Re: Notice 11-08 Markups, Commissions and Fees

Dear Ms. Asquith:

I am submitting this comment regarding Notice 11-08 Markups, Commissions and Fees. I respectfully request that FINRA reconsider portions of the proposal. I sincerely agree that clients should be fully aware of the fees and commissions that are charged in relation to transactions and services provided by their brokerage firm. I also think that most if not all of the clients are cognizant of the structure of commissions and fees prior to and during their relationship with their brokerage firm. Much like other services that an individual inquires about or receives, there is always discussion regarding the costs they will incur. Providing the client with additional disclosure will not afford them with better information -- just additional paperwork and confusion. In addition to complicating an already overburdened system of paperwork for the client, the proposal is muddying what is already a subjective rule with less guidance.

There are five areas to this proposal that I will address. First, in the current NASD Rule 2440, it states "he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including … the fact that he is entitled to a profit." The new rule would state "the fact that the member is entitled to remuneration." The difference between these two statements is vast. A profit is considered a positive gain from an investment or business operation after subtracting all expenses while remuneration is defined as compensation or payment. In our specific case, there are numerous trades where we do not make a profit but for which we do receive remuneration. Any business would fail if all they considered was compensation. The proposal does not even use a qualifier along with remuneration such as fair or reasonable.

Second, regarding the current "5% policy" this has proven to be an additional trigger in reviewing our trades to insure that the clients are paying a fair and reasonable commission on trades. Part of our process is to further scrutinize trades that fall at, or above the 5% range. Without such a benchmark, reviewing commissions would become more cumbersome. In addition, stating that 5% is well above the industry average based upon a study that was completed in 2007 with data from 2004 from a group based on low priced, less liquid securities, and firms that had compliance issues on their record and tended to be small and medium in size is much more of a qualitative study than a quantitative one. The proposal seems to indicate that based upon this study, which did not provide an overview of the industry but an extremely skewed one, that we should be charging approximately two percent. Had the study been done on a wider spectrum of business models, securities, prices and in a timelier manner then it may have provided a better view of the industry. While the "5% policy" may be outdated, the data provided in the proposal is not accurate or timely and lowers the "policy" by more than 50%. Removing the "policy" would also make the exam process more subjective. The examiners may see a commission, no matter how low, as excessive and proving that it is not would come down to a he said/she said situation.

Third, as addressed briefly above providing standard commission charges disclosure for new clients, as changes occur and on an annual basis, will be unwieldy for the client to review and the firm to produce. In reviewing our clearing firm's commission schedule, I sorted through a document of over 100 pages. This is not a document that will be user friendly to any knowledgeable client much less the average investor. The fact that the schedule can be negotiated would not provide <u>all</u> clients with accurate information. They would still be operating without complete disclosure. Also, what would prevent a firm from having a standard commission schedule and then negotiating with each individual client? Compliance departments and examiners would not be able to review each agreement and know for certain that the client was paying the negotiated charge unless an exorbitant amount of time and funds were expended. Then, what would be the benefit of a standard commission schedule?

Fourth, publishing these "standard" commission schedules would not permit the client to evaluate the benefit of one firm in comparison to another as full disclosure has not been made. Having this type of information available to competitors would not necessarily result in lower commissions but in a smaller pool of firms for the client to choose from. As a small introducing firm, we already compete with the online firms, banks, and larger firms. Now you are forcing us to give our competitors information about our business model.

Fifth, disclosing fees and charges for services to clients would result in the client receiving, in our case, documents from both us and our clearing firm. This would be confusing to the client and could result in additional difficulties for them. If we state that we would negotiate fees and the client wishes to do so for an annual fee charged by the clearing firm how would we proceed? Will our clearing firm have to disclose ticket charges? What about other fees associated with trades, SEC fees and Exchange fees? Who would document these?

In conclusion, I agree that the client must come first and they should be treated fairly both from an economic and service perspective. Inundating them with additional disclosures that they would glean little from would not benefit them. Changing the markup, commission and fees rules as stipulated in Notice 11-08 would not result in more clarity or reasonable charges for the client. It would give more convoluted documents to an already overburdened client, stifle competition, inject more subjective processes into exams, increase the burden on an already overloaded compliance staff, and not provide benefits for either the client or the firm.

Respectfully,

Alesia A. Mullis

Alesia A. Mullis
Chief Compliance Officer