

VIA ELECTRONIC MAIL

March 27, 2017

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

Re: Regulatory Notice 17-06; Proposed Amendments to Rules Governing Communications with the Public

Dear Ms. Asquith:

On February 6 2017, the Financial Industry Regulatory Authority (FINRA) published its request for public comment on proposed amendments to FINRA rules governing Communications with the Public (Proposed Amendments).¹ The Proposed Amendments would create an exception to the current prohibition on communications projecting performance, allowing firms to distribute a customized hypothetical investment planning illustration if it does not project the performance of individual securities.

The Financial Services Institute² (FSI) appreciates the opportunity to comment on this important proposal. FSI and its member firms strongly support regulatory harmonization among the financial regulators and support FINRA's efforts to establish uniform regulatory requirements for broker-dealers and investment advisers in their communications with the public. The Proposed Amendments resulted from FINRA's retrospective review of existing rules, which FSI believes is essential to efficient regulation. We provide specific supportive comments below.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the US, there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all producing registered representatives.³ These financial advisors are self-employed independent contractors, rather than employees of the Independent Broker-Dealers (IBD).

¹ Financial Industry Regulatory Authority, Inc. (FINRA), Regulatory Notice 17-06, Communications with the Public (February 2017), available at: <http://www.finra.org/industry/notices/17-06>.

² The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

³ The use of the term "financial advisor" or "advisor" in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a

FSI's IBD member firms provide business support to independent financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners with strong ties to their communities and know their clients personally. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans. Their services include financial education, planning, implementation, and investment monitoring. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide Main Street Americans with the financial advice, products, and services necessary to achieve their investment goals.

FSI members make substantial contributions to our nation's economy. According to Oxford Economics, FSI members nationwide generate \$48.3 billion of economic activity. This activity, in turn, supports 482,100 jobs including direct employees, those employed in the FSI supply chain, and those supported in the broader economy. In addition, FSI members contribute nearly \$6.8 billion annually to federal, state, and local government taxes. FSI members account for approximately 8.4% of the total financial services industry contribution to U.S. economic activity.⁴

Discussion

FSI appreciates the opportunity to comment on the Proposed Amendments. FSI supports consistency across the financial regulators and commends FINRA's efforts to establish uniform regulatory requirements for communications with the public among investment advisers and broker-dealers.

A. Inconsistency Between FINRA and SEC Rules Favors One Business Model Over Another

Current FINRA rules prohibit broker-dealers and their registered representatives from predicting or projecting performance of an investment strategy. This prohibition is in place to protect investors from spurious, inaccurate, or misleading performance projections of individual investments. However, investment advisers are not subject to such a prohibition under the '40 Act⁵ and in fact often provide performance projections to clients as a part of their financial planning or asset allocation process. The resulting inconsistency between regulatory standards may result in competitive imbalances and create opportunities for regulatory arbitrage. Harmonizing the rules for investment advisers and broker-dealers will eliminate confusion for firms and investors.

B. Impact on Dually Registered Reps

This inconsistency between regulatory regimes also creates a lack of clarity over which communications rules apply to financial advisors who act in both the broker-dealer capacity or as a Registered Investment Advisor under the '40 Act depending on which services they are

dual registrant. The use of the term "investment adviser" or "adviser" in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

⁴ Oxford Economics for the Financial Services Institute, *The Economic Impact of FSI's Members* (2016).

⁵ The Investment Advisers Act of 1940, 15 U.S.C. §80b-1 et seq. (amended January 3, 2012) available at <https://www.sec.gov/about/laws/iaa40.pdf>

providing to their clients. Firms that are dually-registered or representatives who are dually-registered, may already be providing information regarding projected performance to their investment advisory clients. Allowing dually-registered firms or representatives to align the way they provide projections would simplify compliance and minimize the cost of regulatory oversight.

Given the current lack of regulatory consistency and the confusion that having two standards creates for FSI's dually registered members, FSI supports the Proposed Amendments. The Proposed Amendments allow broker-dealers to utilize asset allocation illustrations and models in the same way that investment advisers do, provided they do not make specific projections about individual investments. Investors benefit from a better understanding of the assumptions on which an advisor's recommendation to pursue a particular investment strategy is based. Allowing advisors to provide projections in this limited context and with sufficient disclosures is beneficial to investors while making it clear that the performance of an individual security is not guaranteed. We further believe the Proposed Amendments include sufficient supervisory requirements for such illustrations: either they can be generated using a template that has been approved by a Registered Principal before its use or distribution, or each illustration can be approved individually prior to its use or distribution in a similar manner to FINRA Rule 3001 (Supervision), providing firms with key flexibility in their use of asset allocation models and illustrations. FSI believes these specific supervisory requirements will help educate investors on options available to them while still protecting them from misleading performance projections.

C. Retrospective Rule Review

The Proposed Amendments have resulted from FINRA's retrospective review of its rules governing Communications with the Public. Retrospective review of existing rules is essential to smart, efficient regulation. The review is intended to assess whether the rules are meeting their intended objectives and to take steps to maintain or improve their effectiveness while minimizing negative economic impacts. The multi-step process sought comment from the industry, subject matter experts, and outside counsel; and included a cross section of firm sizes and business models. The Proposed Amendments came out of a thoughtful process of examining the Communications with the Public Rules and the process included gathering input from the industry, including FSI, and other stakeholders. FSI and its members applaud FINRA's efforts to reexamine rules, like the Communications with the Public Rules, that they know to be historically frustrating or confusing to their members.

Conclusion

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

Thank you for considering FSI's 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