December 17, 2010

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

Re: Concept Release for Broker-Dealer Disclosure Statement
Regulatory Notice 10-54

Dear Ms. Asquith:

TIAA-CREF Individual & Institutional Services LLC ("TC Services") writes in response to FINRA Regulatory Notice 10-54. That notice seeks industry comment as to the development of a disclosure statement for broker-dealers to provide to clients upon the establishment of a business relationship. FINRA contemplates this disclosure would discuss the broker-dealer's products and services, duties and potential conflicts of interest.

TC Services supports the development of a disclosure statement and offers the following comments with regards to tailoring the disclosure to be more helpful and relevant for investors:

- FINRA suggests the appropriate point in time to deliver the disclosure statement is at the establishment of a relationship. We believe this an appropriately flexible trigger point as it seemingly recognizes that the establishment of a relationship may not always be as formulaic as at the time of an account opening. This can often be the case with broker-dealers that support employer sponsored retirement plan participants.

- The notice contemplates allowing broker-dealers to deliver the disclosure in two parts—i.e., a layered approach. We support this option. We envision it would result in broker-dealers first providing a concise written statement at the outset of the relationship. This initial disclosure would provide an overview of products and services, general conflicts of interests and any limitations on the services provided. This initial document would then prominently refer to a website where the broker-dealer would provide more detailed product specific disclosures, such as fee schedules for each product. We are concerned that the alternative "all in up front" approach will overwhelm the investor with disclosure not relevant to their particular relationship and not address investor preference with regards to the use of the Internet.

- While we agree it prudent for FINRA to begin seeking comment on a framework for a broker-dealer disclosure statement, we also believe FINRA must coordinate any subsequent rulemaking with the Securities and Exchange Commission ("SEC") given the SEC's anticipated similar rule making efforts pursuant to section 913 of the Dodd-Frank Act.

I. THE DEFINITION OF WHEN A RELATIONSHIP IS ESTABLISHED SHOULD ACCOMMODATE DIFFERENT BUSINESS MODELS

A broker-dealer may not always establish a relationship with a client at the time of account opening. FINRA should interpret "the establishment of a relationship" broadly enough to include that point in time when an investor first initiates meaningful direct contact with the broker-dealer. This type of flexibility is particularly important to broker-dealers who provide a limited set of support services to employer sponsored retirement plan participants.

By way of background, TC Services is a SEC registered broker-dealer and part of the TIAA-CREF group of companies which together support the financial needs of over 3.7 million clients. The majority of these clients are investors in employer sponsored retirement plans administered by TIAA, a New York based insurance company.

While TIAA serves as record keeper and administrator for these plans, TC Services through its registered representatives supports the individual investing needs of the participants. This support ranges from responding to routine matters such as balance inquiries to requests for advice as to investing in an appropriately diversified portfolio of mutual funds and annuities from the plan's available investment menu. While there are numerous different services a registered representative can provide to a participant, they generally fall into two categories—self directed/administrative or advised/solicited transactions.

Regardless of category, these brokerage services are not available until sometime after the time of "account opening". And the account opening process itself—i.e., enrollment through their plan sponsor in the sponsor's plan—does not result from the establishment of a relationship with TC Services. Rather, a retirement plan participant generally enrolls in a retirement plan through his or her employer as part of the new employee on-boarding process or is automatically enrolled in the plan by the employer upon employment. TC Services is not generally involved with either enrollment scenario.

Nor do plan participants ever establish an account with a broker-dealer. Rather, the plan sponsor establishes an omnibus account with an independent custodian such as a bank and the record-keeper records the individual participant's interest in the assets deposited directly by the plan sponsor with the custodian. TC Services does not handle monies associated with the plan nor serve as custodian. The plan assets are not attributable to TC Services for purposes of calculating its minimum net capital or customer reserve requirements.

Nonetheless, plan participants do eventually establish a relationship with TC Services. TC Services' first contact with a participant is generally when the participant phones a call center staffed by TC Services registered representatives for assistance or meets with a registered representative during a scheduled visit on the premises of the employer. TC Services believes the manner in which it supports employer sponsored retirement plans is generally similar to how other broker-dealers affiliated with plan record keepers support retirement plans and their participants.

Given the above, TC Services believes the most relevant point in time to view when a retirement plan participant establishes a relationship with a broker-dealer for purposes of triggering a disclosure statement delivery obligation is when the participant seeks advice as to a securities transaction. TC Services submits this as an appropriate bright line standard for broker-dealers supporting retirement plans. Prior to that point in time, the participant is either not using the services of the broker-dealer or is simply using the broker-dealer to place self directed transactions or handle administrative account inquiries.

Within the context of a retirement plan, requiring the delivery of a disclosure statement prior to that point in time is neither practical nor helpful to the client. Prior delivery is not practical because enrollment generally takes place without the involvement of the broker-dealer. Moreover, most of the initial communication between the broker-dealer registered representatives and plan participant occurs through brief phone queries—a medium through which it is difficult to concurrently deliver a written disclosure statement. Prior delivery is not helpful because the types of harms FINRA seeks to address through the disclosure statement and Regulatory Notice 10-54 are not generally present with routine account inquiries and self directed transactions. An advice session represents the first meaningful contact between a plan participant and broker-dealer where a disclosure of services and potential conflicts is relevant to the participant.

In addition, we believe FINRA should allow a broker-dealer to tailor its disclosure statements for distinct groups of clients such as retirement plan participants, much like the SEC permits investment advisers to do with the Form ADV. To require otherwise will result in client segments like retirement plan participants receiving irrelevant disclosure as to brokerage products and services—e.g., margin—not available to them.

II. THE BENEFITS OF A LAYERED APPROACH TO DISCLOSURE

FINRA should allow broker-dealers to deliver the contemplated disclosure in a layered format that initially provides a concise written disclosure document—e.g., two pages—and then a reference to the broker-dealer's website for more specific detailed disclosure. We believe investors would prefer the simplicity offered by this approach. The initial written disclosure would discuss general services and conflicts of interest while the more detailed web version would address disclosures with respect to particular products.

Reserving the detailed product specific disclosure for the Internet allows clients to quickly jump via hyperlink to the disclosure relevant to their particular relationship. An Internet based approach also allows firms to keep the disclosure "evergreen" and eliminates the need for an annual re-offering of the disclosure document.

Investors are comfortable with using the Internet to obtain investment information. The Investment Company Institute ("ICI") found in a recent study that 95% of investors surveyed use the Internet and that 90% of those surveyed "agree or strongly agree with the statement that 'getting investment information online is the wave of the future.'"[1] The ICI survey also found that almost 90% of investors overall and more than 80% of mutual fund investors who access the Internet use it to gather financial information.[2]

For those clients not yet comfortable accessing information via the Internet, the initial written disclosure statement could provide a toll free phone number through which an investor could obtain a written version of the Internet based disclosure.

Besides prominent disclosure in the initial written disclosure document, FINRA has several other options for further enhancing the visibility of the Internet disclosure. FINRA could require firms disclose the website address prominently near the client signature line on new account forms, much like is done today with the bolded arbitration clause notice. FINRA could also consider requiring firms add disclosure on quarterly statements reminding investors of the evergreen Internet disclosure. FINRA could require broker-dealers add short disclosure to firm advertisements and sales materials, such as, "please refer to www.tiaa-cref.org/brokerdisclosures for a complete description of services and potential conflicts of interest, or call 1-800-555-5555 for a free written copy."

FINRA can look to other regulatory precedent when considering a hybrid approach of both written and Internet based disclosure:

- Proxy Rules. Rule 14a-16(d) under the Securities Act of 1933 ("Securities Act") governs the contents of the notice that an issuer must send to its security holders in connection with the availability on the Internet of proxy material for that issuer. The rule requires the notice to state that if the security holder wants a paper copy of the proxy material, the security holder must request one. It also requires that the notice provide the security holder with a toll-free phone number, email address and Internet website where current and future proxy material in paper form can be requested.

[1] "Investor Views on U.S. Securities and Exchange Commission's Proposed Summary Prospectus" (March 14, 2008) at 19, *available at* http://www.ici.org/stats/res/ppr_08_summary_prospectus.pdf.

[2] *Id.*

- Mutual Fund Summary Prospectus. Pursuant to Rule 498 of the Securities Act, the SEC permits mutual funds to use a new summary section of the prospectus as an optional "summary prospectus" to satisfy the fund's prospectus delivery requirements under Section 5(b) of the Securities Act. Funds are permitted to use short-form summary prospectuses only on the condition that they make their full statutory prospectus and other specified fund documents available on the Internet, with paper copies available upon request. The Commission stated that this approach is "intended to provide investors with better ability to choose the amount and type of information to review, as well as the format in which to review it (online or paper)."[3]

III. FINRA SHOULD COORDINATE RULE MAKING WITH THE SEC

We agree FINRA should begin seeking comment as to an appropriate framework for a broker-dealer disclosure statement. Nonetheless, we also believe FINRA must coordinate any rulemaking in this area with the SEC given that agency's authority under section 913 of the Dodd-Frank Act to consider similar disclosures for broker-dealers. Section 913 requires the SEC "facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers and investment advisers, including any material conflicts of interest." It also contemplates broker-dealers disclosing if they offer only a limited range of products.

There is also one other pending regulatory proposal that further makes coordination with the SEC worthwhile. The SEC recently proposed significant changes to rule 12b-1 of the Investment Company Act of 1940—the pending 12b-2 proposal. As part of this proposal, the SEC proposes to require broker-dealers to provide certain fee disclosure within the confirmation statements required by Rule 10b-10 of the Securities Exchange Act of 1934. We ask FINRA coordinate its proposed disclosure statement framework with this portion of the 12b-2 rule proposal to avoid duplicative disclosure requirements.

[3] Securities Act Rel. No. 8998 (Jan. 13, 2009).

IV. CONCLUSION

We very much appreciate the opportunity to comment on this proposal and FINRA's continued focus on protecting the interests of investors. Should you wish to discuss our comments, please contact the undersigned at 303.626.4229.

Very truly yours,

Adym W. Rygmyr
Associate General Counsel
TIAA-CREF Individual & Institutional Services, LLC

cc: Mary L. Schapiro, Chairman
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