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Deputy General Counsel
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BY ELECTRONIC MAIL

December 20, 2010

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

Re: Comments on Regulatory Notice 10-54: Disclosure of Services, Conflicts and Duties

Dear Ms. Asquith:

Bank of America¹ (the “Firm”) respectfully submits this letter in response to Financial Industry Regulatory Authority, Inc. (“FINRA”) Regulatory Notice 10-54 (the “Concept Proposal”). The Concept Proposal would require FINRA member firms to make a written disclosure to clients describing the types of accounts and services provided by the firm, as well as any potential conflicts of interest between the firm and clients, at the start of a relationship.

Bank of America believes investors will benefit from the sort of simple, clear, upfront disclosures described in the Concept Proposal. We believe these disclosures will help investors choose among a variety of products and levels of service, decide how they want to interact with financial professionals, and decide how to pay for those services. Bank of America is committed to communicating about our Firm, and the products and services we offer, in plain-English. Bank of America also is committed to delivering communications about our Firm to clients according to their preference for receiving this type of information (e.g., in hard copy or electronically).

¹ Bank of America Corporation is one of the world’s largest financial institutions, serving its clients with a full range of banking, investing, asset management and other financial and risk management products and services. It is among the world’s leading wealth management companies. Bank of America Corporation stock (NYSE: BAC) is a component of the Dow Jones Industrial Average and is listed on the New York Stock Exchange.

I. Bank of America encourages FINRA to work closely with the SEC.

Bank of America believes investors will benefit from close coordination between FINRA and the U.S. Securities and Exchange Commission (“SEC”) to ensure any rulemaking that flows from the Concept Proposal fits together with any action taken by the SEC to harmonize the standard of care for all financial professionals.²

Bank of America encourages FINRA and the SEC to reevaluate the overall disclosure regime for investors. We believe that information about our Firm should be clear, in plain-English, and meaningful whenever it is delivered to clients – not just at the beginning of a relationship, as set forth in the Concept Proposal. Accordingly, Bank of America will continue our work to refine client communications in line with the enhancements described in FINRA’s Concept Proposal and as described below.

II. Any new rule should require that the upfront disclosure document be concise and presented in plain-English.

Bank of America supports a requirement that the contemplated disclosures be drafted in plain-English so they are easily understandable to the largest number of clients.³ We are in the process of reviewing many of our client communications – in the banking, lending, and investment space – in order to provide clients with easy access to clear and meaningful information about the Firm and its services.

We believe some of the details included in the Concept Proposal are too specific and complex for an upfront disclosure document. For example, the Concept Proposal suggests the disclosure would describe “all fees associated with each brokerage account and service offered to retail customers, a specific description of the service provided for each fee and whether fees are negotiable.”⁴ We believe it would be more appropriate to explain the different types of fees (e.g., transaction-based fees, asset-based fees, payments from third-parties) and explain that varying rates may be available based on the type and level of service or product requested, the volume of transactions executed through the firm, and other factors. This more general disclosure will provide clients with sufficient information to make informed choices without becoming so lengthy as to be unclear or confusing to clients.

² As required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the SEC is conducting a study of the standards of care that apply to brokers and advisers and may issue rules applying a fiduciary duty to brokers providing personalized advice to retail investors. See Bank of America comment letter to Elizabeth M. Murphy, Secretary, SEC (Aug. 30, 2010), available at www.sec.gov/comments/4-606/4606-2583.pdf (expressing support for applying a fiduciary duty in connection with the provision of personalized investment advice to individual investors and emphasizing that any new, harmonized standard of care should be applied in a manner that would preserve the range of products and services currently available and their pricing structures).

³ The Concept Proposal indicates that the FINRA Staff conceived of an upfront disclosure document similar in purpose to Form ADV. We note that the recent amendments to Form ADV, Part 2 were motivated in large part by a desire to make the information therein truly accessible to investors. See, e.g., SEC Press Release Announcing Form ADV Amendments (July 21, 2010), available at <http://www.sec.gov/news/press/2010/2010-127.htm> (noting that the old format required advisers to respond to a series of multiple-choice and fill-in-the-blank questions organized in a “check-the-box” format that was not always conducive to describing the adviser’s business or conflicts in a user-friendly manner).

⁴ See FINRA Regulatory Notice 10-54 (Oct. 2010) (emphasis added).

III. Any new rule requiring an upfront disclosure document should give member firms a reasonable amount of latitude to determine the document's content as well as the frequency and method of delivery.

A. *Flexibility on Document Content*

As noted, Bank of America believes that, so long as a firm clearly and accurately presents information about its services, conflicts, and duties, it should be given flexibility in determining how to structure the upfront disclosure document and how much detail to include.

Bank of America offers a wide range of brokerage and investment advisory services to clients to meet their preferences for interacting with the Firm (e.g., online or self-directed, full-service brokerage, and/or an investment advisory relationship). Providing clients with detailed information about each of the Firm's services and the corresponding duties would make an upfront disclosure document far too long, and thus ineffective.⁵ Instead, and as noted in the preceding section, we believe an upfront disclosure document would better serve clients by providing them with an initial *overview* of the Firm's services, conflicts, and duties, and then refer clients to other sources for more specific and pertinent information (e.g., the Firm's website with product- or service-specific information, a contact number for questions, or the client's Financial Advisor).

Bank of America already provides a number of disclosures to our clients during the course of their relationship with us.⁶ We expect that those specific disclosures will continue to focus our clients' attention on particular issues when they are most relevant.⁷

B. *Flexibility on the Frequency of Delivery*

We support a requirement that firms deliver the type of disclosure contemplated by the Concept Proposal no later than the date a client signs an account agreement or makes the first trade, whichever occurs later.

Bank of America has heard from clients that they are frustrated with the frequency and volume of the required disclosures they receive from us. Accordingly, while firms should be required to periodically review and update their client disclosures so that material changes are reflected, they should be given flexibility on how and when to communicate those changes. For example, firms should be able to point existing clients to where the current disclosure document is available and updated (e.g., in a notice accompanying a periodic account statement or in an email referring clients to a portion of the Firm's website with the most current version of the disclosure document), so firms can keep clients informed without adding to the volume of

⁵ Furthermore, we believe it is unnecessary for firms to include in an upfront disclosure document a list of the services or products that they do not offer.

⁶ "Firms would continue to provide the more particularized sales practice disclosures currently required in interactions between registered representatives and customers." FINRA Regulatory Notice 10-54 (Oct. 2010).

⁷ For example, product-related disclosures may be most meaningful to a client when provided in the context of a potential transaction in the product.

materials they already receive. However, firms should be required to deliver a copy of their current disclosure document to clients at any time upon request and according to the client's preference (*i.e.*, hard copy or electronic).

C. *Flexibility on the Method of Delivery*

While the accessibility, content, and frequency of disclosures are very important, the mechanism for delivery is equally important. Any rulemaking under the Concept Proposal should allow clients to choose the method of delivery for the upfront disclosure document as well as notifications about subsequent material changes. For example, if a client has consented to electronic delivery of documents, we believe it would be reasonable for Bank of America to accommodate that preference and deliver the upfront disclosure document exclusively through electronic means.

While Bank of America agrees that the upfront disclosures should be communicated in a "written statement," it should not be required that the statement be limited to those disclosures contemplated by the Concept Proposal.⁸ Rather, firms should be given latitude to incorporate other information that is pertinent to clients at the beginning of their relationship. Furthermore, including the upfront disclosures in a package of other documents and/or agreements that may be provided at the outset of a client relationship should be permitted. In other words, it should not be required that the upfront disclosure be a standalone document.

IV. *A new upfront disclosure document should be delivered only to new clients.*

A rule pursuant to the Concept Proposal should require delivery of an upfront disclosure document only to new clients who establish an initial relationship with a brokerage firm after the effective date of the rule. We do not want to confuse our existing clients by delivering to them a disclosure document designed specifically to inform *new* investors. We believe applying any new rule retroactively could inadvertently undermine our efforts to provide clients with information that is meaningful, delivered at the appropriate time in their relationship, and not overwhelming. Accordingly, Bank of America encourages FINRA to allow firms flexibility in providing existing clients with disclosure documents under any new requirements.⁹

Requiring delivery of the disclosure document at the client/decision-maker-level rather than the account- or service-level also will avoid overwhelming clients through the receipt of multiple copies of the same information where they have many relationships with a broker-dealer or as their relationship evolves and grows. For example, a client with an individual account, an IRA account, a joint-account, and an UTMA/UGMA account for his or her child should not have to receive the upfront disclosure document four times due to the different account ownership and the distinct investment objectives and risk tolerances attached to each account.

⁸ See FINRA Regulatory Notice 10-54 (Oct. 2010).

⁹ As noted above in Section III.B., we believe it would be reasonable for FINRA to require firms to deliver a copy of their then-current upfront disclosure document to existing clients at any time upon request.

V. FINRA should provide adequate time for firms to deal with the significant implementation challenges that any rulemaking under the Concept Proposal will present.

We expect that as firms are developing an upfront disclosure document pursuant to a FINRA rulemaking, they also will be faced with operational challenges in connection with an SEC rule requiring firms to transition to a harmonized standard of care for all financial professionals providing personalized investment advice to individual investors. A harmonized standard of care will entail a whole range of systems changes, as well as the development and implementation of training programs and amendments to policies and procedures. We encourage FINRA to work in tandem with the SEC in setting reasonable effective dates for new rules.

VI. Conclusion.

In summary, Bank of America strongly supports FINRA's proposal to enhance disclosures to investors by requiring firms to provide a succinct and understandable disclosure document at the outset of a client relationship. We look forward to providing additional comments if and when FINRA publishes a proposed rule.¹⁰

If you have any questions, or if we can provide any further information, please contact me at 646-855-1180.

Sincerely,



R. Scott Henderson

cc: Richard G. Ketchum, Chairman and Chief Executive Officer, FINRA
Eric Levine, Senior Regulatory Coordinator, FINRA

¹⁰ We expect that, at the time of a proposed rule, commenters, including Bank of America, will have the benefit of the results of the SEC study on the obligations of brokers, dealers, and investment advisers. See SEC Release No. 34-62577.