

December 22, 2010

Via email to pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, N.W.
Washington, D.C. 20006-1506

Re: FINRA Regulatory Notice 10-54

Dear Ms. Asquith:

Janney Montgomery Scott LLC (“**Janney**”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“**FINRA**”) Regulatory Notice 10-54 (the “**Concept Proposal**”). The Concept Proposal asks whether FINRA members should be required to provide a disclosure statement to retail investors at or before the member commences a business relationship with such an investor, and poses wide ranging questions about the nature and extent of this disclosure statement.

Janney supports initiatives designed to provide full, fair and transparent disclosure to clients in a clear, efficient and useful manner. For the reasons specified below, we believe that the timing of the Concept Proposal is premature and may not result in clear, efficient and useful disclosure, particularly in a time of rapidly evolving regulatory and fiduciary reform.

We are the largest full-service securities brokerage firm headquartered in Pennsylvania. We have nearly 1,900 employees in over 100 offices across 17 states primarily in the Eastern United States. We provide advice and service to both retail and institutional investors through our Private Client (including Wealth Management) and Capital Markets businesses. We serve more than 350,000 retail customer accounts including over 25,000 fee-based and advisory accounts, and over 400 institutional account relationships. Our firm has flourished over its 178 year history by building our business with a focus on our clients’ best interest.

Janney is registered with the Securities and Exchange Commission (“**SEC**”) as both a broker-dealer, under the Securities Exchange Act of 1934, and as an investment adviser, under the Investment Advisers Act of 1940. Such dually-registered firms are now addressing a number of regulatory reform initiatives that may significantly change long-standing business models and impose significantly new disclosure obligations. These initiatives include:

- (1) a study by the SEC staff and potential follow-up recommendations and proposals regarding the applicable standard of care to brokerage and advisory clients when

Marcia E. Asquith
December 22, 2010
Page 2 of 3

providing investment advice to retail customers pursuant to Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)¹;

- (2) changes to the manner and form by which mutual funds may provide compensation for distribution services (Rule 12b-1 changes);
- (3) the Department of Labor’s proposal to significantly expand the categories of firms and individuals that could be considered fiduciaries when providing investment advice to ERISA and IRA accounts; and
- (4) the SEC’s clear ability to mandate disclosures before the purchase of investment products and services pursuant to Section 919 of the Dodd-Frank Act.

These represent some of the initial initiatives that may significantly alter the brokerage and advisory services landscape. In most cases, the SEC has been directed to consider these matters and to implement meaningful changes. Until the regulatory agencies have been afforded the time and deliberations necessary to implement any such changes, it would be premature to impose the requirements contemplated by the Concept Release.²

If the rule proposal does move forward, there is a significant risk of inconsistency or duplication between FINRA and the SEC proposal, which will make it difficult to provide useful and coherent comment on these proposals. Even more problematic, the proposals could result in final rules that are not coordinated and do not produce simple and clear disclosures for investors, and may not provide for a comprehensive and coherent evolution of regulatory reform when providing investment advice to retail customers.

As an investment adviser, we fully appreciate the fiduciary standard implicit in advisory relationships and already provide the disclosures contemplated by the Concept Proposal in some manner to our advisory clients.³ As a broker-dealer we employ a wide range of disclosure

¹ Janney submitted a comment letter on this study emphasizing that a “pragmatic” disclosure approach should be taken to important conflict issues and that the best practices of broker-dealer disclosures would have to be coordinated with the investment adviser disclosure requirements. See <http://www.sec.gov/comments/4-606/4606-2571.pdf>.

² For example, the SEC’s rulemaking responsibilities under a number of provisions of the Dodd-Frank Act directly apply to the issues raised in the Concept Proposal.

³ In addition to the list of proposals and studies previously referenced that may overlap with the Concept Proposal, as an investment adviser, Janney is currently addressing the SEC’s Form ADV Part II rule changes including a requirement to change the format of the disclosure and create an additional disclosure supplement of all associates providing investment advice.

Marcia E. Asquith
December 22, 2010
Page 3 of 3

techniques taking into account both regulatory requirements and best practices for the education of our retail customers. Some of these are account-based and some are provided at the point of sale or in a confirmation after a sale. Some are delivered hard copy and others through a combination of electronic and internet delivery. While we feel it is premature to address the Concept Proposal in detail, we are initially struck by the possible breadth of the topics and matters that the Concept Proposal may cover and of the logistics in delivering disclosures to our hundreds of thousands of impacted clients. We note and agree with other commenters that have outlined various considerations to address when undertaking such significant disclosure changes.⁴

In conclusion, before taking any further action on the issues raised in the Concept Proposal, we urge FINRA to be mindful of the significant resources currently being expended by dually registered firms to comply with new SEC advisory requirements and to prepare for the regulatory initiatives referenced above. Once there is clarity from the SEC and other agencies on these matters, FINRA will be better positioned to determine whether any additional rules are warranted. Moreover, market participants will be able to provide comments that take into account the full scope of regulatory requirements applicable to their activities all in the effort to provide full, fair and transparent disclosure to clients in a clear, efficient and useful manner.

Sincerely,



Ronald A. Holinsky
Deputy General Counsel

⁴ For example, the letter dated December 3, 2010 from the Securities Industry and Financial Markets Association (“SIFMA”) advocates (i) simple plain English disclosures without overwhelming details, (ii) a layered approach to disclosure with upfront disclosure of most relevant information combined with targeted details if necessary, and (iii) utilization of web-based disclosures especially for prospects and updates.