

THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy



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RICHARD M. WHITING
EXECUTIVE DIRECTOR AND
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December 27, 2010

Via email to pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

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

Dear Ms. Asquith:

The Financial Services Roundtable¹ (“Roundtable”) appreciates the opportunity to comment on the Financial Industry Regulatory Authority’s (“FINRA”) Regulatory Notice 10-54 (“Notice”). The Notice asks whether members of FINRA should be required to provide a written statement to all retail customers at or in advance of commencing a business relationship with the customer. The Notice also asks for comments regarding the content and nature of this written statement. Particularly, the Notice asks if such statements should contain information concerning the types of accounts and services that the firm provides to retail customers, disclosures as to the incentive structures used by the firm, information regarding possible conflicts of interest between the firm and a retail customer, or disclosures regarding the duties owed by the firm to the customer.

The Roundtable supports providing retail customers with simple and clear disclosures, including information about material conflicts of interest. Fair disclosures are an important component in ensuring that retail investors can fairly evaluate and compare the many different products that now exist in the investment market. In determining the content of any required disclosure, the Roundtable believes that regulators should take care to ensure that any new requirements do not cause inadvertent harm to consumers. “More” disclosure does not necessarily mean “better” disclosure. **The Roundtable believes that there is a risk that harm may occur when regulators create disclosure requirements that are confusing to retail investors, are inconsistent with other regulatory requirements, provide information that is**

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$85.5 trillion in managed assets, \$965 billion in revenue, and 2.3 million jobs.

duplicative or unneeded, or that unnecessarily increase the cost of providing services to investors.

The Roundtable respectfully urges FINRA to work closely with the Securities and Exchange Commission (“SEC”) and other regulators, such as the Department of Labor, Internal Revenue Service, and state securities and insurance commissioners, to ensure that any disclosure standards are business model neutral and follow core principles that are applicable across different sectors of the financial and securities markets. As stated in Notice 10-54, Section 913 of the Dodd-Frank Act requires the SEC to conduct a study (“§ 913 Study”) on the obligations of brokers, dealers, and investment advisers. Among other things, the SEC is required to consider regulatory gaps that exist in the regulation of investment advisers and broker-dealers, and to consider how best to close any gaps that are identified. Part of the study requires the SEC to consider how to “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.”² Because the content of the pending SEC study directly applies to issues addressed by Notice 10-54, we believe it would be in the best interests of retail investors for FINRA to wait until the completion of the SEC study before issuing a more formal rule proposal. Awaiting the completion of the study lowers the risk that FINRA will adopt standards and procedures that are inconsistent with the findings of the SEC. It would also allow for better coordination to ensure that market participants are given uniform guidance in developing and providing standardized disclosures to investors.

In a letter to the SEC regarding its § 913 Study on the standard of care of brokers, dealers, and investment advisers, the Roundtable reiterated its long-standing support for harmony and consistency in the regulations that affect different sectors of the retail securities market.³ Specifically, the Roundtable noted that the conduct of broker-dealers is already closely regulated by state, federal, and FINRA standards. Through § 913(f) of the Dodd-Frank Act, the Roundtable believes that Congress manifested a desire for the SEC to conduct a wholesale review of all disclosure rules, not just those affecting the broker-dealers who are members of FINRA. The SEC was also given broad authority to make rules regarding broker-dealers and investment advisers that provide personalized investment advice. We believe that piecemeal reforms that apply to only portions of the retail securities market may be counterproductive. Specifically, such presumptive changes pose the risk of causing regulatory arbitrage, duplicative regulation, and inefficiency. **While the Roundtable firmly supports the intent behind the Notice, we believe that retail investors are best served when FINRA, the SEC, and others regulators work in concert and consider all available information.**⁴

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law No. 111-203, § 913(f), 124 Stat. 1376, 1828 (July 21, 2010).

³ See Letter from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable to Elizabeth Murphy, Secretary, SEC (Aug. 30, 2010), available at <http://www.fsround.org/policy/regulatory/pdf2010/FINALBROKER-DEALERSTUDYLETTER8-30-10.pdf>.

⁴ One area of possible confusion relates to the basic term “retail customer.” The Notice proposes to define a retail customer as any customer “that does not qualify as an ‘institutional account’ under NASD Rule 3110(c)(4).” This is much different than the definition of retail customer contained in § 913(a) of the Dodd-Frank Act. Under the Act, a “retail customer” is defined as “a natural person, or the legal representative of such natural person, who—(1) receives personalized investment advice about securities from a broker or dealer or investment adviser; and (2) uses such advice primarily for personal, family, or household purposes.

The Roundtable endorses the principles of disclosure suggested in a preliminary letter submitted by the Securities Industry and Financial Markets Association (“SIFMA”) as an appropriate starting place for creating a more formal system of disclosure procedures.⁵ The principles proposed by SIFMA include: Consistency, Clear Disclosure, Layered Approaches, Web-Based Disclosure, and Definitive Update Procedures.

The Roundtable thanks FINRA for the opportunity to make its opinions known regarding these important issues. We especially appreciate the opportunity to emphasize our support for consistency among different regulators, particularly the SEC, Internal Revenue Service, Department of Labor and state securities regulators and harmonization regarding the regulation of business statements given to consumers. If it would be helpful to discuss the Roundtable’s specific comments or general views on this issue, please contact me at Rich@fsround.org. Please also feel free to contact the Roundtable’s Senior Regulatory Counsel, Brad Ipema, at Brad.Ipema@fsround.org.

Sincerely Yours,

A handwritten signature in black ink that reads "Richard M. Whiting". The signature is written in a cursive, slightly slanted style.

Richard M. Whiting
Executive Director and General Counsel
Financial Services Roundtable

⁵ See Letter from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA to Marcia Asquith, Office of the Corporate Secretary, FINRA (December 3, 2010), available at <http://www.sifma.org/Issues/item.aspx?id=22482>.