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December 27, 2010

Via E-mail to pubcom@finra.org

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

Re: FINRA Regulatory Notice 10-54 – Concept Proposal to Require a Disclosure Statement for Retail Investors at or Before Commencing a Business Relationship

Dear Ms. Asquith:

Wells Fargo Advisors ("WFA") appreciates this opportunity to comment briefly on FINRA's "Concept Proposal", Regulatory Notice 10-54, that asks whether members of FINRA should be required to provide a disclosure statement to clients at or before the commencement of a business relationship with a retail client. WFA fully supports rule changes when they are necessary to make meaningful and measurable improvements to protect investors and the securities marketplace. WFA has participated in the development of the comment letters of industry groups such as SIFMA and the Financial Services Roundtable. We are supportive of the comments in those letters. We write this letter to review certain aspects of this proposal to insure that FINRA considers whether the rule accomplishes its goals.

WFA consists of brokerage operations that administer almost $1 trillion in client assets It accomplishes this task through 15,088 full-service financial advisors in 1,100 branch offices in all 50 states and 4,569 licensed financial specialists in 6,610 retail bank branches in 39 states.[1]

[1] WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across North America and internationally. Wells Fargo has $1.2 trillion in assets and more than 278,000 team members across 80+

WFA employs thousands of non-customer facing individuals who help support the extensive retail brokerage presence.

FINRA Should Wait

WFA commends FINRA for its implicit acknowledgement that the retail securities landscape is changing and that FINRA needs to be an engaged and thoughtful participant in that change. It is that very fact, however, of increased regulatory motion that augurs for a coordinated and cohesive rulemaking approach. The actual contours of any change in the duty of care owed to retail customers have not yet been determined. In its comment letter to the Securities and Exchange Commission (SEC) regarding fiduciary standard, WFA fully supports the adoption of a uniform federal fiduciary duty standard when providing personalized investment advice regarding securities to retail clients.[2] Where the SEC's rulemaking also preserves client choice to select the level of service and type of relationship they desire, WFA believes this change would enhance protections for clients. The SEC, however, also has the obligation under Dodd-Frank not only to facilitate simplified disclosures of conflict of interest but also to create point of sale documents for mutual funds and draft rules for improved municipal disclosures. It would be premature to divorce that federally mandated rulemaking from FINRA's efforts as it is conceivable that the final SEC rules could dramatically change what FINRA would consider as appropriate for disclosures at the inception of an investor-firm relationship.

The Concept Proposal Does Not Go Far Enough

Even as a concept proposal, FINRA should still put this effort on hold primarily because it actually does not go far enough. FINRA's suggestion is "to provide a written statement to the customer describing the types of accounts and services it provides, as well as conflicts associated with such services and any limitations on the duties the firm otherwise owes to retail customers."[3] Missing is the impact of providing such disclosures fully. Investing in the securities markets entails the risk that investors can lose some or all of their funds invested. Nonetheless, there is a raft of litigation that often seems to suggest that there was a lack of awareness of this principle. There should be a fulsome discussion of whether as a concept release certain disclosures create "safe harbors" for liability assuming all activity occurred within the confines of this business relationship disclosure statement. It is the very nature of a concept release that ideas push beyond the basics of day-to-day regulation. In taking this broader and holistic approach, it is an absolute imperative that FINRA wait to see the final layout of the regulatory canvas on which it will be able to work.

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businesses. WFA includes a number of brokerage operations that have combined as the result of the 2008 purchase of Wachovia Corporation by Wells Fargo. For the ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

[2] This rulemaking comes from Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank.")

[3] *Regulatory Notice 10-54* (October 2010).

FINRA Should Use Another Vehicle to Explore These Issues

In addition to waiting for the SEC regulatory changes and expanding the scope of what it considers, FINRA also should explore the issues raised in its concept proposal through another means. The written comment process frankly is inadequate to undertake the broad structural framework FINRA hopes to address. Given the changing rules that may come out as a part of the Dodd-Frank changes, it appears preferable that FINRA explore this concept with an interactive study group or commission. Comprised of academics, regulators, industry and consumers, FINRA could vet a host of the issues raised in its concept proposal in a "real-time" fashion that affords a much better understanding than the "fixed-in-time" approach of the comment letter process. The study group would be able to import existing external research on certain topics. It could answer and discuss issues such as whether there is a gender difference in how such a disclosure statement is written or delivered and whether there are needs for senior investors. In a world where one registers stock offerings, brokerage firms, brokerage personnel, this concept release seems to open the discussion of whether there should be the de facto registration of investors. A commission or study team could address such concerns or others that do not lend themselves to the comment letter process. The commission could possibly hold hearings in towns away from Washington or New York or invest in consumer testing of different disclosure statement approaches. This process could also understand how information is communicated and what is the optimal length of a disclosure.[4] Importantly, the comment letter process fails to uncover this information in an effective and useful manner.

Other Issues

Disclosures Must Be Clear and Effective

Regardless of whether the disclosure is at or prior to the commencement of a business relationship, the disclosure must be clear, effective, practical and not cost prohibitive. It is important to note, many firms currently provide written disclosures to retail clients, in plain English, at account opening that describe their services, fees and conflicts of interest. As FINRA is well aware, the industry already has regulatory obligations to provide certain disclosures in connection with various products and services. We agree that plain English disclosures are beneficial to our investors and provide an opportunity to educate our clients more thoroughly. FINRA should consider, however, whether this upfront disclosure under consideration would:

> 1) cause investor confusion when they receive additional disclosures at the time of sale of certain products, services or advice; 2) create opportunities for unintentional inconsistency with other mandatory regulatory disclosures; and 3) be cost prohibitive by requiring multiple (potentially written) disclosures by the firm and its representatives.

[4] For example, it might be worth discussing whether there is a way to deliver information concerning products, services and conflicts in an audio/video presentation sent to mobile phones or email addresses.

Additionally, we would suggest that FINRA review and contemplate whether the upfront disclosure would alleviate some of the current disclosure requirements since much of the information would be provided at or prior to the commencement of the business relationship.

Timing and Delivery Method Considerations

We would encourage FINRA to consider a web-based disclosure. Ideally, firms would notify investors about updates to the web-based disclosure annually, unless, substantive changes are made to services, fees, or conflicts of interest. Although web-based disclosure is the preferred method, disclosure should be available in writing for those individuals without the ability to access the internet access.

Conclusion

Dodd-Frank has created a unique opportunity for regulators to coordinate rules and regulations. Dodd-Frank provides the SEC the rulemaking authority to create a fiduciary standard and what disclosures may arise from the standard of care. Section 913 of Dodd-Frank also requires the SEC to "facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with brokers, dealers and investment advisers, including material conflicts of interest." FINRA should recognize the potential for inconsistency between their Concept Proposal and the SEC fiduciary study results. This could easily create duplication of work, confusion within the industry of regulatory requirements and unnecessary allocation of time and cost in the effort to comply with inconsistent standards. Investors want better disclosures, but they will not be well-served if, however, the regulations are inconsistent between the SEC and FINRA. We believe this Concept Proposal may be more beneficial and robust once the SEC has concluded its study of fiduciary standard.

If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long
Director of Regulatory Affairs