



VOICE OF INDEPENDENT FINANCIAL SERVICES FIRMS
AND INDEPENDENT FINANCIAL ADVISORS

VIA ELECTRONIC MAIL

May 21, 2012

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

RE: Regulatory Notice 12-18 – Expungement Procedures

Dear Ms. Asquith:

On April 5, 2012, FINRA published Regulatory Notice 12-18 to propose new rules for *In re* expungement procedures for persons not named in a customer-initiated arbitration matter (Proposed Rules). The Financial Services Institute¹ (FSI) welcomes the opportunity to comment on the Proposed Rules.

While we opposed the expansion of Form U4 reporting requirements to include allegations of sales practice violations made against a registered person in arbitration or litigation in which that person is not named as a party, FINRA adopted the requirement.² The result has been that many unnamed persons want disclosures expunged from their CRD records because they believe that the allegations against them are unfounded. FINRA's current rules do not provide an effective process to facilitate these expungement requests. Therefore, we agree with FINRA that there is a need for a new process that will allow the expungement of these Form U4 disclosures.

¹ The Financial Services Institute is an advocacy organization for the financial services industry – the only one of its kind – FSI is the voice of independent broker-dealers and independent financial advisers in Washington, D.C. Established in January 2004, FSI's mission is to create a healthier regulatory environment for their members through aggressive and effective advocacy, education and public awareness. FSI represents more than 100 independent broker-dealers and more than 37,000 independent financial advisers, reaching more than 15 million households. FSI is headquartered in Atlanta, GA with an office in Washington, DC.

² See, for example, FSI's April 17, 2009 comment letter regarding SEC File Number SR-FINRA-2009-008 at <http://www.sec.gov/comments/sr-finra-2009-008/finra2009008-158.pdf>.

WASHINGTON, D.C. | ATLANTA

888 373-1840

607 14th Street NW | Suite 750 | Washington, D.C. 20005
1905 Woodstock Road | Suite 1200 | Roswell, GA 30075

financialservices.org

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisers are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 201,000 independent financial advisers – or approximately 64% percent of all practicing registered representatives – operate in the IBD channel.³ These financial advisers are self-employed independent contractors, rather than employees of the IBD firms. These financial advisers provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisers are typically “main street America” – it is, in fact, almost part of the “charter” of the independent channel. The core market of advisers affiliated with IBDs is comprised of clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisers are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.⁴ Independent financial advisers get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisers have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisers. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisers play in helping Americans plan for and achieve their financial goals. FSI's primary goal is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our

³ Cerulli Associates at <http://www.cerulli.com/>.

⁴ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments

The Proposed Rule will provide an orderly system for unnamed persons in arbitration or litigation to have disclosures expunged from their CRD records when the claims are shown to be unfounded or that they have been incorrectly identified as the person involved in a sales practice violation. Therefore, FSI supports the adoption of the Proposed Rule.

In addition to seeking comments on the overall impact of the Proposed Rule, FINRA has specifically asked for comments on certain notice requirements and whether a subpoena should be required to obtain documents associated with the arbitration hearing. Our comments on these issues are provided below:

- Notice Requirement - FSI supports the 180-day notice requirement in proposed Rule 13807(c) for the unnamed person to notify FINRA of the intent to file for expungement relief. We believe that this will provide unnamed persons sufficient time to determine whether to pursue an *In re* expungement claim.
- Obtaining Documents – FSI opposes the imposition of a subpoena requirement in proposed Rule 13807(l)(1)(A)(i). These expungement proceedings should be simplified and streamlined to reduce the cost associated with an unnamed party's effort to clear their name. Requiring a subpoena unnecessarily complicates the process and increases the costs associated with expungement. Therefore, we urge FINRA to eliminate the subpoena requirement.

Conclusion

We remain committed to constructive engagement in the regulatory process and welcome the opportunity to work with FINRA on this issue.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 202 803-6061.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. T. Bellaire".

David T. Bellaire, Esq.
General Counsel and Director of Government Affairs