

VIA ELECTRONIC MAIL

November 4, 2013

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

Re: **Regulatory Notice 13-29: Membership Application Proceedings**

Dear Ms. Asquith:

On September 20, 2013, the Financial Industry Regulatory Authority (FINRA) published a request for comment on a revised proposal regarding the Consolidated FINRA Rules governing FINRA's Membership Application Proceedings.¹ The proposal would transfer the existing NASD Rule 1010 Series (Membership Proceedings) with substantive changes into the Consolidated FINRA Rulebook as the FINRA Rule 1100 Series (Membership Application). This revised proposal includes additional rule provisions addressing regulatory issues identified by FINRA staff as well as codifying existing membership-related interpretations and practices. FINRA released a prior proposal in Regulatory Notice 10-01,² and the revised proposal in Regulatory Notice 13-29 includes changes in response to comments received by FINRA.

The Financial Services Institute³ (FSI) appreciates the opportunity to comment on this important proposal. FSI and its members have concerns with the current Continuing Membership Application Process and the application of Proposed Rule 1160 (currently NASD Rule 1017) in particular. In principle, FSI supports many of the proposed changes that seek to provide more clarity and streamline the process. However, we remain concerned with many operational difficulties of the Continuing Membership Application process and provide suggestions for FINRA to improve the process as these rules transfer to the Consolidated FINRA Rulebook.

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

¹ Regulatory Notice 13-29, (September 2013), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p347347.pdf>.

² Regulatory Notice 10-01, (January 2010), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p120675.pdf>.

³ The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 100 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 35,000 Financial Advisor members.

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.⁴ 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.⁵ 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 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

FSI appreciates the opportunity to provide a response to the Request for Comment. While many of the proposed rule changes provide favorable and needed clarifications, we remain concerned with regard to several aspects of the Membership Application Proceedings process that the proposed rules do not adequately address. We provide the following comments:

- **Proposed FINRA Rule 1111:** Proposed FINRA Rule 1111 sets forth defined terms applicable to the MAP process, which are currently contained in NASD Rule 1011. We make the following suggestions:
 - *Proposed FINRA Rule 1111(d)* – We commend FINRA for altering the proposed definition of “control” included in Regulatory Notice 10-01 to now track the definition of control adopted in Form BD. We continue to believe, however, that the definition can be significantly clarified if the first sentence excludes the phrase “or otherwise.” We suggest the following changes:
 - “The term ‘control’ means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities or by contract, ~~or otherwise.~~”
- **Proposed FINRA Rule 1112:** Proposed FINRA Rule 1112 sets forth the requirements and general procedures for submitting MAP applications and supporting documentation to FINRA.

⁴ Cerulli Associates at <http://www.cerulli.com/>.

⁵ These “centers of influence” may include lawyers, accountants, human resources managers, or other trusted advisers.

- *Proposed FINRA Rule 1112(a)* – We support the changes made in the proposed language. Specifically, we support the addition of the language “or by other means of verification prescribed by FINRA,” which provides methods for determining the date of completion in the event that FINRA’s electronic systems experience interruptions.
- *Proposed FINRA Rule 1112(b)* – We applaud FINRA for retaining the current 60-day time frame for applicants to respond after the service of an initial written request for information or documents. Shortening this period to 30 days would not have provided applicants sufficient time to respond.
- **Proposed FINRA Rule 1130:** Proposed FINRA Rule 1130 sets forth the standards or criteria for evaluating whether to grant or deny an NMA or CMA, currently covered under NASD Rule 1014.
 - *Proposed FINRA Rule 1130(c)* – We commend FINRA for removing language in the original proposal that would require FINRA to determine that sources of funding “are not objectionable.” However, the new criteria, requiring that an applicant has “fully disclosed and established through documentation *satisfactory to FINRA* all direct and indirect sources of funding, and FINRA has determined that such sources of funding are otherwise consistent with the standards set forth in this Rule” does not provide the necessary clarity for firms to comply with the requirements. As we discuss in the next section with regard to Proposed FINRA Rule 1160’s “substantially complete” language, this broad standard provides too much flexibility to deny an application even if applicants have submitted every requested document in complete form or have not been asked for additional information within 30 days of filing. Rather, member firms have experienced situations where unrestrained and overly accommodating discretion to FINRA has unnecessarily extended the MAP process. Members are happy and eager to provide FINRA with all documentation necessary to complete the process; they have an economic interest in complying with all MAP requirements to the satisfaction of FINRA. However, rule language that provides FINRA with generous discretion with regard to determining when requirements have been met to its “satisfaction” is too vague and makes compliance more difficult. We understand that FINRA wishes to provide itself with the necessary tools to review additional documents in the event that an Applicant has been less than forthcoming; however we believe that the standards set forth in the rule provide that necessary rigor. We, therefore, offer the following changes:
 - “The Applicant has fully disclosed and established through documentation ~~satisfactory to FINRA~~ all direct and indirect sources of its funding, and FINRA has determined that such sources of funding are otherwise consistent with the standards set forth in this Rule.”
- **Proposed FINRA Rule 1160:** Proposed FINRA Rule 1160 is the membership rule requiring a member to file a CMA for approval of specific changes to its ownership control or business operations. The rule is currently covered under NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations).
 - *Proposed FINRA Rule 1160(a)* – We remain concerned with the standards FINRA relies upon in determining when an application is not “substantially complete.” Similar to concerns mentioned above with regard to Proposed FINRA Rule 1130, members have experienced situations where any deficiency, regardless of how minor, has been interpreted by FINRA to meet the standard of “not substantially complete.” Firms have experienced instances where FINRA has not requested additional documentation even after repeated calls to FINRA to determine the status of the application. Firms have also experienced instances where 29 of the 30 days after filing have elapsed before receiving an initial request for any additional information or documents necessary to render a decision on the application and have therefore been considered to not be “substantially complete.” We suggest the following changes:

- “A member shall file, pursuant to the standards set forth in Rule 1130, an application of any change to its ownership control or business operations set forth in paragraphs (a)(1) through (6) of this Rule. Failure to adequately address all standards pursuant to Rule 1130 will result in a determination that the application is not substantially complete. If Applicant has not received an initial request for additional information or documents necessary to render a decision on the application within 30 days of Applicant filing, the application will be considered substantially complete.”

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with FINRA on this and other important regulatory efforts.

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". The signature is fluid and cursive, with a large initial "D" and "T" followed by "Bellaire".

David T. Bellaire, Esq.
Executive Vice President & General Counsel