Cetera® FINANCIAL GROUP

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

VIA E-MAIL
pubcom@finra.org

Re: Regulatory Notice 15-22 – Discretionary Accounts and Transactions

Dear Ms. Asquith:

On behalf of its affiliated broker-dealers[1], Cetera Financial Group, Inc. ("Cetera") submits this comment on the proposal to adopt FINRA Rule 3260 in the consolidated FINRA rulebook, relating to discretionary accounts and transactions. We appreciate the opportunity to provide our views regarding the proposal.

Proposed Rule 3260(a) generally would impose certain conditions to the establishment and effectuation of discretionary accounts (including obtaining the customer's signed, dated prior written authorization, and documentation of the member's acceptance of the account by signature), as well as provide standards for supervisory review of such accounts. These requirements would not apply to fee-based accounts. The proposal clarifies that the customer and member firm signatures may be obtained through electronic means, otherwise in compliance with the Electronic Signatures in Global and National Commerce Act as well as applicable SEC and FINRA guidance.

Proposed Rule 3260(b) generally would require that member firms obtain a customer's signed, dated prior written authorization before accepting orders for such customer's account from a person other than the customer. The Rule also requires the receipt of a signed, dated manual signature of the person authorized to give such instructions. The signature of such authorized party must be a wet signature.[2]

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[1] The affiliated broker-dealers include Cetera Advisor Networks LLC, Cetera Advisors LLC, Cetera Investment Services LLC, Cetera Financial Specialists LLC, First Allied Securities, Inc., Legend Equities Corporation, Summit Brokerage Services, Inc., Investors Capital Corporation, VSR Financial Services, Inc. and Girard Securities, Inc.

[2] We recognize that FINRA Rule 4512(a)(3) similarly requires FINRA member firms to maintain a record of the "dated, manual signature" of each person with discretion over an account.

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It is common that many registered representatives associated with member firms are also investment adviser representatives of the member firm itself when it is dually-registered, or affiliated or unaffiliated investment advisers. Much of the investment advisory business conducted by these dually-registered persons is conducted under discretionary authority granted by the customer. We believe that this is common among firms providing similar investment services to members of the public. Under this Rule proposal, the exercise of discretionary authority by dually-registered representatives for investment advisory clients would allow for the client to authorize this discretion through electronic signature, but would require the member firm to document the representative's exercise of discretion via a wet signature.

It is our understanding from discussions with FINRA staff that the requirement of a wet signature is intended to engender a higher degree of accountability in those persons who would exercise the authority to invest another's account with discretion. While we agree with the stated goal, we believe that various methods of electronic signature adequately provide the same level of understanding in those exercising discretion. For example, one method of electronic signature is a physical signature using a stylus on an electronic pad. Another is a system that authenticates a signer through questions based on publicly available information, allowing authenticated users to proceed to a signing "ceremony" that requires a mouse click or other physical action to place an electronic signature on a document. There are likely other methods of electronic signature, but likely all require some act (like the stylus signature or signing ceremony) to indicate agreement. It is our view that these acts constitute the same effort and thought that go into a manual signature, and should be deemed to engender the same degree of heightened accountability in those persons exercising discretion.

We are also concerned that the requirement to obtain manual signatures creates inefficiencies in account documentation processes that adversely affect both member firms and customers. If electronic documentation processes provide the same level of accountability that we believe, forcing the use of manual signatures in a process that is otherwise electronic would appear to institute unnecessary delays in complying with customer requests. Similarly, the impediments to efficiency caused by the bifurcation of account establishment processes can harm member firms financially and operationally, and likewise impede customer service.

Finally, we believe that it is inconsistent to assume that a customer's consideration to grant discretionary authority to a third party is less important than a member firm's acceptance of that authority. In other words, if a customer can grant that authority via an electronic signature but a member firm cannot accept the authorized person's authority the same way under the theory that an electronic signature does not engender as high a degree of accountability, the implication is that the customer's decision is less important. We believe that just like a client's reasoned decision to grant discretionary authority to a

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third party can be obtained via modern electronic signature means, so should a member firm's ability to document the authorized person's acceptance of that authority.

We hope these comments are useful as you evaluate and finalize the proposed rule. Please feel free to contact the undersigned if we can be of further assistance regarding these comments.

Sincerely,

Greg Olson
Deputy General Counsel