

VIA ELECTRONIC MAIL

June 25, 2018

Jennifer Piorko Mitchell
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Regulatory Notice 18-14, Retrospective Rule Review of Rule 3110 (Supervision)

Dear Ms. Mitchell:

On April 24, 2018, the Financial Industry Regulatory Authority (FINRA) published its request for public comment on its Retrospective Rule Review of FINRA Rule 3110 (Supervision) governing annual compliance meetings (the Notice).¹ Under this retrospective rule review, FINRA seeks to determine the effectiveness and efficiency of the Annual Compliance Meeting (ACM) as required under Rule 3110.²

The Financial Services Institute³ (FSI) appreciates the opportunity to comment on this important proposal. As one of the only trade associations with both firm and individual financial advisor members, we are in a unique position to provide valuable input to FINRA from both perspectives. As such, FSI surveyed both our firm and financial advisor members with the questions raised in the Notice and largely found that our members believe the ACM is effective in educating financial advisors on their compliance obligations and they do not experience economic hardship as a result of the requirement. That said, they are eager to provide suggestions for potential alternatives to the status quo. Our findings and suggestions are discussed in more detail in our comments below.

Background on FSI Members

The independent financial services community has been an important and active part of the lives of American investors for more than 40 years. In the U.S., there are approximately 167,000 independent financial advisors, which account for approximately 64.5% percent of all

¹ See FINRA Regulatory Notice 18-14 (April 24, 2018) available at http://www.finra.org/sites/default/files/notice_doc_file_ref/Regulatory-Notice-18-14.pdf.

² See FINRA Rule 3110(a) (7); see also, FINRA Rule 3110, Supp. Mat. 04.

³ The Financial Services Institute (FSI) is an advocacy association comprised of members from the independent financial services industry, and is the only organization advocating solely on behalf of independent financial advisors and independent financial services firms. Since 2004, through advocacy, education and public awareness, FSI has been working to create a healthier regulatory environment for these members so they can provide affordable, objective financial advice to hard-working Main Street Americans.

producing registered representatives.⁴ These financial advisors are self-employed independent contractors, rather than employees of Independent Broker-Dealers (IBD).

FSI member firms provide business support to financial advisors in addition to supervising their business practices and arranging for the execution and clearing of customer transactions. Independent financial advisors are small-business owners who typically have strong ties to their communities and know their clients personally. These financial advisors 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. Due to their unique business model, FSI member firms and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their investment goals.

Discussion

FSI appreciates the opportunity to comment on the Notice. In general, both our firm members and financial advisors members feel that the ACM requirement is effective and they do not experience economic hardship because of the requirement. The majority of our firm members who responded to our survey conduct their ACMs in person and all of our firm respondents felt that the ACM is helpful in educating financial advisors on compliance issues. Similarly, 90% of our financial advisors who took our survey felt the ACM helps them understand their compliance obligations.

As such, our comments will mainly focus on answering Question 6 of the Notice, which asks “Can FINRA make the rules, interpretations or attendant administrative processes more efficient and effective? Are there alternatives to the rule that would better communicate compliance obligations to registered persons or would reduce its costs?”⁵

I. Input Regarding Efficiency and Effectiveness

A. Introduction

As stated above, FSI members who responded to our survey regarding the questions raised in the Notice nearly unanimously responded that the ACM requirement is effective in educating financial advisors regarding their compliance obligations.

B. Firm Suggestions

Because 100% of our firm members responded that the ACM requirement is effective and nearly all of them felt the ACM requirement is efficient, FSI did not receive many suggested changes from our member firms. However, at least one of our member firms suggested FINRA create an annual course that contains pertinent and timely topics. As firm members currently need to create their own ACM content, this suggestion would not only likely improve the effectiveness of

⁴ The use of the term “financial advisor” or “advisor” in this letter is a reference to an individual who is a registered representative of a broker-dealer, an investment adviser representative of a registered investment adviser firm, or a dual registrant. The use of the term “investment adviser” or “adviser” in this letter is a reference to a firm or individual registered with the SEC or state securities division as an investment adviser.

⁵ See Notice at p. 4.

the content but also make the process more efficient for firms. FSI suggests that FINRA consider creating at least a portion of the ACM for member firms that addresses common issues FINRA is experiencing with financial advisors or educates on a topic or rule that appears to be confusing to advisors based on inquiries FINRA receives from the Small Firm helpline and through branch office examination findings. Firms could incorporate this portion in to their ACM content while still being required to create additional content that is tailored to the firm and their specific compliance requirements. In the alternative, FINRA could provide a resource teaching firm personnel how to develop compelling ACM content. This could be provided through the Compliance Boot Camp, District Compliance Meetings, e-learning courses, A Few Minutes with FINRA, or as a session at FINRA's Annual Conference.

In the alternative, FINRA could create a checklist for firms on topics that FINRA believes advisors would benefit from learning more about. The content of the checklist could be informed by common exam deficiencies found in branch office examinations, common customer complaints, and other timely and relevant material identified by FINRA. For example, had FINRA made such a checklist this year, it could have included a discussion of financial exploitation of seniors and FINRA's new requirements regarding obtaining a trusted contact.

C. Financial Advisor Suggestions

While FSI's financial advisor members also nearly unanimously responded that they find the ACM effective, they submitted several suggestions for making it more efficient. A significant percentage (nearly 25%) responded that they felt the effectiveness and efficiency was such that a yearly in-person ACM was the correct method for firms to utilize. Not surprisingly, those who responded with suggestions to improve the efficiency of the ACM felt that virtual presentation of the ACM as opposed to in-person would be more efficient.

A recurring suggestion among respondents was to allow them to attend the ACM via webinar or another web-based alternative. One respondent pointed out that this would allow the firm to provide four or five scheduled showings and the advisor would be able to choose which one fit best into their schedule, allowing them to ensure they were able to provide their full attention to the ACM. On the other hand, several respondents commented that they felt the in-person nature of the ACM was what made it the most effective. Most of these comments focused on their ability to ask questions and receive feedback in real time during the meeting. Therefore, FSI suggests that any changes to the rule requirements continue to encourage interaction between the firm and the advisors, whether the interaction is in person or through a webinar or another web-based solution. Given that the rule both currently allows the ACM to be conducted virtually and requires firms to provide a mechanism for attendees to ask questions, FSI does not suggest any additional changes to the rule but felt FINRA would want to be aware of this feedback.

Lastly, several financial advisor respondents felt that the ACM content has become redundant year to year and that yearly meetings were too frequent as a result. Some respondents suggested that instead of annually, the meeting should occur every three years. FSI suggests that FINRA could perhaps require an in-person meeting every three years with a virtual meeting required during the intervening years. FSI also notes that if FINRA adopts a yearly checklist for firms and/or creates timely content for firms to use, this will address the issue of stale or repetitive information from year to year.

II. Suggestions Regarding Potential Alternatives

A. Introduction

FSI members who responded to the survey appeared eager to provide suggested alternatives to the ACM to educate financial advisors regarding their compliance obligations. These suggestions were made almost exclusively by our financial advisor members. As discussed in the preceding section, many financial advisors suggested a web-based or other virtual forum for firms to conduct the meeting. Presently, firms are allowed to utilize a virtual format and are not required to have the meeting in person. As such, the input from the financial advisors is somewhat misdirected to FINRA rather than their firm so it will not be discussed in great detail in this section. However, many respondents provided suggestions that could be adopted in a revised rule or even provided to FINRA member firms as best practices with regards to both the ACM specifically and educating financial advisors in general.

B. Alternatives Suggested by Financial Advisors

One respondent suggested making brief one-pagers outlining a specific rule and its resulting requirements, which would be available to financial advisors on a regular basis. Several respondents suggested that the ACM content needs to be more closely tailored to current issues and their specific business. Some commenters suggested that rather than one meeting per year, they instead be provided with materials and virtual content either twice per year or at regular intervals throughout the year so they are receiving information and education on an on-going basis. One respondent stated that their firm communicates compliance information throughout the year and then this culminates in a “refresher” of sorts at the ACM, which they find to be very effective. A theme throughout the comments was that the information provided needs to be concise and easily digestible as well as relevant. FSI suggests FINRA can develop and provide concise materials to firms for use in the ACMs. Firms could tailor the information to their specific supervisory structure but the process will be more efficient since FINRA will be sharing the work of developing the information.

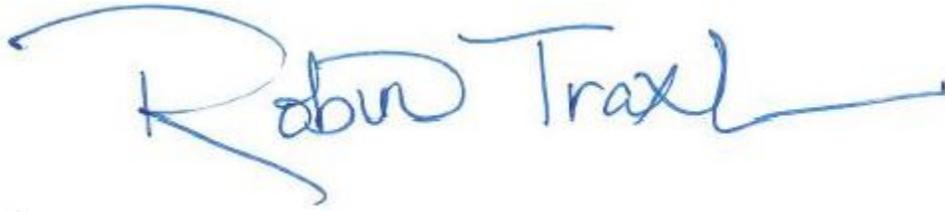
Conclusion

FSI recognizes that much of the input we received from our financial advisor members suggested flexibility that is already provided under the rule, such as virtual meetings. However, since financial advisors are the end-user of the ACMs and the purpose of the ACM is to ensure financial advisors understand their compliance obligations, FSI believes it is important to share their input with FINRA so that FINRA can potentially use it to develop training, content, and guidance for compliance personnel charged with developing and conducting the ACMs.

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

Thank you for considering FSI’s comments. Should you have any questions, please contact me at (202) 393-0022.

Respectfully submitted,

A handwritten signature in blue ink that reads "Robin Traxler". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Robin Traxler
Vice President, Regulatory Affairs & Associate General Counsel