

VIA ELECTRONIC MAIL

May 14, 2015

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

Re: Regulatory Notice 15-10: Retrospective Rule Review Membership Application Rules

Dear Ms. Asquith:

On March 30, 2015 FINRA published Regulatory Notice 15-10, requesting comment on the effectiveness and efficiency of its membership application rules. In conducting this retrospective review of existing rules, FINRA is seeking comments to determine whether these rules are meeting their intended investor-protection objectives by reasonably efficient means. The membership application rules (MAP rules) allow FINRA to assess the proposed business activities of potential and current firms for investor protection purposes. The MAP Group within FINRA is responsible for evaluating applicants' financial, operational, supervisory, and compliance systems to ensure each meets the standards for admission or for a change in ownership or control. The group also determines whether the application and all supporting documents are consistent with federal securities law, regulations, and FINRA rules.

The Financial Services Institute¹ (FSI) appreciates the opportunity to comment on this Regulatory Notice. FSI continues to support and is encouraged by steps taken by FINRA following its formal adoption of economic impact assessment and cost-benefit analysis for rulemaking.² The utilization of retrospective review is a vital component to increasing the transparency and accountability of SRO rulemaking, and will ensure that rules remain relevant and are appropriately designed to achieve their objectives. As FINRA progresses through the findings and action phases of the review process, FSI looks forward to providing constructive feedback to support FINRA's assessment.

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

¹ 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.

² See Framework Regarding FINRA's Approach to Economic Impact Assessment for Proposed Rulemaking (September 2013); available at <http://www.finra.org/web/groups/industry/documents/industry/p346389.pdf>.

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 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 submit comments on FINRA's Retrospective Rule Review of the MAP Rules. In preparing our comments, FSI engaged with member firms to gather their views and experiences with the Map Rules and FINRA's MAP Group. FSI members typically become engaged with FINRA's MAP Group when they are involved in a merger or acquisition. Under NASD Rule 1017, members must file a continuing membership application (CMA) with the MAP Group, seeking the approval of the expansion or changes in their operations or activities. Members have found the administration of the CMA approval process, rather than the rule text itself, to be challenging. We expand upon these concerns below:

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

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

1. Have the Rules Effectively Addressed the Problem(s) They Were Intended to Mitigate?

The purpose of FINRA's MAP Rules is to ensure that FINRA has the opportunity to assess the proposed business activities of its potential and current member firms for investor protection purposes. FINRA has noted in prior Notices that adding lines of business or other expansions to a member firm can have a significant impact on a firm's supervisory and compliance infrastructure, personnel, and finances.⁵ The MAP process allows FINRA to review changes made to broker-dealer operations and provide documentation demonstrating a continuing consistency with the federal securities laws, regulations, and FINRA rules and regulations. FSI supports the intent of the MAP rules and believes that, overall, the review process allows FINRA to effectively assess changes made to broker-dealers operations. No significant changes to the structure of the MAP Rules are likely necessary.

2. What have been your experiences with implementation of the rule set, including any ambiguities in the rules or challenges to comply with them?

i. Administration of Rules

While, generally, the rules themselves may not need significant changes to improve overall efficiency, the administration of these rules could benefit from evaluation. FSI is aware of several firms that have experienced challenges related to the administration of the CMA process. Under the MAP Rules, FINRA has 30 days to determine whether an application is "not substantially complete."⁶ Firms provided documentation to FINRA and were prepared for a transaction to close when, on the 29th day, FINRA responded with a request for additional documentation asserting that the application is not "substantially complete." In some instances, firms have also been contacted after 30 days, having believed their application was in good order, with requests for additional documentation by FINRA's MAP Group. These occurrences threaten the closing of a merger or acquisition, leading to substantial additional costs. Some ambiguity lies in the wording of NASD Rule 1017, as the definition of "substantially complete" is broad and unconstrained. The language of the rule also leads firms to believe that, after submitting their documentation and not hearing from FINRA within 30 days, that their application is considered complete. In conducting its retrospective review of the MAP Rules, FINRA should consider ways to provide firms with more clarity regarding the review timelines for a CMA and additional clarity regarding the definition of "substantially complete" in NASD Rule 1017.

ii. Broker-Dealer Withdrawal (BDW) and CMA

In an acquisition, the acquiring firm must file a CMA and the acquired firm (if it will cease operations and be fully integrated into the acquiring firm) is required to file a Form BDW to withdraw its member registration. Firms that have acquired an existing member firm have experienced challenges in not being permitted to have the CMA and BDW under review simultaneously. Firms currently experience non-concurrent reviews that lead to inefficient and expensive time spans requiring registered principals and other employees to remain at the

⁵ See FINRA NTM 00-73 (October 2000).

⁶ NASD Rule 1017(b).

acquired firm for prolonged periods. It would be more efficient if FINRA could allow for simultaneous review of both the BDW and the CMA to reduce this time span.

iii. Material Changes in Business Operation

NASD Rule 1017 requires firms to file a CMA if there is a “material change in business operations.” NASD Rule 1011(k) defines a material change in business operations to include: “1) removing or modifying a membership agreement restriction; 2) market making, underwriting, or acting as a dealer for the first time; and 3) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1.” While in most cases this definition is clear, firms have experienced differing interpretations of this provision by FINRA’s MAP Group. One example is a firm who has engaged in a series of small recruiting arrangements over time rather than large equity purchases or acquisitions. Firms have understood Rules 1017 and 1011(k) to be considered on a transaction-by-transaction basis rather than viewed as a whole, while FINRA staff has, on occasion, not applied this interpretation. FSI asks FINRA to provide additional guidance regarding this definition.

3. What have been the costs and benefits arising from FINRA’s rules? Have the costs and benefits been in line with expectations described in the rulemaking?

As noted above, delays in receiving timely responses from FINRA’s MAP Group have led to significant additional costs. Firms have reported to FSI instances where a simple acquisition resulted in six months of delays and requests for additional documentation. One firm reported that, due to a late request for additional documentation from FINRA’s MAP Group, a simple filing led to nearly \$10,000 in additional costs. While firms understand that very large firms involved in major acquisitions may require extended review by FINRA’s MAP Group, we ask that FINRA consider ways to improve how the CMA process is scaled for members of different sizes and that additional guidance is provided regarding an applicant’s eligibility for Fast-Track Review of their CMA application.

1. Can FINRA make the rules more efficient and effective, including FINRA’s administrative process?

FINRA can reduce inefficiencies and member concerns by refining the administration of the MAP Rules. For example, in some instances, lack of communication by FINRA’s MAP Group has amplified concerns by member firms with regard to the CMA process and led to additional costs. In addition, more clarity in the MAP rules and related guidance may improve member experiences substantially. Specifically, FINRA’s MAP rules could potentially be improved by clarifying expectations on the appropriate timelines for documentation requests and at what point firms can proceed in closing a transaction. FSI suggests that the following language be inserted at the end of FINRA Rule 1017:

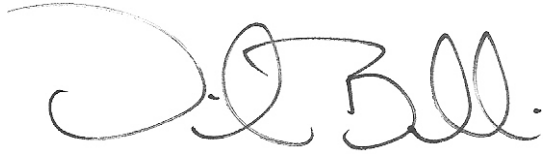
- *“If Applicant has not received an initial request for additional information or documents necessary to render a decision on the application within 30 days of Applicant filing, the application will be considered substantially complete.”*

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