

September 24, 2009

**Office of the Corporate Secretary-Admin.**

SEP 29 2009

**FINRA  
Notice to Members**

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

**Re: Regulatory Notice 09-34**

Dear Ms. Asquith:

In reviewing the proposed Rule, three matters of concern arose:

1. Burying important aspects of compensation in footnotes to this Rule (or anywhere else) is not helpful. The compensation paid to firms for the ability to establish a booth and entertain at annual and other meetings, the special promotional visitations with dinners and other entertainment, and other forms of undisclosed payments cause concern over sales' motivation and priorities placed by firms in their dealings with funds and insurance companies. With the recent cases regarding undisclosed payment for shelf-space and other hidden compensation, it appears that if there is any doubt arising from the interpretation of a rule or any basis for a counsel to provide friendly advice to the sales side of a firm or fund, there is a serious risk of a failure to act within the spirit of a rule. Accordingly, I recommend that you flatly state that any and all compensation must be disclosed in the prospectus or, if not, in a separate disclosure. The statement should be that simple. Then one can massage the refinements from there.

2. The customer abuses arise primarily from the greed of firms and individuals. Unprincipled firms promote those funds who pay them most generously; unscrupulous representatives will seek the highest payouts, regardless of fund quality. There should be an unequivocal prohibition of this conduct. The motivation should in all instances be customer first!

3. Providing the information at the opening of an account is of very limited value. It should be at the first sale of a fund or variable, and then be reinforced

Ms. Marcia E. Asquith  
September 24, 2009  
Page 2

periodically. I doubt seriously many customers want to spend time going to websites to track payouts. This appears to be a papering triumph over the reality of customer disclosure. If there is a basis for bias in making a recommendation, have the firm/representative spell it out.

I appreciate the opportunity to provide these comments. They are mine, and not those of my firm or of any client.

Sincerely,

A handwritten signature in cursive script, appearing to read "Hugh H. Makens".

Hugh H. Makens

HHM/pas  
1710510