

April 28, 2009

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-FINRA-2008-062 – Response to Comments

Dear Ms. Murphy:

This letter responds to comments submitted to the Securities and Exchange Commission (“SEC” or “Commission”) regarding the above-referenced rule filing,¹ a proposed rule change to adopt new FINRA Rule 2267 (Investor Education and Protection) based on NASD Rule 2280. The Commission received two comment letters in response to the proposal.²

The proposed rule would require each member, except a member that does not have customers or is an introducing firm that is a party to a carrying agreement where the carrying firm member complies with the requirements of the rule, to provide customers with FINRA’s Web site address and information regarding FINRA’s BrokerCheck program at least once every calendar year. PFS expresses concern with the proposed rule because it does not maintain an exemption in current NASD Rule 2280(b) for a member that does not carry customer accounts and does not hold customer funds and securities.

According to PFS, the proposed FINRA rule would place a significant burden on member firms that conduct a limited business where customer accounts are introduced to a non-FINRA member product issuer and have no direct contact with customers after the initial transaction. These firms do not carry customer accounts or hold customer funds and securities after the initial transaction and do not send account statements or trade confirmations to customers. As such, PFS asserts that the proposed rule would require a separate annual mailing to customers at a significant cost to these members.³ PFS notes

¹ See Securities Exchange Act Release No. 59160 (December 23, 2008), 74 FR 152 (January 2, 2009) (Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 2267 (Investor Education and Protection) in the Consolidated FINRA Rulebook; File No. SR-FINRA-2008-062).

² Letter from Richard Sacks, Investors Recovery Service, dated January 6, 2009; and letter to Florence E. Harmon, SEC, from John S. Watts, Senior Vice President and Chief Counsel, PFS Investments Inc., dated January 26, 2009 (“PFS”).

³ In its letter, PFS acknowledges that some firms may avoid a special annual mailing by including the required information in the annual mailing of the firm’s privacy statement.

prior FINRA interpretive guidance that clarified the application of NASD Rule 2280 to member firms that conduct this type of limited business.⁴

In response to PFS's comments, FINRA is amending the proposal, consistent with its earlier interpretive guidance, to provide that firms that conduct a limited business in which contact with customers is limited to introducing customer accounts to be held directly at an entity other than a FINRA member, and thereafter do not carry customer accounts or hold customer funds and securities, may furnish a customer with the information required by the proposed rule at or prior to the time of the customer's initial purchase, in lieu of once every calendar year. FINRA believes that it is appropriate for firms that conduct this type of limited business to provide the requisite disclosures to customers at the time of the initial transaction.

In its comment letter, Investors Recovery Service recommends that FINRA add certain disclosures to the proposed rule to provide additional information regarding BrokerCheck, including references to possible dismissals and expungement actions. FINRA believes this comment is outside the scope of the proposed rule change, the primary purpose of which is to provide customers with information regarding the availability of the BrokerCheck hotline number, FINRA's Web site address, and an investor brochure describing BrokerCheck. FINRA further notes that it provides on its Web site additional information regarding BrokerCheck reports, which, among other things, describes the contents of a BrokerCheck report, the source of the information, and the type of information that is not disclosed through BrokerCheck (including a reference that in certain limited circumstances, information is expunged from the CRD system, as further discussed in the cited Notices to Members).

If you have any questions, please contact me at (646) 315-8512 or at Erika.Lazar@finra.org.

Very truly yours,



Erika L. Lazar
Senior Attorney
FINRA Office of General Counsel

⁴ NASD Regulation, Inc. Regulatory & Compliance Alert (Summer 1999) at page 24.