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**Via Electronic Mail** ([rule-comments@sec.gov](mailto:rule-comments@sec.gov))

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

Re: Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.;  
Notice of Filing of Proposed Rule Change and Amendment No. 1 to Adopt NASD Rule  
2830 as FINRA Rule 2341 (Investment Company Securities) in the Consolidated FINRA  
Rulebook (Release No. 34-64386; File No. SR-FINRA-2011-018)

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Dear Secretary Murphy:

On behalf of Mutual of America Securities Corporation (“Securities Corporation”), we respectfully submit these comments in connection with the proposed rule change and amendment No. 1 filed by the Financial Industry Regulatory Authority (“FINRA”) with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 19b-4 thereunder on April 19, 2011 and May 3, 2011, of which notice was published in the Federal Register on May 9, 2011.<sup>1</sup> The proposed rule change (the “FINRA Proposal”) adopts NASD Rule 2830 (Investment Company Securities) as FINRA Rule 2341 (Investment Company Securities) in the Consolidated FINRA Rulebook with significant changes. Most notably, it requires each FINRA member to make new disclosures to customers

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<sup>1</sup> Securities Exchange Act Release No. 64386 (May 3, 2011), 76 FR 26779 (May 9, 2011) [File No. SR-FINRA-2011-018].

regarding its receipt of, or the entering into of an arrangement to receive, cash compensation with respect to investment company securities.

Summary of Concerns with the FINRA Proposal

We respectfully submit that the proposed rule change places an undue burden on members whose sole form of cash compensation from the sale of investment securities is based on an arrangement to be reimbursed for actual expenses incurred from an affiliate that does not vary depending on the sale of investment company securities. We believe that the purposes of the rule, including disclosure of potential conflicts of interest, are not relevant in such a situation, and therefore suggest, as further described below, that the FINRA Proposal be amended to exclude members in those particular circumstances.

About Securities Corporation

Securities Corporation is registered as a broker-dealer under the Exchange Act and is a member of FINRA. It is an indirectly wholly-owned subsidiary of Mutual of America Life Insurance Company. Its sole purpose is to distribute shares of Mutual of America Institutional Funds, Inc. (“Institutional Funds”), a mutual fund available to institutional investors, and does not otherwise engage in broker-dealer activities. The adviser of Institutional Funds, Mutual of America Capital Management Corporation (“Capital Management”), is an investment adviser registered under the Investment Advisers Act of 1940. It is also an indirectly wholly-owned subsidiary of Mutual of America Life Insurance Company.

The Arrangements that would be subject to the FINRA Proposal

Securities Corporation and Capital Management have entered into an inter-company agreement that provides that Capital Management will reimburse Securities Corporation for the

actual expenses it incurs in connection with its services as principal underwriter and distributor of the shares of Institutional Funds (the “Agreement”). Payments under the Agreement are made from Capital Management’s own funds and result in no additional costs to Institutional Funds or its shareholders. Securities Corporation receives no distribution or servicing fees or any form of asset-based fee. Because both Capital Management and Securities Corporation are indirectly wholly-owned subsidiaries of Mutual of America Life Insurance Company, the payments are most properly characterized as inter-company payments between subsidiaries of Mutual of America Life Insurance Company.

The Impact of the FINRA Proposal

The FINRA Proposal requires the member to prominently disclose that it has received, or has entered into an arrangement to receive, cash compensation from investment companies and their affiliates, in addition to the sales charges and service fee disclosure in the prospectus fee table. The member would be required to state in its disclosure that this additional cash compensation may influence the selection of investment company securities that the member and its associated person offer or recommend to investors. Third, the member would have to provide a prominent reference to a web page or toll-free telephone number where the investor could obtain additional information concerning these arrangements.

These requirements are designed to “enable investors to better evaluate whether a member’s particular product recommendation was influenced by these arrangements . . . .”<sup>2</sup> The arrangements intended to be captured by the FINRA Proposal typically include payments set at a percentage of

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<sup>2</sup> FINRA Proposal, *supra* note 1, at 26780.

the shares sold by the member. We understand FINRA's view that such arrangements may provide an incentive for the member to recommend a particular product.

In the case of Securities Corporation, in contrast, the member has no such pecuniary incentive to recommend a particular product. This is because Securities Corporation sells only shares of series of Institutional Funds and receives expense reimbursements regardless of how many shares that it sells.

If the FINRA Proposal is adopted without amendment, Securities Corporation would be required to provide disclosure that would be, at best, superfluous, and, at worst, may actually confuse customers. For instance, it would be required to disclose prominently that the additional cash compensation may influence the selection of investment company securities that the member and its associated person offer or recommend to customers, even though this is not true. Securities Corporation would have to train its sales staff regarding the appropriate disclosure, its use and its delivery requirements. It would have to prepare and update these disclosure documents. Securities Corporation would also be required to maintain a web page or a toll-free telephone number where an investor could obtain additional information regarding these arrangements. All of these items would result in substantial expenditures by Securities Corporation, without any concomitant benefit to customers. In our view, imposing the requirements of the FINRA Proposal on such an entity would not seem to further the purposes of the rule, which, as noted above, relate to informing customers of the incentives of a member to recommend a particular product over another.

Furthermore, in this particular case, Securities Corporation does not receive any sales charges or service fees for the distribution or servicing of Institutional Funds shares. The changes imposed by the FINRA Proposal would discourage this type of an arrangement because the

increased costs to the organization as a whole may encourage organizations such as Capital Management to offset a portion of the costs through the imposition of distribution fees or to cease reimbursing such costs altogether, which could result in Securities Corporation or other similarly situated broker-dealers imposing fees.

Proposed Amendment

A relatively minor change to the FINRA Proposal would exempt Securities Corporation, and other similarly situated broker-dealers, from the disclosure requirements in the described circumstances. The definition of “Cash compensation” in paragraph (b)(C)<sup>3</sup> could be amended by adding the following phrase at the end of the definition: “other than when the entire amount of cash compensation received by a member represents a reimbursement of expenses by an affiliate of the member.”

Alternatively, the Commission could clarify in the adopting release that disclosure is not required by members whose sole form of compensation relates to reimbursement of expenses by an affiliated entity, in circumstances such as the one described in this letter.

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<sup>3</sup> See page 147 of the text of the proposed rule change, available on FINRA’s website at <http://www.finra.com>.

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Please feel free to contact me with any follow-up questions at the number above, or, in my absence, Rajib Chanda of Ropes & Gray at (202) 508-4671 or Thomas L. Martin of Mutual of America at (212) 224-1562.

Sincerely,

Richard D. Marshall, Esq.

cc: Thomas L. Martin, Esq.  
Rajib Chanda, Esq.