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January 6, 2015

Mr. Brent J. Fields, Secretary  
U.S. Securities and Exchange Commission  
100 F Street N.E.  
Washington, D.C. 20549

*Sent by E-Mail*

Re: FINRA Pay-to-Play Rule;  
File No. SR-2015-056

Dear Mr. Fields:

The Investment Company Institute<sup>1</sup> is writing to recommend that the Securities and Exchange Commission approve FINRA's proposal to establish pay-to-play rules.<sup>2</sup> These rules consist of a prohibition on pay-to-play practices (new FINRA Rule 2390) and a related recordkeeping rule (Rule 4580). The Institute has long supported regulatory efforts to address concerns with pay-to-play practices.<sup>3</sup> We are pleased that, like the SEC and the Municipal Securities Rulemaking Board ("MSRB"), FINRA is adopting rules to govern the activities of its members that solicit government clients on behalf of an investment adviser. We are also pleased that FINRA's proposal is designed to complement and be consistent with the SEC's pay-to-play rule.

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<sup>1</sup> The Investment Company Institute (ICI) is a leading, global association of regulated funds, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's U.S. fund members manage total assets of \$17.9 trillion and serve more than 90 million U.S. shareholders.

<sup>2</sup> See *Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 2030 and FINRA Rule 4580 to Establish a "Pay-to-Play" and Related Rules*, SEC Release No. 34-76767 (December 24, 2015) (the "SEC Release").

<sup>3</sup> In particular, the Institute supported the adoption of SEC Rule 206(4)-5 and MSRB Rules G-37 and G-38 to address pay-to-play concerns.

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When FINRA originally published its proposal for comment,<sup>4</sup> the Institute filed a comment letter seeking clarification of the proposed rule's application to covered investment pools.<sup>5</sup> We expressed concern with those provisions in the proposal that were not entirely consistent with the SEC's pay-to-play rule, and recommended that, like the SEC, the recordkeeping requirements in FINRA's rule address issues arising in connection with omnibus accounts. Our letter noted the importance of aligning FINRA's proposed rules with those of the SEC to the maximum extent possible to avoid disparate regulatory standards for persons engaged in similar activities and to facilitate compliance by persons that are also subject to the SEC's rule.

We are very pleased that FINRA has revised its rule to better align it with the SEC's rule by deleting provisions relating to disclosure and disgorgement. FINRA has also confirmed that, like the SEC's rule, FINRA's rule would apply to "registered pooled investment vehicles such as mutual funds, but only if those registered pools are an investment option of a participant-directed plan or program of a government entity."<sup>6</sup> We are pleased that these revisions to the rule and FINRA's clarification will ensure consistency between FINRA's rule and that of the SEC. We commend FINRA for making these revisions and providing this clarification.

With respect to FINRA's recordkeeping requirements, in lieu of making any change to Rule 4580 to address issues arising in connection with omnibus accounts, according to the SEC Release, FINRA has instead represented that:

FINRA recognizes the concerns raised by ICI and will address interpretive questions as needed regarding the application of the proposed recordkeeping requirements to covered members holding omnibus accounts on behalf of other broker-dealers that engage in distribution or solicitation activities with government entities.<sup>7</sup>

The Institute is satisfied with this response and appreciates FINRA's continued willingness to address implementation issues as they arise.

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<sup>4</sup> See *FINRA Requests Comment on a Proposal to Establish a "Pay-to-Play" Rule*, FINRA Notice 14-50 (November 2014).

<sup>5</sup> See Letter from the undersigned to Marcia E. Asquith, Office of the Corporate Secretary, FINRA, dated December 15, 2015.

<sup>6</sup> SEC Release at p. 43.

<sup>7</sup> SEC Release at fn. 122.

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Accordingly, the Institute supports adoption of FINRA Rule 2030 to establish a pay-to-play rule and the corresponding revisions to FINRA's recordkeeping rule, Rule 4580.

Sincerely,

/s/

Tamara K. Salmon  
Assistant General Counsel