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Reuters: Analysis: Tailoring FINRA Rules to Suit Smaller Firms.

NEW YORK (Reuters) – Wall Street’s industry-funded regulator, which usually looks over the shoulders of brokers, is about to examine its own work more carefully as it prepares a review of whether its rules make sense for all firms.

The Financial Industry Regulatory Authority is kicking off the long-anticipated review of the costs and benefits relating to each of its existing rules for Wall Street, said Richard Ketchum, FINRA’s chairman and chief executive.

The review will consider, among other things, whether some of those rules should continue to apply across the industry regardless of a firm’s size or business model, Ketchum said earlier in the week at the Reuters Global Wealth Management Summit.

“We’re not all large integrated firms,” said Ketchum. “We have a lot of cats and dogs in our membership,” he said, referring to a variety of brokerage sizes and specialties. But some industry rules do not take those differences into account.

For example, some brokerages that limit their business to a niche – such as finding private securities offerings for certain institutional investors – are bound by rules often aimed at protecting individual retail investors, said Ketchum, questioning whether that made sense.

FINRA’s review follows a push by the U.S. Securities and Exchange Commission to provide more details about the economic aspects of rule proposals FINRA submits to the agency for approval.

Many small and specialty brokerages, at the same time, have been complaining to FINRA that it is impractical for them to follow rules put in place mainly for large retail brokerages.

The regulator, which oversees 4,250 firms and nearly 630,000 brokerages, expects to publish an initial update about its progress by October, Ketchum said.

FINRA recently hired Jonathan Sokobin, a former high-ranking Treasury Department official, to oversee the review as the regulator’s first chief economist.

Ketchum’s acknowledgment that all industry rules may not be practical for all firms was met with relief by compliance professionals who advise small and specialty firms.

“I’m glad to see that Rick Ketchum has finally heard the message that people are telling him over and over again,” said Howard Spindel, senior managing director of Integrated Management Solutions, a New York-based compliance consultancy. “One-size-fits-all works maybe with socks, but broker-dealers are very heterogeneous,” Spindel said in a telephone interview on Thursday.

RIPPLE EFFECT

FINRA's economic review is part of a broader effort by securities regulators to more deeply scrutinize the potential costs and benefits of securities industry rules.

The SEC wants FINRA to better support the economic aspects of proposals it submits to for review, Robert Colby, FINRA's chief legal officer, said last year.

Wall Street's major lobbying group, the Securities Industry and Financial Markets Association (SIFMA), has also been calling for the SEC to conduct a deeper economic analysis of its rules.

While U.S. law already requires the SEC to analyze the economic impact of its rules, enhancing those efforts could help spare the agency from embarrassing and crippling legal challenges by industry groups.

A federal court in 2011, for example, overturned an important SEC rule required by the 2010 Dodd-Frank Wall Street reform law that made it easier for shareholders to nominate directors to corporate boards. The agency's economic analysis was flawed, the court said.

The securities industry has pressed for more economic analysis, but investor advocates say it can hamper efforts to regulate the industry properly. In May, a divided U.S. House of Representatives passed a Republican-sponsored bill that would force the SEC to conduct more economic analysis before adopting rules for Wall Street.

"This is a proxy for disemboweling regulation," said former SEC Commissioner Arthur Levitt this week at the Reuters Global Wealth Management Summit.

The SEC already makes "painstaking efforts" to determine costs and benefits of its rules, Levitt said.

PRACTICAL SOLUTIONS

FINRA's own review, however, may ultimately lead to overhauling some rules that don't make sense when applied at certain firms, said Spindel of Integrated Management Solutions.

One rule, for example, requires a firm's chief executive to certify in writing each year that he met with the firm's compliance officer and ascertained there were processes in place to ensure compliance with industry rules.

That may work fine in a large firm where the chief executive and chief compliance officer are two different individuals.

However, one person may often wear both those hats in a smaller brokerage, Spindel said. That would make a required meeting between the two executives tricky, said Spindel.

"Who would he be talking to?" Spindel asked. "Himself?"

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By Suzanne Barlyn