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By email submission to pubcom@finra.org

June 13, 2008

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

Re: Regulatory Notice 08-24

Dear Ms. Asquith:

This letter is submitted on behalf of the National Society of Compliance Professionals Inc. ("NSCP") in response to FINRA's publication of Regulatory Notice 08-24 (the "Regulatory Notice"). As explained below, NSCP has a very large membership and a great interest in ensuring that the outcome of the NASD's consolidation with the New York Stock Exchange ("NYSE") benefits all member firms.¹ With this thought in mind, NSCP strongly urges FINRA to give all of its members and other interested persons an additional period of time in which to submit substantive comments on the proposals that are the subject of this Regulatory Notice. The ultimate goal of the rule consolidation process is too important to be rushed.

Set forth below is a brief description of NSCP, its mission and goals, followed by our formal request for an extension of the comment period. We then go on to discuss aspects of the proposed amendments to the Supervision and Supervisory Controls rules that we believe would benefit from greater clarity. In the interest of getting our comments to you by the stated deadline, our substantive comments on these proposals have been necessarily abbreviated; we will be happy to amplify these comments in the event FINRA extends the comment period. In addition, we would be happy to meet with you at your convenience to discuss any issue raised in this letter or to discuss how NSCP can assist in the consolidated rulebook project.

NSCP's Mission

As you may be aware, NSCP is a non-profit membership association with more than 1800 members dedicated to supporting the compliance profession. Our members work in the compliance areas of broker-dealers and investment adviser firms and come from all sizes of firms. To our knowledge, NSCP is the largest organization of securities industry professionals in the

United States devoted exclusively to compliance. NSCP serves its members' interests by sponsoring regional and national education meetings; publishing "white papers" on best practices within the securities industry; providing comments to federal and SRO regulators on new rules and proposed amendments to existing rules; and meeting with regulators to discuss "hot topics" in the industry and share the concerns of compliance professionals. In short, NSCP's mission is to ensure that the securities compliance industry meets high professional standards and effectively communicates its needs to regulators and others.

Why an Extension of Time is Warranted

As you know, the Regulatory Notice requests comment on dozens of proposed rule changes. We appreciate the enormous amount of effort that FINRA staff has put into synthesizing existing NYSE and NASD rules and making decisions regarding regulations that the staff believes should be kept intact, regulations that should be amended, and regulations that should be deleted. This effort has taken substantial time, which is understandable and commensurate with the scope of the endeavor.

Now comes the opportunity for FINRA members and other commenters to engage in a thoughtful review of FINRA's recommendations. This review necessarily involves comparing existing NYSE and NASD rules and engaging in a complex, rule-by-rule, detail-by-detail, analysis of each proposed new rule, rule amendment and proposed deletion. The review also requires a concerted effort to consider whether alternatives not presented by the proposals would better accomplish the underlying regulatory purpose, be less costly, or better position U.S. securities firms to compete in the global economy. NSCP and its members are engaged in this analysis but need more time – just as FINRA needed time – to examine all of the proposals and consider all of their possible effects.

We believe that an extension of the comment period is warranted by the sheer scope of the endeavor and its significance to every member firm. Accordingly, we are hereby requesting that FINRA extend the comment period by an additional thirty days. Even though thirty days represents a very short extension, it would enable more member firms to submit comments to FINRA and would result in an SEC rule filing that better reflects the views of FINRA members.

Proposed FINRA Rule 3110(a): Supervisory System

FINRA is proposing that paragraph (a) of new Rule 3110 require all FINRA members to appoint a registered principal to supervise each type of business in which the firm engages, "regardless of whether registration as a broker-dealer is required for that activity."² We think that clarification from FINRA regarding the intent of this proposal is necessary because it is unclear whether FINRA intends to impose its supervisory scheme on non-broker-dealer business. The proposed language could lead to this conclusion.

There are many reasons why this proposal as drafted would create very difficult burdens for broker-dealer compliance staff. As you know, member firms devote considerable resources to ensuring that compliance staff are well trained, properly licensed, and have the tools to do their jobs. This training must focus on a broker-dealer's "broker-dealer activities" – indeed, if member firms were required to bifurcate their compliance programs into separate programs to address rules and regulations not subject to FINRA's jurisdiction – and then devote resources to develop separate compliance programs that fit within the FINRA broker-dealer compliance model - fewer resources could be devoted to broker-dealer compliance activities. We are sure that this result was not intended.

We also note that the proposed change is inconsistent with the scope of proposed Rule 3110; the first sentence of the rule as currently proposed states:

Each member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable *securities laws and regulations*, and with applicable FINRA and Municipal Securities Rulemaking Board (MSRB) Rules. (emphasis added)

The rule provisions that follow this sentence must be viewed as being derivative of the thought expressed in this sentence. In other words, FINRA's purpose in adopting supervisory rules must be focused on a member firm's compliance with securities laws and regulations. We also note that the federal statute that authorizes the formation and operation of a national securities association specifically limits any such association from adopting rules outside the purview of the purposes of the statute.³

Proposed FINRA Rule 3110(b): Written Procedures

FINRA is proposing in Rule 3110(b)(2) that "all" transactions of a member firm relating to the investment banking and securities business of the firm be reviewed by a registered principal, and that the principal's review be evidenced in writing. FINRA states in the Regulatory Notice that the review of such transactions may be risk-based.

We would like to request clarification regarding what seems to be an inconsistency between the proposed requirement that "all" transactions be reviewed on the one hand, and the permissibility of using a risk-based approach on the other hand. Within the industry, a risk-based approach is understood to permit each member firm to use its best judgment to establish protocols to identify transactions, activities or communications that present a heightened risk when compared to other transactions, activities or communications and then deploy the firm's resources in a way that recognizes the particular risk characteristics of different types of transactions. Assuming that FINRA agrees with this definition of "risk based," we would suggest deleting the word "all" from the proposed rule, and re-writing the rule so that the risk-based standard is included in the rule text.

Proposed FINRA Rule 3110(b)(3): Supervision of Outside Securities Activities

In paragraph (b)(3) FINRA proposes that a member firm supervise all approved outside investment banking or securities business activities of an associated person and states that once approved by the member firm, the outside business activity “becomes the business of the member firm . . .”⁴

This is another area in which we would like to request clarification. Compliance staff typically are trained and equipped to play a role with respect to clearly defined areas and activities that are recognized as presenting a risk to the broker-dealer’s business. By moving away from the “transaction based” standard of NASD Rule 3040, FINRA would make compliance (as well as supervision and the audit function) much more difficult. In this regard we note our concern with the use of the word “business” – “business” can be an elastic concept without defined boundaries – how would compliance staff (or auditors or supervisors) effectively deal with entire “businesses,” as opposed to specific transactions”? We suggest that it is also unnecessary and duplicative to have broker-dealers “own” other businesses that are regulated by other U.S. state or federal regulators or by foreign regulators.

In addition, we are concerned that the rule would unnecessarily prevent the exercise of sound business judgments within a holding company structure. Under current regulations a member firm may permit a director or officer to also act as a director or officer of one or more affiliated companies, or to hold a management position with an affiliated company. There are many legitimate business reasons why a holding company would want the same individual to play an advisory role on a broker-dealer’s board of directors, and also perform a hands-on, day-to-day, function for an affiliate. Under the proposed rule, the broker-dealer would have to supervise the director’s or officer’s job at the affiliated company – obviously, this is not realistic and would in many cases be at odds with the expertise of broker-dealer supervisory and compliance staff.

We would suggest that there are alternatives to such a broadly-drafted rule; for example, the staff might want to identify outside securities activities that are common in the industry today, and then evaluate the risks likely to be associated with each type of activity. From a cost/benefit standpoint, we would think that it would be desirable to direct valuable supervisory and compliance resources to outside securities activities that present a high risk to the broker-dealer or customer funds or securities, rather than direct all member firms to supervise all outside securities activities in the same manner, without regard to the risk profile of a particular activity.

Proposed FINRA Rule 3110(c): Internal Inspections

Proposed paragraph (c) of Rule 3110 would prohibit member firms from “lessening in any manner” the effectiveness of an internal inspection due to conflicts of interest that may be present. We would expect compliance staff to have difficulty interpreting the “lessen in any manner” standard; to assist compliance professionals, FINRA should elaborate on what it believes this standard means.

Supplementary Material Regarding Insider Trading

FINRA proposes to require every member firm, regardless of the nature of its business, to monitor all employee trading as well as the trading of family members of the firm's employees. To our knowledge, this would be a substantial change to current regulatory requirements applicable to non-NYSE member firms, and is likely to result in significant additional costs for such firms. We would be interested in seeing a risk analysis that examines the likelihood that a member firm that is not in the investment banking business would be put at risk by the trading of its employees' family members. We would also like FINRA to consider the fact that not every member firm is authorized to carry retail accounts; accordingly, many member firms would not have the option of requiring all family members to hold their accounts at the member firm. Monitoring accounts that are held away requires the cooperation of the family member – who may not be inclined to cooperate depending on the definition of “family member” (will the term be limited to immediate family and how would immediate family be defined?) and the family member's acceptance of being subject to a regulatory requirement.

We also note that the obligation that would be imposed on firms engaged in “investment banking services” to file written, periodic reports of internal investigations related to employee and family trading goes beyond the requirements of NYSE Rule 342.21. We are very concerned that requiring the submission of reports of internal investigations could impede the free flow of information and advice between member firms and their employees and legal counsel. As you are no doubt aware, sustaining available legal privileges during the course of an internal investigation can be very important for member firms. Moreover, requiring the publication of a confidential internal review related, for example, to a family member of an employee, will expose members to a whole new range of potential defamation claims. While we have no objection to incorporating Rule 342.21 into the consolidated rules and extending it beyond NYSE listed securities, we urge FINRA to adopt the provision as otherwise written—i.e., to limit the obligation to conducting an internal review of suspicious trading activity.

Proposed FINRA Rule 3150

Finally, we would like to suggest that FINRA make clear with regard to proposed Rule 3150 that member firms are not required to hold customer mail for any prescribed period of time. While we appreciate the convenience afforded by this proposal, we believe that some member firms do not have the processes, systems and personnel to support holding customer mail for extended periods; it should be clear that any member firm is permitted to decline to hold mail where such systems are not available.

* * *

We look forward to being of continued assistance in the rule consolidation process. On behalf of NSCP, I thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Joan Hinchman', with a long horizontal flourish extending to the right.

Joan Hinchman
Executive Director, President and CEO

cc: David Lui, Chairman of the Board, NSCP
Diane Novak, Chair, NSCP Broker-Dealer Committee

¹ NSCP submitted a letter to the Securities and Exchange Commission last year in support of the consolidation of the regulatory functions of the NASD and NYSE Regulation, Inc. See letter to Nancy M. Morris, Secretary, SEC, from Joan Hinchman, NSCP, re: SEC File No. SR-NASD-2007-023, dated April 26, 2007.

² Regulatory Notice (Supervision and Supervisory Controls) at p. 4. The member apparently would also be required to have written supervisory procedures for non-broker-dealer business lines.

³ *See* Section 15A(b)(6) of the Securities Exchange Act of 1934, as amended, stating in part that the rules of a national securities association cannot regulate “matters not related to the purposes of this title....”

⁴ Regulatory Notice (Supervision and Supervisory Controls) at p. 5.