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RW SMITH & ASSOCIATES, INC

June 13, 2008

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

Sent via email to pubcom@finra.org

Re: FINRA Regulatory Notice 08-24
Supervision and Supervisory Controls Amendments

Dear Ms. Asquith:

We are writing in response to FINRA's request for comment in Regulatory Notice 8-24 concerning Supervision and Supervisory Controls. We wish to address the proposed deletion of existing NASD Rule 3040 and the new Proposed FINRA Rule 3110.

NASD Rule 3040 requires a firm to approve private securities transactions of its associated persons and specifies that, if compensation is received for such a transaction, it be recorded on the books of the firm, thereby trigger supervisory requirements. NASD Rules 3030 and 3040 together ensure associated persons receive approval from their respective firms for outside business activities, whether they include securities or not.

Proposed FINRA Rule 3110(b)(3)(A) reads:

> "Unless a member provides prior written approval, no associated person may conduct any investment banking or securities business outside the scope of the member's business. If the member gives such written approval, such activity is within the scope of the member's business and shall be supervised in accordance with this Rule, subject to the exceptions set forth in subparagraph (B)."

Subparagraph B of this Rule then goes on to explain the one exception, that of bank-related securities activities of dual employees.

Proposed FINRA Rule 3110 creates an overreaching and broad obligation that could actually force a member firm to supervise a business for which it has no approval, no appropriately registered principals, and no knowledge or experience.

All FINRA member firms are obligated to supervise their respective businesses and the transactions of their registered persons. Requiring Firm A to supervise the scope of business conducted by a dually registered representative acting on behalf of Firm B would be wholly inappropriate and unreasonable. Firm A and Firm B may have different licenses, completely distinct and separate business lines, and product expertise with corresponding supervisory procedures, thus the implicit reason for the dual registration. To stipulate that Firm A, upon giving written approval for RR1 to be dually registered with Firm B, must now assume the activities conducted under Firm B's license as within the scope of Firm A's member business lacks reason and is without merit. Of further consideration are privacy concerns; how will one firm gain access to the necessary records to supervise the business of the other when there are strict rules/laws safeguarding information and data?

To provide a very clear example, Firm A is exclusively a municipal securities broker's broker. Firm A is approved for and conducts business solely as a municipal securities broker, not a dealer. If a registered representative of Firm A is dually-registered with a broker-dealer (Firm B) to conduct a corporate bond business or engage in business with institutional customers, Firm A is neither approved nor qualified with appropriate principals to supervise such business. In fact, the broker-dealer (Firm B) with whom the dually-registered representative is registered is the qualified member firm in this scenario and should have sole responsibility for supervising the corporate bond and institutional transactions conducted through its firm.

Another example would be that of RR2 who is registered with Firm C, a firm which does not have an insurance license. Firm C is not approved for variable securities, is not licensed for variable securities, and does not have a qualified principal to review such business. RR2 dually registers with Firm D in order to transact variable insurance business. Firm D, of course, is approved for variable securities, is licensed for variable securities, has a qualified principal to review such business, and is obligated to supervise the business accordingly.

The Proposed Rule should not impact the types of arrangements described above and we wish to see guidance on this issue specifically. We strongly suggest adding language to address the member firm's obligation to agree to and delineate responsibilities in writing with the corresponding member firm to address supervisory obligations in the circumstance of dual registration agreements. The existing CIP rule is an example of a rule that allows for one firm's reliance on another firm's supervisory policies and procedures, assuming certain criteria are met.

Sincerely,

S. Lauren Heyne

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Chief Compliance Officer