



National Association of Insurance and Financial Advisors

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June 13, 2008

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

VIA E-MAIL (pubcom@finra.org)

Re: Proposed Consolidated FINRA Rules Governing Supervision and Supervisory Controls (Regulatory Notice 08-24)

Dear Ms. Asquith:

The National Association of Insurance and Financial Advisors (NAIFA) appreciates the opportunity to provide you with comments with respect to the Financial Industry Regulatory Authority (FINRA) proposed consolidated rules governing supervision and supervisory controls, issued in Regulatory Notice 08-24 (the Proposed Rules).

Founded in 1890 as the National Association of Life Underwriters, the National Association of Insurance and Financial Advisors is a federation made up of 744 state and local associations representing the business interests of 225,000 members and their employees nationwide. Members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments.

NAIFA has two concerns about the Proposed Rules: (i) the scope of a broker-dealer's supervisory responsibility over a registered representative with respect to the registered representative's insurance activities, and (ii) the burden imposed on registered representatives

who, going forward, will be required to obtain prior written approval from their broker dealer for all outside securities activities.

First, with respect to the scope of a broker-dealer's supervisory responsibility over a registered representative's insurance activities, it appears that the Proposed Rules make no substantive change from the current rule (NASD Rule 3030). Under current rules, a registered representative is required to give notice to its broker-dealer regarding any "outside activity" (including insurance sales activity but excluding investment banking and securities activities, which are treated differently) for which the registered representative receives compensation. The broker-dealer is not required or authorized to approve or otherwise supervise such activity. We are requesting confirmation from FINRA that this would not change under the Proposed Rules.

To the extent there is any change made by the Proposed Rules with respect to supervision, it appears to apply to the overall management of the broker-dealer, which would be required under Proposed Rule 3110(a) to designate a principal of the firm "to supervise each type of business in which the firm engages." (The current NASD Rule 3010(a)(2) limits the requirement for such supervision to business that requires registration as a broker-dealer.) While there is some lack of clarity as to the intent and scope of the supervisory requirement under Proposed Rule 3110(a), the Proposed Rule does not appear to impose any additional substantive regulatory requirements on the activities of the registered representative. This is appropriate, particularly with respect to insurance activities, which are fully regulated by the state insurance regulators and over which FINRA has no authority.

Assuming NAIFA is correct in its reading of the substance of Proposed Rule 3110(a), the substance of the proposal is not an issue for NAIFA. However, the lack of clarity in Proposed Rule 3110(a) and the explanatory materials published along with the Proposed Rules in Notice 08-24 is of concern. Proposed Rule 3110(b)(3) appears to contemplate heightened supervisory responsibility for broker-dealers with respect to outside securities activities, as opposed to other outside activities over which the broker-dealer has minimal interest and FINRA has no authority, such as insurance activities. In light of the expanded supervisory responsibility imposed by Proposed Rule 3110(b)(3), however, the Proposed Rules, when taken as a whole, do not

sufficiently differentiate the treatment of outside activities unrelated to securities, such as insurance, from securities-related outside activities.

We urge FINRA to revise the Proposed Rule to:

- (1) clearly describe the limited nature of broker-dealer “supervision” of outside activities unrelated to securities, and that such “supervision” does not include broker-dealer approval, disapproval, or other supervision of such activities;
- (2) clearly indicate in both the rule and any explanatory materials, that activities of registered representatives unrelated to investment banking or securities are not regulated or supervised by FINRA; and
- (3) state that the only requirement on registered representatives with respect to such activities is notification of the broker-dealer.

The second issue of concern to NAIFA is the burden imposed on registered representatives who, going forward, will be required to obtain prior written approval from the broker-dealer for outside securities activities.

The new requirement is problematic both because of the administrative burdens and the competitive disadvantage it imposes on the registered representative.

With respect to the administrative burdens, time and cost issues are NAIFA’s primary concerns. Time is of the essence in securities transactions. Obtaining approval from multiple broker-dealers prior to engaging in a particular activity could take a significant amount of time and delay – or even kill – a securities transaction. Subjecting the registered representative to the supervision of multiple broker-dealers could impose significant administrative difficulties, as well as expense. In addition, it is likely that each broker-dealer would demand a cut of any commission received by the registered representative.

A related issue is the competitive disadvantage that this requirement imposes on registered representatives. This requirement would give each broker-dealer complete control

over the securities activities in which its registered representatives are engaged. A broker-dealer could disapprove a registered representative's request to engage in an outside securities activity for any reason or no reason at all. There could be a strong incentive for a broker-dealer to disapprove outside securities transactions for competitive reasons. That is, a broker-dealer might deny a registered representative's request to engage in outside securities activities simply because the broker-dealer wants to keep the business for itself. This would harm not only the registered representative, but also the consumer, whose choices would be unfairly limited.

For these reasons, NAIFA urges you to remove Proposed Rule 3110(b)(3) from the proposal, leaving in place the current structure, which, we believe gives broker-dealers sufficient supervisory authority over registered representatives.

Thank you for your consideration of NAIFA's views.

Sincerely,

/s/ Gary A. Sanders

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