



NASAA

NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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December 12, 2014

Submitted electronically to pubcom@finra.org

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

Re: Comments in Response to Regulatory Notice 14-50

Dear Ms. Asquith:

The North American Securities Administrators Association (“NASAA”)¹ appreciates the opportunity to offer comments regarding the Financial Industry Regulatory Authority’s (“FINRA”) Regulatory Notice 14-50 (“The Proposal”), which addresses FINRA’s proposed pay-to-play rules. While NASAA supports FINRA’s efforts to implement rules designed to curb the disruptive practices related to pay-to-play schemes, NASAA urges FINRA to strengthen its proposed rules.

Investment Adviser Act Rule 206(4)-5 prohibits SEC-registered investment advisers from engaging the services of a third-party to solicit a government entity for advisory business unless such third-party is a “regulated person.”² The SEC defines regulated person to include SEC-registered broker-dealers that are members of a national securities association whose rules “prohibit members from engaging in distribution or solicitation activities if certain political contributions have been made” and that “such rules impose substantially equivalent or more stringent restrictions” than the SEC rules.³ The Proposal is FINRA’s initial effort to create such rules so that investment advisers can engage FINRA members to solicit government entities.

As the SEC’s rule makes clear, any FINRA rule must be equivalent to or more stringent than the SEC’s own pay-to-play rule in order for FINRA members to be considered regulated

¹ NASAA is the association of all state, provincial, and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

² 17 CFR 275.206(4)-5

³ *Id.*

persons. The Proposal satisfies this requirement, as it substantially mirrors the SEC's rule. FINRA, however, should take this opportunity to create more stringent rules for its members.

The Proposal suggests a two-year "cooling off" period in which a FINRA-member firm cannot be paid to engage in solicitation or distribution activities with a government entity on behalf of an SEC-registered—or exempted—investment adviser.⁴ While this cooling off period is identical to the cooling off period in the SEC rules, a longer cooling off period would increase the investor protection component of the proposal. Specifically, NASAA suggests that FINRA-member firms be prohibited from engaging in distribution or solicitation activities on behalf of an investment adviser directed at any government entity for a period four years following any qualifying contribution by the FINRA-member firm. Additionally, if a FINRA-member firm has engaged in solicitation or distribution activities with a government entity on behalf of an investment adviser, then that FINRA-member firm should be prohibited from making any qualifying contributions to that government entity for period of four years following the conclusion of the solicitation or distribution activities.

As currently proposed, FINRA Rule 2390 is only applicable to arrangements between SEC-registered, exempt, or exempt reporting advisers and FINRA-member firms due to a limited definition of the term investment adviser. Proposed Rule 2390's definition of investment adviser should be expanded to include state-registered investment advisers. Specifically, Proposed Rule 2390 should be expanded so as to prohibit FINRA-member firms from conducting distribution or solicitation activities with government entities on behalf of state-registered investment advisers if the FINRA-member firm has made any qualifying contributions to the government entity. Expanding the definition of investment adviser in the Proposal to encompass relationships between FINRA-member firms and state-registered investment advisers would further reduce the disruptions created by pay-to-play schemes.

Finally, NASAA supports FINRA's inclusion of disgorgement provisions for violations of the rule. FINRA, however, should include other investment education foundations, such a state securities investor education funds, as possible recipients of disgorgement payments.

The Proposal mirrors the SEC's rules ensuring that FINRA's members can continue to engage in the lucrative business of soliciting government entities on behalf of investment advisers, but FINRA should take this opportunity—by implementing the above suggestions—to create more stringent pay-to-play regulations that increase the underlying investor protection goals of such rules. Should you have any questions regarding the comments in this letter, please do not hesitate to contact Joseph Brady, NASAA Acting Executive Director and General Counsel at jb@nasaa.org or 202-737-0900.

⁴ FINRA's proposed definition of investment adviser includes advisers exempt from SEC registration pursuant to Section 203(b)(3) of the Investment Advisers Act of 1940 and exempt reporting advisers, as defined in Rule 204-4(a).

Marcia Asquith
December 12, 2014
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Sincerely,

A handwritten signature in black ink, appearing to read "William Beatty". The signature is fluid and cursive, with a large initial "W" and a stylized "B".

William Beatty
NASAA President
Washington Securities Administrator