



The VOICE of the Independent Broker/Dealer

July 16, 2007

Barbara Z. Sweeney  
NASD  
Office of the Corporate Secretary  
1735 K Street, NW  
Washington, D.C. 20006-1506

*Re: Response to Request for Comment to NASD and NYSE Proposed Joint Guidance Regarding the Review and Supervision of Electronic Communications; Notice to Members 07-30*

Dear Ms. Sweeney:

Serving as primarily a small and independent firm advocate for over 25 years, the National Association of Independent Broker-Dealers ("NAIBD") and its board of directors work together with independent broker-dealer owners & principals, industry product & service providers, and the SEC, NASD, and states' regulatory organizations to improve the securities industry as a whole. Recognizing the specific needs of independent broker-dealers (which make up over 85 percent of all US securities firms), the NAIBD provides specialized, widely acclaimed advocacy by hosting national informational meetings, catering specialized website programs, rapidly distributing critical regulatory details and product/service offers, supplying feedback to SEC, NASD, and state regulators, and offering regular networking meetings and other events.

The NAIBD is pleased to offer comments in response to the above-referenced joint guidance (the "Proposal") which would establish guidance for the industry's application in development of policies and procedures for the review and supervision of various types of electronic communications.

The NAIBD favors the principles-based approach taken in the guidance. In particular, NAIBD supports an approach to the review and oversight of communications that would permit each member firm to determine what types of communications present risk and warrant oversight, which communications are subject to review in accordance with relevant rules and regulations, and the means through which employees should be trained on the supervisory procedures. Further, NAIBD supports the supervisory guidance found in the Proposal which indicates that random reviews be performed in frequency and based on those sampling percentages deemed appropriate by each individual firm. This approach, rather than one which would require specific percentages enables firms to best elect how and when reviews may be performed to best serve the needs of its supervisory and compliance personnel.

In surveying its members, however, the NAIBD identified concerns that it wishes to bring to the attention of the NASD.

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National Association of Independent Broker/Dealers

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First is the concern expressed by a number of NAIBD members challenging the inclusion of text messaging among the types of electronic communications that should be covered by this proposal, since (1) text messaging is transmitted and received most commonly through existing cellular phone technology and not through the member firm's computer-controlled electronic compliance/surveillance systems, and (2) text messaging is merely a convenient substitute for voice communication and should not be classified within the definition of electronic correspondence. NAIBD feels that each member firm should be entitled to its own assessments of whether or not to include communications such as text messages within its supervisory system using a risk-based principled approach. NAIBD advises against the encroachment of regulators in areas in which modern technology will likely continue to present popular alternatives to verbal communications (transcription technologies, for instance).

Second is the concern that the Proposal sets forth certain specific guidance for electronic means of limiting, supervising or otherwise supervising and controlling the transmissions of electronic communications that may cause undue financial burden to small firms. In an effort to quantify NAIBD's concerns, certain of the survey results are provided below.

Of more than 50 firms participating in the survey:

- 50% do not require pre-approval for the business-related use of a personal electronic communications device other than a PC (for instance, text messaging).
- 56% do not have facilities in place to monitor and supervise E-faxes.
- 58% do not have in place an electronic surveillance system that applies a lexicon-based review of communications that pass through it.
- 71% do not have in place systems to block access to other e-mail platforms through their network.
- 81% of firms responding to the survey have policies for electronic communications that include a list of permissible and prohibited electronic communication mechanisms in effect.
- 88% do not systematically block access by their employees to message boards.

With respect to system capabilities, we have interpreted these related results to indicate that firms have taken steps to address the use of various types of electronic communication mechanisms through written procedures, rather than technological means. Therefore, NAIBD concludes that firms would encounter significant costs in systems upgrades to meet the standards established in the guidance, which are primarily based on potentially cost prohibitive technological platforms, but that implementation of effective policies may be attainable through non-automated solutions rather than driven by extensive technology.

NAIBD considers the aspect of the Notice that gives technical guidance to bear great importance, because although the recommendations are being offered as "guidance", the NAIBD's experience is that regulatory examiners tend to use notices such as these as 'checklists' in determining firm's compliance with the regulation in the performance of their examinations. As a result, it is feared that small firms with non-automated means of surveillance in place to supervise electronic communications might be severely disadvantaged by being measured against an unreasonable benchmark, without consideration for the principle-based, best efforts policies they have imposed in consideration of their available resources.



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In summary, NAIBD respects and supports the ongoing efforts of the NASD to institute a risk-based principles-driven approach to regulation. NAIBD respectfully requests that the NASD reconsider making technical recommendations, which NAIBD feels is inconsistent with a generally principles-based approach.

Respectfully submitted,

Lisa Roth, Chairman

National Association of Independent Broker-Dealers

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