

6/13/08

Sent Via Email: 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: Supervision and Supervisory Controls

Dear Ms. Asquith:

We are submitting this letter in response to a request for comments by the Financial Industry Regulatory Authority ("FINRA") published in Regulatory Notice 08-24 titled Supervision and Supervisory Controls. Great American Advisors®, Inc. ("GAA") appreciates this opportunity to respond to FINRA's request for comments.

While GAA understands and supports FINRA's efforts to work diligently toward the creation of a consolidated rulebook addressing rules employed by both the National Association of Securities Dealers ("NASD") and New York Stock Exchange ("NYSE"), such consolidation, in certain cases, creates substantial hardships respective to the member firms obligations prescribed by the Proposed Rules. GAA believes that with the application of revisions as discussed herein, the Proposed Rules as published in Regulatory Notice 08-24 may be amenable for all member firms.

Proposed Rule 3110(a) requires firms to "establish and maintain a system to supervise the activities of each associated person..." The proposed rule replaces the terms "registered representative, registered principal, and other associated person..." exclusively with the term "associated person". GAA has concerns over the potential broad interpretation of the term "associated person". GAA believes that the use of this term may unintentionally expand FINRA's jurisdiction to include a member's affiliates and the affiliate's employees in situations where they merely provide incidental services to the firm or where the affiliate reports to a senior executive who is also a registered principal of the firm. GAA recommends that FINRA amend the language to require firms to "establish and maintain a system to supervise the activities of each registered representative or registered principal actively engaged in the securities business of the firm..."

GAA is also concerned that subsection 3110(a)(2)'s requirement that firms must designate "an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages" is overly broad. The language suggests that firms must designate registered principals with supervisory responsibilities for outside business activities (e.g., investment advisory services or fixed insurance product sales). Through this Rule Proposal, FINRA appears to be expanding their jurisdiction into areas that are the responsibility of other regulators. GAA recommends that the language of the Proposed Rule revert to that of current NASD Rule 3010 which reads in relevant part: "The designation, where applicable, of an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required."

The Proposed Rule 3110(b) makes similar use of the term “associated person” as in 3110(a). GAA has the same concerns about the language in this context. In addition, GAA is concerned that 3110(b)(1) requires firms to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages...” As in 3110(a)(2) above, GAA believes this language is overly broad and represents a significant expansion of a broker-dealer firm’s supervisory responsibilities and FINRA’s jurisdiction. Therefore, GAA recommends that the language be rewritten to limit the requirement to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages for which registration as a broker/dealer is required”.

GAA also believes subsection 3110(b)(2) should state clearly that the firm’s supervisory procedures for review of investment banking and securities business may be risk based. This language is contained in the Supplementary Material .06, but GAA believes it should appear in the rule itself. Subsection 3110(b)(3) of the Proposed Rule needs significant revision to provide firms with clarity. GAA believes the phrase “conduct any investment banking or securities business” is too vague. As a result, GAA urges FINRA to replace it with the phrase “participate in any manner” as used in the current NASD Rule 3040. This language is far clearer and has been the subject of years of NASD interpretation.

In addition, GAA is concerned that the Proposed Rule’s subsection 3110(b)(3) once again seeks to broaden member firms’ responsibility for outside activities by including approved activities “within the scope of the member’s business...” This issue is of particular concern for GAA as its financial advisors may engage in outside activities, including investment advisory services through their own investment advisor entity. This is a significant departure from the guidance included in NASD Notice to Members 94-44 and 96-33. GAA believes this existing guidance, as described in NASD Notice to Members 94-44 and 96-33, should remain in effect. GAA is also concerned that this section of the Proposed Rule could require the firm to supervise the non-securities activities of dual employees who have corporate responsibilities for related entities. These activities should be exempt from the requirements of 3110(b)(3).

GAA has concerns with subsection 3110(b)(4) of the Proposed Rule. GAA believes the “supervisory procedures must ensure” language should be replaced by the phrase “supervisory procedures must be reasonably designed...” to make the provision consistent with traditional concepts of reasonable supervision. In addition, the section would require a registered principal to review “correspondence with the public and internal communications.” GAA believes the Proposed Rule should state clearly that such review could be risk-based and delegated to appropriate personnel. This language is part of Supplementary Material .09 and .11, but GAA believes it is of such importance that it should be included in the Proposed Rule itself.

Subsection 3110(b)(6)(C) of the Proposed Rule should be clarified such that home office employees are exempt from the requirement. In addition, supplementary material should be adopted that explains that the receipt of commission overrides does not equate to having one’s compensation “determined by” a person who is supervised.

In Subsection 3110(b)(6)(D) of the Proposed Rule, GAA finds the use of the phrase “procedures preventing the supervision required by this Rule from being lessened in any manner” imposes an unrealistic standard upon the broker/dealer. As a result, GAA requests a more reasonable requirement of “procedures reasonably designed to achieve compliance with this Rule.”

GAA recommends that FINRA amend Subsection 3110(b)(7) of the Proposed Rule to state clearly that written supervisory procedures may be maintained electronically at each OSJ or location where supervisory activities are conducted.

GAA believes the requirements of written inspection reports included in subsection 3110(c)(2)(A) should be amended so as to avoid specifically requiring inclusion of testing and verification of policies and procedures that may be conducted by the firm at their home office or other location rather than at a branch or non-branch location. GAA also believes subsection 3110(c)(3)(A) should exempt the firm's home office staff so that firms are not obligated to hire outside consultants to perform their inspections of these individual's activities.

GAA recommends that subsection 3110(c)(3)(B) should be amended. Once again, we find the use of the phrase "procedures preventing the supervision required by this Rule from being lessened in any manner" imposes an unrealistic standard upon the broker/dealer. As a result, GAA requests a more reasonable requirement of "procedures reasonably designed to achieve compliance with this Rule." GAA recommends that Supplementary Material .14 be amended to require "the quality of supervision at remote locations is reasonably designed to ensure compliance..." GAA further recommends that Supplementary Material .16 be amended to reflect the terms of the current limited size and resource exception. Specifically, GAA would rewrite subsection (b) to read "regardless of the member's size and resources, the member has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager."

GAA objects to FINRA's proposal in subsection 3120(b) to apply certain content requirements from NYSE Rule 342.30 to reports created by firms with \$150 million or more in gross revenue. The proscriptive nature of this Proposed Rule is contrary to the principles-based approach of NASD Rule 3012 and does not appear to add significant value to the process. Additionally, the required report represents a significant new burden for firms that are not dual members and a significant continued burden for firms that are dual members. As a result, GAA requests that FINRA eliminate subsection 3120(b) and (c) in their entirety.

GAA is concerned that Proposed Rule 3150 establishes unreasonable requirements for the holding of customer mail. For example, the Proposed Rule would require firms to be able to communicate with the customer whose mail is being held in a timely manner to provide important account information. While GAA understands the objective behind the proposed language, it is important to note that mail is oftentimes held specifically because the client is unreachable (e.g., overseas travel or active military service). GAA believes this language should be clarified or struck from the Proposed Rule. The Proposed Rule also utilizes the phrase "extended time" without providing a definition. GAA believes FINRA should define the term or insert a specific period of time into the Rule. GAA also has concerns about the requirement that firms "take actions reasonably designed to ensure that the customer's mail is not tampered with..." GAA believes this requirement should be amended to read, "take actions reasonably designed to avoid tampering with the customer's mail..."

GAA has no objections to Proposed Rule 1260 relevant to the responsibility of members to investigate applicants for registration.

We are pleased to have the opportunity to provide these comments and hope that they can assist FINRA in developing rules that are fair and appropriate for all members firms. Sincerely,

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