ADVISORS NETWORK

By Electronic Mail

June 13, 2008

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

Re: Regulatory Notice 08-23
Financial Responsibility Rules

Dear Ms. Asquith:

Thank you for the opportunity to comment on Regulatory Notice 08-23 relating to the Financial Responsibility Rules ("Proposal"). ING Advisors Network offers this comment letter on behalf of its four retail broker-dealers.[1]

We appreciate the complexity of FINRA's rule consolidation efforts and applaud FINRA's stated objectives of streamlining and reorganizing the Financial Responsibility Rules. We also endorse the concept of tiered rules with the caveat noted below based on the risk profile of a member firm's activities.

With these concepts in mind, we offer the following specific comments to the Proposal.

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[1] ING Advisors Network is the marketing name for a group of retail broker-dealers with a total of over 7,500 representatives. Our representatives are independent contractors and engage in the sales of general securities and packaged products. Our broker-dealers are also registered with the Securities and Exchange Commission ("SEC") as investment advisers.

Comment Time Period Should be Extended

We believe that the very short time period FINRA has given the industry is not sufficient given the importance of these particular rules. The rules are complex and, as noted below, there are significant issues with the Proposal. We do not believe the industry can effectively respond to all the issues or provide sufficient guidance on how they could be drafted in the time period provided.

FINRA should extend the comment period for 30 days so that it can obtain thoughtful and complete comments before filing the Proposal with the SEC. In the long run, this likely would be more expeditious than amending the Proposal after it is filed with the SEC.

Tiered Rules

We endorse the risk-based approach of applying certain rules only to broker-dealers that clear or carry customer accounts. This approach properly addresses operating risk. However, we do not agree with the proposal that broker-dealers exempt from SEC Rule 15c3-3(k)(2)(i) be subject to the more stringent rules. Broker-dealers operating pursuant to (k)(2)(i) are subject to a number of restrictions that reduce operating risk, such as the prohibition on carrying margin accounts. For this reason it is not clear why the Proposal subjects (k)(2)(i) broker-dealers to the same requirements as firms that clear and carry customer accounts.[2]

Authority to Increase Capital Requirements

As Regulatory Notice 08-23 states, Rule 4110(a) is a new provision for FINRA members[3]. It gives the FINRA Executive Vice President ("EVP") charged with oversight for financial responsibility (or his or her officer delegate) unilateral authority to raise net capital or net worth requirements, give more stringent treatment to items in the net capital computation, or require a firm to restore or increase net worth or net capital. FINRA states that proposed Rule 4110(a) is based primarily on NYSE Rule 325(d). However, the proposed rule differs from NYSE Rule 325(d) in two important respects. First, the EVP may take this step when "necessary for the protection of investors or in the public interest". Secondly, the proposed rule states that when this occurs, "FINRA shall issue a notice pursuant to FINRA Rule 9557."

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[2] The difficulty of including (k)(2)(i) is exemplified by footnote 5 to Regulatory Notice 08-23 which states that the heightened requirements only apply to member firms who "operate" under (k)(2)(i) exemptive relief, as opposed to firms that elect the exemption but don't operate under it.

[3] Rule 4110(a) appears to apply to clearing, carrying and (k)(2)(i) firms, although in referring to a decision with respect to a specific firm it only refers to clearing or carrying firms.

Presumably the intent of this additional language is to establish a standard that triggers FINRA's authority to act (i.e. protection of customers or the public) and to establish a process for broker-dealers to have an opportunity to be heard on whether the action is appropriate. These are laudable goals. However, the language of the proposed rule is unclear and the procedural protections are not sufficient. Regulatory Notice 08-23 states that proposed Rule 4110(a) will be triggered in "extraordinary circumstances". If so, the Rule should include language to that effect rather than simply stating that the EVP may act when "necessary for the protection of public investors or in the public interest". Additionally, the rule should clarify at what point a Rule 9557 notice is to be issued, and that once issued, the broker-dealer may avail itself of the opportunity for a hearing pursuant to Rule 9559.

It is questionable whether Rules 9557 and 9559 provide sufficient procedural safeguards to a broker-dealer that requests a hearing on a Rule 4110(a) determination that additional capital is required or items in the net capital computation be given more stringent treatment. Rules 9550, *et seq.* have very aggressive timelines under which a broker-dealer must act to contest a Rule 4110(a) determination. These procedural rules make some sense when restrictions are being imposed under current Rule 3130 for broker-dealers experiencing financial and operational difficulties. However, to apply the same timelines where a broker-dealer is not in capital deficiency but is required pursuant to Rule 4110(a) to infuse additional capital does not appear appropriate. This is exacerbated by the fact that although 4110(a) requirements are stayed upon a timely request for a hearing under Rule 9557, Rule 9557 includes new language allowing the FINRA CEO to override the stay without an opportunity for appeal of that decision. This override power appears to abrogate the limited procedural protection in the expedited proceedings rules, and is particularly troubling in view of the broad language and powers of Rule 4110(a).

Withdrawal of Capital

Notice 08-23 states that proposed Rule 4110(c)(2) is based "in part on NYSE Rule 312(h) and Securities Exchange Act Rule 15c3-1(e)". In fact, proposed Rule 4110(c)(2) bears little resemblance to NYSE Rule 312(h), and, without explanation, imposes greater restrictions than 15c3-1(e). Proposed Rule 4110(c)(2) states that:

> A carrying or clearing member or a member operating pursuant to the exemptive provisions of SEA 15c3-3(k)(2) shall not, without the prior written approval of FINRA, withdraw capital, pay a dividend or effect a similar distribution that would reduce such member's equity, where such withdrawals, payments or reductions in the aggregate, in any 35 day rolling calendar day period, on a net basis, exceeds 10% of its excess net capital.

NYSE Rule 312(h) states:

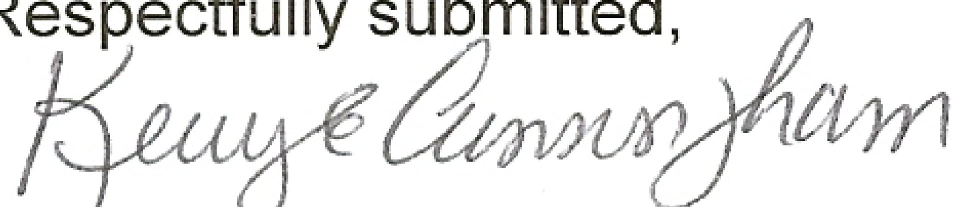
> (h) No member corporation subject to Rule 325 shall, without the prior written consent of the Exchange, redeem or repurchase any shares of its stock on less than six months notice given to the Exchange no sooner than six months after the original issuance of such shares (or any predecessor shares). Each member corporation shall promptly notify the Exchange if any redemption or repurchase of any of its stock is postponed because prohibited under the provisions of Exchange Act Rule 15c3-1 (see 15c3-1(e)).

The only relationship between proposed Rule 4110(c)(2) and current NYSE Rule 312(h) is that both rules address capital withdrawals. Proposed Rule 4110(c)(2) loosely parallels but is more restrictive than Securities Exchange Act Rule 15c3-1(e). Rule 15c3-1(e) requires that the designated examining authority approve capital withdrawals that exceed 30% of excess net capital on a net basis in any 30 day calendar period, and that the designated examining authority be notified after the fact if the capital withdrawal exceeds 20% of excess net capital. Proposed Rule 4110(c)(2) requires that any capital withdrawal that exceeds 10% on a net basis in any 35 day rolling calendar day period be pre-approved by FINRA in writing. There is no explanation in Notice 08-23 as to the reason for the 10% threshold, except that it is "de minimus." We believe that the 10% threshold is too restrictive, particularly since it is not limited in any way by the actual dollar amount of excess net capital a broker-dealer has.

Rule 4140 Audit

FINRA Rule 4140 would permit the FINRA EVP "at any time, due to concerns regarding the accuracy or integrity of a member's financial statements, books and records" to require a broker-dealer to cause an audit to be made by an independent public accountant. The proposed rule is extremely broad as to under what circumstances the EVP could impose such a requirement and affords no opportunity to a broker-dealer to challenge any such requirement imposed. Audits by independent accountants can be very costly to broker-dealers and is effectively a sanction, comparable to one that might be imposed in a disciplinary proceeding. The imposition of such a sanction without any appeal process does not appear appropriate.

Respectfully submitted,



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