



VIA ELECTRONIC MAIL

November 18, 2009

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Re: Comment Letter – FINRA Proposed Rules Governing Communications With the Public

Dear Ms. Asquith:

National Planning Holdings, Inc. ("NPH") offers this comment letter on behalf of its subsidiary broker-dealers, all of which are Financial Industry Regulatory Authority ("FINRA") member firms:

- Invest Financial Corporation (IFC) CRD – 12984
- Investment Centers of America (ICA) CRD – 16443
- National Planning Corporation (NPC) CRD – 29604
- SII Investments (SII) CRD – 2225

The four NPH Broker-Dealers have over 3500 Registered Representatives offering investment services to clients in all domestic jurisdictions. The NPH Firms are also members of the Financial Service Institute ("FSI") and support the advocacy activities of the FSI. We appreciate the opportunity to submit comments regarding the proposal to create FINRA Rules governing communications with the public. The thoughts and comments provided in this letter have been reviewed by members of senior staff of our Firms, including the respective Presidents and Chief Compliance Officers, and represent the collective view of the NPH Broker-Dealers.

The NPH network appreciates FINRA's review and assessment of the existing NASD and NYSE rules governing communications with the public. In some respects, it appears FINRA is attempting to streamline these rules for broker-dealer firms, however we have some concerns related to specific elements of the proposal as follows.

Proposal – Communication Categories

FINRA is proposing to reduce the existing number of communication categories from six to three, with the new categories represented as:

- ***Institutional Communication*** - would include communications that fall under the current definition of "institutional sales material"—i.e., communications that are distributed or made available only to institutional investors. "Institutional investor" would have the same definition as under NASD Rule 2211(a)(3).
- ***Retail Communication*** - would include any written (including electronic) communication that is distributed or made available to more than 25 retail investors. "Retail investor" would include any person other than an institutional investor, regardless of whether the person is an existing or prospective customer.

- **Correspondence** - would include any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors, regardless of whether they are existing or prospective customers.

Comments:

Retail Communication

- By creation of the new "Retail Communication" category, FINRA is combining the existing advertising and sales literature categories. Currently these categories differ primarily on whether the audience is controlled (sales literature) or uncontrolled (advertising). The differentiation in the intended audience assists the member firm in determining whether the content is appropriate, necessary disclosures for inclusion, etc. We are concerned that by combining the two categories, FINRA may effectively review all retail communications as intended for an uncontrolled audience, thereby requiring additional disclosures or content revisions that may not be necessary. We feel retaining the distinction of the intended audience are an important component of rules governing communications with the public.
- In regard to public appearances, the proposal states *"In this regard, associated persons who recommend securities in public appearances generally would be subject to the same disclosure requirements under proposed FINRA Rule 2210(f) as research analysts that recommend securities in public appearances pursuant to NASD Rule 2711(h)"*. We seek clarification in this proposal as to what FINRA deems as a recommendation during public appearances. Specifically, is the discussion of a general product category such as variable annuities a recommendation? Alternatively, would the mention or discussion of a specific product be considered a recommendation in a group setting? We believe there is a distinction between a public appearance wherein a representative discusses general investment categories and suggests individual client meetings before making a recommendation to purchase a particular product versus one where a representative recommends the purchase of a particular stock or investment product.

Correspondence

- The existing definition of correspondence states:

(1) "Correspondence" consists of any written letter or electronic mail message and any market letter distributed by a member to:

(A) one or more of its existing retail customers; and

(B) fewer than 25 prospective retail customers within any 30 calendar-day period.

In contrast, the new proposed definition would eliminate the "one or more of its existing retail customers" standard and simply combine both existing and prospective customers into one category. Again, we feel the intended audience is an important distinction that should be retained. Representatives should be able to communicate with existing retail customers, differently than they do with prospective clients. Additionally, by following the standards of the new correspondence definition, significantly more communications which are currently deemed correspondence would now be deemed retail communications, subject to more stringent principal review and even in some cases filing requirements.

Proposal - Filing Requirements

Comments:

- In relation to filing requirements, we would request FINRA to provide additional guidance as to what is meant by retail communications “concerning” the particular product within the filing category. It seems that this term is subjective in nature, leaving member firms to interpret how far the communication goes before stepping into filing territory. We request FINRA to assess whether a more meaningful description can be provided to help clarify the materiality test for member firms to use when assessing whether a filing requirement has been triggered.
- In regard to the filing requirement, FINRA should consider using the “approval” date versus date of “first use” as firms may not know the exact date of first use by the field representative or internal business department.
- Regardless of the proposed rules, member firms struggle with existing issues within the stated rules. One such example is seminar invitations. FINRA’s current position is that seminar invitations are defined as sales literature and require full disclosure. We feel that seminar invitations are merely meant to gain interest for the underlying seminar presentation, which would be fully disclosed as necessary and filed with the Department if necessary. Additionally, it is expected that seminar invitations follow all required standards when communicating with the public such as not being exaggerated or misleading. As part of this rule consolidation, we would ask FINRA to assess whether reasonableness standards for such scenarios could be achieved and addressed within the rule or supplemental material.

Additional Items For Consideration

In addition to the specific items outlined in the proposal, we would like to highlight some additional issues that were not formally addressed.

Comments:

Electronic Mediums

- With the increase in use of websites, email, instant messaging, social networking, etc. we propose that FINRA consider whether any of these mediums require special attention in respect to rules governing communications with the public. This is especially true in relation to supervision and record keeping aspects. The rule consolidation process affords FINRA the opportunity to modernize its rules in relation to electronic communication mediums or to provide best practice guidance in the form of regulatory notices.

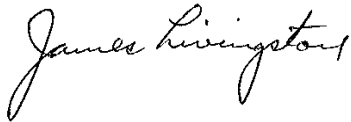
Implementation Timeline

- Should the proposed rules be implemented as drafted, member firms would be required to engage in a substantial effort to assess and revise existing procedures, train staff and representatives, and realign any existing workflow. Accordingly, we would suggest FINRA consider providing a generous and ample timeline for member firms to comply with these new standards.

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In summary, the NPH Broker-Dealers reiterate their support of FINRA's rule consolidation process. We have great appreciation for the time and efforts involved in such an enormous undertaking and believe that member input into the process is critically important. However, we respectfully request that FINRA consider the issues we have outlined related to the proposed rules governing public communications which may have unintended consequences to the member firm community.

Sincerely,

A handwritten signature in cursive script that reads "James Livingston". The signature is written in black ink and is positioned below the word "Sincerely,".

James Livingston
President/Chief Executive Officer
National Planning Holdings, Inc.