



VIA ELECTRONIC MAIL

December 16, 2008

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

Re: Comment Letter - Regulatory Notice 08-68, Proposed FINRA Rule Addressing the Circulation of Rumors

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 3000 Registered Representatives offering investment services to clients in all domestic jurisdictions. We appreciate the opportunity to submit comments on the issues raised in Regulatory Notice 08-68 regarding the proposal to create a new rule addressing the circulation of rumors. 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.

We provide the following comments related to proposed Rule 2030:

General Comment. The NPH Broker/Dealers understand and appreciate the intent of Rule 2030. We believe that it is inappropriate and unethical for any individual to knowingly distribute false information in any context, and especially to manipulate the markets. However we have concerns related to the broad nature of the text as proposed and in light of existing rules 6140(e) and 2210 also question if a new rule is required.

Lack of Definition of "Rumor". The proposed rule does not define the term "rumor". Merriam-Webster's on-line dictionary defines a rumor as "1. talk or opinion widely disseminated with no discernable source; 2. a statement or report current without known authority for its truth. . ". Therefore, a rumor would potentially be any statement, written, verbal or electronic, which has not been verified for its truth and accuracy. It is an extremely broad term, and when coupled with the lack of clarity provided by NYSE 435(5) or FINRA Rule 6140(e) results in an application with extreme breadth, that will include conduct that is not currently considered problematic.

Comparison to NYSE Rule 435(e). Regulatory Notice 08-68 provides that it is incorporating NYSE Rule 435(5).

NYSE Rule 435(e) provides that no member shall:

(5) Circulation of Rumors

Circulate in any manner rumors of a sensational character, which might reasonably be expected to affect market conditions on the Exchange. Discussion of unsubstantiated information published by a widely circulated public media is not prohibited when its source and unsubstantiated nature are also disclosed. Report shall be promptly made to the Exchange of any circumstance which gives reason to believe that any rumor or unsubstantiated information might have been originated or circulated for the purpose of influencing prices in listed securities.

As noted in Regulatory Notice 08-68, NYSE Rule 435(e) requires that the rumor be of a “sensational character” and that it “affect market conditions on the exchange”. By eliminating the two conditions of NYSE Rule 435(e), FINRA has significantly broadened the impact of the proposed rule. While Proposed Rule 2030 would prohibit statements that are reasonably believed to be false or misleading, it would also prohibit the transmission of any statement regarding a specific security that “would improperly influence the market price of such security” regardless of whether such statement was factually accurate or not. Since the term “improperly” is not defined, it would result in subjective determinations and inconsistent results. Additionally, because it applies to individual securities, rather than “market conditions on the Exchange”, a member may be subject to disciplinary action for transmitting a true and correct report relative to an individual security (such as a Penny Stock). Obviously it is far easier to influence the market price of a Penny Stock than it is to affect the market conditions of the NYSE. As a result, the impact of proposed rule 2030 is significantly broader than NYSE Rule 435(e).

Unsubstantiated Information Exception. We also believe that to provide clarification, the following exception, which currently exists in NYSE Rule 435(5), should be incorporated into Rule 2030:

Discussion of unsubstantiated information published by a widely circulated public media is not prohibited provided that the source of the information and its unsubstantiated nature are disclosed.

We believe inclusion of this language would provide further clarification and specificity needed in the rule. This exception is especially important in light of the enormous amount of information, which is publicly available via various media outlets and the valid Internet sources.

Materiality Standard. The proposed rule applies to rumors “which the member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security.” We believe that the proposed rule lacks a necessary materiality standard, in that this particular aspect of the rule does not impose any type of severity threshold, therefore we foresee harmless scenarios that would violate this component of the rule. In essence, a representative could inadvertently transmit information that is deemed a rumor that is false or misleading, but which does not influence the market price of such security. This event would be treated the same as a material event, where the representative intentionally transmitted the information. Both events would be violations, and both would activate the reporting requirement under the proposed rule. We believe that if a new rule is required, the rule should provide a materiality standard by changing the text of the rule as follows:

. . . which the member knows or has reasonable grounds for believing is false or misleading ~~or~~ and would improperly influence the market price of such security.

This change would effectively provide that even inadvertent distribution of a rumor (such as forwarding an email that the representative has not read in its entirety or which has an unopened attachment) would not result in a rule violation unless it resulted in improper market influence.

Reporting Requirement. The proposed rule includes a reporting requirement, which states:

A member must promptly report to FINRA any circumstance, which reasonably would lead the member to believe that any such rumor might have been originated or circulated.

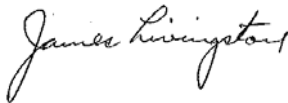
It is our opinion that the broad nature of the rule as written, and the lack of any materiality provision, will trigger reporting requirements for events that would otherwise be non-material in nature, creating regulatory and administrative burdens for both member firms and FINRA. There are also concerns related to a member firm's ability to detect such events and report them promptly. Additionally, given the lack of definitions of key terms such as "rumor" and "improperly influence" firms would be forced to report many items that may not be within the spirit of the proposal. Therefore, if this component of the rule is retained, FINRA's expectations related to prompt reporting requires further clarification.

Firm Level Procedures. It is our opinion that the proposed rule need not include additional requirements, which would place greater emphasis on member firms' policies and procedures related to the circulation of rumors. As with any applicable regulatory requirement, member firms have an existing obligation to adequately address such requirements in their written supervisory procedures and processes.

In summary, the NPH Broker-Dealers reiterate their support of FINRA's Rulebook consolidation process. We have great appreciation for the time and effort 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 proposed Rule 2030, which may have unintended consequences to the member firm community. We specifically request that FINRA re-evaluate the rule proposal providing a materiality standard and further clarification and definitions as outlined above.

We appreciate FINRA's consideration of our comments.

Sincerely,

A handwritten signature in cursive script that reads "James Livingston".

James Livingston
Chief Executive Officer
National Planning Holdings, Inc.