



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:

The National Association of Independent Brokers-Dealers, Inc. (NAIBD or the association) was formed in 1979 to positively impact rules, regulations, and legislation by facilitating a consistent, productive relationship between industry professionals and regulatory organizations. The organization is national in scope and direction with 350+ Broker-Dealer and Industry Associate Members.

NAIBD welcomes FINRA's proposed consolidation of rules governing supervision and supervisory controls, and in particular, applauds the principles-based approach.

In particular, NAIBD supports allowing the annual compliance meeting to be conducted through means other than by in-person meetings. Further, we support the language permitting the delegation of correspondence review responsibilities to non-principals. On behalf of its members, notwithstanding certain comments made below, NAIBD is confident that the strides taken to provide clarity with regard to inspection cycles as proposed in new Rule 3110(c) will have an overall positive impact.

NAIBD stands strongly behind the shift to a principles-based approach evident in Proposed Rule 3110(b)(6), especially the deleted prescriptive provisions of Rule 3012 related to the producing manager's customer account activity and the elimination of the requirement to impose heightened inspection when such production rises above a specific threshold.

NAIBD appreciates and supports the exceptions made for circumstances where small firms of limited size and resource may be otherwise unable to comply with the letter of the rule.

Notwithstanding our general support of the proposed amendments and revisions, we respectfully submit the following comments, concerns and requests for clarification for FINRA's consideration.

Comment Time Period

NAIBD requests that FINRA extend the comment time period for a minimum of 30 days, to allow adequate time for the thorough consideration of these complex proposals. With the benefit of additional time, we believe that the comments and insight from the industry will provide meaningful remarks that may result in accelerated rule approval once the proposal reaches the SEC.

Review of Correspondence and Internal Communications and Documentation and Supervision of Supervisory Personnel

It appears that several proposed supervision amendments have moved away from the long-standing "reasonably designed to" standard to a concrete 'perfectionist' requirement. In our opinion, this shift presents the industry with an unrealistic burden of performance, beyond what is reasonable to achieve. For instance, Proposed Rule 3110(b)(4) requires that supervisory procedures "must ensure the firm identifies and supervises customer complaints, customer instructions, funds and securities, and review of communications in accordance with its written procedures"; 3110(b)(6)(c) requires that "the supervisory system include procedures that prohibit associated persons who perform a supervisory function" ...; and 3110(b)(6)(d) requires that "the supervisory system include procedures that prevent the supervision required by this Rule from being lessened in any manner."

NAIBD suggests that despite all diligent and reasonable efforts, firms may be unable to provide such assurances. NAIBD suggests that FINRA consider amending the requirement that supervisory procedures must ensure, prohibit or prevent, and continue to incorporate the 'reasonably designed to' standard. This would achieve consistency with long-standing guidance such as is found in Notice to Members 99-45 which states that a supervisory system cannot guarantee firm-wide compliance with all laws and regulations. Instead, it should be a product of sound thinking and within the bounds of common sense.

Proposed Rule 3110(b)(6)(ii)(a) Limited Size and Resources

NAIBD notes that as part of the Rule 3012 adopting release, the SEC required that any firm that was unable to comply with the supervisory function requirements of Rule 3012

due to its size or supervisory personnel position within the firm must notify FINRA of its reliance on this exception. Should Proposed Rule 3110 be adopted, NAIBD seeks clarification as to status of the electronic Limited Size and Resource Exception notification currently available in the Forms & Filings section on FINRA's Gateway system and whether a firm will be required to verify its continued reliance on the exception annually.

Proposed Rule 3110(c)(1)(B) Non-Branch Inspections

The proposed rule requires firms to inspect every branch office that does not supervise one or more non-branch locations at least once every three years. However, in aged Notices to Members including 98-38 and 99-45, among other guidance, FINRA alerted member firms to findings of the SEC that one pre-announced annual inspection may not be adequate to discharge a firm's supervisory obligations for these types of locations. The established guidance appears to conflict with the proposed rule. NAIBD requests clarification as to whether or not the 1998 and 1999 guidance is hereby retracted.

NAIBD believes that non-branch inspections should be designed in conjunction with the member firm's business model. For example, if there is no business being conducted from a non-branch location and the firm otherwise has adequate supervisory controls in place, then it may be appropriate to have one pre-announced annual inspection or even something less frequent. Such a determination should be done on a case-by-case basis and left to the particular member firm to incorporate in their inspection schedule.

Proposed Rule 3110(c)(2) (A) and (D) Written Inspection Reports

NAIBD notes that firms with small or geographically dispersed retail offices likely do not perform certain functions required to be inspected in 2(A) and (D), such as safeguarding of customer funds and securities and transmittals of funds or securities from customers to third party accounts. NAIBD requests that FINRA confirm that in such cases wherein certain of the requirements are not performed in branch offices, it is sufficient to simply so state in the firm's written procedures, and not in the inspection reports for affected office locations.

Proposed FINRA Rule 3110(a)(2): Supervision of Non- Securities Activities

NAIBD has significant concerns regarding the Proposed Rule 3110(a)(2), which would require that a member's supervisory system provide for designation of a supervisory principal for all business activities of its representatives, including those which would not otherwise trigger a registration requirement.

This rule as proposed is inconsistent with 3110(a), the prefatory rule in this series, which imposes supervisory requirements regarding those business activities of a firm that are reasonably designed to achieve compliance with applicable securities laws and regulations and with the applicable Rules of FINRA. NAIBD requests clarification as to this inconsistency.

If in fact FINRA's intent is to require firms to establish supervisory systems to encompass the outside non-securities business of their associated persons, NAIBD requests that FINRA retract this aspect of the proposal in consideration of the overwhelming burden it would place on firms. For example, those firms which permit their associates to engage in activities such as fixed insurance, investment advisory, tax or legal business, or the like would face insurmountable obstacles including exorbitant costs, and complex, duplicative and perhaps even limiting jurisdictional issues. It does not appear even remotely feasible that an independent contractor firm could remain in business were this component of the rule to be enacted.

Supplementary Material .02 – Designation of Additional OSJs

Retail sales and/or frequent communications with customers has not previously been a determining factor in the designation of an office as an OSJ. Many NAIBD member firms have small retail offices in geographically dispersed locations that would not otherwise be considered as OSJ offices. NAIBD suggests that this condition be removed from the Supplemental language as it implies that conducting these types of activities may require that the location be designated as an OSJ.

Supplementary Material .03 - One-Person OSJs

The supplementary material states that one-person OSJ locations must be under the close supervision and control of another appropriately registered principal ("senior principal") and subject to regular onsite supervision. NAIBD asserts that this guidance contains ambiguous terms and/or requirements that are not necessary. The term "close" is vague and superfluous since the proposed rules already prohibit supervisors from supervising their own activities. The term "Senior Principal" is unclear with respect to the qualifications, licensing, corporate stature and/or tenure that might be required to satisfy "senior principal" designation. Further, requiring regular onsite supervision of one-person OSJs does not appear to be any more necessary than for non-OSJ branch offices that are not subject to a similar requirement. Moreover, firms employing certain forms of modern electronic surveillance systems can more than adequately supervise activities. We request that this language be removed from the guidance.

Supplementary Material .04 - Supervision of Multiple OSJ's by a Single Principal

NAIBD questions the rationale behind the requirement of a regular and routine onsite presence of the designated principal. Numerous remote means of oversight may be practical, reasonable and effective without the requirement to be onsite. For instance, one principal might be assigned to supervise two or more offices that are designated as OSJs because they review advertisements or structure private placements. A firm may want to assign one individual to oversee activities in two or more offices conducting similar, limited types of activities because the firm wants to make sure that each office conducts such activities in a consistent manner and/or the individual has the requisite experience to oversee the activities. It may not be necessary for the designated principal to have a regular onsite presence, as the designated principal could easily review documents remotely and verify that business is being conducted in accordance with the firm's policies and procedures through other than onsite means.

This guidance may also be problematic in situations where a firm has several one-person OSJs. It is not reasonable or practical to think that a firm has adequate personnel to assign one "senior principal" to review the activities of just one "one-person OSJ", let alone meet the requirement to be onsite on a regular and routine basis. NAIBD contends that this would be overly burdensome and perhaps, an out-dated requirement.

Finally, the supplementary material text has an undertone of 'guilty until proven innocent' when it states: "There is a further general presumption that a determination by a member to designate and assign one principal to supervise more than two OSJs is unreasonable." The primary goal of any supervisory system is to prevent violations of rules and regulations. If no violation occurs, how can it be assumed that assigning one principal to supervise more than two OSJs is unreasonable and why would a firm have a greater burden to evidence the reasonableness of such a supervisory structure?

Supplementary Material .10 - Evidence of Review of Correspondence and Internal Communications

NAIBD suggests that the guidance in this section be amended to account for the fact that the 'reviewer' might in fact be an electronic system. NAIBD is aware that many of its members accomplish broad, thorough and at times high volume reviews through electronic systems that employ stringent, systematic and reliable review protocols. NAIBD urges FINRA to validate the use of these electronic systems by specifically amending this language to allow that the chronicling of reviews might be performed by an electronic 'reviewer'.

The last sentence in this guidance related to email reviews reads: "Merely opening a communication is not sufficient review." NAIBD feels that this final sentence is unrealistic and unnecessary. While it may be reasonable to state that simply opening a paper communication does not in and of itself constitute a review, in fact opening an electronic communication would and in many cases does allow the reviewer to read the content in its entirety. In the case of an electronic review system, preliminary reviews are performed without actually 'opening' the communication in the classic sense. It is reasonably foreseeable that over time, these systems will become more sophisticated, which might render this sentence obsolete. Notwithstanding the prior comments, NAIBD believes that the import of the guidance is achieved without this final sentence, and therefore that it should be omitted.

NAIBD appreciates the opportunity to comment on this proposal. If you have any questions or would like to request clarification, please contact the undersigned at 858-549-7131, ext. 318.

Sincerely,

// Lisa Roth //

Lisa Roth
Chairman, NAIBD