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VIA ELECTRONIC MAIL

July 20, 2011

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: SR-FINRA-2011-028

Dear Ms. Murphy:

We appreciate the opportunity to comment on the proposed consolidated rules issued by the Financial Industry Regulatory Authority ("FINRA") governing the supervision and supervisory controls of Branch Offices and Offices of Supervisory Jurisdiction (hereinafter, the "Proposed Rules").[1] FINRA initially proposed the consolidation of NASD Rules 3010 and 3012 into proposed FINRA Rules 3110 and 3120 in Regulatory Notice 08-24 in May of 2008. LPL Financial LLC (formerly LPL Financial Corporation and hereinafter "LPL") responded to the proposal in a letter from Stephanie Brown to FINRA dated June 13, 2008 (the "Comment Letter"). On June 29, 2011, the SEC published the Proposed Rules in the Federal Register and requested comments[2].

As stated in our Comment Letter, LPL supports FINRA's efforts to develop a consolidated rulebook that not only seeks to harmonize and streamline existing rules, but also gives consideration to the diversity of firms subject to FINRA regulation. While LPL remains supportive of the consolidated rulebook process being conducted by FINRA, and certain of the aims of the Proposed Rules, LPL remains deeply concerned that the vast changes proposed by FINRA in the Proposed Rule will cause serious disruption to the independent broker-dealer model and will carry significant costs that have not been appropriately justified. LPL strongly encourages FINRA and the SEC to revisit the broad changes contained in the Proposed Rules to consider the implications to independent broker-dealers. Importantly, LPL recommends that to the extent the Proposed Rules are adopted, broker-dealers be granted considerable time to adjust

[1] Proposed Rule Change to Adopt the Consolidated FINRA Supervision Rules (June 10, 2011), available at http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p123779.pdf

[2] Proposed Rule Change to Adopt the Consolidated FINRA Supervision Rules, 76 Fed. Reg. 38245 (June 29, 2011), available at http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p123841.pdf

their business practices to absorb the significant costs and operational and compliance changes that will be necessary to comply with these new self-regulatory regulations.

I. Introduction

LPL is one of the nation's leading diversified financial services companies and is registered with the SEC as both an investment adviser and broker-dealer. LPL currently supports the largest independent registered representative base,[3] (referred to herein as "financial advisors") and the fifth largest overall registered representative base in the United States, providing financial professionals with the front, middle, and back-office support they need to serve the large and growing market for brokerage services and independent investment advice, particularly in the market of investors with $100,000 to $1,000,000 in investable assets. As of March 31, 2011, brokerage and advisory assets totaled $330 billion, of which $99.7 billion was in advisory assets. LPL self-clears its transactions and maintains custody of its brokerage client customer accounts.

II. Supervisory System: Proposed Rule 3110(a)

Under the Proposed Rules, FINRA seeks to amend NASD Rule 3010 which requires firms to designate "an appropriately registered principal(s) with the 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" by eliminating the phrase "for which registration as a broker-dealer is required." As noted in our Comment Letter, this change in language significantly alters FINRA's jurisdiction and directly infringes on the oversight of other regulatory regimes. In addition, the compliance burden placed upon member firms – to adequately supervise businesses that do not have a direct correlation to the securities business of the member firm – is misplaced and unlikely supported by law.

As discussed in our Comment Letter, many member firms permit their financial advisors to engage in investment advisory services and insurance activities in addition to their securities business. The Proposed Rules appear to depart from prior FINRA guidance that supervision was only necessary if the financial advisor participated in the execution of the trade. Instead, member firms would be responsible for activities completely unrelated to securities activities, including the sale of technology or financial planning activities. In addition, the responsibility to supervise the insurance activities of its financial advisors is currently governed by State authorities and the requirement that FINRA would create parallel jurisdiction through the Proposed Rule is disturbing.

As noted above, LPL questions the purpose of the Proposed Rules' requirements to have an appropriately registered principal supervise non-securities related activities that are regulated by other primary regulators. Should the Proposed Rule be adopted, the prospect of having disparate treatment between FINRA and the primary regulator of the business activity would be real. For instance, the Proposed Rules could lead to conflicting substantive and procedural standards of

[3] Investment Advisor's Top 25 Independent Broker/Dealers, *Investment Advisor*, June 2010.

supervision for these activities between FINRA and the primary regulator governing the business activity.

Although the purported aim of the new construct is to protect consumers by ensuring that all members engage in high standards of commercial honor and just and equitable principles of trade,[4] it is more likely to serve as a catalyst for the plaintiff's bar to bring meritless suits for allegedly imperfect supervision of non-securities related activities. Indeed the very notion that a supervisory principal (or for that matter FINRA) would have the expertise to supervise all lines of business of a member firm – regardless of its connection to securities activities – appears misguided. In addition to technology changes, to properly comply with the Proposed Rules, member firms may be forced to either severely limit the activities in which financial advisors are permitted to engage, or alternatively, employ significantly more staff with wide ranging expertise to properly supervise the non-securities related activities in accordance with FINRA's view of proper non-securities related supervision. Moreover, the Rule is not business model neutral and unfairly impinges on the independent model, where entrepreneurial financial advisors often may engage in various non-securities related business activities.

In our Comment Letter we respectfully requested the reinsertion of the removed language and in light of the comments above we now again respectfully request that the implications of the Proposed Rule be revisited and that the original language of NASD Rule 3010(a)(2) remain intact in the consolidated rule.

III. OSJ and Non-OSJ Principals: Proposed Rule 3110(a)(4)

Proposed Rule 3110(a)(4) would require that each OSJ and each non-OSJ branch office designate one or more appropriately registered principals with authority to carry out the supervisory responsibilities assigned to that office by the member. In addition, the Supplemental Material in .03 and .04 specifies that a producing registered representative cannot supervise his or her own activities. In addition, Supplemental Material .04 further provides that a producing OSJ supervisor must be under the close supervision and control of another appropriately registered principal (each a "Senior Principal") and that such Senior Principal must conduct *on-site supervision* of the activities of the OSJ supervisor on a regular periodic schedule determined by the member.

LPL fully supports the notion that self-supervision of a financial advisor's own securities activity may be problematic; however, we strongly believe that the manner of addressing this conflict is best left to member firms and should take into account the business models of independent broker-dealers. LPL agrees that the designation of a Senior Principal to oversee the activity of the onsite OSJ supervisor may be necessary. Nevertheless, the prescribed requirement of "regular periodic onsite supervision" by such Senior Principal may not create the appropriate efficiencies or enhance the overall supervisory structure as intended. The Proposed Rules appear to ignore the nature of the business in today's high technology environment where nearly all of the supervisory responsibilities of the OSJ may be conducted from remote locations that take into account the economic circumstances of each member firm.

[4] FINRA Rule 2010.

Furthermore, the proposal appears to disregard the substantial costs that would be incurred by independent broker-dealers that have long established business practices of conducting supervision remotely while still allowing for the detection of onsite deficiencies through their branch examination processes. As stated in our Comment Letter, LPL would be forced to make substantial investments in new personnel and incur significant travel expenses to comply with the Proposed Rules, costs that do not appear to have been taken into account by FINRA when proposing the rules. We strongly encourage the SEC and FINRA to reexamine the efficacy of Proposed Rule 3110(a)(4) with a particular focus on its disparate impact on the independent model and we recommend that the SEC and FINRA permit firms to manage their business with the maximum degree of flexibility.

IV. Implementation

While LPL applauds FINRA's efforts to consolidate its rules and to further address conflicts of interest and potential self-dealing through the regulatory process, the Proposed Rules do not appear to take into account the significant structural changes that would need to occur to the independent broker-dealer model should the Proposed Rules be adopted. In addition, the consolidation process appears to be a misdirected effort to expand the regulatory scope of FINRA in a manner that has greatly reduced the input from membership by discussing the new requirements in the context of a rule consolidation. We highly encourage the SEC and FINRA to reexamine the Proposed Rules to provide a more equitable system of supervision taking into account the various business models of member firms. In addition, should the Proposed Rules be adopted, LPL would strongly encourage a substantial period of time in which to change current business practices, operations, and compliance controls and to allow for the appropriate time to adjust to the dramatic costs this will impose on independent broker-dealers.

V. Conclusion

Thank you for the opportunity to comment on the Proposed Rules. If you have any questions regarding this letter, please do not hesitate to contact me at (617) 897-4340.

Sincerely,

Stephanie L. Brown (SLB)

Stephanie L. Brown

cc: Kathy VanNoy Pineda
Chief Compliance Officer