

October 14, 2010

Michael J. Spratt
U. S. Securities and Exchange Commission
Division of Investment Management
100 F Street NE
Mail Stop 8549
Washington, DC 20549-8549

Re: SEC Study on Enhancing Investment Adviser Examinations

Dear Mr. Spratt:

On behalf of my colleagues at FINRA, thank you again for the opportunity to meet with you last week regarding the SEC's study on enhancing investment adviser examinations, mandated by Section 914 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. At our meeting, you asked that we provide the SEC staff with materials that describe FINRA's governance structure.

FINRA is a not-for-profit, non-stock corporation organized under the laws of the State of Delaware. FINRA's governance structure is established in its Certificate of Incorporation and by-laws, copies of which are enclosed.¹ In particular, Article VII of the by-laws addresses the powers and authority of the Board of Governors and Article XIII establishes the power of the Board to impose sanctions. Both FINRA's corporate structure and its by-laws are subject to Commission approval.²

The Commission's 2007 order regarding the consolidation of the regulatory functions of NASD and NYSE Regulation, Inc. also sets forth a detailed description of FINRA's Board of Governors. The order describes the structure during both the transitional and post-transitional phase of the consolidation. The transitional phase ended three years after the July 30, 2007 effective date of the consolidation. A copy of the Commission's 2007 order is enclosed.

¹ The by-laws address FINRA's organizational structure, including the Board of Governors, officers and agents, membership, and dues. The by-laws do not set forth FINRA's substantive regulatory requirements, such as the Conduct Rules and Financial and Operational Rules, among others.

² Pursuant to a Plan of Allocation and Delegation of Functions by FINRA, FINRA has delegated certain authority to FINRA Regulation, Inc. and FINRA Dispute Regulation, Inc., both of which are wholly-owned subsidiaries of FINRA. The Governors who serve as members of the Regulatory Policy Committee of FINRA's Board of Governors form the Boards of Directors of both FINRA Regulation, Inc. and FINRA Dispute Regulation, Inc.

The following aspects of FINRA governance are particularly important:

- FINRA's governance is designed to ensure that its Board of Governors, key committees, and staff act independently and in the public interest.
- FINRA's Board of Governors must at all times have more Public Governors than Industry Governors.
- Section 15A of the Securities Exchange Act of 1934 requires that a national securities association provide for fair representation of its member firms. The allocation of Board seats among Industry Governors is structured to ensure that large, mid-sized and small firms all are represented. Industry Governors also include a Floor Member Governor, an Independent Dealer/Insurance Affiliate Governor, and an Investment Company Affiliate Governor.
- The Public Governors, the Floor Member Governor, Independent Dealer/Insurance Affiliate Governor, and the Investment Company Affiliate Governor are appointed by the Board from candidates recommended by the Board's Nominating Committee. Only those seven Board seats allocated to small, mid-sized and large firms are elected by FINRA member firms.
- Board Committees having the authority to exercise the powers and authority of the Board must have more Public Governors than Industry Governors. No member of the brokerage industry may serve on the Board's Management Compensation Committee, which sets staff salaries.
- The number of Public Governors on the Nominating Committee must at all times equal or exceed the number of Industry Governors. FINRA's CEO may not serve on the Nominating Committee.
- FINRA member firms vote to approve changes to FINRA's by-laws, which are also subject to Commission approval. As described below, however, member firms have no authority to approve or disapprove FINRA rule proposals, interpretations, or enforcement proceedings.
- FINRA's staff is autonomous, subject to the regular supervision of senior FINRA management and to the Board as it may deem necessary. Rulemaking typically involves consultation with FINRA standing committees, which are advisory only and serve at the pleasure of the Board. FINRA staff may and does bring proposals to the Board notwithstanding contrary committee views, which are noted to the Board. And, of course, all FINRA rules are subject to SEC approval and public notice and comment.

- The staff has sole discretion to decide which matters to investigate and prosecute. The initiation of proposed enforcement actions are not subject to Board of Governors approval. The initiation of enforcement actions are authorized by FINRA's Office of Disciplinary Affairs (ODA), which is independent of FINRA's Enforcement Department and is not involved in the investigation or litigation of cases. ODA is charged with reviewing each proposed settlement or complaint, including any Wells Submissions, to provide an independent review of the legal and evidentiary sufficiency of the charges proposed by the staff. ODA also reviews settlements for consistency with our sanction guidelines as well as applicable precedent. ODA approval is required before the issuance of a settlement or complaint.
 - FINRA's Code of Procedure governs the hearing process. FINRA hearings are administered by a Hearing Officer who is employed by FINRA in the Office of Hearing Officers (OHO). OHO is independent of Enforcement and is not involved in the investigative process. Employment protections exist for Hearing Officers to further ensure their independence; they may not be terminated except by the FINRA Chief Executive Officer, with a right to appeal to the Audit Committee of FINRA's Board of Governors. Hearings are held before a Hearing Officer and two industry panelists. Panelists are drawn from a pool of current and former securities industry members of FINRA's District Committees, as well as its Market Regulation Committee, former members of FINRA's National Adjudicatory Council (NAC) and former FINRA Governors.
 - A firm or individual has the right to appeal a hearing panel decision to FINRA's National Adjudicatory Council (NAC), which is equally balanced between individuals who are in the securities business and non-industry representatives. The NAC may call a decision for review on its own motion and will do so generally when it believes that the decision below is substantially inconsistent with other precedents or prior level of sanctions. There is no right to appeal a decision to FINRA's Board of Governors. However, FINRA's Code of Procedure provides that a Governor may call a matter for review. The Board may review the NAC decision (not later than the next Board meeting), and may affirm, modify or reverse the proposed written decision of the NAC. The Board may affirm, modify, reverse, increase or reduce any sanction, or impose any other fitting sanction. Alternatively, the Board may remand the disciplinary action with instructions. The FINRA Board prepares a written decision as prescribed by the rules. A firm or individual can, of course, appeal FINRA's action to the SEC and then to a federal court.

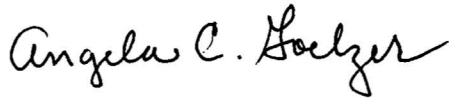
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- FINRA *Regulatory Notice* 09-17 provides guidance on our enforcement processes in investigations and formal disciplinary processes. A copy of this *Notice* is enclosed.

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Please let me know if you have any questions or if you would like any further information on this topic.

Best regards,



Angela C. Goelzer
Vice President

Enclosures

Cc: Robert E. Plaze
Richard G. Ketchum
Stephen Luparello
T. Grant Callery
Marc Menchel
Thomas M. Selman