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RW SMITH & ASSOCIATES, INC

July 13, 2009

Ms. Florence Harmon
Deputy Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE; File Number SR-FINRA-2009-039

Dear Ms. Harmon:

Thank you for the opportunity to comment on the proposed rule change recently filed by FINRA regarding adoption of FINRA Rule 3310 (Anti-Money Laundering Compliance Program), intended to become part of the Consolidated FINRA Rulebook.

I have served in a number of different compliance departments of small broker-dealers for over 15 years and understand the majority of broker-dealers fall into the "small firm" category. Since the inception of the Patriot Act I have overseen firms' anti-money laundering compliance programs as dictated by the Anti-Money Laundering ("AML") rules. I have found that the requirements to comply with the various aspects of AML rules can be costly, overreaching, and require a significant amount of staff time and training. These aspects of complying with AML rules are exaggerated in a small firm where a department may consist of a total of one, as well as firms whose business lines offer virtually, or literally, no opportunity for money laundering.

I wholeheartedly recognize the benefits to the larger investing public of the AML rules and understand the general need for the AML rules to be applicable to all registered entities, not just ones with an elevated risk of money laundering. However, having worked for firms where so few AML activities have warranted further investigation, I do not believe there is a reasonable rationale for the independent testing requirements to apply so evenly to firms of such great disparity and that proposed Rule 3310, as adopted without the exception, would likely cause more harm than benefit due to the likelihood that the increased burden will not result in significant findings.

Based on the FINRA proposed rule filing, it appears that The Financial Crimes Enforcement Network has concluded that this exception does not comply with the independent testing provision of the BSA, which precludes AML program testing by personnel with an interest in the outcome of the testing. An important question to ask is whether there have been any problems in this area. Is this rule proposal a case of fixing a problem that doesn't exist? Most employees would certainly have a vested interest in the

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outcome of the testing – but in a way that would encourage them to bring to light problems – not try to hide them. In my experience an employee in a small firm is less likely to blatantly ignore a money laundering red flag. I do not feel that maintaining the exception in NASD IM-3011 creates a hole for money laundering activities.

In addition to my roles as compliance officer and chief compliance officer over the years, I have also worked as a compliance consultant for broker-dealers. Certainly in the region I have worked, the Pacific Northwest, there have been a limited number of available independent consultants who are qualified to conduct independent testing of a broker-dealer's anti-money laundering program; I know of many firms who only have available to them a licensed attorney to perform the testing, which increases the cost of the independent testing considerably.

Existing NASD IM-3011-1 allows, subject to certain conditions, the AML Compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested. These conditions are important to examine because they are what allow the exception to work well:

- The member has no other qualified internal personnel who are able to conduct the test. This condition prohibits a firm who has an independent tester available to them from intentionally choosing an employee who would be more likely to give a good report.
- The member has written policies and procedures to address conflicts that may arise from such a practice, including anti-retaliation procedures. Conflicts will vary greatly from firm to firm and this condition allows the member to examine and document those conflicts. This condition also helps protect the tester.
- If possible, the person conducting the test reports the results first to a person who is senior to the person to whom the tester reports. This condition helps ensure more independence of the results.
- If the tester does not report the results to a person who is senior to the person to whom the tester reports, the member must document a reasonable explanation for not doing so.
- The member must document its rationale, which must be reasonable, for determining that it has no other alternative than to comply in the manner set forth in the rule exception. The condition to document the rationale is important in part because it allows the regulatory authority to review the circumstances and make its own determination as to whether it is appropriate or not.

The adoption of FINRA Rule 3310 would eliminate the exception of NASD IM-3011-1, even when the above conditions are met. Removal of this exception completely ignores the fact of many small broker-dealers working in limited business lines, who have no customers, who have no custody or securities, and engaged in other low-risk activities. I believe it is reasonable to allow the use of a tester who fully understands the firm's business and the potential risks involved in that business, and not always a letter choice than hiring an outside vendor at a high cost who may not in fact be able to perform the

testing as well as internal personnel. The removal of this exception creates yet another layer of unnecessary cost on small firms with no apparent benefit.

FINRA submitted this proposed rule change directly to the Securities and Exchange Commission by stating it did not have substantive changes. I strongly disagree with that statement and this rule proposal. I would like to see FINRA submit this rule request to its members. There are small firms that currently utilize this exception and its accompanying conditions for positive results, and they should be given the opportunity to voice their concerns.

I am currently the CCO of a firm that has been operating as a municipal securities broker's broker for 24 years; we have performed the required testing even though the firm has had no customers and no accounts and therefore no mechanism by which someone could engage in money laundering. Small firms are the engine of not only this industry, but of America. The move to eliminate small firm exemptions and exceptions is causing hardship to small firms across the country. Please reject proposed FINRA Rule 3310 as unreasonable.

Sincerely,

S. Lauren Heyne

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Chief Compliance Officer
RW Smith & Associates, Inc.