



National Association of Insurance and Financial Advisors

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September 21, 2010

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

Via Electronic Mail: rule-comments@sec.gov

Re: File Number SR-FINRA-2009-042: Proposed Rule Change Relating to Outside Business Activities of Registered Persons

Dear Ms. Murphy:

This letter will present the views of the National Association of Insurance and Financial Advisors (“NAIFA”) in response to the filing by FINRA with the Securities and Exchange Commission of a proposed rule change regarding the outside business activities of registered persons.

NAIFA comprises more than 700 state and local associations representing the interests of 200,000 members and their associates nationwide. NAIFA’s members are bound by NAIFA’s Code of Ethics and are full time professionals in insurance and related financial services. NAIFA members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. Founded in 1890 as The National Association of Life Underwriters, NAIFA is the nation’s oldest and largest financial services membership association. The vision of NAIFA is to protect and promote the critical role of insurance and insurance products in a sound financial plan and the essential role provided by professional agents and advisors. NAIFA’s mission is to advocate for a positive legislative and regulatory environment, enhance our members’ business and professional skills, and promote the ethical conduct of our members who assist the public in achieving financial security and independence. Approximately 80 percent of NAIFA members are licensed as registered representatives of broker-dealers and market and service various types of financial products, investments and securities.

The proposed rule change, which was originally filed with the SEC on June 8, 2009, would adopt NASD Rule 3030 (Outside Business Activities of an Associated Person) as new FINRA Rule 3270 (Outside Business Activities of Registered Persons) in the Consolidated FINRA Rule Book, and make several substantive changes to the rule. The rule change would also delete Incorporated NYSE Rule 346 and include certain provisions from NYSE Rule 346 into new FINRA Rule 3270. In response to comments received on the proposed rule change, FINRA filed Amendment No. 1 to the proposed rule change with the SEC on July 30, 2010.

Proposed FINRA Rule 3270, as amended, would require a registered person to provide prior written notice of outside business activity to his or her member firm. The supplementary material to the proposed rule requires member firms that receive notice of a registered person's outside business activity to consider whether such activity will i) interfere with the person's responsibilities to the firm or the firm's customers or ii) be viewed by the firm's customers or the public as part of the member firm's business. Following this review, the firm must decide whether it should impose specific conditions or limits on the outside activity, which may include prohibiting the activity. The firm must also determine if the specific activity should be treated as an outside securities activity rather than an outside business activity.

NAIFA shares the SEC's and FINRA's commitment to investor protection, and we applaud and support the continued efforts by the SEC and FINRA to safeguard investor interests. However, NAIFA has significant concerns about the requirement contained in the supplemental material to proposed Rule 3270 that member firms, upon receipt of written notice of a proposed outside business activity, review the registered person's participation in the activity and take certain actions based upon the conclusions reached following such review, including potentially prohibiting the outside activity. The net effect of this requirement will be to impose on FINRA's member firms an obligation to supervise the outside business activities of the firm's registered persons, which NAIFA believes exceeds FINRA's authority and jurisdiction.

NAIFA's specific concerns regarding the supplemental material to proposed Rule 3270 are as follows:

1. The commentary to the initial proposal stated that "FINRA believes that requiring prior written consent for outside business activities is unnecessary". NAIFA agrees with FINRA's position on this issue. However, imposing on member firms the requirements found in proposed Rule 3270's Supplementary Material .01 is the functional equivalent of imposing a consent requirement on a registered person's outside business activities, since the member firm would be required to review the activity and may be required to impose limitations on such activity or even outright prohibit the registered person from engaging in the outside activity.

2. Requiring increased oversight by a broker-dealer over its registered persons' non-securities outside business activities is not likely to further the goal of consumer protection because many of the outside activities engaged in by registered persons are already subject to comprehensive regulation by state regulators. This is particularly the case with respect to activities engaged in by NAIFA members and other insurance producers who are registered representatives of broker-dealers. The outside business activities of these persons typically involve the marketing and sale of insurance products, including fixed annuities, which are already subject to thorough regulation by state insurance regulators. These persons must also pass an examination and obtain a license

from the state insurance department before engaging in insurance sales activity, and they are subject to continuing education requirements and the ongoing supervision and regulation by the state insurance commissioner.

There is no need to increase the amount of oversight over products that are already subject to a comprehensive regulatory structure, and doing so will provide no additional meaningful protections for consumers. In addition, an increase in supervision by broker-dealers such as that contemplated in the proposed rule will likely result in increased costs to both broker-dealers and registered persons, which will ultimately lead to increased costs for consumers without any increase in consumer protection. **NAIFA therefore proposes that, at a minimum, the scope of propose Rule 3270 be narrowed to exclude financial activity such as the sale and service of non-securities insurance products, which are already subject to comprehensive regulation at the state level.**

3. Broker-dealer concerns about potential future liability if the proposed rule is adopted could result in FINRA member firms being increasingly cautious about allowing their registered persons to engage in outside activities. This could ultimately harm the consumer because it would result in fewer potentially useful products and services being available to consumers.

4. As stated above, the obligations placed on member firms by the proposed rule's supplementary material will likely result in the member firm essentially being required to supervise the registered person's outside business activities. This would be problematic because broker-dealers do not have the resources or product-specific expertise necessary to oversee a registered person's outside activities which involve non-securities products or transactions. It is unrealistic to assume that broker-dealers will be able to develop an in-depth understanding of the multitude of products and transactions that registered persons routinely engage in as outside activities.

5. Similarly, imposing these obligations upon member firms would distract from the firm's core supervisory functions, and would likely have an adverse impact on a firm's oversight of its core securities business. In order to comply with its responsibilities under the proposed rule's supplementary material provision, broker-dealers would have to expend time and resources that would be better used to effectively supervise higher-risk securities-based transactions. FINRA and the SEC should avoid creating a situation where the attention of FINRA's member firms is spread too thinly. Consumers would ultimately be better served if a firm's attention and efforts were focused on financial products that are within its area of expertise and which carry a higher degree of risk for the consumer.

6. Many NAIFA members have reported to us that their broker-dealer's current level of involvement in their outside business activity goes far beyond the requirement of current NASD Rule 3030, which requires the registered person to provide the member firm with prompt written notice of any outside business activity. In spite of the fact that what is occurring "on the ground" may, in many cases, parallel what proposed Rule 3270 would require, NAIFA is concerned i) that the proposed rule represents an unwarranted effort by FINRA to expand its authority and jurisdiction beyond securities products and activities and ii) that Rule 3270 would inappropriately formalize the degree of involvement of broker-dealers in their registered persons' non-securities outside business activities. The scope of FINRA's rule-making authority is not

unlimited under the federal securities laws. FINRA rules must have some type of direct connection to securities activities in order to fall within the scope of FINRA's jurisdiction and rulemaking authority. Many outside business activities, including the marketing and sale of most insurance products, have little if any nexus to the broker-dealer's supervisory duties with respect to securities products and activities or to the broker-dealer's responsibilities under FINRA rules and the federal securities laws.

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In sum, NAIFA strongly encourages that Supplementary Material Section .01 to proposed Rule 3270, which would impose certain specific affirmative obligations on member firms that receive notice of a registered person's outside business activity, be stricken and not be adopted. In the alternative, NAIFA recommends that the scope of propose rule 3270 be narrowed to exclude financial activity such as the sale and service of non-securities insurance products, which are already subject to comprehensive regulation at the state level.

Thank you for your consideration of our views. Please contact the undersigned if you have any questions regarding our comments.

Yours Truly,

/s/ Gary A. Sanders

Gary A. Sanders
Vice President, Securities and State
Government Relations