



**National Association of Insurance and Financial Advisors**

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July 29, 2009

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

Via Electronic Mail: [rule-comments@sec.gov](mailto: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 is a national federation of over 700 state and local associations, whose members live and work in every congressional and state legislative district. NAIFA represents the interests of approximately 200,000 agents, advisors 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. Founded in 1890, NAIFA is the nation’s oldest and largest trade association of insurance and financial services professionals. NAIFA’s mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. Over half of all 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 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 in 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.

Proposed FINRA Rule 3270 would require a registered person to provide prior written notice of outside business activity to his or her member firm, and would expand the circumstances under which such notice would have to be provided. The proposed rule also requires member firms that receive notice of a registered person's outside business activity to review such activity i) to determine if it raises investor protection concerns and, if the firm determines it does, to implement appropriate limits on the activity or prohibit the activity and ii) to determine if it should be treated as an outside securities activity rather than an outside business activity.

NAIFA agrees with the general spirit of the proposed rule, and shares FINRA's and the SEC's commitment to investor protection. Indeed, we applaud and support FINRA's and the SEC's continued efforts to safeguard investor interests. However, of particular concern to NAIFA and its members is the requirement in proposed Rule 3270 that member firms review the registered person's participation in outside activities and take certain actions based upon the conclusions reached following such review, including potentially prohibiting the outside activity.

The commentary to the proposal states 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 (Obligations of Member Receiving Notice) would in many ways be 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.

In addition to functionally imposing a consent requirement on a registered person's outside business activities, the obligations placed on firms by the proposed rule's supplementary material provision could 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, and it is unrealistic to assume that broker/dealers will be able to understand the multitude of products and transactions that registered persons routinely engage in as outside activities.

The proposal is particularly unnecessary and ill-advised with respect to outside activities which involve insurance products. This is because insurance products, including fixed annuities, are already subject to comprehensive regulation at the state level through the efforts of state insurance departments and other state regulators. 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.

Finally, 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 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 on the supervision of 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 by a firm's attention and efforts being focused on financial products that are within its area of expertise and which carry a higher degree of risk for the consumer.

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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.

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

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