NSCP
NATIONAL SOCIETY OF COMPLIANCE PROFESSIONALS INC.

July 29, 2009

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

Re: Comments on Proposed FINRA Rule 3030
(Outside Business Activities of Associated Persons)

Dear Ms. Murphy:

The National Society of Compliance Professionals ("NSCP") appreciates the opportunity to comment on the proposed Rule 3030 ("Proposed Rule") by the Financial Industry Regulatory Authority ("FINRA").

The Proposed Rule is of considerable interest to NSCP and its members. NSCP is the largest organization in the securities industry serving compliance professionals exclusively, through education, certification (CSCP), publications, and consultation forums. Since its founding in 1987, NSCP's membership has grown to more than 1700 compliance industry professionals from broker-dealers, investment advisers, banks, insurance companies, registered investment companies, advisers to hedge funds, accounting firms and law firms. The diversity of our membership allows NSCP to represent a large variety of perspectives in the financial services industry.

As an initial matter, NSCP commends FINRA for addressing the effectiveness of current rules intended to help employing firms prevent improper outside business activities by their associated persons. NSCP acknowledges that FINRA seeks to reflect FINRA Rule 3270, which already

encompasses outside business activities of registered persons, by making moderate changes to Rule 3270 and adopting NASD Rule 3030 to incorporate outside business activities of associated persons. In that regard, the practical application and effectiveness of the rule provisions contained in proposed FINRA Rule 3030 (the "Proposal") must be carefully considered, as FINRA has admirably attempted to do.

Upon review and discussion of the Proposal, the consistent theme of our comments has been the need for clarification on items not addressed in the Proposal, in particular with respect to (1) the proposed due diligence requirement, and (2) the proposed supervision requirement.

The first matter in need of clarification is the proposition that broker-dealers perform some degree of due diligence to "determine whether the proposed activities raise investor protection concerns." The degree of due diligence is a concern and is not addressed in the rule proposal, neither is the potential liability for the BD if the outside activity changes over time. Is the BD required to perform "continuing" due diligence? What if the activity is found to be illegal? Has the BD aided and abetted by not notifying someone of the illegality or if the BD is not aware of the illegality? For example, suppose a registered representative starts his/her own Laundromat. The BD is notified and does its due diligence and determines that it is not securities related and that it is a valid endeavor. However, a year later it is discovered that the Laundromat is being used to launder money. Is the BD liable under the AML laws? There is also recent case law in this area whereby a CCO was charged by the SEC with aiding and abetting for failing to discover the illegal activities of one of the firm's traders. These two examples support the conclusion that the proposed due diligence requirement under the OBA rule, without clarification, places firms in a lose/lose position. Almost any activity could raise investor protection concerns. FINRA should either define "investor protection concerns" as it relates to non-securities related activities, or it should remove the proposed requirement.

The second matter in need of clarification is the supervision of non-securities related activities. If the outside activity is securities related, then the BD is required to not only supervise, but to run that business through its books. If it is not securities related, how much

supervision is required? There is no mention in this notice of the supervision requirements that will follow adoption of the rule amendment. For an example highlighting our concerns over this proposed requirement, suppose a registered representative becomes a part of his/her local school board. The BD does its due diligence and determines that it is not securities related and that the activity raises no investor protection concerns. A year later the school district decides to float a bond issue. Is that now a securities related activity and how much is the BD required to supervise? And, how would the BD know that the bonds have been issued? Finally, there are certain outside activities (such as CPAs and attorneys) that firms do not have the legal authority to supervise and certain others that they may not have the expertise to supervise.

Most importantly, the proposed "supplementary material" requirement would significantly expand a firm's supervisory/oversight obligation to non-securities products, over which FINRA should have no jurisdiction. If an activity raises potential "investor protection concerns," FINRA requires the firm to implement procedures to supervise the activity. How a firm would effectively apply such procedures is unclear. It is difficult to supervise or oversee a non-securities activity which is outside of the firm's ken and control; yet FINRA can come back and argue the procedures were insufficient.

Conclusion:

Approving this rule without the clarification of the supervision issue is premature. We would recommend tabling this rule and presenting it with the revised supervision proposals in order for firms to have a clear understanding of all of their responsibilities with regard to outside business activities.

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NSCP would be delighted to work with the SEC in formulating a revised approach consistent with these comments. Any questions regarding our comments or requests for additional information should be directed to the undersigned at 860.672.0843.

Very truly yours,

Joan Hinchman
Executive Director, President and CEO

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