LPL Financial

Stephanie L. Brown
Managing Director
General Counsel

One Beacon Street, 22nd Floor
Boston, MA 02108-3106
stephanie.brown@lpl.com
617 897 4340 *office*
617 556 2811 *fax*

9785 Towne Centre Drive
San Diego, CA 92121-1968
858 909 6340 *office*
858 646 0609 *fax*

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BY EMAIL TO: rule-comments@sec.gov

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

RE: File Number SR-FINRA-2009-042 Proposed Changes Relating to Outside Business Activities of Related Persons

Dear Ms. Murphy:

LPL Financial Corporation ("LPL")[1] appreciates the opportunity to comment on the above-referenced proposed rule amendments by the Financial Industry Regulatory Authority ("FINRA"), which propose to adopt NASD Rule 3030 (Outside Business Activities of an Associated Person) as new FINRA Rule 3270 (Outside Business Activities of Registered Persons) (the "Proposed Rule") while making several substantive changes to the rule. Specifically, new FINRA Rule 3270 would require the following:

- A registered person would be required 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;

- A member firm receiving notice of a registered person's outside business activity would be required to review such activity (a) to determine if it raises investor protection concerns and, if so, to implement appropriate limits on the activity or prohibit the activity altogether and (b) to determine if it should be treated as an outside securities activity rather than an outside business activity.

LPL applauds FINRA's and the SEC's unwavering commitment to investor protection, and we understand that this Proposed Rule is intended to create strong regulatory protections

[1] LPL Financial is one of the nation's leading diversified financial services companies and the largest independent broker/dealer supporting more than 12,000 financial advisors nationwide. LPL Financial has offices in Boston, Charlotte, Chicago, Los Angeles, San Diego and West Palm Beach.

around outside business activities that could bring harm upon unsuspecting investors. However, we have certain concerns with the Proposed Rule, which we explain in detail below.

I. Registered Persons Should Obtain Written Consent Prior to Engaging in Outside Business Activities

The Proposed Rule requires that a registered person provide prior written notice of outside business activity to his or her member firm. In the commentary accompanying the Proposed Rule, FINRA notes its belief that requiring prior written consent for outside business activities is unnecessary. We respectfully disagree; prior written consent is advisable and a requirement we would strongly support.

FINRA also suggests a requirement that "firms must review the registered person's participation in the outside activity to determine whether it raises investor protection concerns" and if so, "the firm must implement procedures or restrictions on the activity to protect investors, or prohibit the activity." As we discuss further below, we believe this standard of review to be too vague and too broad.

Allowing a registered person to engage in an outside business activity as soon as it provides the member firm with written notice places the member firm in a position of risk, as the registered person could be engaging in questionable activity before the member firm has had the time to review the matter. We suggest that FINRA amend the Proposed Rule to prevent registered persons from engaging in any outside business activity until prior written consent is received from their broker-dealer.

In addition to requiring prior written consent before allowing registered persons to engage in outside business activities, we would also suggest that registered persons have an ongoing duty to inform their broker-dealer of any material change that is made to their outside business activities. Without this ongoing obligation, a member firm would have no way to make knowledgeable decisions regarding the outside business activities of their registered persons, thereby subjecting it to regulatory risk and potential harm.

II. Proposed Rule Expands Member Firms' Supervisory Obligations to Cover Outside Business Activities

Perhaps of greater concern is the fact that the Proposed Rule creates broad obligations that would require member firms to supervise the outside business activities of its registered persons. Supplementary Material .01 adds a completely new supervisory standard by stating that if a member firm determines that an outside activity "raises investor protection concerns," it "must implement procedures or restrictions on the activity to protect investors, or prohibit the activity." Many, if not all, broker-dealers are not staffed to assume the responsibility of supervising the wide variety of outside business activities in which their registered persons engage. Industry rules currently provide that broker-dealers supervise their registered persons if the activity involves securities transactions or the provision of investment advice. LPL believes it is ill-advised to mandate a new supervisory standard with respect to outside business activities

through supplementary materials, particularly when existing NASD and FINRA rules already clearly address the supervisory obligations of broker-dealers.

LPL therefore does not support the adoption of Supplementary Material .01. However, if this material is to be included in the Proposed Rule, we would encourage certain clarifications. First, the Proposed Rule provides that the member firm must "make a determination whether the proposed activity raises investor protection concerns..." This implies a certain degree of due diligence, but the Proposed Rule does not address the extent to which a broker-dealer is required to examine the described activity, nor does it provide whether or not the due diligence requirement is an ongoing one. Second, the Proposed Rule does not define the term "investor protection concerns." This term would be subject to interpretation and could result in different standards being applied across member firms. We would strongly suggest clarifying this language to provide that the member firm must "make a determination whether the proposed activity *involves investment advice or securities activities*." If it does, a member firm would then be required to supervise such activity.

III. Conclusion

In short, LPL believes that approving the Proposed Rule without addressing and clarifying the abovementioned issues would cause our industry harm. We would be happy to work with you to formulate a revised approach to these issues.

LPL appreciates the opportunity to comment, and we thank you for your consideration of our concerns. Should you have any questions, please contact me at (617) 897-4340.

Sincerely,

Stephanie L. Brown
Managing Director, General Counsel