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November 12, 2009

Via Email:*rule-comments@sec.gov*

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: **File Number SR–FINRA–2009–060** – Provision of Information and Testimony and Inspection and Copying of Books

Dear Ms. Murphy:

Wells Fargo Advisors ("WFA") appreciates this opportunity to comment briefly on amendments to FINRA Rule 8210. This rule confers on FINRA staff the authority to compel a member, person associated with a member, or other person over whom FINRA has jurisdiction, to produce documents, provide testimony, or supply written responses or electronic data in connection with an investigation, complaint, examination or adjudicatory proceeding. As this authority is a key component of an effective regulatory scheme, WFA generally supports the rule amendments. We write this letter to address some concerns with the language as proposed.

WFA consists of brokerage operations that administer over $900 billion in client assets. It accomplishes this task through 15,600 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states. As an active participant in the securities industry, WFA has sufficient insight into the regulatory process as administered by FINRA.

FINRA proposes to amend Rule 8210 on providing information to require in an investigation: "the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such member's or person's possession, custody or control" (new language underlined.) In using the word "control," in addition to possession and custody, FINRA has stated that it intends to require members or persons covered by the rule to provide records that they have the legal right, authority, or ability to obtain upon demand. FINRA notes that they believe this interpretation is consistent with the federal rules definition of control and will allow it to overcome SEC decisions which impose no obligation on FINRA members to seek information from third parties when under investigation.

This rule change appears to permit FINRA to compel the production of documents that may belong to a third party (e.g. affiliated or unaffiliated person, organization or entity). That interpretation probably creates a scenario with unintended consequences. The change is aimed at scenarios related to employees engaged in outside activities who have possession or control over documents or information related to those outside entities. If FINRA's interpretation of "control" prevails, associated members will be negatively impacted in their work on boards and non-profit organizations. The classic unintended consequence will flow from most for-profit organizations and many non-profits thinking twice about having an associated member on their board if the associated member, because she or he is a director and has the right to look at almost any record of the organization, might have to produce the records to FINRA. The proposed rule change thus becomes a means of reaching into entities over whom FINRA otherwise would have no jurisdiction. As a self regulatory organization, FINRA has limited jurisdiction by statute. The SEC should approve attempts to extend beyond these statutory boundaries only in the rarest of circumstances. FINRA's right to demand possession, custody or control should relate to the associated person's activities as an associated person. Few of these activities on boards or for non-profits would give rise to the ability to demand records absent a contract or unusual circumstances.

The regulatory expansion as crafted in this proposal also undermines the rights that third parties have in ordinary civil or criminal proceedings. In those matters, when their records are subpoenaed, third parties have a means of addressing any issues they may have against the production of their documents. FINRA or its regulatory allies can use the subpoena process to obtain the third party information when it needs it. The subpoena route also helps build in protections for member firms against claims by third parties of improper disclosure. After the recent regulatory scandals, it seems incongruous for FINRA to seek the power to do what some regulators were criticized for doing in those matters. It appears that in some instances regulators relied exclusively on the subject of the investigation to supply information related to records of third parties as opposed to independently obtaining those records from the third party. It would not seem appropriate to codify into a rule such an oft-criticized examination technique. Finally, there can be a regulatory and investigative benefit to working cooperatively with other regulators or entities on an investigation where it appears key records are in the hands of third parties over whom those others have jurisdiction.

Thank you for providing WFA the opportunity to comment. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long
Director, Regulatory Affairs