



VIA ELECTRONIC MAIL

June 12, 2008

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, DC 20006-1506

Re: Comment Letter - Regulatory Notice 08-24, Proposed Amendments to Supervision and Supervisory Controls

Dear Ms. Asquith:

National Planning Holdings, Inc. (NPH) offers this comment letter on behalf of its subsidiary broker-dealers, all of which are Financial Industry Regulatory Authority (FINRA) member firms:

- Invest Financial Corporation (IFC) CRD – 12984
- Investment Centers of America (ICA) CRD – 16443
- National Planning Corporation (NPC) CRD – 29604
- SII Investments (SII) CRD – 2225

The four introducing retail broker-dealers and registered investment advisers are registered to conduct business in all domestic jurisdictions, with over 3000 Registered Representatives offering investment services from over 400 Offices of Supervisory Jurisdiction (OSJ). We appreciate the opportunity to submit comments on the issues raised in Regulatory Notice 08-24 regarding the proposal to consolidate FINRA rules governing Supervision and Supervisory Controls. The thoughts and comments provided in this letter have been reviewed by members of senior staff, including the respective broker-dealer Presidents and Chief Compliance Officers, and represent the collective view of the broker-dealers within our organization.

We provide the following comments regarding the potential impact of certain elements of the rule proposals presented in the Regulatory Notice.

Proposed Rules - General Logistics and Clarification

We appreciate FINRA's willingness to undergo critical evaluation of current rules and regulations in an attempt to 1) delete obsolete rules, 2) harmonize rules, 3) consider new approaches, and 4) adopt existing rules. However, FINRA's position on prior interpretative guidance in the form of IMs and Notice to Members is unclear and should also be formally addressed in the proposal process, within Attachment A, as either adopted or deleted.

Additionally, we feel the (16) items represented in the Supplementary Material should be formally included within the body of the appropriate Rules to avoid confusion. Currently the Supplementary Material appears fractured and disjointed from the corresponding Rules. Should the new rules be adopted, this may lead to confusion by member firms when attempting to assess and implement the new requirements.

Proposed Rule 3110 – Supervision

Note: New language is underlined; deletions are in brackets.

3110 (a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each [registered representative, registered principal, and other] associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable [NASD] FINRA and Municipal Securities Rulemaking Board (MSRB) [R] rules.

- COMMENT: In proposed rule 3110(a) we have concern with the proposed omission of the verbiage *[registered representative, registered principal, and other]* being replaced simply by the term associated person. We believe there may be unintended consequences in using such broad terminology, and would request FINRA to consider an alternative such as “..establish and maintain a system to supervise the activities of each associated person who is actively engaged in the securities business of the firm...”.

3110 (a)(2) Supervisory System

The designation, where applicable, of an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages [for which registration as a broker/dealer is required].

- COMMENT: In proposed rule 3110(a)(2) we have concern with the proposed omission of the verbiage *[for which registration as a broker/dealer is required]*. Maintaining this verbiage provides the appropriate jurisdictional scope for FINRA's oversight obligations. Many member firms and/or their associated persons offer a variety of non-securities products and services such as investment advisory, insurance, legal, accounting, and mortgage. Ultimately these other business channels have their own unique forms of regulatory oversight such as the Securities and Exchange Commission and/or State Regulatory bodies. By omitting this verbiage we fear regulatory overlap and redundancy will occur, which is an issue that we know FINRA has attempted to reduce in recent years.

3110 (b)(1) Written Procedures

Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and [to supervise] the activities of its [registered representatives, registered principals, and other] associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with [the] applicable FINRA and MSRB [R]rules [of NASD].

- COMMENT: As with 3110(a)(2) we are concerned that the verbiage in 3110(b)(1) is too broad in nature, and we request that FINRA consider revising the verbiage to limit the requirement to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages for which registration as a broker/dealer is required”.

3110 (b)(3) Supervision of Outside Securities Activities

Unless a member provides prior written approval, no associated person may conduct any investment banking or securities business outside the scope of the member's business. If the member gives such written approval, such activity is within the scope of the member's business and shall be supervised in accordance with this Rule, subject to the exceptions set forth in subparagraph (B).

- COMMENT: The phrase “conduct any investment banking and securities business” is overly broad. We urge FINRA to consider replacing with the current text in NASD Conduct Rule 3040 “participate in any manner”.
- COMMENT: The proposed verbiage states if approved “*such activity is within the scope of the member’s business and shall be supervised in accordance with this Rule*”. Therefore, proposed rule 3110(b)(3) appears to broaden a member firm’s responsibility related to outside securities activities, which is a departure from the current text found in NASD Conduct Rule 3040 and the subsequent guidance provided in Notice to Members 94-44 and 96-33.

3110(c)(3)(B)(i) Internal Inspections

[An office inspection by a] Each member must have procedures that are reasonably designed to [pursuant to paragraph (c)(1)]:

(A) ensure that the person conducting an inspection pursuant to paragraph (c)(1) is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to the location; and

(B) prevent the inspection from being lessened in any manner due to any conflicts of interest, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected that may be present.

(i) If a member determines that compliance with paragraph (c)(3)(A) is not possible either because of a member’s size or its business model, the member must document in the inspection report the factors the member used to make its determination and how the inspection otherwise comports with paragraph (c)(3)(B). [may not be conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is directly or indirectly supervised by such person(s). However, if a member is so limited in size and resources that it cannot comply with this limitation (e.g., a member with only one office or a member has a business model where small or single-person offices report directly to an office of supervisory jurisdiction manager who is also considered the offices’ branch office manager), the member may have a principal who has the requisite knowledge to conduct an office inspection perform the inspections. The member, however, must document in the office inspection reports the factors it has relied upon determining that it is so limited in size and resources that it has no other alternative than to comply in this manner.]

- COMMENT: Regarding rule proposal 3110(c)(3)(B)(i) it states “*If a member determines that compliance with paragraph (c)(3)(A) is not possible either because of a member’s size or its business model, the member must document in the inspection report the factors the member used to make its determination and how the inspection otherwise comports with paragraph (c)(3)(B)*”. If it is a member firm’s size or business model, which dictates this provision (issues that are generally static), it would be very burdensome to reiterate this determination within each individual inspection report. Rather we suggest that FINRA revise the requirement to allow this determination to be documented once in the Firm’s written supervisory procedures.

Supplementary Material .16 Exception to Persons Prohibited from Conducting Inspections

A member’s determination that it is not possible to comply with Rule 3110(c)(3)(A) with respect to who is not allowed to conduct a location’s inspection will generally arise only in instances where:

(a) the member has only one office; or

(b) the member has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices’ branch office manager.

- COMMENT: In relation to Supplementary Material .16, we recommend the verbiage be amended to reflect the terms of the current limited size and resource exception identified in NASD Conduct Rule 3010(c)(3). Specifically, we suggest revising the text of subsection (b) to state “regardless of the member’s size and resources, the member has a business model where small or single-person offices report directly to an OSJ Manager who is also considered the offices’ branch office manger”.

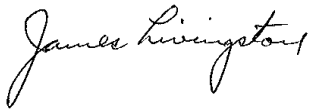
By making this revision, this section will then continue to address concerns raised in Notice to Members 04-71 Endnote 36: *During the rulemaking process, NASD received comments from its member firms that if firms with an independent dealer model could not use their usual practice of having the branch office manager/OSJ manager conduct inspections of satellite offices, it would impose a considerable strain on the firms’ existing compliance resources. In response to these comments, NASD specifically recognized that the independent dealer model would fit within the “limited size and resources” exception to the prohibitions on who may conduct office inspections. SR-NASD- 2002-162 – Amendment No. 3, at 15-16 (December 16, 2003).*

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The NPH broker-dealer network reiterates its support of FINRA’s Rulebook consolidation process. We have great appreciation for the time and effort involved in such an enormous undertaking. However, we request that FINRA consider the areas we have identified within Regulatory Notice 08-24 that may either negatively impact the member firm community or require further clarification.

We appreciate FINRA’s consideration of our comments and anticipate further communication on this subject.

Sincerely,



James Livingston
Chief Executive Officer
National Planning Holdings, Inc.