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June 18, 2007

Ms. Nancy M. Morris
Securities and Exchange Commission

VIA E-Mail rule-comments@sec.gov
File Number S7-08-07

Dear Ms. Morris,

We are responding to the Commission's solicitation of comments contained in Release No. 34-55431. Essentially, the amendments that the Commission has proposed in this release codify various practices that have been mentioned in various Commission staff interpretive or no-action letters and in addition propose to modify certain practices in an effort to recognize changes that have occurred since various rules were adopted.

We have read the Release and have also read some of the comment letters that have been submitted by various interested parties. In particular, we support and agree with most of the comments made by the Securities Industry and Financial Markets Association ("SIFMA") in its letter that we understand was transmitted to you.

However, we believe that the amendments proposed in many respects are not comprehensive enough to recognize that the rules as they are proposed to be amended apply to registrants that are extremely heterogeneous in nature. These registrants range from being multi-billion dollar world-wide operations in a multitude of products and services to broker-dealers that consist of only a handful of people who have very limited operations.

By way of background, our firm performs financial, operational and regulatory services for about 2% of NASD's membership. While most of our clients are small to medium sized members, some are large firms.

In a previous comment letter relating to proposed New York Stock Exchange-NASD merger, we suggested that the Commission inspire the self-regulatory organizations to do the right thing by, among other things, revamping all of the rules so that they do not apply on a one-size-fits-all basis. We believe that the same holds true for the Commission's own rules, such that the Commission should recognize that the same rules that apply to some of the largest broker-dealers in the world should not apply to tiny broker-dealers who are ultra-specialized in their activities. Many of these tiny broker-dealers never hold customer cash or securities. Some of them are broker-dealers who are registered as such only because they receive transaction-based compensation but not because the broker-dealers are actually even aware of transactions on which they are compensated, as they occur. In our view, SEC and self-regulatory rules should be examined in light of why these tiny broker-dealers need to be subjected to many of the rules in the first place in light of how costly the compliance functions are. The Commission should even consider whether many of the broker-dealers should even be subject to the net capital rule or to the requirement for an annual audit conducted by independent auditors. In many cases, the audited financial statements are not even shown to anyone but regulatory authorities.

We believe that to eliminate regulatory inefficiency and duplication requires a major fresh look, not a hodge-podge of inefficient fixes made by the self-regulatory organizations and the Commission itself. In the long run, well thought out solutions will eliminate unnecessary costs, will benefit the broker-dealer community and the general public, and will promote the United States as being a place where the regulatory scheme is not too harsh, not lenient at all, but fair and consistent.

Overall, the proposed amendments, as modified to take into account the comments submitted by responsible industry participants, such as SIFMA and others, are a step in the right direction but we do not consider them to be a perfect long-term solution. Rather, we believe that the entire regulatory scheme should be totally revamped especially as it applies to small broker-dealers.

With respect to some of the firms, the Commission should consider the recommendations posited in http://sec.gov/rules/other/265-23/gvniesar091205.pdf. This report, which is too long to reproduce here but which is available on the Commission's website, makes very good and serious recommendations that we believe are a major step in the right direction.

In this regard, these recommendations recognize that for limited purpose broker-dealers, under current rules, the cost of the possible protection afforded to the general public by forcing these broker-dealers to abide by a regimen of stringent capital and reporting rules greatly exceeds the likely benefit that could ever accrue to the general public. Indirectly, the general public is adversely affected to the extent that the limited purpose broker-dealers charge more for their services to cover the cost of complying with some of these rules such as the net capital rule or the rule requiring annual audited financial statements. On this last point, note that various broker-dealers are exempt while other, in many cases, much smaller or less prominent broker-dealers are subject to the annual audit requirement.

For example, under current rules, a typical private placement broker-dealer that never holds customer property can engage in transactions that are even millions of dollars more than the broker-dealer's capitalization. The customers are protected by the fact that the broker-dealer does not hold their property and may not do so except as provided by rules such as Rule 15c2-4. There is simply no need for a net capital or reporting scheme to further protect the customers. The customers certainly don't rely upon the capital or reporting rules to protect themselves.

There are many minor adjustments that should be made as technical corrections if only to recognize an item as minor as the proliferation of limited liability companies as the preferred business form for most new and small broker-dealers. Some of the current rules simply do not take them into account thus causing regulatory confusion.

Lastly, we would like to bring the Commission's attention to certain commissions receivable by one broker-dealer from another broker-dealer. Footnote 19 to the release states that the 30 day exception "is limited to receivables from a clearing broker-dealer related to transactions in accounts introduced by the broker-dealer." We believe that that limiting treatment goes beyond the current text of the net capital rule and we believe it goes beyond the intent of the rule.

The commissions to which I refer are generated as a direct result of transactions executed through the use of facilities provided by a registered broker-dealer to public customers or their executing brokers, are based upon each specific transaction being executed, are paid by one registered broker-dealer to another on a monthly basis, and in that regard have typically been remitted by the middle of the month following the month in which the transactions occur.

Over the years, the staff of the Commission has made clear that if a business entity receives transaction-based income, e.g. fees for processing securities transactions, that that entity would be construed to be engaged in the business of being a broker-dealer and therefore would need to register as a broker-dealer with the Commission. As the securities industry modernizes, there are many entities that have registered as broker-dealers only because of the staff's interpretation that they must do so and not because they render traditional brokerage services. In many instances, the attributes of some of the services they perform are substantially similar to those performed by the more traditional broker-dealers. Generally, they are effectuating securities transactions by accepting orders and either executing the orders or forwarding them to other broker-dealers or to markets where they are executed. They typically charge for the services they perform on a per ticket or per share basis or based upon a formula that relates to the value of each transaction or series of transactions. Perhaps the only things that distinguish these broker-dealers from some other, more conventional broker-dealers is that none of the transactions they handle are specifically solicited from the customers and there is usually very little human contact with the customers since the orders are almost all handled electronically.

We do not view these minor distinctions are being significant differences in comparing the role that these electronic broker-dealers play in comparison to other broker-dealers insofar as the revenue production and collection processes are concerned. In all of the instances, the broker-dealers are earning money because they are effectuating commission transactions in securities on behalf of others. For most firms that do not carry customer accounts, the commissions are remitted by carrying brokers on a monthly basis after the end of every month.

We believe that no matter what these commissions are called by the various participants in the market place, the substance of these revenues and the receivables that are generated on the books of the producing broker-dealer are almost precisely the same and should be characterized as such for net capital purposes, in particular with respect to the applicability of Rule 15c3-1(c)(2)(iv)(C) which imposes a deduction for "commissions receivable from other brokers…all of which receivables are outstanding longer than thirty (30) days from the date they arise". To do so would establish parity between the commissions earned by the more traditional broker-dealers with the substantially similar commissions earned by those broker-dealers that effectuate transactions through electronic means.

We know of no regulatory purpose that is served by making any distinction between the commissions generated by the more traditional brokerage activities and those generated by other means but that are still directly related to securities transactions. In fact, we believe that to treat these items differently for broker-dealers that use innovative newly-developed technology and procedures as compare to those that generate their income using more traditional means, discriminates unfairly against the innovators thus effectively discouraging the very developments that the Commission itself has tried to encourage as part of the National Market System.

Very truly yours,

Howard Spindel
Senior Managing Director

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Comments to SEC 34-55431