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Member FINRA/SIPC

July 29, 2013

Via: <http://www.sec.gov/cgi-in/ruling-comments>

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Release No. 34-69902; File No. SR-FINRA-2013-025; Proposed Rule Change to Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook

Dear Ms. Murphy:

Wells Fargo Advisors, LLC (“WFA”) appreciates the opportunity to comment as the Securities and Exchange Commission (“the SEC” or “the Commission”) considers a request by the Financial Industry Regulatory Authority (“FINRA”) to approve a proposal to consolidate certain FINRA supervision rules.¹ The consolidated rules address a broad range of supervisory obligations, including member duties with respect to the design and oversight of a supervisory system, the nature and scope of written supervisory procedures, the conduct of internal inspections, investigations and transaction review and the development and maintenance of supervisory controls.² WFA reiterates its previously expressed support for FINRA’s efforts to consolidate the rulebooks of the National Association of Securities Dealers (“NASD”) and New York Stock Exchange (“NYSE”) Regulations and files these comments to facilitate further improvement in the consolidated supervision rules.³

WFA consists of brokerage operations that administer approximately \$1.3 trillion in client assets. It employs 15,268 full-service financial advisors in branch offices located in all 50 states

¹ Notice of Filing of Proposed Rule Change to Adopt the Consolidated FINRA Supervision Rules, <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p286229.pdf>.

² Sec. & Exch. Comm’n, Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook, 78 FR 40792 (July 8, 2013) at 40793-99, <http://www.finra.org/web/groups/industry/@ip/@reg/@rulfil/documents/rulefilings/p297239.pdf>.

³ Wachovia Securities comment re: FINRA Regulatory Notice 8-24, Supervision and Supervisory Controls, 1, <http://www.finra.org/Industry/Regulation/Notices/2008/P038778>.

and the District of Columbia, and 3,304 licensed financial specialists located in retail bank branches.⁴

Although the range of supervisory topics covered by the proposed consolidation is broad, WFA is focusing its letter on two specific points in view of the relatively short window of time available for comment. In particular, WFA offers these comments to assure that FINRA's consolidated supervision rules do not result in a dramatic expansion of member responsibility to monitor the accounts of associated persons' family members when the associated person has no beneficial interest in or control over the accounts. In addition, WFA's comments are offered to assure that the consolidated rules support a fair evaluation of a firm's supervisory structure.

I. The Consolidated Rules Should Maintain Long-Standing NYSE Limits on Duties Relating to Covered Accounts.

FINRA's proposed Rule 3110(d) defines member duties with respect to Transaction Review and Investigation, including obligations to monitor activity in the member's accounts in order to detect violations under the Exchange Act or FINRA rules "prohibiting insider trading and manipulative and deceptive devices."⁵ These duties require members to monitor the accounts of associated persons and "any other covered account[s]."⁶ FINRA's proposed covered accounts definition would "add" to the definition of covered accounts those of "parents, siblings, fathers-in-law, mothers-in-law and domestic partners" when the family member's account is held at or introduced by the member firm.⁷

There are basic practical hurdles to the proposed expansion of duties that WFA believes FINRA should consider. Namely, a non-dependent relative may be uncomfortable disclosing private information such as personal financial status or social security numbers that may be needed to identify and monitor the non-dependent relative's accounts. Moreover, an associated person may be unaware that a non-dependent relative maintains an account with the firm, much less an account that may have been introduced to the carrying firm by an unaffiliated correspondent broker-dealer.

Explaining its rationale for the proposed expansion to include adult children and spouses of associated persons within its covered persons definition, FINRA cited 1999 and 2000 SEC releases describing the Commission's view that insider trading "typically" involves parents, children, siblings and spouses.⁸ FINRA thus declined to incorporate longstanding exceptions from the covered accounts definition under NYSE rules for children, and the spouses of children

⁴ WFA is a non-bank affiliate of Wells Fargo & Company ("Wells Fargo"), a diversified financial services company providing banking, insurance, investments, mortgage, and consumer and commercial finance across the United States of America and internationally. Wells Fargo's brokerage affiliates also include Wells Fargo Advisors Financial Network LLC ("WFAFN") and First Clearing LLC, which provides clearing services to 88 correspondent clients, WFA and WFAFN. For ease of discussion, this letter will use WFA to refer to all of those brokerage operations.

⁵ Notice of Filing of Proposed Rule Change to Adopt the Consolidated FINRA Supervision Rules, 286-88.

⁶ *Id.*

⁷ *Id.* at 157-8.

⁸ *Id.* at 158, footnote 99.

of associated persons who were not either financially dependent upon or living in the same household with the associated person.⁹ Nevertheless, FINRA has not provided prior guidance or direction suggesting the need for a shift from NYSE's practice. Furthermore, notwithstanding the SEC releases FINRA cites in its response, in 2004 the Commission adopted "Code of Ethics" rules under the Investment Advisers Act of 1940 and Investment Company Act of 1940 that imposed similar conditions upon reporting and review of transactions by an investment adviser's "access persons" as those applying to broker dealer covered persons under NYSE rules.¹⁰ In light of the SEC's affirmation of the traditional covered account approach in the 2004 ethics rules, WFA urges FINRA to reconsider the proposed expansion of member covered account duties.

WFA believes these practical and privacy concerns, coupled with the long-standing practice of limiting the covered account monitoring duties to accounts for which an associated person has either interest or control, suggest that FINRA should reconsider its proposed expansion of the covered person definition.

II. A Reasonably Designed OSJ Supervisory Structure Should Not Be Subject to a Negative Presumption.

In proposed Supplementary Material .04 to Rule 3110(a), FINRA outlines factors that members should consider and document to support the member's determination that it is reasonable to assign a single principal to two or more offices of supervisory jurisdiction ("OSJ").¹¹ Nevertheless, it "establishes a general presumption that a principal will not be assigned to supervise more than one OSJ." Furthermore, the proposed Supplementary Material presumes that it is "unreasonable" for a principal to supervise more than two OSJs, and applies "greater scrutiny" to such a supervisory structure.¹²

FINRA received several comments expressing concern about the application of negative presumptions when a member adopts a supervisory structure in which a single principal is assigned to more than one OSJ.¹³ In response, FINRA noted that it views such presumptions as consistent with the "long-standing" rule requiring an on-site principal at each OSJ. Nevertheless, FINRA acknowledges that the proposed Supplementary Material seeks to provide "flexibility" in view of "evolving business" models so that a member may assign a principal to more than one OSJ if the member finds that such a structure is "reasonable and effective."¹⁴

WFA applauds FINRA for recognizing the industry's evolving supervisory needs and for contemplating a higher level of flexibility in determining whether a single principal can

⁹ *Id.*

¹⁰ SEC Rule 204A-1(b) Reporting requirements under Investment adviser codes of ethics, 17 CFR Chapter II § 274.204A1; SEC Rule 17j-1(d) Reporting requirements of Access Persons, 17 CFR Chapter II §270.17j-1; (limiting access person reporting requirement to transactions for which the access person has direct or indirect beneficial ownership and excluding transactions over which the access person has no direct or indirect influence or control).

¹¹ Notice of Filing of Proposed Rule Change to Adopt the Consolidated FINRA Supervision Rules, 43, 292-93.

¹² *Id.* at 43.

¹³ *Id.* at 43-4.

¹⁴ *Id.*

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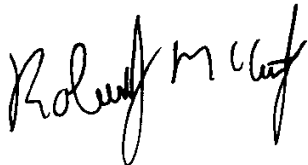
reasonably and effectively supervise more than one OSJ. Likewise, WFA supports the requirement that a member should document factors, such as those listed in the Supplementary Material, that support the member's finding that such a supervisory structure is reasonable. WFA is concerned, however, that the application of negative presumptions undermines the very flexibility that FINRA seeks to provide members that are adapting their supervisory structures as business models evolve. In particular, WFA is concerned that the use of such burden-shifting language in the Supplementary Material could unduly influence the analysis of FINRA inspection staff considering a member's determination that a multi-OSJ principal assignment is reasonable. Accordingly, WFA believes the removal of negative presumptions about a single principal assigned to more than one OSJ would be more consistent with FINRA's stated intent to provide members with greater flexibility.

Conclusion

WFA thanks the SEC for its willingness to consider the issues raised in this letter. We believe the modifications described above would assure that FINRA's consolidated supervision rules do not risk an overbroad interpretation of member responsibilities to monitor activity in covered accounts and facilitate FINRA's objective to support flexibility in the design of effective supervisory structures.

If you have any questions about this letter, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. McCarthy". The signature is fluid and cursive, with the first name being the most prominent.

Robert J. McCarthy
Director of Regulatory Policy
Wells Fargo Advisors