



NASAA

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**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

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October 22, 2014

*Submitted electronically to rule-comments@sec.gov*

Brent J. Fields, Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**RE: Release No. 34-73210, File Number SR-FINRA-2014-037**

Dear Mr. Fields:

On behalf of the North American Securities Administrators Association (“NASAA”),<sup>1</sup> I hereby submit the following comments in response to Release No. 34-73210, File No. SR-FINRA-2014-037 entitled Notice of Filing of a Proposed Rule Change to Adopt FINRA Rules 0190 (Effective Date of Revocation, Cancellation, Expulsion, Suspension or Resignation) and 2040 (Payments to Unregistered Persons) in the Consolidated FINRA Rulebook, and Amend FINRA Rule 8311 (Effect of a Suspension, Revocation, Cancellation, or Bar).<sup>2</sup> NASAA appreciates the opportunity to offer its comments on the above-referenced proposal.

It is NASAA’s general view that registration should be required for individuals that receive transaction-based compensation because such registration is integral to the regulation of firms and individuals.<sup>3</sup> The overarching concern is that without a regulatory framework in place there will be no counterbalance to the risk that transaction-based compensation can lead to

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<sup>1</sup> NASAA is the association of the 67 state, provincial, and territorial securities regulatory agencies of the United States, Canada, and Mexico. NASAA serves as the forum for these regulators to work with each other in an effort to protect investors at the grassroots level and to promote fair and open capital markets.

<sup>2</sup> 79 Fed. Reg. 59322 (Oct. 1, 2014).

<sup>3</sup> See e.g. Brumberg, Mackey & Wall, P.L.C., SEC Denial of No-Action Letter, 2010 WL 1976174 (May 17, 2010) (“A person's receipt of transaction-based compensation in connection [with effecting transactions in securities] is a hallmark of broker-dealer activity. Accordingly, any person receiving transaction-based compensation in connection with another person's purchase or sale of securities typically must register as a broker-dealer or be an associated person of a registered broker-dealer.” (internal citations omitted)).

abusive sales practices.<sup>4</sup> Thus, exceptions to this principle should be rare, and when implemented they should be highly prescriptive. NASAA previously commented on a similar proposal issued by FINRA in Regulatory Notice 09-69.<sup>5</sup> Our prior comments expressed concerns regarding the open-ended nature of the proposed rule in that it could be subject to continuous revision through the no-action letter process.<sup>6</sup> In response to the prior comments of NASAA and others, FINRA has proposed to adopt Supplementary Material .01 (Reasonable Support for Determination of Compliance with Section 15(a) of the Exchange Act). While the addition of this Supplementary Material mitigates some of the concerns previously raised by NASAA, NASAA remains concerned with the complex issues surrounding the compensation of unregistered persons largely unaddressed by the current proposal.

NASAA is also concerned with the proposal's treatment of continued transaction-based compensation to retired representatives. While FINRA makes reference to and asserts a similarity between its current proposal and the prior SEC No-Action Letter issued to the Securities Industry and Financial Markets Association ("SIFMA") on the topic, NASAA notes that the SEC guidance contains a more detailed discussion of the topic.<sup>7</sup> Additionally, the SEC guidance places restrictions on these compensation arrangements not addressed by FINRA in its proposal. FINRA notes that it believes its current proposal complies with the existing SEC guidance; however, NASAA believes FINRA's proposal must be made more explicit as to the restrictions surrounding continuing compensation to retired representatives in order to bring it fully in line with existing SEC guidance.

FINRA should also take this opportunity to clarify its rules surrounding the payment of transaction-based compensation to foreign finders. As NASAA notes above, the payment of transaction-based compensation to finders is a complex issue, and the use of foreign finders only adds to this complexity. While FINRA's current proposal retains the current rules, with only technical changes, these rules fail to provide any clarity as to what a finder is or does. Instead, the approach in the rules is to try to define what a finder is not; namely, someone not required to register in the U.S. as a broker-dealer. Further, the rule is silent as to what, if any, duties a FINRA-member firm has in supervising the activities of the finder beyond the disclosure of the relationship between the firm and the finder. FINRA should clarify these issues by more clearly defining the role of foreign finders, outlining the activities they can conduct, and clarifying the role played by FINRA-member firms in supervising foreign finders.

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<sup>4</sup> See Order Exempting the Federal Reserve Bank of New York, Maiden Lane LLC and the Maiden Lane Commercial Mortgage Backed Securities Trust 2008-1 from Broker-Dealer Registration, SEC Release No. 34-61884 (Apr. 9, 2010) available at <http://www.sec.gov/rules/exorders/2010/34-61884.pdf> ("Registration helps to ensure that persons who have a "salesman's stake" in a securities transactions operate in a manner that is consistent with customer protection standards governing broker-dealers and their associated persons.").

<sup>5</sup> See letter from Rex A. Staples, General Counsel, NASAA, to Marcia E. Asquith, Office of the Corporate Secretary, Financial Industry Regulatory Authority (February 16, 2010).

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> See SIFMA, SEC No-Action Letter, 2008 WL 5205814 (Nov, 20, 2008).

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NASAA appreciates the opportunity to offer its comments on the current proposal, but believes further revisions are needed in order to address our concerns with the payment of transaction-based compensation to non-registered actors.

Sincerely,

A handwritten signature in black ink, appearing to read "William Beatty". The signature is fluid and cursive, with a large initial "W" and "B".

William Beatty  
NASAA President  
Washington Securities Commissioner