



NASAA

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

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***Via Electronic Submission to [pubcom@finra.org](mailto:pubcom@finra.org)***

February 16, 2010

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA 1735 K Street, NW  
Washington, DC 2006-1506

**Re: Comments on the Proposed Amendments Governing Payments to Unregistered Persons: Regulatory Notice 09-69**

Dear Ms. Asquith:

The North American Securities Administrators Association, Inc. (“NASAA”)<sup>1</sup> appreciates the opportunity to comment on the above referenced Regulatory Notice. Our comments are the following.

**I. Process of Rulemaking**

NASAA recognizes the complex nature of the issues of regulating finders, a subcategory of unregistered persons. However, the prospect of utilizing ongoing and potentially unlimited SEC No Action Letters to regulate an area of securities regulation such as finders and other unregistered persons is troublesome to NASAA. In particular, it can be very expensive for the public to find their way through a sea of No Action Letters without a more detailed codified rule coming from the SEC and/or FINRA on this topic.

Moreover, NASAA expresses concern about an approach specifically creating a rule that would be subject to continual revision through No Action Letters. NASAA believes that the proposition of having FINRA rely upon and rule make through ongoing No Action letters as it pertains to the complex issue of finders strains the principles of legislative rulemaking authority.

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<sup>1</sup> NASAA is the association of all state, provincial, and territorial securities regulators in North America. Its membership consists of the securities regulators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. Their core mission is protecting investors from fraud and abuse in the offer and sale of securities. Organized in 1919, NASAA is the oldest international organization devoted to investor protection.

No Action letters provide advice to a particular party under specified facts and circumstances. If Regulatory Notice 09-69 passes through the system as it stands, FINRA effectively will make and re-make this rule *ad infinitum* through current and future No Action letters. There would never be a referendum for handling the complex issue of finders. Rather, the result would be a rule that would violate the Notice and Comment standards inherent in rulemaking procedures for FINRA.

## **II. Transaction based compensation**

The States and NASAA are quite concerned about transaction based compensation and the potential for abusive practices by finders and other unregistered persons who engage in securities business activities. States will continue to review this arena and any compensation received by unregistered person and enforce the state law applicable within their jurisdictions.

## **III. Retired persons and contracts**

FINRA provides the opportunity for retired persons to receive ongoing fees for current active accounts that they used to manage. NASAA questions the open ended nature of FINRA's provision for the allowance of these contractual relationships. The extent of hidden fee arrangements between shadow parties who trade consumers' accounts is particularly troublesome to NASAA. NASAA poses the question: Has there been consideration as to potential trigger points wherein these types of post "retirement" payment pose potential and/or actual conflicts of interest, the dangers to the underlying account holder whose assets are being used to generate fees that are split by multiple parties, and is full disclosure to consumers being provided?

Please do not hesitate to contact the undersigned regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rex A. Staples", with a long horizontal flourish extending to the right.

Rex A. Staples  
General Counsel  
NASAA