



NASAA

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

March 15, 2011

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

**Re: Markups, Commissions and Fees  
FINRA Regulatory Notice 11-08**

Dear Ms. Asquith:

The North American Securities Administrators Association, Inc. (“NASAA”)<sup>1</sup> appreciates the opportunity to comment on the above referenced FINRA rule consolidation.

Our comments are the following.

NASAA is surprised by the vast changes suggested through a rule consolidation notice for comment. The substantive content of this notice would effectuate a significant shift of seventy years of markup and commission public policy in the brokerage industry.

**Cap removal**

This Notice proposes replacing clear NASD rules in favor of lesser standards denoted in NYSE rules by removing the 5% cap on commissions and mark ups. NASAA is in favor of retaining specific caps on commission and mark ups under the 5% Policy. Clear guidance in this arena is needed for purposes of litigation, enforcement, compliance, and general clarity. The industry often asks regulators for clear guidance, and this is an example of an existing rule that is very clear in its application. NASAA wonders what deleterious effect the 5% cap would have

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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.

and why FINRA would attempt to abandon seventy (70) years of public policy through a Notice for rule consolidation. The study cited by FINRA in its consolidation proposal found the average mark up/commission falls between 2-2.2%. Therefore, the cap does not appear to be excessively burdensome to ordinary commercial interests but rather serves as a legal backstop to more extreme practices in the industry.

NASAA is in favor of clear rules and policies that support investor protection and this cap is an example of such a policy.

### **“Proceeds Provision”**

NASAA further takes exception to the proposed removal of the “Proceeds Provision” contained within NASD IM-2440-1. To remove this provision permits double dipping of commissions. NASAA is surprised that FINRA is recommending removal of the provision. Churning of brokerage accounts - and the fees recognized by doing so - has long been one of the industry’s most severe prohibited abusive practices. The “Proceeds Provision” offers clear guidance to brokers and dealers as to what is disallowed.

Notwithstanding, FINRA states that it believes that in some instances, the application of the “Proceeds Provision” may be a confusing standard. To remove the rule rather than to engage in further clarification seems contra to the interests of investors.<sup>2</sup> NASAA is firmly opposed to double dipping on commissions and is opposed to removal of this provision through rule consolidation.

### **Commission and Fee Schedules**

NASAA applauds FINRA for the addition of the requirement that firms issue commission and fee schedules to customers.

### **Conclusion**

NASAA cannot concur with the removal of the “5% Policy” and the “Proceeds Provision” to FINRA commission and mark up rules that fly in the face of investor protection.

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

Sincerely,

/s/Rex A. Staples

Rex A. Staples  
General Counsel  
NASAA

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<sup>2</sup> NASAA believes appropriate review of exception reports by compliance officers and regulators will continue to be supportive of the “Proceeds Provision.”