



**VIA ELECTRONIC MAIL**

March 26, 2007

Barbara Z. Sweeney  
National Association of Securities Dealers  
Office of the Corporate Secretary  
1735 K Street, NW  
Washington, DC 20006-1506

**Re: Comment Letter, Notice To Members 07-12, Proposed Amendments to Rules 3010(g) and 2711**

Dear Ms. Sweeney:

National Planning Holdings, Inc. (NPH) offers this comment letter on behalf of its subsidiary broker-dealers, all of which are National Association of Securities Dealers (NASD) member firms:

- Invest Financial Corporation (IFC) CRD – 12984
- Investment Centers of America (ICA) CRD – 16443
- National Planning Corporation (NPC) CRD – 29604
- SII Investments (SII) CRD – 2225

The four fully disclosed retail broker-dealers and registered investment advisers are registered to conduct business in all domestic jurisdictions, with over 2600 Registered Representatives offering securities services through over 400 Offices of Supervisory Jurisdiction (OSJ). We appreciate the opportunity to submit comments on the issues raised in Notice to Members (NTM) 07-12 regarding the proposal to harmonize Rules 3010(g) and 2711. The thoughts and comments provided in this letter have been reviewed by members of senior staff, including the respective broker-dealer Presidents and Chief Compliance Officers, and represent the collective view of the broker-dealers within our organization.

We have thoroughly reviewed NTM 07-12 and have considered the NASD's proposal related to Rules 3010(g) and 2711. Due to the structure and scope of the broker-dealers within the NPH network, the proposal related to Rule 2711 does not apply. Therefore, our evaluation of NTM 07-12 will focus solely on the proposed rule amendments related to Rule 3010(g). We provide the following comments regarding the potential impacts this rule proposal presents:

**Intent of Rule Harmonization**

We understand the spirit and intent behind the process of rule harmonization between the NASD and NYSE in moving towards a new, singular, Self Regulatory Organization (SRO). However, NASD and NYSE must take into consideration and carefully weigh the subsequent, and possibly unintended, consequences to such harmonization. Efforts should be made to fulfill the joint mission of the SROs while also creating as minimal an impact as possible to the manner in which NASD and NYSE member firms fulfill their supervisory responsibilities.

## **Form Branch Registration and Uniform Branch Office Definition**

During 2005 and 2006, great strides were made by NASD, NYSE, and State regulators to establish uniform standards for branch registration (Form BR) and branch definition (Uniform Branch Office Definition). This collaboration was welcomed by member firms, as it ultimately eliminated many redundancies and inconsistencies that were previously present in the branch categorization and registration process. This level of cooperation illustrates the positive results achievable through the rule harmonization process. Member firms revised policies and procedures to meet the new Form BR requirements and Uniform Branch Office Definition, which according to NASD statistics included the registration of over 60,000 new branch office locations throughout the industry.

## **Elimination of Office of Supervisory Jurisdiction**

Taking the aforementioned overviews into account, we do not support the proposed rule amendment to NASD Conduct Rule 3010(g) related to the elimination of the OSJ definition. The following items below, outline the specific issues of concern related to this proposal:

- **Exception Is The Rule** – It is clear that the basis for this rule proposal stems from a specific sub-section of NYSE offices whose only supervisory-related function is principal review and approval of research analyst reports. We would suggest creating a limited exception for this type of activity to be excluded from the definition of OSJ, rather than creating a completely new and complex supervisory framework for all office locations. Our concern is that the NASD and NYSE are moving away from the needs of the majority of NASD member firms, to address the needs of the minority of NYSE offices involved in a very specific supervisory function (i.e. approving research analyst reports).
- **Unnecessary Complexity** – After reviewing the proposal, it is evident, that contrary to NASD's suggestion that "this proposal will simplify the current structure by clearly delineating, in one rule, four classifications for member offices and the supervisory and inspection obligations that attach to each", the proposal actually appears to create unnecessary complexity. The current framework under Rule 3010 provides a basic and easily understandable definition for OSJ Branches, Non-OSJ Branches, and Non-Branches, in addition to the inspection requirements for each. Departing from a (3) tiered approach, to a (4) tiered approach with new naming conventions illustrates more complexity and granularity, not less.

The requirement for the proposed "Supervisory Branch Office" and "Limited Supervisory Branch Office" to supervise one or more locations, is confusing due to the fact that it requires firms to monitor the number of locations reporting to these types of locations. The current structure does not correlate the number of branches reporting to another with the definition of the supervising office location's role. Currently, an OSJ or Non-OSJ office can have anywhere from zero to a number of sub-locations reporting to them at any given time. A fluctuation in this figure does not impact the primary registration type for the location, rather the types of functions being conducted from the location indicate the registration type. We support the current structure as we feel the type of functions being conducted from a location is far more crucial to the overall framework of supervision, than the number of offices reporting to that location.

Additionally, the rule proposal does not clearly indicate how those formally holding the title of "OSJ Manager" would be referred to in the new branch office structure, or whether their supervisory function would be altered in any way.

- **Lack of State Level Coordination** – Based on initial feedback from various State regulators, it appears that this proposal was not previously vetted with the States through such forums as the North American Securities Administrators Association. Member firms are concerned that failure of the NASD and NYSE to consider State level impacts and properly coordinate such rule harmonization, will result in a lack of adoption by State regulators. This scenario could potentially bring rise to once again placing member firms in a position to address conflicting SRO and State level requirements related to office locations. As an aside, it is our understanding that an estimated one-third of States incorporate branch office definitions into their rules, including the OSJ terminology.
- **Education and Training** – Member firms create policies and procedures, as well as training programs that support their compliance requirements and standards. Registered persons and their respective supervisors have become accustomed to the current branch office definitions under Rule 3010. They have a strong understanding of the scope of each office type, including the types of activities that may or may not be performed at each location, in addition to books and records requirements. We are concerned that a new structure for supervision and office categorization could potentially confuse Registered persons and supervisors, resulting in inadvertent lapses in compliance requirements regarding the type of business conducted from the location.
- **Procedures and Marketing Materials** – Lastly, member firms would be required to amend all procedures and marketing materials that reference the current branch office definitions and terminology under Rule 3010. This would include all back-office standard operating procedures, field level manuals and guides, and all marketing materials such as business cards and letterhead. Although we certainly do not concede that this related impact should be weighted equally to those above, we have included in our comment letter for the purpose of providing a well-rounded analysis of the overall impact related to this rule proposal.

Again, the NPH broker-dealer network reiterates its support of the SRO consolidation process. We agree that a unified SRO for both NASD and NYSE member firms will foster greater efficiencies and standardization in the long term. However, we request the NASD consider the areas we have identified within the rule amendment proposal to 3010(g) that will negatively impact the member firm community.

We appreciate the NASD's consideration of our comments and anticipate further communication on this subject.

Sincerely,



M. Shawn Dreffin  
President and CEO  
National Planning Holdings, Inc.  
National Planning Corporation