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June 13, 2008

Via E-mail: [pubcom@finra.org](mailto:pubcom@finra.org)

WACHOVIA

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1500

Re: Financial Regulatory Authority ("FINRA") Regulatory Notices 8-23, Financial Responsibility; 8-24, Supervision and Supervisory Controls; 8-25, Books and Records; and 8-26, Investor Education and Protection.

Dear Ms. Asquith:

Wachovia Securities, LLC (Wachovia Securities) is pleased to submit the below comments concerning the proposed rulebook consolidation:

### **Introduction and Overview**

Wachovia Securities is a full service brokerage firm serving clients in 50 states. It assists active retail clients in managing almost \$1.1 trillion in assets. Wachovia Securities is fully supportive of the principles underlying FINRA efforts to consolidate its regulatory rule book with those of the former NYSE Regulation. We applaud it for making hard choices in many instances in a fair and thoughtful manner. Nonetheless, FINRA may have fallen short in some respects, and we accordingly endorse much of the analysis contained in the letter filed by the Securities Industry and Financial Markets Association (SIFMA). We file this brief comment letter to highlight some areas of concern where we would urge FINRA to take another look at the proposed rules and

consider changes that will result in a better match between the rules and the way the industry works best.

## **Suggested Clarifications or Changes in Supervision and Supervisory Controls**

### **A. Supervision of Multiple OSJs**

FINRA's proposed consolidation would create new rules 3110 and 3120, which will focus on supervision and supervisory controls respectively. Much of the proposal incorporates existing rules and will adequately combine the letter and principles underlying prior NYSE and NASD rules. Rule 3110(a) (4) requires that firms designate one or more principals for each OSJ. Supplementary material that FINRA incorporated with this rule poses concerns the Firm, as it expresses a general presumption that one principal cannot supervise more than one OSJ. *FINRA Regulatory Notice 08-24 (5-14-08)* at page 26. We believe that FINRA should refrain from making *any* presumptions in the area of principal's supervising multiple OSJs. The supplementary material lists a number of factors that firms should review in determining whether a principal can supervise more than one OSJ. These factors, and others, are sufficient and should provide tools for making a determination on a case-by-case basis as to whether a certain principal's supervision of an OSJ, or OSJs, is appropriate under the circumstances. A general presumption tends to undermine that factor specific analysis, creating a level of regulatory rigidity that works against the better approach of focusing on broad principles. In addition, it acts to limit firms from applying additional factors that are relevant to their particular lines of business.

In the same line of reasoning, we object to the proposed general presumption that supervision of two or more OSJs is "unreasonable." It is critically important that a review of supervision focuses on the quality and character of the supervision, and not presumptions based on assumptions that may not reflect the day-to-day realities of effective supervision. Many firms have a strong historical record involving the supervision of multiple OSJs, such that a presumption would be unfair and unwarranted. These firms have OSJs with very small registered representative populations. The ability to supervise multiple one-to-three person locations is not the same as multiple large branches. Permitting the supervision of multiple OSJs also allows firms to reach investors who would otherwise be unserved or underserved at a time when all acknowledge there is a growing need for individuals to prepare for retirement. Eliminating the presumption permits firms to use history, experience and other factors to guide their decisions on supervising OSJs. This stance is not intended to say that an analysis, and potentially additional guidance, of a principal supervising multiple OSJs is unnecessary, but it reflects a concern that simply stating a presumption will lead to incorrect and inconsistent reviews that will work to remove from consideration the actual effectiveness of supervisory systems.

## **B. Principals to Supervise All Business Lines of the Firm**

Proposed FINRA Rule 3110(a) contains a provision which requires firms to designate “appropriately registered principal(s)” to supervise each type of business in which the firm engages. FINRA would depart from current rules and require such a designation of a principal even if the business line requires no registration as a broker-dealer. This proposed change is flawed in many respects, and we urge FINRA to cancel or modify this provision. First, the proposed change might be legally unworkable as the term “registered principal” is one that has meaning in reference to a person possessing training, skills and responsibilities related to the securities laws. For FINRA to propose that those persons also have duties outside of registered securities activities, with no regard for whether their required training equips them for such duties, might be subject to challenge in an appropriate forum. Additionally, the standard by which FINRA would determine whether those supervisory duties were handled properly would appear ephemeral if it is acknowledged by FINRA that the business lines are such that do not require broker dealer registration. In a time where many look to avoid regulatory duplication, this proposal would have FINRA join as a separate regulator of a business line those traditional and long-standing regulators of that same line of business. One could easily envision a scenario where that regulator of the business line requires one type of supervisor trained in their rules, but who possesses no FINRA licenses, and FINRA would require a registered principal under its rules who may have no training under the designated business line. Certainly, all should be concerned if firms engage in non-registered business with no clear and meaningful supervision. We strongly urge FINRA to reconsider this rule to find the least disruptive, most effective, and legally supportable means of reaching that end.

## **C. Annual Report to Control Persons**

We fully support the efforts to streamline the supervisory control rules. We applaud the elimination of the need to deliver the annual report to “Control Persons” under Rule 354. However, we believe FINRA should go further and eliminate the separate requirement for an annual compliance report. The development of programs and testing for compliance with the annual process report incorporates all the necessary components of the annual compliance report. The tremendous investment of time and resources, through out the year, to execute a program and generate a report alleviates the need for a separate annual compliance report. In fact, it effectively renders it duplicative. We urge FINRA to push forward the cost effective elimination of the separate annual compliance report.

## **Conclusion**

Wachovia is pleased to have this opportunity to provide FINRA with our feedback on the proposed rule book consolidations. We believe that FINRA has devoted tremendous

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thought and effort in tackling this monumental task. The comments put forth are designed to help achieve a result that can be fair, efficient and enduring. Please feel free to contact me if you wish to discuss this letter.

Very truly yours,

Ronald C. Long

Director of Regulatory Affairs

RCL:mm