



February 9, 2011

J. Gordon Seymour
Office of the Secretary
PCAOB Headquarters
1666 K Street, N.W.,
Washington, D.C. 20006-2803

PROPOSED TEMPORARY RULE FOR AN INTERIM PROGRAM OF INSPECTION RELATED TO AUDITS OF BROKERS AND DEALERS; Docket Matter No. 32

Dear Mr. Seymour;

Thank you for the opportunity for the National Association of Independent Broker Dealers (“NAIBD”) to comment on PCAOB’s Proposed Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers. Please convey our comments to the Board.

The NAIBD was formed in 1979 to positively impact rules, regulations, and legislation by facilitating a consistent, productive relationship between industry professionals and regulatory organizations. The organization is national in scope with a network of approximately 150 Broker-Dealer and Industry Associate Members.

We recognize the extent to which the Board’s mandate impacts public confidence and how important investor confidence is to stability of our capital markets and our industry as a whole. Therefore, we understand that the Board cannot make broad exemptions to its inspection authority without careful consideration of the myriad risks posed by various business activities in which brokers and dealers engage. Further, we are aware that brokers and dealers engage in broadly varied types of businesses and that some of these may involve activities that are relatively unfamiliar to the Board.

We generally support the proposed temporary rule on the belief that it provides the Board with the time and data necessary to better understand the varied demographics, and to determine with confidence those classes of brokers and dealers, if any, which will ultimately be exempted from the Board’s permanent inspection program.

Nonetheless, we firmly believe that there are a few sub-groups of brokers and dealers whose activity poses no significant risk to the investing public and which should be exempted from the Board’s permanent program. We encourage PCAOB to identify the firms that fall into a minimal or no risk category and enact these exemptions without unnecessary delay.

It has been suggested that the PCAOB exempt all introducing brokers and dealers. While we do not patently disagree with this suggestion, we do believe that the Board should undertake a careful analysis that considers additional attributes and characteristics.

For instance, we believe that the following attributes are important in the context of determining investor risk among broker-dealers:

- Custody, Discretion
- Institutional/Retail/Domestic/Foreign Clients
- Industry Tenure and Experience
- Broad, Limited or No Products
- Full, Limited or No Services
- Customer Concentration/Distribution
- Revenue Concentration/Distribution
- Product Concentration/Distribution
- Affiliations/Subsidiaries

In addition to these attributes, we believe that lines can be drawn to separate among classes of firms whose profile is meaningful in regard to risk, such as:

- Firms have or do not have the attributes (such as for custody, discretion, products, services)
- Firms for which any particular attribute varies by length of time (such as for experience), degree of concentration (products or customers), proportionate or aggregate value to firm (revenues or affiliations)
- Firms with all or none of the attributes; firms whose combination of the attributes is simple or complex; firms for which the attribute presents inherently high risk or low risk

We hope the PCAOB will also consider that some firms present minimal or no risk due to the number and nature of disclosed business lines. For instance, approximately 575 firms engage solely in one line of business. Of these firms with only one business line:

- The most predominant categories represented are Private Placements, Mutual Funds, Variable Annuities, and “Other”
- 202 firms engage only in Private Placement activity
- Significantly, 185 firms engage only in “Other” (the second highest over all)

The following table presents data regarding firms with one business line in the context of their attributes:

Only 1 Business Line	Attributes, Description	Approx. #
PLA	Private Placement only firms typically conduct business among funds, and business owners, other institutions or accredited investors. Nearly all of the firms in this category, with private placements as their only business, have fewer than 30 employees, and approximately 170 or 85% of them have 10 or fewer employees.	202
Other	Firms selecting “Other” are required to describe their business line(s) in a text box associated with this item. Nearly all of the firms disclosing “Other” are engaged in Mergers and Acquisitions, Placement Agent Services, or other private securities or investment banking activity.	185
MFR	Mutual Fund only firms mostly offer mutual funds to retail customers by application (no custody, no clearing agreement). FOCUS data would reveal which if any of these ‘self-clears’ under the K2(i)(i). All but 3 of the firms in this category have fewer than 50 employees.	48
VLA	Firms offering Variable Annuities only engage in application way business (non-custodial; non-clearing). The vast majority of these firms are very small (only 6 of the 22 have more than 25 employees.	22

Not much different from these are firms with only two types of business. These firms number just shy of 1000 in all. Of them:

- All but 20 of the 1000 are “small firms” according to FINRA (fewer than 150 RRs)
- 80%, or just over 700 of them have 10 or fewer RRs
- More than half (about 520 firms) disclose Private Placements/Other as their two types of business
- Next in numbers are firms disclosing Mutual Funds/Variable annuities as their two business lines (approximately 90 firms)

The following table presents information about firms with only two business lines in the context of their attributes:

Only 2 Business Lines	Attributes, Description	Approx. #
PLA and Other	Firms in this category interact with institutions (businesses, corporations, funds) and sometime accredited investors. They may engage in investment banking, M&A activity, offer Placement Agent Services, act as Third Party Marketers. Approximately 500 of these firms have fewer than 30 employees; about 420 have fewer than 10. Only one has more than 150 RRs. In many cases, firms with these two business lines have no public customers, and limited private transactions. Because of the highly consultative nature of this business, some go for months or even years without closing a transaction. They do not engage in tax shelters or limited partnerships on a primary or secondary basis (these activities are captured by other disclosure categories.)	520
MFR and VLA	Most firms in this category engage in retail sales to customers by application (no custody, no clearing agreement). FOCUS data would reveal which if any of these 'self-clears' under the K2(i)(i) exemption. Although a handful of firms engaging solely in these two business lines are large firms; nearly 80% have fewer than 10 employees.	93

Using data and information like this, we encourage the Board to continue along its thoughtful path to understanding the nature and variety among brokers and dealers, so that certain classes including firms who do not have public customers, those with no access to customer funds or securities, those with less than \$1mm in annual revenues, and/or those whose activities are limited to offering one or more 'packaged' products (such as variable annuities, mutual funds, CDs), among others, are considered for a permanent exemption. We believe exempting firms in any or all of these categories will provide the PCAOB with the best possible opportunity to maximize its efforts where they can be most impactful.

It is also important to note that exemptions to firms in these categories, mostly small firms, will have a significant financial impact. Since the Sarbanes-Oxley Act gave the PCAOB Board inspection authority and responsibility and continuing through passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which expanded that inspection authority to include audits of registered securities brokers and dealers, our members have suffered the burden of increased fees for our annual audits. In some cases, most predominantly in more rural areas, costs have sky-rocketed. Considering

that in many cases there is no positive impact on public safety, many small firms should be relieved from this increase in overhead.

On behalf of broker-dealer trade associations, including the National Association of Independent Broker Dealers and the Financial Services Institute, I have attended an open Board Meeting of the PCAOB in December 2010, as well as a regular meeting of the Board in January 2011. On both occasions, I have had the opportunity to observe the diligence and thoughtfulness of the PCAOB Board, whose deliberations demonstrated sensitivity to the financial impact on firms, the relevance of its inspections to varied business models, while remaining ever mindful of the Board's central mission of consumer protection.

Thus it is with great respect for both the composition and the mission of the Board that I request that the Board leverage its interim period wisely, and that ultimately, it exercise its authority to exempt small, low-risk firms from its inspection requirement.

Best regards,

A handwritten signature in black ink, appearing to read 'LRoth', written over a horizontal line.

Lisa Roth
Association Past-Chairman
Chair, NAIBD Member Advocacy Committee