

MEMO# 23185

January 15, 2009

Institute Comments On FINRA Proposed Self-Reporting Rule

[23185]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 3-09
CHIEF COMPLIANCE OFFICER COMMITTEE No. 2-09
SEC RULES COMMITTEE No. 2-09 RE: INSTITUTE COMMENTS ON FINRA PROPOSED SELF-REPORTING RULE

As part of its activities to better align the rules of the NASD and the NYSE, FINRA has proposed to consolidate NASD Rule 3070 and NYSE Rule 351, relating to the reporting obligations of member firms, into a new FINRA Rule 4530. * Rule 4530 would also include a new provision requiring members to report whenever they conclude that a violation of any securities, insurance, commodities, financial, or investment-related laws, rules, regulations, or standards of conduct of a regulatory body or self-regulatory organization has occurred. Proposed Supplementary Material .01 to the proposed rule would clarify, in part, that this provision would not require the reporting of an isolated violation by the member or an associated person of the member that can be reasonably viewed as a ministerial violation that did not result in customer harm and was remedied promptly upon discovery.

In response to FINRA's request for comment on this proposal, the Institute has filed the attached comment letter. The letter supports adoption of the rule and the proposed Supplementary Material, but recommends revising the Supplementary Material to avoid the reporting of non-material events as well as duplicative reporting. With respect to the first issue, the letter notes that our recommendation would both take the guess work out of determining what constitutes a "ministerial violation" and relieve FINRA from receiving reports of isolated de minimis – though non-ministerial – violations that were promptly remedied and did not result in customer harm. With respect to the second issue, the letter recommends that the Supplementary Material clarify that, to the extent a member has a

duty to report a violation under another provision of law, it is not required to re-report the information pursuant to Rule 4530.

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[Attachment](#)

endnotes

*See FINRA Regulatory Notice 08-71 (Nov. 2008) (<http://www.finra.org/Industry/Regulation/Notices/2008/P117455>).

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