

MEMO# 23520

June 10, 2009

FINRA Reproposes Rule Addressing the Circulation of Rumors

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 27-09
CHIEF COMPLIANCE OFFICER COMMITTEE No. 10-09
EQUITY MARKETS ADVISORY COMMITTEE No. 22-09
SEC RULES COMMITTEE No. 31-09 RE: FINRA REPROPOSES RULE ADDRESSING THE
CIRCULATION OF RUMORS

As you know, last November, FINRA proposed a new rule 2030 relating to the circulation of rumors as part of the process of developing a new, consolidated rulebook. [\[1\]](#) In light of comments received on the proposal, including from ICI, [\[2\]](#) FINRA has made substantial changes and repropose Rule 2030. [\[3\]](#)

The Institute's letter on the original proposal expressed two concerns. First, it suggested that FINRA had broadened the current rules' scope in ways that would lead to unintended consequences and technical violations of the rule for legitimate conduct. In this regard, we suggested that FINRA qualify the term "rumor" in the final rule along the lines of Incorporated NYSE Rule 435(5), which is limited to rumors of a sensational character reasonably expected to affect the market. We also recommended retaining the exception currently found in Rule 435(5) for discussions of information published by a widely circulated public media.

FINRA has incorporated both of these suggestions in the reproposal. As amended, proposed Rule 2030 applies to a rumor that a member knows or has reasonable grounds for believing is false or misleading and is likely to influence the market price of a security. The

proposal also includes three limited exceptions to the general prohibition, including an exception for discussions of information published by a widely circulated public media. The two other exceptions allow for discussions necessary to explain market or trading conditions (a context specifically highlighted in our letter) and internal discussions undertaken to inquire into the veracity of a rumor.

The second main concern that we expressed in our comment letter was over the reporting requirement in the original proposal. It would have required that firms “promptly report to FINRA any circumstance which reasonably would lead the member to believe that any such rumor might have been originated or circulated.” We strongly recommended that FINRA add an element of materiality to this standard, which they have done in the reproposal. As amended, Rule 2030 would require firms to promptly report rumors that the firm learns of and knows, or has reasonable grounds for believing, were originated or circulated for the purpose of improperly influencing the market price of a security.

In addition to making the changes noted above, FINRA has added two items of Supplementary Material. The first highlights the fact that knowingly originating or circulating false or misleading information with the intent to cause an impact on the price movement of a security is unlawful and violates FINRA rules as well as provisions of the federal securities laws and SEC rules. The second specifically addresses a firm’s obligation to adopt written policies and procedures concerning rumors. These policies must contain appropriate training programs, and must clearly identify who is responsible for issuing guidance when responding to rumors.

Comments on the amended proposal are due by July 16, 2009. If there are issues you would like the Institute to consider addressing in a comment letter, please contact Bob Grohowski at 202/371-5430.

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Securities Regulation/Investment Companies

endnotes

[1] See Circulation of Rumors, Regulatory Notice 08-68 (November 2008). See also Memorandum No. 23091, dated November 26, 2008.

[2] See Memorandum No. 23136, dated December 19, 2008.

[3] See Origination and Circulation of Rumors, Regulatory Notice 09-29 (June 2009). The Regulatory Notice is available on FINRA’s site at <http://www.finra.org/Industry/Regulation/Notices/2009/P118808>.

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