

MEMO# 23122

December 12, 2008

Draft ICI Letter On Proposed FINRA Rule Addressing The Circulation Of Rumors

[23122]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 47-08
CHIEF COMPLIANCE OFFICER COMMITTEE No. 22-08
EQUITY MARKETS ADVISORY COMMITTEE No. 65-08
SEC RULES COMMITTEE No. 88-08 RE: DRAFT ICI LETTER ON PROPOSED FINRA RULE
ADDRESSING THE CIRCULATION OF RUMORS

As we previously informed you, FINRA is requesting comment on a proposed rule relating to the circulation of rumors. [\[1\]](#) A draft of the Institute's comment letter on the proposal is attached and summarized below.

Comments on the proposed rule must be filed with FINRA by Thursday, December 18. Please provide your comments on the draft letter by Tuesday, December 16 to Bob Grohowski by phone at (202) 371-5430 or by email at rcg@ici.org or to Mara Shreck by phone at (202) 326-5923 or by email at mshreck@ici.org.

The draft letter expresses several concerns over the proposed rule, suggesting that FINRA has broadened the current rules' scope in ways that may lead to unintended consequences. In particular, the letter suggests that the wording of the basic prohibition – that “no member shall originate or circulate in any manner a rumor concerning any security which the member knows or has reasonable grounds for believing is false or misleading or would improperly influence the market price of such security” – is extremely broad. The breadth of this language may lead to technical violations of the rule for legitimate conduct.

To address this concern, the draft letter recommends that FINRA define 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.

The draft letter also recommends retaining the exception in Rule 435(5) for discussions of information published by a widely circulated public media. In making this recommendation, the draft letter suggests that, to the extent that FINRA deems it necessary to limit the exception, it may wish to consider the approach taken by the FSA. Where a legitimate business reason exists to pass on or discuss a rumor, the FSA suggests that firms source the origin of the information (where possible), avoid giving it additional credibility or embellishment, identify it as a rumor, and make clear that the information has not been verified. We are particularly interested in members' views about whether to make this suggestion.

Finally, the draft letter expresses concern over the reporting requirement in the rule, which would require firms to "promptly report to FINRA any circumstance which reasonably would lead the member to believe that any such rumor might have been originated or circulated." The letter concedes that to the extent that FINRA clarifies and appropriately limits the scope of the final rule, the reporting requirements become more practical and easier to implement. Even so, the letter strongly recommends that FINRA consider whether a materiality standard could be added to the reporting requirement that would better serve regulatory policy purposes and result in more meaningful reports to FINRA.

Robert C. Grohowski
Senior Counsel
Securities Regulation - Investment Companies

[Attachment](#)

endnotes

[\[1\]](#) See Memorandum 23091, dated Nov. 26, 2008.