

MEMO# 23136

December 19, 2008

ICI Letter on Proposed FINRA Rule Addressing the Circulation of Rumors

[23136]

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TO: BROKER/DEALER ADVISORY COMMITTEE No. 49-08
CHIEF COMPLIANCE OFFICER COMMITTEE No. 23-08
EQUITY MARKETS ADVISORY COMMITTEE No. 67-08
SEC RULES MEMBERS No. 143-08 RE: ICI LETTER ON PROPOSED FINRA RULE
ADDRESSING THE CIRCULATION OF RUMORS

As part of the process of developing a new, consolidated rulebook, FINRA has proposed a new rule relating to the circulation of rumors. [\[1\]](#) The proposed rule is based on existing FINRA Rule 6140 and Incorporated NYSE Rule 435(5), with certain notable changes. The Institute's comment letter on the proposal is attached and summarized below.

The Institute's letter expresses two concerns over the proposed rule. First, it suggests that FINRA has broadened the current rules' scope in ways that may lead to unintended consequences and technical violations of the rule for legitimate conduct. The letter points out 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. To address this concern, the letter recommends 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. The letter also recommends retaining the exception currently found in Rule 435(5) for discussions of information published by a widely circulated public media.

Second, the letter expresses concern over the requirement 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.” The letter argues that it would be

impossible as a practical matter to design a compliance procedure by which a firm could comply with the requirement to report “any circumstance” that suggests that a rumor “might have been” originated or circulated. Even if such a procedure were possible, it would serve no meaningful regulatory purpose to have firms filing numerous reports that simply say that a rumor might have been originated or circulated, with no attendant market or client impact. 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.

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[Attachment](#)

endnotes

[1] See Circulation of Rumors, Regulatory Notice 08-68 (November 2008). The notice is available on FINRA’s web site at <http://www.finra.org/Industry/Regulation/Notices/2008/P117414>.

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