

Chief Governance Office  
Wachovia Securities LLC  
1 North Jefferson Ave  
St. Louis, MO 63103  
MO 3110  
314-955-6851  
Fax 314-955-9668



December 30, 2008

Via E-mail: [pubcom@finra.org](mailto:pubcom@finra.org)

WACHOVIA

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K. Street, NW  
Washington, DC 20006-1506

**Re: Regulatory Notice 08-71  
FINRA Rule Governing Reporting Requirements**

Dear Ms. Asquith:

Wachovia Securities, LLC (“Wachovia Securities”) is pleased to submit the below comments concerning FINRA’s proposed Rule 4530 which modifies the former NASD Rule 3070 and Incorporated NYSE Rule 351 concerning reporting requirements. Wachovia Securities supports generally the proposed Rule 4530 as firms and investors benefit from the rule’s goal of policing certain internal and external reporting requirements. We file this brief letter to highlight some concerns raised by the proposed rule in its current form.

Wachovia Securities is a full service brokerage firm serving clients in 50 states. It assists active retail clients in managing assets approaching \$1 trillion. Given its size, Wachovia will have occasion to report concerning matters involving its customers and employees. One important provision, however, will expand dramatically the types of issues on which a brokerage firm will report. Rule 4530(a)(1)(A) mandates that a firm report findings of violations by *any* business or professional organization. This proposed language changes the prior rule by eliminating the modifier “financial” for business or professional organizations. The rule accounts for this change by limiting the findings to “securities, insurance, commodities, financial or investment-related laws, rules, regulations or standards of conduct . . . .”

## Confidential

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Even as modified the rule is vague. Proposed Rule 4530(a)(1)(A) does not define nor identify the universe of business or professional organizations whose findings firms must report. There is no requirement that the firm or its associates actually be a member of the undefined “business or professional organization.” While one could argue that regulators “know it when they see it” when it relates to the type of business or organizations whose findings must be reported, the clear language of the rule does not provide such comfort. It is not difficult to envision an advocacy group, e.g. “business”, “finding” that a firm has violated “general standards of known fair business conduct.” While it is debatable whether the prior rule allowed for such ambiguity, the rule as written will increase the likelihood that firms may be required to report findings from a varied network of “business and professional organizations.”

The ambiguity of the rule also runs counter to the current regulatory climate to bring accountability to business and professional organizations in the securities field. Federal regulators and self regulatory organizations have all supported the model rule on senior designations promulgated by the North American Securities Administrators Association (“NASAA”).<sup>1</sup> The model rule notes that certain organizations may lack standards for granting senior designations, and it requires that such business and professional organizations meet certain conditions before their senior designations are recognized. Similarly, section 4530(a)(1)(A) of the Proposed Rule should have business and professional organizations meet some minimum threshold before obligating firms to report any “findings”. We encourage FINRA to amend the supplementary materials to remove the vagueness of this section of the Proposed Rule.

FINRA should also find a way to address the many different definitions of violations that may exist in the numerous “business and professional organizations.” Where businesses are not consistent in their definition of violations, the Proposed Rule will subject firms to burdensome tracking and reporting requirements. For example, The Certified Financial Planner (CFP®), Board of Standards, Inc. (“CFP Board”) states that, “An error in judgment is not necessarily unethical conduct.”<sup>2</sup> Other businesses and professional organizations, however, may find that same error in judgment violates one of their standards or rules. It seems that basic principles of fairness require FINRA to address these inconsistencies through the supplemental materials.

We trust that these brief comments will assist you in your review of the proposed rule. Please feel free to contact me if you wish to discuss this letter.

Very truly yours,

Ronald C. Long, Director  
Regulatory Affairs

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<sup>1</sup> NASSA Model Rule, [http://www.nasaa.org/content/Files/Senior\\_Model\\_Rule\\_Adopted.pdf](http://www.nasaa.org/content/Files/Senior_Model_Rule_Adopted.pdf)

<sup>2</sup> Definition taken from Certified Financial Planner, Board of Standards, Inc., at <http://www.cfp.net/learn/complaint.asp>.