

PFS INVESTMENTS INC.

Member FINRA®

January 16, 2009

Via Electronic Mail to pubcom@finra.org

Marcia E. Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Re: Regulatory Notice 08-71 and Proposed Rule 4530(a)(3)

Dear Ms. Asquith

This letter is submitted on behalf of PFS Investments Inc. (“PFS”). PFS recognizes the need to review and reconcile both the NYSE and NASD Rules as FINRA proceeds with the consolidated rule book. We appreciate the opportunity to comment on Proposed Rule 4530 (the “Proposed Rule”), which is the consolidated rule addressing regulatory reporting requirements. PFS believes it is necessary to comment on this proposal because, as written, it imposes additional obligations on legacy NASD members and the extent of those obligations is unclear. Our comments primarily concern section (a)(3) of the rule.

As stated in Regulatory Notice 08-71, section (a)(3) “requires a firm to report whenever the firm has *concluded on its own* that an associated person of the firm . . . has violated any securities, insurance, commodities, financial or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or SRO.” The reporting of “internal conclusions” is a substantial shift from the existing reporting requirements of NASD Rule 3070. In the proposing notice, FINRA stated that the concept of requiring firms to report “internal conclusions” was adopted from existing NYSE Rule 351(a)(1). The NYSE, however, had provided guidance on Rule 351(a)(1) which served to reduce the reporting burden on firms while retaining those reporting requirements that were most meaningful to regulators.

Specifically, in NYSE Information Memo 06-11 (March 16, 2006) the NYSE stated that “. . . if a firm has concluded that an individual has engaged in violative conduct and imposes discipline less severe than that which is required to be reported under NYSE Rule 351(a)(10), then the firm **need not** make a filing under NYSE Rule 351(a)(1) with

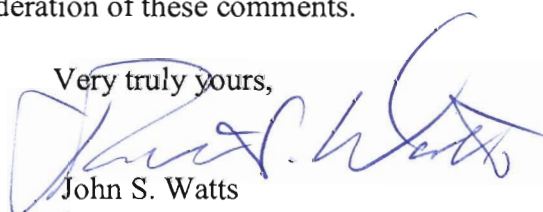
respect to that employee's conduct.”¹ The NYSE went on to qualify this statement, and explained that “systemic firm failures involving numerous customers, multiple errors, or significant dollar amounts” should be reported, as should violative conduct “that has widespread or potentially widespread impact to the firm, its customers or the industry.” The NYSE guidance appears to be a well-balanced approach to obtaining information necessary to effective regulation while not serving to stifle a firm’s internal disciplinary processes or place an excessive reporting burden on firms. Based on the language of the proposing notice, however, it appears that FINRA is proposing not to adopt the NYSE guidance.

The Proposed Rule states that if a member firm reports disciplinary action against a representative under section (a)(2) (the equivalent of NASD 3070(a)(10)), then a filing need not be made under section (a)(3).² But for lesser disciplinary actions that are not required to be reported under section (a)(2), FINRA stated only that violations “that can reasonably be viewed as a ministerial violation of the applicable rules that did not result in customer harm” do not have to be reported under section (a)(3).³ FINRA provided no guidance on what would “reasonably” be viewed as “a ministerial violation,” leaving members open to subjective interpretation in the examination process. In addition, FINRA has not demonstrated the need for this increase in regulatory reporting, despite the significant additional burden it will impose on firms.

Finally, we request that FINRA remain mindful that in today's litigious environment, firms often make decisions to settle controversies with customers to avoid what can be substantial litigation costs, even when the representative involved has done nothing wrong. Obviously, the economics that drive these decisions become more pronounced as the amount in controversy gets smaller. The Proposed Rule should continue to allow firms this flexibility, and make clear that a settlement with a customer will not presume that a reportable violation has occurred.

Thank you for your consideration of these comments.

Very truly yours,



John S. Watts

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¹ The requirements of NYSE Rule 351(a)(10) are essentially equivalent to those of NASD 3070(a)(10), and require reporting only when a person associated with the member is the subject of any disciplinary action taken by the member involving suspension, termination, the withholding of commissions or imposition of fines in excess of \$2,500, or otherwise disciplined in any manner which would have a limitation on the individual’s activities.

² Proposed Rule 4530, Supplementary Material .01

³ Id.