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July 14, 2009

Marcia E. Asquith

Office of the Corporate Secretary

FINRA

1735 K Street, N.W.

Washington, D.C. 20006-1506

**Re: Comments on Amended Proposed Rule 2030:
Origination and Circulation of Rumors**

Dear Ms. Asquith:

The National Society of Compliance Professionals ("NSCP") appreciates the opportunity to comment on the amended proposed Rule 2030 ("Proposed Rule") by the Financial Industry Regulatory Authority ("FINRA").

The Proposed Rule is of considerable interest to NSCP and its members. NSCP is the largest organization in the securities industry serving compliance professionals exclusively through education, certification (CSCP), publications, consultation forums, and regulatory advocacy. Since its founding in 1987, NSCP membership has grown to more than 1700 members including compliance professionals at broker-dealers, investment advisers, banks, insurance companies, registered funds and hedge funds. The diversity of our membership allows the NSCP to represent a large variety of perspectives in the financial services industry.

As an initial matter, NSCP commends FINRA both for addressing the important problem of abusive practices relating to rumors and for the process by which FINRA has considered this proposal. In December 2008, NSCP commented on the original proposed Rule 2030. NSCP is heartened to note the many revisions to the Proposed Rule that reflect comments from NSCP and other organizations. NSCP also commends FINRA for re-opening the comment process to permit additional comments on the amended proposal. NSCP recognizes that FINRA did not need to solicit additional comments, although this new comment process can help FINRA refine the final rule even further.

NSCP has two comments with the amended Proposed Rule:

1. The definition of “rumor” in the Proposed Rule, although a welcome addition to the Proposed Rule, can be further refined to exclude certain communications which do not pose the potential for abuse and can often enhance market fairness and stability.

2. The reporting requirement in the Proposed Rule could be further refined to exclude from the reporting obligation situations that should be of no interest to FINRA and could potentially impose unnecessary burdens on member firms.

I. Further Refinement of the Definition of “Rumor” Is Warranted

The addition of a definition of "rumor" is welcome. The definition, however, requires further refinement. A “rumor” is defined as "a false or misleading statement or a statement without a reasonable basis." (emphasis added) While NSCP has no comment on the first half of this definition, the second half should be narrowed. Because the two halves of the definition are joined by an "or," either part can result in a statement being deemed a rumor.

FINRA appears to be seeking, by the second part of this definition, to impose a due diligence obligation on member firm employees before they can pass on market intelligence to another person, inside or outside their firms. This is not practical since in ordinary conversation we all make statements which we believe to be true but which are not supported by the type of due diligence that would qualify to establish “a reasonable basis” for the statement. The danger in imposing a due diligence obligation on every expression of belief is that it could significantly chill communication and impose unrealistic burdens on compliance professionals.¹

To take an example, suppose I stated: “A health care reform bill will pass in this Congress.” This is my honest view and my expression of this belief is made in good faith and could not possibly influence trading in any security, mainly because every listener will immediately recognize this statement as a layman’s expression of opinion. Nonetheless, if I were asked to provide the “reasonable basis” for this statement, I might have nothing to provide. Under the second part of the definition in the Proposed Rule, this innocent expression of belief might thus be classified as a “rumor” and be subject to regulation under the Proposed Rule. For this reason, it would be preferable to delete the “without a reasonable basis” language from the definition of a “rumor.”

The Proposed Rule contains three exceptions to the general prohibition on communicating rumors. The first is for rumors "published by widely circulated public media" where the rumor is sourced. Guidance should be provided on what constitutes "widely circulated public media." The second exception allows discussions of rumors among market participants "when necessary to explain market or trading conditions." Such communications may not be made "to influence price movement" and the information must be presented "in as neutral and balanced a way as practicable under the circumstances." An unintended and undesirable consequence of this last language would

¹ We recognize that the Proposed Rule excludes expressions of opinion from the definition of “rumor:” “A statement will not be considered a ‘rumor’ if it is clearly an expression of an individual’s or firm’s opinion, such as an analyst’s view of the prospects of a company.”

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be to punish someone for debunking a false rumor. In debunking a false rumor, the communicator will not (and should not) communicate in a neutral and balanced manner, but rather in a very one-sided and emphatic manner. Also, in debunking a false rumor, the communicator intends to impact the price of the security. In terms of effect on the market, even a neutral and balanced communication to clients that a rumor is just that, and not known to be true or false, can have an impact on market conditions. What FINRA appears to be striving for is guidance that, in the guise of "explaining market or trading conditions," member firm employees should not spread rumors in a manner that gives them more credence than they deserve. The exception either should be revised to make that intent clear or the explanatory language should be deleted from the text of the rule and the intent of the exception should be described in FINRA's rule filing.

II. The Reporting Obligation Should Be Further Refined

The Proposed Rule would require reporting by member firms of a rumor which the member "knows or has reasonable grounds for believing was originated or circulated for the purpose of improperly influencing the market price of a security." The requirement is very difficult for member firms to apply because it requires them to guess about the motives of the originator or disseminator of the rumor. The key element of the reporting obligation is an assessment of the "purpose" for spreading the rumor. It would be much easier for member firms to have an objective standard they could reliably apply, rather than forcing them to guess about the "purpose" of others. For example, reporting could be required when the member firm knows the rumor is false and believes that the rumor has influenced the price of a security. This more objective reporting requirement would impose more reasonable burdens on compliance professionals and avoid the possibility of FINRA being flooded with unwanted and unhelpful reports.

* * *

NSCP would be delighted to work with FINRA in formulating a revised approach consistent with these comments.

Questions regarding our comments or requests for additional information should be directed to the undersigned at 860.672.0843.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Joan Hinchman', with a long horizontal flourish extending to the right.

Joan Hinchman
Executive Director, President and CEO