



Financial Industry Regulatory Authority

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September 4, 2008

Florence E. Harmon
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. SR-FINRA-2008-030 – Response to Comments

Dear Ms. Harmon:

This letter responds to comments received by the Securities and Exchange Commission (“SEC” or “Commission”) to the above-referenced rule filing, a proposed rule change to adopt NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM-3013-1 (Annual Compliance and Supervision Certification) as a FINRA Rule in the Consolidated FINRA Rulebook. The proposed rule change was published for comment in the Federal Register on July 15, 2008.¹

The Commission received two comment letters to the proposed rule change.² SIFMA supported the proposal in every respect, save one: it asks FINRA to retain the April 1 certification deadline contained in Incorporated NYSE Rule 342.30, which FINRA has proposed to delete as part of the proposal. Instead, FINRA would maintain the existing NASD Rule 3013 deadline, which requires certification not later than the anniversary date of a member’s prior year’s certification. Alternatively, SIFMA asks that FINRA permit member firms to effect their annual certification no less than three weeks after the anniversary date of the prior year’s certification, but not later than April 1.

The reasoning behind SIFMA’s request is unpersuasive. Most fundamentally, SIFMA seemingly disregards the fact that firms that have previously certified on or near April 1 may continue to do so, provided the certification is executed no later than the anniversary of the prior year’s certification. Moreover, SIFMA gives short shrift to the

¹ Exchange Act Release No. 58118 (July 8, 2008), 73 FR 40647 (July 15, 2008).

² See letter to Florence E. Harmon, Acting Secretary, Commission, from Amal Aly, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) dated August 4, 2008, and letter to Secretary, Commission, from Christine LaBastille, Managing Director, Integrated Management Solutions (“IMS”) dated August 5, 2008.

implications of its request on FINRA only firms that have chosen a cycle other than April 1 that better meets with their organizational structure and procedures.

SIFMA asserts unconvincingly that for larger firms such an annual deadline would “inject uncertainty as to when the entire report and process should commence each year” and that “the time period covered by the report and certification will be constantly shifting.” SIFMA’s arguments appear premised on the mistaken assumption that dual members must couple the CEO certification with an annual compliance report required to be submitted by April 1 of each year under Incorporated NYSE Rule 342.30 (“Annual Compliance Report”). For example, SIFMA states that “the planning for the certification, *which includes preparation of the Annual Compliance Report* and the CEO Certification Report, begins as early as January each year.” (emphasis added)

These assertions suggest a fundamental misapprehension of the proposed rule and a failure to distinguish between the requirements of the CEO certification rule and report and the Annual Compliance Report.³ Unlike the latter, the CEO certification rule and report do not cover a specific time period. Rather, the CEO certifies that as of the date of certification, the firm has in place *processes* to establish, maintain, review and modify its policies and procedures and that the report evidences those processes. As long as the report remains accurate – i.e., that processes exist – the CEO may execute the certification at any time, including waiting until the anniversary of the prior year’s certification so as not to move up the deadline for the next year. As such, the proposed rule change provides firms complete flexibility as to when the certification process begins and culminates. A firm may choose to time the process to coincide with other regulatory requirements, but nothing in the proposal compels that result or would burden a firm that chooses to do so.

IMS, a consulting firm that provides compliance services to broker-dealers, asserts that NASD Rule 3013 has been “unworkable” and ineffectual for small FINRA member firms and urges FINRA to adopt an unspecified small firm exemption as part of the proposal. IMS’s contentions generally are vague and without support, and IMS acknowledges that its views do not necessarily reflect those of any of its clients. Furthermore, several of IMS’s comments are directed at the requirements of NASD Rule 3012, which is not part of this proposal.

IMS does address one particular provision of the proposal that requires the CEO and CCO to meet at least once in the 12 months preceding the certification to (1) discuss and review the matters that are the subject of the certification; (2) discuss and review the member’s compliance efforts as of the date of the meeting; and (3) identify and address

³ FINRA has issued for comment a proposal to eliminate the Annual Compliance Report requirement as part of its rulebook consolidation process. *See Regulatory Notice 08-24* (May 2008). Under the proposal, certain firms – those that reported \$150 million or more in gross revenue on their FOCUS reports in the prior calendar year – would be required to include certain of the content requirements of the Annual Compliance Report in their annual supervisory controls system report. That report must be submitted to senior management at least annually, but there is no specific deadline date.

significant compliance problems and plans for emerging business areas. IMS contends that in instances where the CEO and the CCO are the same person, the requirement is “silly” and that much amusement ensues when the firm tells that person that he must have a meeting with himself and document the results. IMS appears to suggest that such firms be exempted from this provision.

FINRA disagrees. It is expected that a person who is both CEO and CCO will contemplate the required topics of the meeting and document that he or she has reviewed those matters.

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FINRA believes that the foregoing responds to the issues raised by the commenters to this rule filing. If you have any questions, please contact me at (202) 728-8451; email: philip.shaikun@finra.org. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

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

Philip Shaikun
Associate Vice President and
Associate General Counsel