

June 27th, 2007

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, DC 20006-1506

Dear Ms. Sweeney:

We appreciate the opportunity for interested parties to be able to comment on the Proposed Joint Guidance Regarding the Review and Supervision of Electronic Communications (“Proposed Guidance”). We also wish to compliment the NASD and NYSE on the Proposed Guidance (NASD Notice to Members 07-30) as the document, from our perspective, effectively balances regulatory and supervisory concerns with the evolving technologies which have made these efforts ever more challenging.

Since 2001, our company, 17a-4, llc, has focused exclusively on e-messaging compliance and management consulting. (We use the term e-messaging to include email, Instant Messaging, Bloomberg and Reuters email and other types of electronic communication.) We have worked with over 200 financial institutions to:

- Develop e-messaging policies and procedures for SEC Rule 17a-4 and NASD Rule compliance;
- Implementation of e-messaging capture and retention technologies;

Based on our experience and our close work with many different types of institutions, we believe we are in a unique position to comment with respect to the Proposed Guidance. Though the Proposed Guidance is extremely comprehensive, we suggest the following additions for your consideration.

Guidance on hyperlinked disclaimers

One of the most problematic areas with using Lexicons is that so many of the words (i.e. guarantee, confidential, unauthorized) appear in financial institutional disclaimers. We have clients in which most of their supervisory ‘hits’ are only in the disclaimers and thus an inefficient use of supervisory time and effort. Although 17a-4, llc recommends that firms convert to hyperlinked disclaimers (one in which clicking on the hyperlink will provide disclaimer information in the appropriate languages), most firms are reluctant to move to this solution without guidance from the SEC/ NASD.

Guidance on legacy ingestion or system errors

Most supervisory systems work in conjunction with e-messaging archival systems. We have encountered a significant number of situations in which legacy email during an installation or a conversion are flagged by the supervisory systems even though the e-messages have been previously reviewed. These e-messages will remain open on the supervisory system and interfere with performance until they are actually flagged by a reviewer. We suggest that the Joint Guidance specify that firms may 'block flag' these messages with a disposition code indicating that these messages have previously been reviewed and that they are being flagged for operational purposes only.

Review of email originating from EU countries

Many firms have EU operations with email subject to Directive 95/46/EC of the European Parliament on the Protection of Individuals with Regard to the Processing of Personal Data and the Free Movement of such Data (http://ec.europa.eu/justice_home/fsj/privacy/law/index_en.htm). (Data Protection Acts or DPA).

We have tried to address and reconcile the inherent conflicts between NASD 3010 and the DPAs. For many clients, we recommend that US compliance not review emails which originate in EU countries from EU employees. However, there are many concerns with this approach and we ask that the NASD provide guidance to financial firms with respect to acceptable policy.

Thank you again for allowing interested party input into this discussion.

Respectfully submitted,



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