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ASSET MANAGEMENT

MBSC Securities Corporation

November 20, 2009

VIA EMAIL TO PUBCOM@FINRA.ORG

Ms. Marcia C. Asquith
Senior Vice President and Corporate Secretary
Office of Corporate Secretary
FINRA
1735 K Street
Washington, DC 20006-1500

RE: Proposed New Rules Governing Communications with the Public
FINRA Regulatory Notice 09-55

Dear Ms. Asquith:

MBSC Securities Corporation appreciates this opportunity to comment on FINRA's proposed amendments to its rules governing communications with the public, as set forth in FINRA Regulatory Notice 09-55 (hereafter "09-55" and, collectively, the "Proposals").

MBSC Securities Corporation ("MBSC") is registered as a broker-dealer with the U.S. Securities and Exchange Commission ("SEC") and is a FINRA member. MBSC is a subsidiary of The Dreyfus Corporation ("Dreyfus"), which is registered with the SEC as an investment adviser and has approximately $430 billion in assets under management. Among other services provided, Dreyfus is the investment adviser, and MBSC is the distributor, for the $300 billion Dreyfus family of mutual funds. MBSC and Dreyfus are members of BNY Mellon Asset Management, the umbrella organization for The Bank of New York Mellon Corporation's affiliated investment management and global distribution companies. BNY Mellon is a global financial services provider with over $960 billion in assets under management and over $22 trillion under administration and custody.

Preliminarily, we note our participation in drafting the comment letter submitted by the Investment Company Institute ("ICI") in response to the Proposals and we generally support the views expressed in ICI's comment letter. Nevertheless, we believe there are several aspects of the Proposals that merit special emphasis and perhaps alternate treatment. To that end, we present below an overview of those points, followed with a more detailed discussion in corresponding sections. Again, we thank FINRA in advance for its time and attention to our comments.

Overview.

A. **Additional Filing Requirements**. The Proposals would restore certain filing obligations (here, for "retail communications") from which the industry was relieved in 2003. These communications include certain communications that currently are classified as "Correspondence" as well as certain types of Press Releases. However, FINRA barely has provided justification for restoring these filing requirements, and we believe that the current filing exclusions should be maintained.

B. **Clarify Certain Exclusions from Filing Requirements**. Generally, we support the proposed exclusion from filing for retail communications that are either *"solely administrative in nature"* or based on templates, as provided in proposed FINRA Rule 2210(c)(7)(A) and (B) (and, in proposed FINRA Rule 2210(b)(1)(D), but with respect to an exclusion from principal review for "administrative" retail communications) we believe that FINRA should clarify and expand on the terms "solely administrative" and "non-narrative" as used in the proposed Rule.

C. **Expense Ratio Disclosure**. We oppose proposed FINRA Rule 2210(d)(5) to the extent it would require disclosure of a fund's expense ratio *"as stated in the [fund's] prospectus or annual report, whichever is more current….."* For several reasons, we believe a single point of reference is preferable.

Further, while not specifically addressed in the Proposal, we respectfully request that FINRA (a) authorize a fund alternatively to disclose its annualized monthly expense ratio; (b) eliminate the requirement for fund expense ratios (and sales charges) to be disclosed within a "prominent text box"; and (c) address the reference to a "print advertisement" which term no longer is defined in proposed subsection (B).

D. **Recordkeeping.** We generally support the recordkeeping requirements of proposed FINRA Rule 2210(b)(4)(A), but we believe that FINRA should clarify its intention in using the phrase "or distributed" with respect to institutional communications as well as why reference is made to "any" principal who gave written approval with respect to a communication.

E. **Investment Analysis Tools.** While not specifically addressed in the Proposal, we respectfully request that FINRA consider eliminating the requirement for "interactivity" in regard to the established standards for the use of investment analysis tools under proposed FINRA Rule 2214. Established technologies that generate ranges of probabilities of investment outcomes (e.g., Monte Carlo simulations), are critical retirement planning tools and provide investors with meaningful insight. Investors' interests and needs would be better served under a rule that permits customer access to such technologies even if the customer does not control the inputs.

F. **Social Media**. We believe it is advisable at this time for FINRA to expressly cover social media technologies under its rules. Member firms broadly make use of social media technologies (e.g., Facebook, Twitter, and blogs). We further believe that the regulation of social media must recognize the core usage of social media as a platform for creating a community environment among a company and its customers and the general public. Social media is not first and foremost a marketing tool and it would be a mistake to regulate it as such in its entirety.

Discussion.

A. **Additional Filing Requirements**.

As proposed to be defined, "Correspondence" no longer would include sales communications distributed to existing retail customers (nor does it include communications delivered to fewer than 25 prospective retail customers). Also, the Proposals eliminate the current exclusion from filing for press releases that are made available only to members of the media. As a result, if adopted, the Proposals would restore significant additional filing burdens (and associated costs) from which members were relieved in 2003. Further, these additional burdens appear to be presented merely as a by-product of the new definitions under proposed FINRA Rule 2210(a),

because FINRA otherwise barely has articulated any express argument for restoring these burdens and costs. For these reasons, we oppose these changes.

In May 2003, the SEC approved amendments that expressly "modernized, simplified, and clarified" NASD's rules governing communications with the public. As part of this undertaking, Correspondence was more expansively defined and exempted from filing and pre-use principal approval requirements pursuant to Rule 2211. In support thereof, NASD stated the following in the 2001 release that proposed these amendments:

> *"...registered representatives may provide customers with information concerning their accounts, changes in market conditions, or current economic conditions. Given the volume of form letters and group e-mail that members and their associated persons may send, and the speed with which this material can be dispatched to customers, a pre-sue approval requirement may be less practical than supervisory procedures that are more specifically tailored to these forms of communications....NASD Regulation believes that Rule 3010(d) provides the most effective means for supervising form letters and group e-mail sent to existing and a limited number of prospective retail customers."*

In our view, nothing has changed since 2001 that makes these statements any less true today. Nevertheless, FINRA now proposes to turn back the clock and eliminate this flexibility afforded member firms without any express justification for why this policy no longer is valid. Because the Proposal restores prior filing obligations and increases member firm costs, without justification for the policy shift, we believe FINRA should reconsider this aspect of the Proposals.

Similarly, the Proposals also seek to roll back the similar exclusions for press releases made available only to members of the media. Again, in the 2001 proposing release, NASD states that this exclusion *"would recognize the time-sensitive nature of these press releases, and the fact that press releases generally do not raise significant concerns in the filing process."* Now, in 2009, the only justification FINRA offers for rolling back this exclusion is that firms do not avail themselves of this exclusion because firms almost always post press releases on their Web sites. We disagree with this premise. We do not believe that FINRA member firms broadly *"almost always"* post press releases related to open-end investment companies on their Web sites. In fact, if they are excluded from filing, and not posted, how would FINRA determine this percentage? Moreover, even if a higher percentage of press releases are in fact posted on the web, what has changed to make the policy expressed in 2001 no longer valid? As with Correspondence, absent express and compelling justification, we also believe that FINRA should reconsider this aspect of the Proposals.

B. <u>Clarify Certain Exclusions from Filing Requirements</u>.

Proposed FINRA Rule 2210(c)(7)(B) would exclude from filing retail communications that are *"solely administrative in nature."* We believe the Proposal also narrows the exclusion from current requirements and requires clarification and/or expansion.

The 2001 release referenced above noted a fairly broad array of "shareholder notifications" (e.g., a letter about an investor's account) that properly would be classified within the definition of Correspondence. However, now it appears that the Proposal significantly alters that understanding by defining "administrative" to include those matters referenced in footnote 6 of 09-55.

We believe that FINRA should clarify that many of the routine shareholder communications that a fund sponsor/distributor has with its shareholders would be characterized as "administrative" for purposes of the Proposal. These communications would include, for example, letters that merely notify fund shareholders about a proposed or recently consummated fund merger, a change to fund

account services or privileges, to an applicable fee and charge, or to a fund's primary portfolio manager. Absent other promotional content, these kinds of communications should not be subject to principal review and filing with FINRA (either pursuant to an exclusion from the definition of "retail communications" or by expressly stating that such communications do not constitute retail communications).

Similarly, proposed FINRA Rule 2210(c)(7)(A) would exclude from filing retail communications that are based on templates that previously were filed with FINRA and the only revisions to which have been to statistical or other "non-narrative" information. We ask that FINRA clarify "non-narrative." For example, Dreyfus prepares an array of print "fund fact sheets" that contain an array of performance quotations and portfolio statistics, as well as other textual information such as a goal/approach summary, risk factors, primary portfolio managers, and other disclosures. We believe, for example, that a change to the name of a primary portfolio manager or editorial revisions to a risk disclosure should not necessitate re-filing. However, you can see how confusion could arise in this regard if the standard is simply "narrative" v. "non-narrative" content. Clarification in this regard would be appreciated.

C. Expense Ratio Disclosure.

We question the intention behind proposed FINRA Rule 2210(d)(5) to the extent it requires disclosure of a fund's expense ratio *"as stated in the [fund's] prospectus or annual report, whichever is more current....."* The proposal to disclose a fund's expense ratio as stated in the fund's prospectus or annual report, whichever is more current, has little to no added benefit for investors. FINRA has not provided an express reason for proposing this change, and we believe that they should.

Preliminarily, we hope the FINRA recognizes the technological challenges of complying with current NASD Rule 2210(d)(3) in this regard. An automatic feed normally is required to populate a web site with this information. These automatic feeds are most effective when they pull information from one source (and currently that is the prospectus). The Proposal potentially compromises the reliability of this process because it may cause information to have to be drawn from multiple sources over time, or input manually, in order to comply. This would make compliance more difficult and, on balance, create an unnecessary burden with limited, if any, added investor benefits.

Consider first the example of a fund with a December 31 fiscal year (and more than a one year track record). Normally, such a fund will release its annual report by March 1 and its prospectus by May 1. The expense ratio reflected in the annual report also will be reflected in the fee table of the May 1 prospectus. Thus, proposed Rule 2210(d)(5) seems merely shift the annual cycle from March 1 to May 1 for revising expense ratio disclosure. We fail to see the material significance of this rule change in that light.

Consider next the example of a fund with a material change to its expense ratio during its fiscal year. In this case (using web sites to illustrate), the fund's prospectus would be revised to disclose that different expense ratio. The Proposal would require the fund to revise its expense ratio disclosure. If it is already drawing an automatic feed from prospectus disclosure, this would not be an issue. However, if it is drawing an automatic feed from annual report data, this change would require manual entry. For large fund complexes and particularly fund supermarket providers and fund portals, this can be more problematic and, again, we do not see the benefit to investors of the proposed rule change.

We note that in the 2004 release which announced the adoption of then new NASD Rule 2210(d)(3), NASD noted that it determined to require that expense ratio disclosure be derived from

the fund's prospectus because *"expenses calculated under Item 3* (of Form N-1A) *may not reflect the effect of fee waivers and expense reimbursements that are subject to termination, while those calculated according to Item 9* (expense ratio calculations for shareholder reports) *may reflect these waivers and reimbursements."* We believe FINRA should comment on the implications of this concern in relation to proposed FINRA Rule 2210(d)(5), and reiterate its position is with regard to the presentation of expense ratios that reflect fee waivers. If this distinction remains a concern, then we recommend FINRA expressly provide for that which was stated in the 2004 release (including in footnote 12 thereof), which provides that a fund must disclose an expense ratio that does not reflect any applicable waivers or reimbursements, but may accompany this expense ratio data with related disclosure.

If FINRA's goal is to provide investors with updated expense ratio data, we believe FINRA should instead consider permitting disclosure of a fund's annualized monthly expense ratio. This offers two benefits. First, it permits fund groups to continue to rely on a single source for expense ratio data. Secondly, because it is calculated monthly, it provides investors with a better look at the fund's current expenses compared with the prospectus fee table, which can be up to 12 months old. Prior to 2004 and the adoption of current NASD Rule 2210(d)(3), NASD had advised that reliance on the prospectus as the source of expense ratio data was based on the desire to facilitate an "apples-to-apples" comparison of expenses for investors (ostensibly, a comparison of monthly expense ratios would not do that because they were not contained in the prospectus).

We disagreed with that statement then and we disagree with it now, because we do not see anything inherently more reliable or beneficial to investors in comparing Fee Table expense ratios instead of monthly expense ratios (which have the added benefit of reflecting a fund's "current" costs). Moreover, fund company web sites and sales literature routinely disclose annualized monthly expense ratios (as part of proving investors with "current" portfolio and performance statistics), and are burdened with the duty to then have to disclose two sets of expense ratio numbers simply to comply with Rule 2210(d)(3).

Moreover, the Rule 482 narrative disclosure that accompanies performance quotations in fund sales communications directs the investor to the fund's prospectus and information on fees and expenses. To simply repeat that information in a sales communication, we believe, is less useful than disclosing a fund's annualized monthly expense ratio. Taken together with the prospectus expense ratio, which will be "older", it also could be the case that the monthly expense ratio will suggest a trend in expenses which would be of more use to shareholders. To this end, we recommend that proposed FINRA Rule 2210(d)(5) provide the discretion to disclose either the expense ratio set forth in the prospectus fee table or the fund's annualized monthly expense ratio.

Separately, we recommend that FINRA abolish the "text box rule." When adopted in 2004, FINRA stated that the text box rule *"would facilitate the ability of investors to compare expense information for different funds"*, corresponding with FINRA's claim that the rule *"would better insure that standardized performance is presented in a clear and prominent manner."* After more than five years, we do not believe that the text box rule has in any way contributed to an investor's ability to compare expense ratios. Media publications, web sites, fund supermarkets and portals, and eventually XBRL technology all have, and will, provide investors with a superior ability to compare fund expenses. Whether or not a Dreyfus magazine advertisement presents fund performance quotations and expense information inside of a "text box" or not has no impact on the ability for shareholders to compare that same information for a different fund. If FINRA can determine during this rulemaking process that it is appropriate to restore filing and principal review requirements that were eliminated over five years ago, we believe it is equally incumbent upon FINRA to recognize when a rule has outlived its usefulness and should be abolished.

Finally, we note a reference in proposed FINRA Rule 2210(d)(5)(B) to a "print advertisement", which we assume is an error given the new definitions in proposed FINRA Rule 2210(a). FINRA should address this confusion and clarify whether or not the reference was intended to cover "mass media" retail communications, for example.

D. Recordkeeping.

With regard to proposed FINRA Rule 2210(b)(4)(A), we believe that FINRA should clarify (a) its intention in using the phrase "or distributed" with respect to institutional communications and (b) why there is reference to "any" principal who gave written approval with respect to a communication. First, we question who at a member firm is being targeted as the "distributor" of an institutional communication. If FINRA merely intends for members to identify which employee is "responsible" for the communication, then that should be clarified. Even in that case, though, we cannot glean FINRA's intention with this requirement (i.e., why it seeks identification of one or the other persons). We object to the Proposal if the intention is to identify who actually distributes, or "hands out" the communication among institutional investors or financial professionals, because that could implicate any number of people, some of whom may not even be known to the preparer of the communication at the time.

E. Investment Analysis Tools.

We support the views set forth in ICI's comment letter on this topic and recommend that FINRA eliminate "interactivity" as a criteria for a member firm to avail itself of the limited exception afforded by proposed FINRA Rule 2214. We believe that investors are disadvantaged by FINRA limiting investor access to investment analysis tools to situations where the investor inputs the assumptions. We believe FINRA can reach the conclusion that, with appropriate disclosures and safeguards, it is in the best interests of investors also to have access to other types of planning and analysis tools that run simulations that are not interactive in nature. While interactive technologies can provide the benefit of utilizing investor assumptions, other types of simulations (e.g., Monte Carlo type) that are based on hypothetical assumptions can provide more comprehensive and meaningful output (which includes output describing the likelihood of a range of probable investment outcomes) and a stronger basis for investment decision-making. We believe that if FINRA can see the merit in permitting the use of "investment analysis tools" as currently defined, then it should see equal benefit in such tools and simulations that are not interactive.

F. Social Media.

We believe that it is appropriate at this time for FINRA to expressly cover social media technologies under its rules. More importantly, we believe that the regulatory regime for social media must recognize that the core purpose of social media is to provide a platform for creating a community environment among a company and its customers and the general public. The core use of social media is not as a marketing tool and we believe it would be a mistake to regulate it in its entirety by it simply classifying these technologies as "web sites" or "electronic communications" and, therefore, comprehensively subject to Rule 2210.

We believe the ICI comment letter provides a good first step in that analysis. However, we further believe that FINRA can pursue rational regulation of social media even further, for example, by recognizing the conversational, "servicing" nature of "blogging" and, under Rule 2210, not treat

every blog entry by a member firm as a "retail communication" subject to filing and principal review.[1]

To clarify, we do not dispute that some aspects of social media properly are regulated under Rule 2210. However, express views such as *"what a registered representative puts on a blog is considered an advertisement"* is clearly overbroad because it doesn't account for the content or context of the communication. It is in this regard that we respectfully request FINRA's take time to tailor its regulation of social media.

If you have any questions or require additional information, please do not hesitate to contact me at (212) 922-7688. Also, you may wish to contact John B. Hammalian, Managing Counsel, at (212) 922-6794 or at hammalian.j@dreyfus.com.

We thank you for your attention and consideration.

Sincerely,

Kenneth J. Bradle

Kenneth J. Bradle
President
MBSC Securities Corporation

[1] We note from the content of the several podcasts posted on finra.org FINRA's stance on social media and the indiscriminate and sweeping application of Rules 2210 and 2211 to all aspects of social networking. We note the statement of such broad principles as (a) social networks are "web sites"; (b) social networks are "electronic communications" and can be grouped under any of the six definitions of public communications; (c) blogs are subject to all content and filing requirements and supervision thereof should provide for written principal approval of any posted statements (or else access should be blocked); (d) *"what a registered representative puts on a blog is an advertisement"*; and (e) blog postings must be retained by the member firm for three years.