


Proposed rumor rule eased in wake of complaints about FINRA's first version

FINRA last week substantially revised a proposed rule on rumor management, dropping provisions that industry members characterized as unworkable and unenforceable.

Gone is the section that would have required you to report to FINRA "any circumstance" that would lead you to believe that any false rumor might have been started or circulated.

The SRO ran into a barrage of heated comments from industry players saying that provision and some others were overbroad or couldn't realistically be enforced (*BD Week*, Jan. 5, 2009). The new rule is part of FINRA's consolidation of the NASD and NYSE rulebooks.

The new version (Regulatory Notice 09-29 ) still has a reporting requirement, but it's much narrower than the original proposal. The new one would require firms to "report rumors that the firm learns of and knows, or has reasonable grounds for

believing, were originated or circulated for the purpose of improperly influencing" a security's market price.

The redone proposal would prohibit firms from starting or circulating a rumor it knows or has reasonable grounds to think is false or misleading *and* is likely to influence the market price of a security. The original proposal prohibited spreading a rumor that was *either* false *or* that could affect a security's market price.

The new version has supplementary material that adds a component that specifically calls on firms to have written policies and procedures addressing rumors. You would also need to develop and document appropriate training policies and programs to help associated people comply. In addition, the firm would need to identify who's responsible for providing guidance when responding to rumors, including escalation procedures, and reporting obligations.

TIP: If the rule is finalized, you should update your code of ethics and your insider trading policy to reflect the provisions of the rule, advised **Amy Lynch**, president of **FrontLine Compliance, LLC**, a regulatory compliance consulting firm based in Alexandria, Va.

Make sure you include the rule's definition of "rumor" in your policies, and also explain in those policies the exceptions the rule allows. In your training program, use real-life-type examples, which are especially helpful in explaining exceptions, she said.

Require sales reps and traders to limit work-related communications to telephones, e-mails, and PDAs supplied by the firm, Lynch advised.

The Supplementary Material to the proposal:

✓ **defines "rumor"** as "a false or misleading statement or a statement without a reasonable basis." In addition, a statement won't be considered a rumor "if it is clearly an expression of an individual's or

(Rumor rule, continued on page 2)

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Rumor rule *(cont. from pg. 1)*

firm’s opinion, such as an analyst’s view of the prospects of a company.”

✓ **explains exceptions** to the rule – **a)** discussions of a rumor that’s published by “widely circulated public media” as long as its source and unsubstantiated nature are disclosed; **b)** discussions of rumors among market participants when necessary to explain market conditions. This discussion should be done “in a responsible way” that includes sourcing the origin of the information when possible and not exaggerating; and **c)** rumors discussed within the firm to try to verify them. The unsubstantiated nature must be disclosed, and the source of the information should be disclosed when possible.

✓ **states that intentionally** spreading false rumors to try to manipulate a security’s price is illegal and also violates FINRA’s rules. ■

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