



December 16, 2009

Via E-Mail: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books) (Release No. 34-60836; File No. SR-FINRA-2009-060)

Dear Ms. Murphy:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ General Counsels Committee and Self Regulation Committee appreciate the opportunity to comment on the Financial Industry Regulatory Authority (“FINRA”) proposal to amend FINRA Rule 8210. The Committees believe clarifying the scope of Rule 8210 is commendable, however, this proposal goes much further than clarifying and should be further considered prior to adoption. SIFMA is requesting that the SEC require FINRA to further analyze the consequences of this proposal and publicly report the findings prior to approving the amendments. SIFMA echoes and supports the concerns of several other commentators on this proposal, as briefly summarized below, and urges the SEC and FINRA to reconsider this proposal.²

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally with offices in New York and Washington, D.C., and is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit www.sifma.org.

² Comment letter from Bari Havlik, Charles Schwab, to Elizabeth M. Murphy re: SR-FINRA-2009-060 (Nov. 12, 2009); comment letter from Ronald C. Long, Wells Fargo Advisers, to Elizabeth Murphy re: SR-FINRA-2009-060 (Nov. 12, 2009).

SIFMA is particularly concerned about the proposed expansion of FINRA's authority with almost no explanation or study of the potential consequences. The proposal seeks to expand FINRA's ability to obtain information which is under the "member's or person's possession, custody or control." The issue, however, is the definition of "control" used in the rule proposal has far-reaching due process, confidentiality, and jurisdiction issues which are not discussed by FINRA in its proposal. SIFMA also shares the commentary, concerns, and questions expressed by the Commission in the *Ochanpaugh* decision regarding the interpretation and scope of current Rule 8210, and respectfully requests that the SEC review the *Ochanpaugh* decision and request FINRA respond meaningfully to the Commission's commentary, concerns, and questions.³

SIFMA is also concerned about the lack of procedural protections of which FINRA members may avail themselves. Unlike in a court, if a FINRA member cannot comply with a request pursuant to the proposed Rule 8210 and is found to have violated the rule, the procedural process to appeal to the SEC and federal courts is long and arduous. SIFMA is also concerned that FINRA members may not receive the same procedural protections as those found in federal court, despite the fact that this rule seeks to adopt the same standard found in the Federal Rules of Civil Procedure.

There are also significant privacy and confidentiality concerns for third party information which may be acquired by FINRA pursuant to this rule. Unlike data submitted to the SEC or a court, any such confidential data may be handed over by FINRA pursuant to a third party subpoena without notice to that party. SIFMA believes these concerns are far-reaching and should be further analyzed prior to adopting the rule.

Finally, this rule may also serve to discourage non-profit organizations from asking individuals working in the securities industry to serve on their boards because information from that non-profit may be subject to FINRA requests due to their affiliation with an associated person of a FINRA member firm.

³ In re: Jay Alan Ochanpaugh, Securities Exchange Act Release No. 54363 (August 25, 2006).

SIFMA urges the SEC to delay its approval of this rule proposal until further analysis is done, and any unintended consequences are limited. If you have any questions, please contact Amal Aly at 212-313-1268, Melissa MacGregor at 202-962-7385, or myself at 202-962-7373.

Sincerely,

A handwritten signature in black ink, appearing to read "Ira D. Hammerman". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Ira D. Hammerman
Senior Managing Director and General Counsel

cc: Amal Aly
Melissa MacGregor