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September 14 , 2005

Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-0609

Re: Release No. 34-52259; File No. SR-NYSE-2004-64 -- Proposed Changes to Exchange Rule 342 Requiring Chief Executive Officer Certification

Dear Mr. Katz:

The Self Regulation and Supervisory Practices Committee of the Securities Industry Association [1] (the "Committee") appreciates the opportunity to provide comments in response to the referenced rule filing (the "Rule Proposal"), which seeks input on proposed amendments and related interpretive material to New York Stock Exchange ("NYSE" or "Exchange") Rule 342. Among other things, the Rule Proposal would require each member to (i) designate a principal executive officer or general partner to serve as a Chief Compliance Officer ("CCO"); (ii) file a yearly attestation signed by the Chief Executive Officer ("CEO") certifying as to the firm's compliance processes and procedures and (iii) prepare and submit to the NYSE an annual compliance report no later than April 1 of each year.

As legal and compliance professionals, the Committee strongly supports rule amendments that would require, on an industry-wide basis, meaningful and joint consideration by the CEO (or equivalent officer) and the CCO (together with other principal officers) of the firms' supervisory procedures, policies, compliance programs and initiatives. Indeed, many firms already have embedded within their business models effective processes tailored to their size, structure and activities that facilitate the type of regular and substantive interaction sought by the Rule Proposal.

The Committee therefore generally supports the proposed amendment and related interpretive material to Rule 342, and commends NYSE for seeking to ensure that compliance is given the highest priority by the members' senior executive officers, which we believe will

[1] The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

ultimately enhance investor protection, as well as public trust and confidence in the securities markets. Specifically, we support:

- Designation of a firm principal as Chief Compliance Officer;
- CEO certification as to the firm's processes, similar to NASD Rule 3013;
- Mandatory meetings between the CEO and CCO for the express purpose of assessing a broad range of issues relating to the structure and strength of the firms' compliance and supervisory systems, policies and procedures; and
- Submission to the NYSE, on a yearly basis, of an annual compliance report that details, among other things, the organization's supervisory processes, prior year's compliance efforts, and significant compliance initiatives, issues and responses.

The Committee believes, however, that certain modifications are warranted to avoid unnecessary confusion and differing regulatory standards. Specifically, the Committee seeks: (i) to remove the language within the Rule Proposal's Statements of Substance and Purpose indicating that the CEO certification must address the "adequacy" of the member firm's compliance policies and procedures; (ii) deletion of this requirement from the annual compliance report; and (iii) clearer distinction between the role of the CCO and officers with business line responsibility.

I. Rule Proposal's Reference to "Adequacy" Contradicts Proposed NYSE Certification Language and NASD Rule 3013

As noted in the Rule Proposal, the intended purpose of the rule change is to create a CEO certification requirement similar in scope and substance to NASD Rule 3013. This is reflected in the Exchange's proposed amendment to Rule 342.30(e), which is similar to the NASD's certification in that it requires the CEO to attest that a "process is in place" to establish, maintain, review, modify and test policies and procedures reasonably designed to comply with applicable rules and regulations. While NYSE's proposed certification itself is clear, the Exchange twice states in the rule filing's Statement of Substance and Statement *Register* that the CEO certification must attest to the "adequacy" of the firm's policies and procedures.[2]

The Committee respectfully submits that these references to "adequacy" are inconsistent with both the text and intent of NYSE's proposed certification language, as well as NASD Rule 3013. They also would impose a standard and burden on firms that would be extremely onerous if not impossible to meet. This latter point is of critical importance because, unlike a certification as to having "processes" in place, one that is based on adequacy creates an entirely different and highly subjective obligation. Given the breadth and evolving nature of firm compliance efforts, supervisory control systems, and the regulatory landscape that may apply to member firm activities, the Committee respectfully suggests that a certification as to the adequacy of a firm's compliance policies and procedures is inadvisable -- particularly, since the self-regulatory organizations ("SROs") already have in place other rules aimed more directly at assuring the adequacy of firm policies and procedures.

It is especially compelling that NASD removed the adequacy certification it initially proposed from Rule 3013 because of these same concerns, recognizing "the difficulty in

[2] Exchange Act Release No. 52259 (August 15, 2005), 70 Fed. Reg. 48997, 48998 (August 22, 2005).

certifying to absolute compliance at any given moment in the face of dynamic regulatory and business environments."[3] Accordingly, we respectfully request that NYSE correct the language of the Proposed Rule's Statements of Substance and Purpose to replace the reference to "adequacy" of policies and procedures with the process-oriented language contemplated by the certification itself. The Committee understands from conversations with NYSE staff that this change would be consistent with the NYSE's original intent and that NYSE is willing to make this clarification.

II. Annual Compliance Report

As proposed, the amendment to Rule 342.30 similarly requires the member's annual compliance report to address the "adequacy" of the firm's ongoing compliance processes and procedures. Any opinion as to adequacy in the Report suffers from the same problems discussed above. The Committee also respectfully suggests that the use of an adequacy standard in the report does not support the Exchange's stated purposes for the report, which are to "provide timely information about the compliance efforts of Members and Member Organizations, thereby strengthening and making more efficient the Exchange's Regulatory oversight, and facilitating the required annual certifications."[4] Here again, it is notable that the NASD Rule 3013 does not require a report on the "adequacy" of firm policies and procedures.[5]

While we fully support NYSE's stated objectives, as they are extremely important to maintaining investor protection and confidence, the Committee believes that the existing rule sufficiently addresses these goals, particularly in light of member firm's current obligations to report significant compliance problems and plans for systems or procedures to prevent and detect violations and problems. As such, and in support of the SROs' ongoing efforts to promote regulatory consistency, the Committee respectfully requests that NYSE remove the "adequacy" language from proposed Rule 342.30.

III. Role of Chief Compliance Officer

The Rule Proposal also seeks to require each member firm to designate a principal executive officer or general partner as its CCO. In the commentary to the proposed amendments to Rule 342, the Exchange references this requirement as consistent with Rule 311(b)(5), which mandates that principal executive officers exercise responsibility over each of the firm's business areas.[6] In order to clarify that the CCO does not have business-line responsibility, the Committee respectfully requests that NYSE include language that differentiates the role of a business-line supervisor versus the role of the CCO. Such language could also provide guidance to member

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[3] Exchange Act Release No. 50347 (September 10, 2004), 69 FR 56107, 56108 (September 17, 2004).

[4] 70 Fed. Reg. at 48998.

[5] IM-3013 expressly states that the NASD Annual Compliance Report need only identify the firm's processes and "*need not contain any conclusions* produced as a result of following the processes set forth therein." (Emphasis added).

[6] The suggestion that Compliance professionals exercise supervisory responsibility is repeated again in footnote 17 of the Rule Proposal in which the Exchange speaks of the mandatory meeting between the CEO and CCO as an effective vehicle to "promote and expand the dialogue between Member Organization CEOs and their officers who are *responsible for compliance with* Federal laws and Exchange Regulations." 70 Fed. Reg. at 48999. (Emphasis added).

and member organizations' regarding the critical role of the CCO in enabling the CEO to execute the required certification. Finally, and similar to IM-3013, we suggest that NYSE consider including a statement within the interpretive material to the effect that consultation on the certification by the CCO or other Compliance professionals does not in and of itself imply or establish that the CCO or other Compliance Professional has business line supervisory responsibility.

IV. Conclusion

We thank you for the opportunity to provide comments on this important rule change. If you have any question, please feel free to contact any of the undersigned or Amal Aly, SIA Vice President and Associate General Counsel, at (212) 618-0568.

Sincerely,

John Polanin, Jr.
Chairman
SIA Self-Regulation and Supervisory Practices Committee

cc: Robert L.D. Colby, Deputy Director, Division of Market Regulation, SEC
Catherine McGuire, Associate Director/Chief Counsel, Division of Market Regulation, SEC
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