



Securities Industry Association

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June 16, 1998

Salvatore Pallante
Senior Vice President
Member Firm Regulation
New York Stock Exchange, Inc.
20 Broad Street
New York, New York 10005

Re: NYSE Information Memo 98-16

Dear Mr. Pallante:

The Self-Regulation and Supervisory Practices Committee ("Committee") of the Securities Industry Association ("SIA")¹ has reviewed the new interpretation of NYSE Rule 351(d) recently announced in NYSE Information Memo 98-16. NYSE Rule 351(d) requires each member and each member organization to report to the Exchange statistical information regarding customer complaints relating to such matters as may be specified by the Exchange. NYSE Information Memo 92-38 (dated December 8, 1992) further states that Rule 351(d) requires all members and member organizations conducting a public business to report quarterly statistics of all **written** complaints received from the public. In the above-referenced Information Memo, the Exchange states that it has further interpreted Rule 351(d) to require that any **oral** complaint is a complaint reportable under Rule 351(d).

Prior to this announcement, firms have not been required to compile and report statistics on oral complaints. Nevertheless, the Committee believes that reputable firms take **all** customer complaints very seriously. In fact, the industry has undertaken a number of initiatives in recent years to help all firms deal responsibly with customer complaints. For example, the SIA produced a brochure entitled Investor Topics, which answers many of the most commonly asked questions about investing, including what to do if you have a specific complaint or think a registered representative has mishandled your account. In addition, the SIA has developed "Best Practices" in a number of areas including customer complaints. These initiatives, as well as similar undertakings by regulators designed to educate investors, direct customers to put complaints in writing for the simple reason that it is almost impossible to review and evaluate a complaint unless that complaint has been reduced to writing by the aggrieved party.

There are a number of reasons to require that a complaint be put in writing. First, a written

complaint is a recitation of the facts by the complaining party. Both a firm that is the subject of a complaint, as well as the maker of the complaint, have the right to know with certainty the nature of the facts underlying the complaint and the nature of the complaint itself. To count an oral encounter as a formal complaint leaves its subject matter and focus completely up to the interpretation of the listener and the "20/20" hindsight of the party making the complaint. Both firms and others investigating the complaint thereafter may be misled unintentionally by many factors characteristic of oral conversations: the subjective interpretation of the listener, the memory of the listener, how articulate (or not) the party making the complaint may be, lack of the listener's familiarity with the complainant's normal tone and speaking patterns, and, unfortunately, less than good faith on either side of the conversation. Moreover, by relying on an oral conversation between two parties as the basis for future action, you are creating a fundamental and unprovable conflict between the party making the complaint and the party receiving the complaint. Should their recollections of the conversation differ, as they often will, the only result can be a swearing contest and a heightened level of dispute.

Additionally, it is uncertain whether the party receiving a complaint (presumably, the registered representative) can be relied upon to make such a record and to bring it to the attention of a branch office manager or compliance personnel. Regardless of who is responsible for making the written record of the complaint, the record will never be free of the vagaries of memory and interpretation imposed by the party receiving the complaint (as well as by the reporter when they are not one and the same). Without some form of attestation by the complaining party, there will never be any certainty on either side as to facts reported as underlying the complaint. As the resolution process evolves, there is no protection against changes in the allegations. The most efficient resolution of a complaint is possible when both parties begin by agreeing on the nature of the complaint and the nature of the facts in dispute. Without a written complaint, it will not be possible for parties to rely on the fact that this starting point has been reached.

When a complaint is put in writing, the complaining party has the time and opportunity to make certain that he/she is communicating the true substance of what he/she wishes to convey, and is creating the opportunity to have more than one person review the substance of the communication and reach a conclusion about its contents. Both the firm, and the complaining party, are clear that the information communicated is in fact intended to be a complaint. Thus, the writing is in the interest of both sides to a dispute. A complaint is a very serious event in the professional life of a registered representative, with lasting consequences. It is only fair that, given this degree of seriousness, a complaining party who is also serious takes the time to memorialize allegations whether through a letter, fax, or e-mail. This is particularly true in light of recent technological advances such as the Internet and e-mail which make it relatively simple to reduce a complaint to writing.

Additionally, requiring firms to memorialize oral complaints so that they can be reported will require new procedures, controls, and training for virtually every registered representative.² Further, the reporting of oral complaints will create new responsibilities not easily susceptible to oversight. Regardless of how thorough such efforts may be, this is still an area fraught with difficulty as the listening, writing, and interpretive skills of telephone listeners who may wind up with a complaint on their lines will continue to vary. Moreover, there is no effective way that a firm can combat a charge that an oral complaint was made and not acted upon or reported, or that the communication was other than what the firm understood. Challenges to the firm's

interpretation of the complaint might be made not only by the customer, but by the employee or former employee named by the firm in any writing. Again, we would be encouraging pointless swearing contests that could be avoided by requiring a writing before a complaint is put into a formal reporting process.

In fact, most firms attempt to deal with complaints, whether they are oral or written, fairly and efficiently. As a matter of good business practice, the firm that recognizes an oral complaint as such is already encouraging the complaining party to put the complaint in writing. Further, such a firm is most likely taking steps that it feels are appropriate to avoid customer dissatisfaction even in the absence of the writing. The system today is, as far as we know, working. This fact, combined with currently increased efforts aimed at investor education and registered representative education, and increased public visibility of complaint histories, suggests that there is no reason to disrupt the process by adding an oral complaint reporting requirement.

Finally, the new requirement to track and report oral complaints to the NYSE also creates inconsistent and conflicting regulatory schemes. In the new Form U-4, which is required for all registered representatives, Question 22G requires reporting of **written** complaints only. In addition, based on discussions with Securities and Exchange Commission staff and representatives from the North American Securities Administrators Association, we expect that federal books and records requirements, when they are repropose for comment later this month, will also address only **written** complaints. In connection with these proposals, the industry has successfully demonstrated the significant practical problems associated with tracking and reporting oral complaints. Unfortunately, because the new NYSE policy was announced through an Interpretation rather than through rulemaking, the industry had no notice or opportunity to comment. We respectfully request that, at a minimum, requirements that will impose new substantive obligations on firms should be subject to notice and comment.

As noted above, compiling statistical information on oral complaints will entail a significant amount of work. It is impossible for firms to start reporting oral complaints immediately. Firms will be required to train personnel and to develop procedures and controls. This will involve costs and systems changes that have not been anticipated or budgeted. If the NYSE remains committed to this position, firms will need a sufficient amount of lead time to prepare for this new requirement.

We hope that you will consider the issues raised by the Committee and we respectfully request that you reconsider the position you have taken on the reporting of oral complaints. If you have any questions or would like to discuss this matter further, we are available at your convenience. Please contact the undersigned or Judith Poppalardo, SIA Vice President and Associate General Counsel, at 202-296-9410.

Sincerely,

R. Gerald Baker
Chairman
Self-Regulation and Supervisory
Practices Committee

cc: Robert L.D. Colby, Securities and Exchange Commission

Footnotes:

¹ The Securities Industry Association ("SIA") brings together the shared interests of nearly 800 securities firms, employing more than 380,000 individuals, to accomplish common goals. SIA members including investment banks, broker-dealers, and mutual fund companies--are active in all markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50 million investors directly and tens of millions of investors indirectly through corporate, thrift, and pension plans, and accounts for \$270 billion of revenues in the U.S. economy. This and other recent SIA comment letters can be found on SIA's Internet home page, <http://www.sia.com>.

² Moreover, the NYSE will have to define precisely what constitutes a complaint. Without reasonable parameters, there will be a flood of reports with every drop in the market.