

August 4, 2008

BY EMAIL TO: rule-comments@sec.gov.

Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: File No. SR-FINRA-2008-030 – Proposed FINRA Rule 3130
Annual Certification of Compliance and Supervisory Processes**

Dear Ms. Harmon:

The Self-Regulation and Supervisory Practices Committee of the Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the above-referenced rule filing relating to FINRA’s requirements regarding the annual certification of compliance and supervisory processes. In furtherance of its efforts to consolidate similar NASD and NYSE rules, FINRA is proposing to (i) adopt NASD Rule 3013 and IM-3013, without material change, as new FINRA Rule 3130 and (ii) delete the corresponding provisions in Incorporated NYSE Rule 342.30 and Rule Interpretations 311.

In its filing, FINRA highlights four differences between the existing NASD and NYSE rules and interpretive guidelines relating to the annual CEO certification and designation of a Chief Compliance Officer (“CCO”):

1. Submission to Board of Directors and Audit Committee: NASD IM-3013 requires members to provide their board of directors and audit committees with a report evidencing the processes to which the CEO is certifying, either prior to executing the certification or at the earlier of their next scheduled meeting or within 45 days of certification. In contrast, the Incorporated NYSE rule requires that the report be provided to those bodies prior to certification.

¹ SIFMA brings together the shared interests of more than 650 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. It has offices in New York, Washington, D.C., and London, and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

2. Certification Deadline: NASD IM-3013: Member firms must make the annual certification no later than the anniversary of the previous year's certification. In contrast, the NYSE Incorporated Rule requires that the certification be part of a submission due to the NYSE by April 1 of each year.
3. Filing of Certification: While the Incorporated NYSE rule requires firms to file the certifications with the NYSE, the NASD rule requires firms to maintain the report for inspection.
4. Dual CCOs: NASD member firms with multiple CCOs must define and document the areas of responsibility allocated to each CCO. The Incorporated NYSE rule requires that firms receive approval of these supervisory plans.

SIFMA strongly supports FINRA's decision to incorporate within the consolidated FINRA rulebook NASD's approach to items numbered 1, 3 and 4 above. The proposed approach in each of these three areas is sensible and will minimize burdens on member firms.

With respect to the certification deadline, SIFMA respectfully suggests that FINRA reconsider the "anniversary date" approach and instead retain the April 1st deadline for the CEO certification. Alternatively, and at a minimum, SIFMA recommends that FINRA permit member firms to effect the annual certification no less than three weeks after the anniversary date of the previous year's certification, but in no event later than April 1st. This suggested approach satisfies the same policy objectives of the NASD rule while providing firms with some flexibility in scheduling and the certification process.

Timetable for the Annual Certification

Currently, NYSE member firms are required to have a signed certification filed with the NYSE by April 1 of each year, corresponding to the date when the Annual Compliance Report is due. For larger and multi-business organizations, the planning process for the certification, which includes the preparation of the Annual Compliance Report and the CEO Certification Report, begins as early as January of each year. Taking into consideration a CEO's travel schedule and other commitments (both planned and unanticipated), firms typically build-in sufficient lead-time into the process in order to ensure the CEO makes the certification by April 1 each year. This lead time also allows firms the ability to draft the reports, with the input from the various business functions and their legal and compliance counterparts, and to circulate the drafts for review and comment before it is finalized and forwarded to the Board of Directors and CEO. For larger firms that have decided to require various sub-certifications, the process of obtaining these sub-certifications alone takes several weeks. Currently, the April 1

deadline every year creates predictable timeframes for NYSE firms within which to execute the entire report and certification process year after year.

FINRA's proposal to adopt the NASD rule requiring certification "...no later than on the anniversary date of the previous year's certification" could make this process less predictable and potentially more cumbersome for member firms. For example, the anniversary date approach could cause member firms to back up their timetables for executing this process each year in order to meet the prior year's deadline. Moreover, the time period covered by the report and certification will be constantly shifting.²

As a result, over time this results in the target date for execution of the certification constantly being moved up in order to ensure compliance with the deadline imposed by the new FINRA rule. If implemented, the "anniversary" due date imposed by Rule 3130 would inject uncertainty as to when the entire report and certification process should commence each year.

SIFMA therefore respectfully requests that FINRA retain the April 1 deadline previously imposed by NYSE rules in order to provide predictability and structure to this process for member firms. Notably, although some FINRA-only firms utilize a certification cycle that does not correspond to April 1, we would respectfully suggest that most of the larger firms, for which this process is particularly complex, are operating on the April 1 cycle. Moreover, having the same general timeframe applicable to all benefits all firms, regardless of size and complexity of business. Indeed, several other exchanges either currently require certification by April 1, or are proposing amendments to that effect.³

Alternatively, SIFMA suggests adding language to proposed Rule 3130 that would allow member firms to effect annual certifications "no later than three weeks after the anniversary date of the previous year's certification" but in no event later than April 1st. This would allow firms generally to have the same certification date, year after year, by incorporating enough leeway in the process to account for the schedules of necessary parties such as the CEO, CCOs, senior managers providing sub-certifications, Board of Directors, and Audit Committee. We anticipate that this outcome will allow many of our

² Consider, for example, a large firm whose CEO executed the certification on March 15, 2008 in order to meet the April 1, 2008 NYSE filing deadline. The CEO would have certified after meeting with the CCO and receiving the CEO Certification Report. If the CEO is bound to certify no later than March 15 the next year because of the Rule, and if he/she is unavailable to meet with the CCO during the first two weeks in March, the following year the certification will be due in February. This would significantly shorten the time period to prepare and give the CEO ample time to review the report prior to certification.

³ CBOE Rule 9.8(g) requires an annual report to be filed with the CBOE by April 1 of each year, modeled after the NYSE 342.30 requirement; Newly amended Amex Rule 922 requires member firms to create a report similar to NYSE 342.30 and file it with the AMEX by April 1 of each year. Similarly, pending Boston Stock Exchange, International Securities Exchange and Philadelphia Exchange amendments also would require an annual report to be submitted to the relevant exchanges by April 1, with similar requirements to NYSE Rule 342.30. See File Nos. SR-BSE-2008-29, SR-ISE-2008-21, and SR-Phlx-2008-53

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members firms to maintain a certification due date around their current April 1 deadline, and permit them to continue to gather and base the report information on a time period covered by the previous calendar. Such a solution would give firms a predictable schedule upon which to execute this extensive process year after year and to allocate the appropriate resources to fulfill this requirement.

In light of the foregoing, SIFMA urges FINRA to retain the NYSE annual certification due date of April 1, or alternatively, provide greater flexibility around the due date as described above so that member firms can remain on the same general schedule year after year.

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SIFMA appreciates the opportunity to provide comments on FINRA's proposed new Rule 3130 governing the annual certification of compliance and supervisory processes. If you have any questions or require further information, please contact Amal Aly, SIFMA Managing Director and Associate General Counsel at (212) 313-1268.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Amal Aly', with a stylized flourish at the end.

Amal Aly
Managing Director and Associate
General Counsel

cc: Marc Menchel, Executive Vice President and General Counsel for Regulation
Grace Vogel, Executive Vice President, Member Regulation