Please note This letter was originally submitted Friday, July 2007. This is a revised version of the letter

July 24, 2007

Barbara Z. Sweeney
NASD
Office of the Corporate Secretary
1735 K Street, NW
Washington, D.C. 20006-1506

Dear Barbara,

I am writing in response to the NASD and NYSE's proposed regulation for supervision of electronic communications. There are concerns I would like to air before this regulation is presented before the panel at both entities for ratification. While the NASD and NYSE are making suggestions with the intent to better monitor the activity of members in the securities industry, broker/dealers apprehensive with complete compliance hastily dole out requirements, taking away basic liberties that ultimately affect the individual registered representative.

The proposal for supervision of electronic communications addresses recommendations that firms should take into consideration when establishing their own processes for email surveillance. Most of these recommendations deal with communication between the firm and the public; however, there is a section covering internal communications within a business. Such recommendations within this section include:

- *"Reviews of internal electronic communications that occur in connection with branch or desk examinations and regulatory inquiries, examinations, or investigations."*
- *"Reviews of internal electronic communications that occur in connection with transaction reviews, internal disciplinary reviews, and reviews relating to customer complaints or arbitration."*

From the broker/dealer's perspective, to enact such reviews is difficult considering when to filter out emails that would have such language and/or content. The most practical and common way for broker/dealers to be in compliance with the NASD and NYSE in these situations is to decree sweeping requirements, such as reviewing all email, both business and personal, to ensure they capture emails referenced above.

Additionally, the enforcement of such surveillance would prove even more difficult if one considers the broad scope of communications a registered representative can partake in. A representative is able to communicate with a client beyond the confines of his office at work, whether it is from a different office, at home, or on the road. Moreover, he also is able to use his laptop, desktop, or hand held computer in addition to his computer at work to correspond with his clients. Now consider the bilingual representatives in the industry who do this in a language other than English; how problematic would it be then to monitor electronic communications? From an independent contractor's perspective, implementing a surveillance system this complex and thorough would be very trying, even impossible. To ask the securities industry to install this system, given that 1/3 of the industry is made up of independent contractors, would be unreasonable even in the best light.

The impracticality of this proposal is astonishing at the very least. Considering the volume of emails that are sent out on a daily basis, reading through every email every single day is next to impossible. This positions firms and individual Registered Representatives for neglect (intentional or unintentional) and ultimately, failure. To ask a firm to perform an impossible task by reviewing all emails and then punishing it by missing a detail in one (which translates to a 99% efficiency rating – one mistake in thousands of emails) borders on injustice.

Now take it to the next level: the responsibility of the OSJ in each individual office. The OSJ is already saddled with reviewing compliance on trades, new accounts, investment suitability, etc. Adding the enormous chore of reviewing emails and the OSJ would be rendered completely handcuffed, as he would have to sacrifice time in one of his duties to fulfill his other ones. Say there are 10 registered representatives in the office, each sending out a minimum of 20 emails a day. That would translate into a minimum of 200 emails that the OSJ would have to read and determine whether or not they are compliant. That is a full-time job in itself and with the conventional responsibilities that the OSJ had before, he is now looking at 2 full-time jobs. How can an OSJ be expected to perform at the highest level if he is offered such unrealistic guidelines?

In today's age of modern technology, convenience is the dominant factor when it comes to communication between the representative and the client. Emails have become a replacement for phone calls and meetings, letting the client express him/herself at their leisure without having to worry about the availability of the Representative. Should a client articulate a concern about an investment through an email, it can be easily misconstrued as a complaint to a third party who is not familiar with the relationship between the client and the Representative. Moreover, a client is inclined to be more demonstrative in an email rather than a phone call due to the lack of feedback, even though he/she is wanting to get the same message across in either medium of communication. This can lead to even more confusion for the third party reviewing the email, prompting the reviewer to incorrectly classify the email as a complaint rather than a concern, placing the representative in unnecessary litigation. This dilemma is but another example of the far-reaching results of the proposed regulation.

The broker/dealer's overzealousness to comply with any and all regulations of SROs has negative long-lasting effects on the individual registered representative, and this is no exception. Case in point: According to NASD Rule 2210(a)(2),

"Email sent to more than one client or prospect is deemed to be sales literature."
With my broker/dealer, sales literature is deemed as advertising and such literature is subject to review and approval by the Compliance department before it can be made available to the public, which could take weeks at a time. Interpreting this rule, it means that I cannot send a thank you email to more than 1 client at a time without first submitting the thank you email to my broker/dealer and waiting weeks before it is determined that there are no liability issues with my sign of appreciation. This proposed email regulation is inviting more of the same bureaucratic rhetoric that is plaguing the business of Registered Representatives. Should this proposal take effect, make no mistake, the broker/dealers will have this exact reaction. Individual Registered Representatives will be subject to have all of their email reviewed, from emails concerning aspects of a prospectus to emails containing details of a romantic dinner with a spouse. This potential elimination of privacy is not acceptable and I cannot stand by without voicing my opinion.

The NASD and NYSE need to judge all of the ramifications of this proposal should it be enacted, not just the most direct one. Privacy is a liberty that citizens enjoy and a right that Registered Representatives risk losing because they are associated with the NASD and NYSE. Penalization for mere association is not the avenue to take for improvement within the securities industry. We should look forward to what we can do in our industry, not be wary of what it can do to us.

Sincerely,

E. Anthony Reguero, Chairman
ACTIONS, Inc.