

November 20, 2009

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
Office of the Corporate Secretary
FINRA
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Re: *Request for Comment on Proposed New Rules Governing Communications with the Public (FINRA Regulatory Notice No. 09-55)*

Dear Ms. Asquith:

T. Rowe Price Investment Services, Inc. ("T. Rowe Price") appreciates the opportunity to submit its comments on FINRA's proposed amendments to its rules governing communications with the public ("Advertising Rules"). T. Rowe Price is a registered broker-dealer under the Securities Exchange Act of 1934, FINRA member firm, and acts as principal underwriter to the T. Rowe Price family of funds ("Price Funds"). As of September 30, 2009, there are 125 Price Funds with assets of approximately \$218.4 billion, with more than eight million individual and institutional accounts. All Price Funds may be purchased on a direct basis with no front-end or deferred sales loads or 12b-1 fees. Certain Price Funds are distributed through intermediaries via two separate share classes with 12b-1 fees. Accordingly, communications with the public through fund advertising and sales literature are the primary means by which T. Rowe Price promotes and solicits interest in the Price Funds.

We support the comments of the Investment Company Institute in their comment letter dated November 19, 2009. In addition, we have a few comments of our own on the proposal and some recommendations for additional changes to the Advertising Rules that we believe will benefit investors.

Public Appearances

The proposal would apply new disclosure standards to public appearances that include recommendations. Specifically, the proposal states that "associated persons who recommend securities in public appearances generally would be subject to the same disclosure requirements under proposed FINRA Rule 2210(f) as research analysts that recommend securities in public appearances pursuant to NASD Rule 2711(h)." We seek clarification on the definition of "recommendation" for the purposes of this rule and for written and electronic materials that mention individual securities, including mutual funds. Associated persons who are interviewed on television and on web sites and participate in panels or other live discussions that are open to the public may refer to particular funds or their investments. These references are not intended to be recommendations to buy or sell any of the securities mentioned and are included purely for

illustrative or explanatory purposes. Therefore, we recommend that these references to individual securities should not be considered recommendations for the purposes of this rule proposal. In this regard, we think FINRA should retain the definition of “Public Appearance” in the rule. By eliminating the current definition, we are concerned that private conversations or communications with members of the press and other media could be deemed “public appearances” if such private statements make their way into the public domain (including print media), thereby triggering the requirements to supervise such statements. It would be extremely difficult to target, capture and then monitor and supervise telephone and email communications with members of the press.

The proposal also requires firms to establish appropriate written policies and procedures to supervise public appearances. Specifically, the proposal states that “Such procedures must include provision for the education and training of associated persons who make public appearances as to the firm’s procedures, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to.” We seek clarification as to the definition of “surveillance and follow-up” for purposes of this rule. As mentioned previously, associated persons may be interviewed on television and on web sites and participate in panels or other ad-hoc, live discussions. Typically these are one-time appearances. As a result, we question what level of “surveillance and follow-up” is required for one-time events if such persons have been adequately trained. We recommend that it would be sufficient to train associated persons as to the rules and regulations applicable to public appearances, but not require surveillance by the member firm. Also, we believe that if the associated person uses prepared remarks, scripts, slides, or other written materials that are subject to pre-use review by a principal, there should be no need for surveillance and monitoring. Therefore, we recommend an exception to the rule for member firms that choose to adopt a pre-use approval procedure in lieu of surveillance and monitoring.

Investment Analysis Tools

- **Educational Materials.** NASD Interpretive Material 2210-6 currently allows member firms to use investment analysis tools (“**Tools**”), written reports generated by such Tools, and advertisements and sales literature concerning these Tools with the public. T. Rowe Price has several such Tools that are intended to educate investors about various financial and investment strategies they can employ to help them achieve their goals. In addition, we use these Tools to create educational materials designed to illustrate the likelihood of various investment outcomes if certain investment strategies or styles are undertaken. For example, a handout we created for our financial intermediaries to use with their clients shows the likelihood that retirement income will exceed 30 years given various withdrawal rates. We recently received comments from FINRA on these types of educational materials stating that they did not fall under IM 2210-6 because they were not output from an *interactive* investment analysis tool and were therefore considered to be projections of investment results. None of these educational materials depict projections of the performance of any specific investment, and are not intended to sell any specific T. Rowe Price product or service. We recommend that FINRA expand the current definition of investment analysis tools to include both interactive tools and non-interactive print materials that comply with the disclosure and other requirements of IM

2210-6. We fail to see how written materials which illustrate multiple scenarios using simulation modeling is any different from a Tool which produces the same results provided investors receive the same disclosures relating to the Tool's assumptions, limitations and the other required information under IM 2210-6.

- **Target Date Fund Materials.** With respect to investment products, there is one exception to the use of investment analysis tools that we believe is necessary and would like to bring to FINRA's attention. The T. Rowe Price Retirement Funds were launched in 2002 to provide investors with diversified, actively managed portfolios that are adjusted over time according to a predetermined "glide path." This glide path was designed based on our analysis of thousands of market scenarios using our proprietary investment analysis tool, similar to one that would be used to generate the output shown in the educational materials discussed previously. We use the output of this Tool in our Retirement Fund materials to explain to investors how we came up with our unique asset allocation glide path. Given that the Retirement Date Funds' investment strategy is based on the simulation analysis used in an investment analysis tool, we believe that we should be able to use this analysis in sales literature and advertising for the Funds to explain the basis for our chosen strategy. Therefore, in cases in which an investment company's strategy is based on a time-dependent allocation such as a glide path, we recommend that FINRA allow the use of data generated by Tools in written and electronic communications to investors, provided the illustrations used *are limited to a discussion of a Fund's investment strategy and are not used to project a Fund's investment performance*. If FINRA is concerned that the average retail investor might be confused by or not understand these materials, we suggest requiring that they be used only with institutional investors as defined by current NASD Rule 2211.

Contractual Fee Waivers

T. Rowe Price typically establishes an expense limitation on newly incepted funds until their assets reach an appropriate scale. The expense limitation is a contractual obligation in effect for a specific period of time, and continues to be in effect until the expiration date, which is usually two (2) years unless renewed. It reflects the fund's actual expenses as presented in the fund prospectus and financial statements, and which are deducted from shareholder returns. The same expense data is used to calculate all performance for the fund. We recently began receiving comments from FINRA on performance materials that include subsidized yields for funds with contractual expense limitations requiring us to provide unsubsidized yields for these funds in order to comply with the "fair and balanced" requirement in current NASD Rule 2210(d)(1)(A).

We agree that yield quotations on an unsubsidized basis should be required in cases of a *voluntary* fee waiver, which are subject to termination at any time at the discretion of the fund's investment adviser. Shareholders should be put on notice in these situations that the fund's yield could change if the manager decides to unilaterally withdraw its fee waiver. Consequently, we strongly encourage FINRA to adopt a performance advertising standard with respect to yield quotations in situations where fund advisers have implemented voluntary fee waivers. To rely

on a “fair and balanced” standard in performance calculations without clear standards or additional guidance will not result in uniformity in fund performance presentations, which is absolutely critical to an industry that competes on the basis of performance.

However, we fail to understand how an unsubsidized yield would be material to investors for a fund that is operating under a contractual expense limit, since the expense limit is in place for a set period of time and cannot be changed or terminated without board approval. First, the yield for a fund that is subject to a contractual expense limit is calculated based on the methods of computation prescribed in Form N1-A for fund prospectuses. Form N-1A does not require the yield to be presented in this fashion. To require an unsubsidized yield in these circumstances would result in a different expense methodology than is used in the computation of the other performance information for the fund. Also, since N-1A does not specify how the unsubsidized yield is supposed to be calculated, there is no precise method for the industry to follow. With respect to money funds, we understand that there may be differences in the way fund groups calculate their unsubsidized yields, which results in a lack of uniformity across the industry and possible investor confusion. Yield calculations need to be defined by formula in order to promote uniformity. These complex calculations of a fund’s unsubsidized yield are done for no other purpose and are not used in prospectuses, shareholder reports or any other fund materials. It adds considerable expense and complexity to our performance calculation and web-updating processes. Therefore, this is an issue that should be addressed through FINRA rulemaking as opposed to the advertising review and comment process.

Moreover, a fee waiver or expense limit that will be in place for a *long term period* (at least one year or more) and is imposed *by contract* is an important factor in assessing the impact and materiality of an unsubsidized yield quotation to investors. We submit that an expense limitation of one year or longer coupled with the contractual nature of the arrangement limits the usefulness of presenting an unsubsidized yield, and makes it immaterial to investors. In fact, Form N-1A recognizes this fact as it allows funds to show an investor’s hypothetical expenses (based on a \$10,000 investment) for the 1-, 3-, 5- and 10-year periods that reflect any expense reimbursement or fee waiver arrangements so long as such arrangements will extend beyond one year from the effective date of the fund’s registration statement. T. Rowe Price has been following the same approach for years with respect to the application of expense limits in fund performance advertising and we are not aware of any evidence of investor confusion. Therefore, we recommend that FINRA adopt specific advertising standards for the presentation of yields in situations where there is a voluntary or temporal expense reimbursement or fee waiver arrangement, and not rely on its “fair and balanced” standard, which could result in unequal enforcement by FINRA’s advertising review staff and inconsistent treatment in the industry.

Filing Requirements

- **Extension of Filing Deadline.** One of the biggest challenges with ensuring compliance with the FINRA Advertising Rules is having sufficient time to get the final materials from our various marketing departments so that we can file them within 10 business days of first use or publication. In practice, there can be delays due to factors beyond our control, which then impact the material being filed on time.

We would recommend that the filing requirement be extended from “within 10 business days of first use or publication” to “within 15 business days of first use or publication.” We believe the principal approval requirements provide a sufficient level of investor protection that warrants consideration by FINRA to extend the time by which final materials must be filed.

- **Ranking Backup.** Another challenge is that the Advertising Rules currently require that any advertisement or sales literature that includes a performance ranking or rating must include a copy of the supporting documentation upon filing. T. Rowe Price currently files in excess of 100 pieces per quarter where each piece must include the necessary ranking backup. We believe it would streamline the process if we could submit one document, or refer to a prior FINRA filing, that shows all necessary ranking backup applicable to those pieces relying on such backup.
- **Capacity of the FINRA Advertising Regulation Electronic Filing (“AREF”) System.** A third technology-related challenge with respect to the filing requirements is the limited capacity of FINRA’s electronic filing system. We believe the capacity requirements need to be increased so that larger files can be sent in one file and do not have to be broken into multiple files.

We appreciate the opportunity to provide comments on this proposal. If you have any questions or need additional information, please contact any of the undersigned at the phone numbers listed below.


Sincerely,



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