Investorside®
RESEARCH ASSOCIATION

June 21, 2011

Office of the Secretary of the Commonwealth
Attn. Proposed Regulations
Securities Division, Room 1701
One Ashburton Place
Boston, MA 02108

Re: Proposed Revisions to Rule 12.205 Defining Advisers' Dishonest and Unethical Practices

Dear Sir or Madam:

The Investorside Research Association ("Investorside") is writing to comment on proposed regulation 950 CMR 12.205(9)(c)(16), applicable to the use of expert networks and matching services by investment advisers.

Investorside (www.investorside.com) is a non-profit trade group of investment research providers that do not engage in investment banking, company consulting or research-for-hire. Investorside is comprised of 90 independent member firms that work for investors and that maintain business models revenue-dependent and financially aligned with investor interests. Investorside's members publish a variety of types of investment research to both an institutional and retail clientele.[1]

For the reasons set forth below, Investorside urges the Office of Secretary of the

[1] To our knowledge, none of the members of Investorside are parties to or are otherwise involved in any manner with the facts underlying the Office of the Secretary's proceeding *In the Matter of Risk Reward Capital Management Corp., RRC Management LLC, RRC BioFund LP, and James Silverman,* Docket No. E-2010-057.

Commonwealth not to adopt the proposed regulation as it is currently constructed.

The Proposed Regulation Targets a Particular Form of Research

Rather Than Unlawful Conduct

Investorside supports the Secretary of the Commonwealth's and the Securities Division's efforts to identify and sanction individuals and entities who violate the anti-fraud provisions of the Massachusetts Uniform Securities Act by trading on inside information. We are concerned, however, that the proposed regulation unfairly focuses on a particular segment of the information gathering process, rather than targeting bad actors in the securities industry. Unscrupulous individuals from many occupations, including lawyers, investment bankers, accountants, financial printers, and members of the press have been found to have engaged in insider trading in the past. Rather than focusing resources on individuals or entities who are involved in unlawful insider trading, the proposed regulation would impose additional administrative burdens on lawfully operated expert networks and their clients in complying with the regulation, and on the Securities Division in interpreting, monitoring compliance with and enforcing the regulation. These resources could be more appropriately used to detect, prevent and prosecute violations of the existing state and federal laws regarding insider trading.

While the improper use of material non-public information presents a clear harm to investors and the public, we believe that this harm is more appropriately addressed through enforcement of existing laws against insider trading, as has been ably demonstrated by recent actions taken by the Office of the Secretary, the U.S. Justice Department, and the U.S. Securities and Exchange Commission ("SEC" or "Commission").

The Proposed Regulation is Unduly Broad and Would Interfere

With Legitimate Research Arrangements

Experts deployed through independent research firms are a small but important part of the information gathering process for the buy-side investing community. [2] Rather than focusing compliance and regulatory resources on preventing insider trading, the proposed regulation would inhibit the use of this important source of information by forcing advisers using such services to comply with pre-use requirements that do not apply to other forms of investment research.[3]

---

[2] We estimate that the large majority of primary research is conducted through the sell-side or through direct contact with issuers, consultants and other sources. None of these activities, many of which lack the rules and audit trails of expert networks, would be addressed by the proposed rule.

[3] Some provisions of the proposed rule could be difficult to interpret and enforce. For example sometimes it can be difficult to ascertain the scope of a non-disclosure or similar confidentiality agreement. This is why insider trading laws add the additional requirements of materiality and "scienter" before imposing liability.

As the SEC Staff has stated:

> "Contrary to some reports that I have seen, I believe [recent insider trading cases] do not represent some inherent hostility by the Commission toward expert networks, nor do they indicate that the Commission is seeking to undermine the mosaic theory, under which analysts and investors are free to develop market insights through assembly of information from different public and private sources, so long as that information is not material nonpublic information obtained in breach of or by virtue of a duty or relationship of trust and confidence.
>
> ... Information networks when properly designed are just another type of research and hiring them is consistent with what institutional investors should do."[4]

Specific concerns are raised by paragraph 16(a)(i) of the proposed rule which would require a consultant to "describe all confidentiality restrictions the consultant has, or reasonably expects to have, regarding Confidential Information." While Investorside agrees that relevant conflicts should be addressed by an adviser in engaging an expert, whether through a service or otherwise, by its terms paragraph 16(a)(i) applies to any Confidential Information, whether or not it is relevant to the engagement. For example, an expert who is a full time consultant would be subject to a number of confidentiality restrictions regarding engagements which would not be relevant to (or appropriate to disclose to) an adviser retaining the consultant as an expert for an unrelated matter. Requiring an expert to agree not to disclose confidential information is good sense. Asking an expert to pre-disclose every possible confidential matter the consultant has or expects to have would, as a practical matter, be impossible to comply with even if the expert did not have obligations not to disclose the mere existence of those confidential matters, as is likely. If the Office of the Secretary determines to move forward with this provision, we urge that the proposal specify that only confidentiality restrictions relevant to the consultant's engagement must be disclosed. We also request that the Office of the Secretary clarify that any disclosure or certification by a consultant may be made in writing or through electronic delivery, either directly or through an intermediary (such as the expert network firm).

The Proposed Regulation Cannot Be Applied to SEC- Registered Advisers

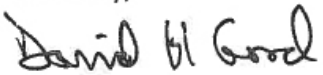
The proposed regulation is silent as to the extent of its application to investment advisers

[4] Remarks at the IA Watch Annual IA Compliance Best Practices Seminar by Carlo V. Di Florio, Director, Office of Compliance Inspections and Examinations, U.S. Securities and Exchange Commission, March 21, 2011.

registered with the SEC who do business in Massachusetts.[5] Title III of the National Securities Market Improvement Act of 1996 ("NSMIA") amended the Investment Advisers Act of 1940 to reallocate federal and state responsibilities for the regulation of investment advisers. Specifically, NSMIA inserted Section 203A(b)(1) into the Advisers Act, which states that "(n)o law of any State . . . requiring the registration, licensing or qualification as an investment adviser shall apply to any [adviser registered with the SEC]. Further, although the states do retain the ability to bring actions regarding activities of SEC-registered advisers which violate state anti-fraud provisions, as the SEC has stated, NSMIA "preclud[es] a state from indirectly regulating the activities of Commission-registered advisers by applying state requirements that define 'dishonest' or 'unethical' business practices unless the prohibited practices would be fraudulent or deceptive absent the requirements."[6] As also noted in the Investment Company Institute's letter to you dated May 23, 2011, the proposed regulation, which would impose a requirement to obtain a certification before an adviser may use a particular type of research, thus directly regulating advisers' activities, would exceed the Commonwealth's residual anti-fraud authority if applied to an SEC-registered adviser and thus would be preempted by NSMIA. Accordingly, Investorside asks that if the proposed regulation is adopted, the Office of the Secretary clarify that it does not apply to SEC-registered investment advisers, regardless of whether such advisers are located in, or have clients in, the Commonwealth of Massachusetts.

Investorside appreciates the opportunity to provide its views on these important issues. If you have any questions, do not hesitate to contact the undersigned.

Sincerely,



David Good
Chairman
Investorside Research Association

Investorside Research Association
61 Broadway, S-1700
New York, NY 10006

[5] Investorside notes that the Office of the Secretary did issue a press release dated April 20, 2011 which stated that the proposed regulation applied to state registered advisers.
[6] SEC Rel. No. IA-1633, 62 Fed. Reg. 28112 at 28126.