

Notices

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Disciplinary and Other FINRA Actions

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Auction Rate Securities

FINRA Temporarily Increases Margin Maintenance Requirements on Auction Rate Securities Backed by Fixed Income Products

Effective Date: March 6, 2008

Executive Summary

The purpose of this *Notice* is to advise FINRA member firms that FINRA is temporarily increasing the maintenance margin requirements for auction rate securities pursuant to NYSE Rule 431(f)(8)(A) and NASD Rule 2520(f)(8)(A). Effective immediately, all auction rate securities that are backed by fixed income products (*e.g.*, municipal bonds, collateralized debt obligations, etc.) will have a 25 percent maintenance requirement.

Questions regarding this *Notice* may be directed to:

- Rudolph Verra, Managing Director, Credit Regulation, at (646) 315-8811;
- Glen Garofalo, Director, Credit Regulation, at (646) 315-8464; or
- Steve Yannolo, Principal Credit Specialist, Credit Regulation, at (646) 315-8621.

Background and Discussion

Auction rate securities are long-term, variable rate bonds generally issued through a Dutch auction, with interest rates that reset at short-term intervals—usually 7, 28 or 35 days. Although they are issued as long-term bonds, auction rate securities are priced and traded similarly to short-term instruments due to the liquidity that has been provided as a result of the interest rate resets. Most auction rate securities are rated AAA.

March 2008

Suggested Routing

- Compliance
- Legal
- Margin Department
- Operations
- Senior Management

Key Topic(s)

- Auction Rate Securities
- Maintenance Margin Requirements

Referenced Rules & Notices

- NASD Rule 2520
- NYSE Rule 431

Recently, the auctions for these securities have been failing, as investors, concerned about the current credit market environment, have not been willing to participate in the auction. As a result, holders of these securities have not been able to liquidate their positions. In order to provide liquidity to their customers, several member firms have asked FINRA whether margin can be extended to these securities.

Margin Eligibility

Pursuant to NYSE Rule 431 and NASD Rule 2520, fixed income auction rate securities that carry an investment grade rating are categorized as “investment grade debt securities,” as defined in NYSE Rule 431(a)(10) and NASD Rule 2520(a)(10), and normally would require equity of 10 percent of the current market value. Fixed income auction rate securities that are below investment grade are categorized as “other marginable non-equity securities” that are defined in NYSE Rule 431(a)(16) and NASD Rule 2520(a)(16) as follows:

- (1) Any debt securities not traded on a national securities exchange meeting all of the following requirements:
 - (i) At the time of the original issue, a principal amount of not less than \$25,000,000 of the issue was outstanding;
 - (ii) The issue was registered under Section 5 of the Securities Act of 1933 and the issuer either files periodic reports pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 or is an insurance company which meets all of the conditions specified in Section 12(g)(2)(G) of the Act of 1934; and
 - (iii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or
- (2) Any private pass-through securities (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:
 - (i) An aggregate principal amount of not less than \$25,000,000 (which may be issued in series) was issued pursuant to a registration statement filed with the Securities and Exchange Commission under Section 5 of the Securities Act of 1933;
 - (ii) Current reports relating to the issue have been filed with the Securities and Exchange Commission; and
 - (iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering.

Fixed income auction rate securities categorized as “other marginable non-equity securities” normally require equity of 20 percent of the current market value or 7 percent of the principal amount, whichever is greater.

However, as a result of the reduced liquidity in these securities, member firms will be required to impose a regulatory maintenance requirement of 25 percent of the current market value for all fixed income auction rate securities, irrespective of whether or not the security is investment grade.

If fixed income auction rate securities are used as collateral for non-purpose credit to any customer, firms are reminded that they must also consider the 25 percent maintenance requirement when determining any maintenance excess or deficiency, and pursuant to NYSE Rule 431(e)(7)(C) and NASD Rule 2520(e)(7)(C), the amount of any deficiency between the equity in the account and the margin required shall be deducted in computing the firm’s Net Capital.

Firms are reminded that, pursuant to NYSE Rule 431(d) and NASD Rule 2520(d), they should consider the need to institute higher margin requirements if deemed appropriate.

Firms are also reminded that auction rate preferred securities issued by closed-end funds are not marginable.

Classification on Customer Statements

In light of the recent events in the marketplace, member firms should give careful consideration to the classification of these securities on customer statements as cash or cash equivalents. Firms are also encouraged to review any references and characterization of these securities on the firm’s Web site as short-term securities.

Portfolio Margin Accounts

FINRA Revises Portfolio Margining Risk Disclosure Statement and Written Acknowledgment for Customers Using Portfolio Margin Accounts

Effective Date: March 14, 2008

Executive Summary

FINRA has revised the sample portfolio margining risk disclosure and acknowledgment statements that member firms must provide to customers who have been approved for portfolio margin. This replaces the March 2007 sample risk disclosure and acknowledgment statements.¹ See Attachment A for the sample disclosure and acknowledgment statements.

Questions regarding this *Notice* may be directed to

- Rudolph Verra, Managing Director, Credit Regulation, at (646) 315-8811;
- Glen Garofalo, Director, Credit Regulation, at (646) 315-8464;
- Steve Yannolo, Principal Credit Specialist, Credit Regulation, at (646) 315-8621; or
- Your firm's Liaison or Finance Coordinator.

March 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Margin
- Operations
- Senior Management

Key Topic(s)

- Margin Requirements
- Options
- Portfolio Margin Risk Disclosure Statement

Referenced Rules & Notices

- NASD Rule 2520
- NTM 07-14
- NYSE Info Memo 07-27
- NYSE Rule 431

Background and Discussion

NYSE Rule 431(g)(5)(C) and NASD Rule 2520(g)(5)(C) require that member firms provide a risk disclosure statement to each prospective portfolio margin customer and obtain from such customer a signed acknowledgment at, or prior to, the initial transaction in a portfolio margin account. These documents are to be in the format prescribed by FINRA or developed by the member firm, provided it contains substantially similar information as the prescribed FINRA format. Firms are reminded that any amendments to the prescribed sample statements provided below must be reviewed and approved by FINRA.

Endnotes

- 1 See NASD Notice to Members 07-14 and NYSE Regulation Information Memo 07-27.

Attachment A

Sample Portfolio Margining Risk Disclosure Statement to Satisfy Requirements of NYSE Rule 431(g) and NASD Rule 2520(g)

OVERVIEW OF PORTFOLIO MARGINING

1. Portfolio margining is a margin methodology that sets margin requirements for an account based on the greatest projected net loss of all positions in a “security class” or “product group” as determined by a model using multiple pricing scenarios. Pricing scenarios for options are based on changes in inputs to a theoretical pricing model, including the underlying price and volatility.

2. The goal of portfolio margining is to set levels of margin that more precisely reflect actual net risk. The customer may benefit from portfolio margining in that margin requirements that are calculated based on net risk are generally lower than alternative “position” or “strategy” based methodologies for determining margin requirements. Lower margin requirements allow the customer more leverage in an account.

CUSTOMERS ELIGIBLE FOR PORTFOLIO MARGINING

3. To be eligible for portfolio margining, customers (other than broker-dealers or members of a national futures exchange) must be approved for writing uncovered options. If a customer (other than a broker-dealer or member of a national futures exchange) wishes to trade in unlisted derivatives, the customer must have and maintain at all times account equity of not less than five million dollars, aggregated across all accounts under identical ownership at the carrying broker-dealer and/or its United States regulated affiliated broker-dealers or Futures Commission Merchants. This identical ownership requirement excludes accounts held by the same customer in different capacities (e.g., as a trustee and as an individual) and accounts where ownership is overlapping but not identical (e.g., individual accounts and joint accounts). In addition to the requirements of the self-regulatory organization rule, carrying broker-dealers may have their own minimum equity requirement and possibly other eligibility requirements.

POSITIONS ELIGIBLE FOR A PORTFOLIO MARGIN ACCOUNT

4. All margin equity securities (as defined in Section 220.2 of Regulation T of the Board of Governors of the Federal Reserve System), warrants on margin equity securities or on eligible indices of equity securities, equity-based or equity-index based listed options, and security futures products (as defined in Section 3(a)(56) of the Securities Exchange Act of 1934) are eligible to be margined in a portfolio margin account. In addition, a customer that has an account with equity of at least five million dollars may establish and maintain positions in unlisted derivatives (e.g., OTC swaps, options) on a margin equity security or an eligible index of equity securities that can be priced by a theoretical pricing model approved by the Securities and Exchange Commission ("SEC").

SPECIAL RULES FOR PORTFOLIO MARGIN ACCOUNTS

5. A portfolio margin account may be either a separate account or a sub-account of a customer's standard margin account. In the case of a sub-account, equity in the standard account may be available to satisfy any margin requirement in the portfolio margin sub-account without transfer to the sub-account.

6. A portfolio margin account or sub-account will be subject to a minimum margin requirement of \$.375 for each listed option, unlisted derivative and security futures product, multiplied by the contract's or instrument's multiplier, carried long or short in the account. Other eligible products are not subject to a minimum margin requirement.

7. A margin deficiency in the portfolio margin account or sub-account, regardless of whether due to new commitments or the effect of adverse market movements on existing positions, must be met within three business days. Failure to meet a portfolio margin deficiency by the end of the third business day will result in a prohibition on entering any new orders, with the exception of new orders that reduce the margin requirement. Failure to meet a portfolio margin deficiency by the end of the third business day will result in the prompt liquidation of positions on the fourth business day, to the extent necessary to eliminate the margin deficiency.

8. Any shortfall in aggregate equity across accounts, when required, must be met within three business days. Failure to meet a minimum equity deficiency by the end of the third business day will result in a prohibition on entering any new orders, with the exception of new orders that reduce the margin requirement, beginning on the fourth business day and continuing until such time as the minimum equity requirement is satisfied, or if applicable, all unlisted derivatives are liquidated or transferred out of the portfolio margin account.

SPECIAL RISKS OF PORTFOLIO MARGIN ACCOUNTS

9. Portfolio margining generally permits greater leverage in an account, and greater leverage creates greater losses in the event of adverse market movements.

10. Because the maximum time limit for meeting a margin deficiency is shorter than in a standard margin account, there is increased risk that a customer's portfolio margin account will be liquidated involuntarily, possibly causing losses to the customer.

11. Because portfolio margin requirements are determined using sophisticated mathematical calculations and theoretical values that must be calculated from market data, it may be more difficult for customers to predict the size of future margin deficiencies in a portfolio margin account. This is particularly true in the case of customers who do not have access to specialized software necessary to make such calculations or who do not receive theoretical values calculated and distributed periodically by an approved vendor of theoretical values.

12. Trading of margin equity securities, warrants on margin equity securities or on eligible indices of equity securities, listed options, unlisted derivatives on margin equity securities or an eligible index of equity securities, and security futures products in a portfolio margin account is generally subject to all the risks of trading those same products in a standard securities margin account. Customers should be thoroughly familiar with the risk disclosure materials applicable to those products, including the booklets entitled "Characteristics and Risks of Standardized Options" and "Security Futures Risk Disclosure Statement". Because this disclosure statement does not disclose the risks and other significant aspects of trading in security futures and options, customers should review those materials carefully before trading these products in a portfolio margin account.

13. Customers should consult with their tax advisers to be certain that they are familiar with the tax treatment of transactions in margin equity securities, warrants on margin equity securities or on eligible indices of equity securities, listed options, unlisted derivatives on margin equity securities or an eligible index of equity securities, and security futures products, including tax consequences of trading strategies involving both security futures and option contracts.

14. The descriptions in this disclosure statement relating to eligibility requirements for portfolio margin accounts, and minimum equity and margin requirements for those accounts, are minimums imposed under the self-regulatory organization rules. Time frames within which margin and equity deficiencies must be met are maximums imposed under the self-regulatory organization rules. Broker-dealers may impose their own more stringent requirements.

15. Customers should bear in mind that the discrepancies in the cash flow characteristics of security futures and certain options are still present even when those products are carried together in a portfolio margin account. In addition, discrepancies in the cash flow characteristics of certain unlisted derivatives may also be present when those products are carried in a portfolio margin account. Both security futures and options contracts are generally marked to the market at least once each business day. Similarly, certain unlisted derivatives may also be marked to the market on a daily basis. However, there may be incongruity between the marking to the market of each eligible product in that marks may take place with different frequency and at different times within the day. For example, when a security futures contract is marked to the market, the gain or loss is immediately credited to or debited from, respectively, the customer's account in cash. While a change in the value of a long option contract may increase or decrease the equity in the account, the gain or loss is not realized until the option is liquidated, exercised, or assigned. Accordingly, a customer may be required to deposit cash in the account in order to meet a variation payment on a security futures contract even though the customer is in a hedged position and has experienced a corresponding (but yet unrealized) gain on an option. Alternatively, a customer who is in a hedged position and would otherwise be entitled to receive a variation payment on a security futures contract may find that the cash is required to be held in the account as margin collateral on an offsetting option position.

The general provisions governing portfolio margining (including definitions used in this document) are set forth in NYSE Rule 431(g) and NASD Rule 2520(g), which can be found at www.finra.org.

Sample Portfolio Margining Acknowledgement

ACKNOWLEDGEMENT FOR CUSTOMERS

UTILIZING A PORTFOLIO MARGIN ACCOUNT

BY SIGNING BELOW, I/WE AFFIRM THAT I/WE HAVE READ AND UNDERSTOOD THE PORTFOLIO MARGINING RISK DISCLOSURE STATEMENT.

CUSTOMER NAME: _____

BY: _____ DATE _____
(signature/title)

Options Position and Exercise Limits Increase

FINRA Announces Amendments to Make Permanent the Pilot Program Increasing Positions and Exercise Limits for Stock Options

Effective Date: February 28, 2008

Executive Summary

On February 28, 2008, amendments to NASD Rule 2860 (Options) made permanent a pilot program increasing position and exercise limits for stock options. The amendments also revised the examples in NASD IM-2860-1 (Position Limits) that illustrate the operation of position limits.¹ The amended rules are set forth in Attachment A.

Questions regarding this *Notice* may be directed to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104; or Kathryn M. Moore, Assistant General Counsel, OGC, at (202) 974-2974.

Background and Discussion

NASD Rule 2860(b)(3)(A) imposes a ceiling or position limit on the number of standardized and conventional options contracts in each class on the same side of the market (*i.e.*, aggregating long calls and short puts or long puts and short calls) that can be held or written by a member, a person associated with a member, a customer or a group of customers acting in concert. The Rule provides that the position limits for equity options are determined according to a five-tiered system in which more actively traded stocks with larger public floats are subject to higher position limits. Options exercise limits, which are set forth in NASD Rule 2860(b)(4), incorporate by reference the position limits in NASD Rule 2860(b)(3).

March 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Institutional
- Legal
- Operations
- Options
- Senior Management

Key Topic(s)

- Exercise Limits
- Options
- Position Limits

Referenced Rules & Notices

- NASD Rule 2860
- NASD IM-2860-1

FINRA has amended the options position and exercise limits in NASD Rule 2860 to make permanent a pilot program that increases position and exercise limits for both standardized and conventional stock options.² Below are the original, pre-pilot limits and new permanent limits.

Original Limits	New Permanent Limits
13,500 contracts	25,000 contracts
22,500 contracts	50,000 contracts
31,500 contracts	75,000 contracts
60,000 contracts	200,000 contracts
75,000 contracts	250,000 contracts

In addition, FINRA amended NASD IM-2860-1 (Position Limits) to revise the examples that illustrate the operation of position limits with the permanent position limits.

Endnotes

- 1 See Securities Exchange Act Release No. 34-57413 (March 3, 2008), 73 FR 12487 (March 7, 2008) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2008-007).
- 2 The original pilot program became effective on March 30, 2005, and has continued uninterrupted until becoming permanent on February 28, 2008. See Securities Exchange Act Release No. 51520 (April 11, 2005) 70 FR 19977 (April 15, 2005) (Notice of Filing and Immediate Effectiveness of SR-NASD-2005-040 establishing the pilot program).

ATTACHMENT A

New language is underlined, deletions are in brackets.

* * * * *

Rule 2860. Options

(a) No Change.

(b) Requirements

(1) and (2) No Change.

(3) Position Limits

(A) Stock Options — Except in highly unusual circumstances, and with the prior written approval of NASD pursuant to the Rule 9600 Series for good cause shown in each instance, no member shall effect for any account in which such member has an interest, or for the account of any partner, officer, director or employee thereof, or for the account of any customer, non-member broker, or non-member dealer, an opening transaction through the over-the-counter market or on any exchange in a stock option contract of any class of stock options if the member has reason to believe that as a result of such transaction the member or partner, officer, director or employee thereof, or customer, non-member broker, or non-member dealer, would, acting alone or in concert with others, directly or indirectly, hold or control or be obligated in respect of an aggregate equity options position in excess of:

(i) [13,500 (or]25,000 [during the pilot period from March 30, 2005 through March 1, 2008 (“Pilot Period”))] option contracts of the put class and the call class on the same side of the market covering the same underlying security, combining for purposes of this position limit long positions in put options with short positions in call options, and short positions in put options with long positions in call options; or

(ii) [22,500 (or)50,000 [during the Pilot Period]]option contracts of the put class and the call class on the same side of the market covering the same underlying security, provided that the [22,500 (or)50,000 [during the Pilot Period]]contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [22,500 (or)50,000 [during the Pilot Period]]option contracts; or

(iii) [31,500 (or)75,000 [during the Pilot Period]]option contracts of the put class and the call class on the same side of the market covering the same underlying security provided that the [31,500 (or)75,000 [during the Pilot Period]]contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [31,500 (or)75,000 [during the Pilot Period]]option contracts; or

(iv) [60,000 (or)200,000 [during the Pilot Period]]option contracts of the put and the call class on the same side of the market covering the same underlying security, provided that the [60,000 (or) 200,000 [during the Pilot Period]]contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [60,000 (or)200,000 [during the Pilot Period]]option contracts; or

(v) [75,000 (or)250,000 [during the Pilot Period]]option contracts of the put and the call class on the same side of the market covering the same underlying security, provided that the [75,000 (or)250,000 [during the Pilot Period]]contract position limit shall only be available for option contracts on securities that underlie exchange-traded options qualifying under applicable rules for a position limit of [75,000 (or)250,000 [during the Pilot Period]]option contracts; or

(vi) through (vii) No Change.

(viii) Conventional Equity Options

a. For purposes of this paragraph (b), standardized equity option contracts of the put class and call class on the same side of the market overlying the same security shall not

be aggregated with conventional equity option contracts or FLEX Equity Option contracts overlying the same security on the same side of the market. Conventional equity option contracts of the put class and call class on the same side of the market overlying the same security shall be subject to a position limit equal to the greater of:

1. the basic limit of [13,500 (or)25,000 [during the Pilot Period]] contracts, or
2. any standardized equity options position limit as set forth in paragraphs (b)(3)(A)(ii) through (v) for which the underlying security qualifies or would be able to qualify.

b. In order for a security not subject to standardized equity options trading to qualify for an options position limit of more than [13,500 (or)25,000 [during the Pilot Period]] contracts, a member must first demonstrate to NASD's Market Regulation Department that the underlying security meets the standards for such higher options position limit and the initial listing standards for standardized options trading.

Provided, however, that for certain securities in an index designated by NASD, a member may claim such higher position limit as permitted in accordance with the volume and float criteria specified by NASD; provided further, that a member claiming a higher position limit under this subparagraph must notify NASD's Market Regulation Department in writing in such form as may be prescribed by NASD and shall be filed no later than the close of business day on the next business day following the day on which the transaction or transactions requiring such limits occurred; and provided further, that the member must agree to reduce its position in the event that NASD staff determines different position limits should apply.

(B) through (D) No Change.

(4) through (24) No Change.

* * * * *

IM-2860-1. Position Limits

The following examples illustrate the operation of position limits established by NASD Rule 2860(b)(3) (all examples assume a position limit of [4,500]25,000 contracts and that the options are standardized options):

(a) Customer A, who is long [4,500]25,000 XYZ calls, may at the same time be short [4,500]25,000 XYZ calls, since long and short positions in the same class of options (i.e., in calls only, or in puts only) are on opposite sides of the market and are not aggregated for purposes of paragraph (b)(3).

(b) Customer B, who is long [4,500]25,000 XYZ calls, may at the same time be long [4,500]25,000 XYZ puts. Paragraph (b)(3) does not require the aggregation of long call and long put (or short call and short put) positions, since they are on opposite sides of the market.

(c) Customer C, who is long [1,700]20,000 XYZ calls, may not at the same time be short more than [2,800]5,000 XYZ puts, since the [4,500]25,000 contract limit applies to the aggregation of long call and short put positions in options covering the same underlying security. Similarly, if Customer C is also short [1,600]20,000 XYZ calls, he may not at the same time be long more than [2,900]5,000 puts, since the [4,500]25,000 contract limit applies separately to the aggregation of short call and long put positions in options covering the same underlying security.

(d) Customer D, who is short [900,000]2,000,000 shares of XYZ, may be long up to [4,500]45,000 XYZ calls, since the “hedge” exemption contained in paragraph (b)(3)(A)(vii) permits Customer D to establish an options position up to [4,500]25,000 contracts in size. In this instance, [4,500]25,000 of the [13,500]45,000 contracts are permissible under the basic position limit contained in paragraph (b)(3)(A)(i) and the remaining [9,000]20,000 contracts are permissible because they are hedged by the [900,000]2,000,000 short stock position.

Electronic Filing

Q&A on Electronic Filing Requirements of NASD Rule 3170

Executive Summary

This *Notice* provides answers to frequently asked questions FINRA has received on the electronic filing requirements under NASD Rule 3170 that became effective January 2007.

The online form filing system—which should be used for submitting the required filings outlined in this *Notice* and in *Notice to Members 06-61*—is available via the FINRA Firm Gateway at <http://firms.finra.org/financialnotifications>.

Questions concerning this *Notice* may be directed to Susan M. DeMando, Associate Vice President, Financial Operations, Department of Member Regulation, at (202) 728-8411.

Background

In November 2006, FINRA (then NASD) published *Notice to Members 06-61*, which outlined the newly approved electronic filing requirements and effective date of new NASD Rule 3170 (Mandatory Electronic Filing Requirements).¹ Specifically, the Notice listed 10 financial notifications (and 11 related SEC Rules) to which NASD Rule 3170 would apply immediately. As such, on January 1, 2007, firms were required to file each of the following notifications via an online system:²

March 2008

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topics

- Electronic Filing Requirements

Referenced Rules & Notices

- NASD Rule 3170
- NTM 06-61

Rule 15c3-1(e)	Withdrawals of equity capital
Rule 15c3-3(i)	Special reserve bank account
Rule 17a-4(f)(2)(i) Rule 17a-4(f)(3)(vii)	Electronic storage media
Rule 17a-5(f)(4)	Replacement of accountant
Rule 17a-11(b)	Net capital deficiency
Rule 17a-11(c)(1)	Aggregate indebtedness is in excess of 1200 percent of net capital
Rule 17a-11(c)(2)	Net capital is less than 5 percent of aggregate debit items
Rule 17a-11(c)(3)	Net capital is less than 120 percent of required minimum dollar amount
Rule 17a-11(d)	Failure to make and keep current books and records
Rule 17a-11(e)	Material inadequacy in accounting systems, internal controls or practices and procedures

Firms should use the Firm Gateway at <http://firms.finra.org/financialnotifications> to file these notifications.

Frequently Asked Questions

Q-1. Are firms that previously had NYSE as their primary examination authority prior to the consolidation of NASD and NYSE Regulation into FINRA required to submit the referenced electronic filings through the new Firm Gateway and Financial Notification submission process?

A-1. Yes. As a result of the consolidation, firms previously designated to NYSE prior to the consolidation became subject to NASD Rule 3170. To help these firms transition to using a new filing system, they will be contacted (via written and/or verbal correspondence) by their Coordinator to explain the new system and will be given an appropriate amount of time to make any necessary filings.

However, NYSE regulatory notifications not otherwise referenced above (*e.g.*, for NYSE 325(b)(2)) are still required to be submitted to your Coordinator in the same format that existed prior to the consolidation.

Q-2. Where can my firm access the system to make electronic filings?

A-2. The financial notifications application is accessible through the Firm Gateway at <http://firms.finra.org/financialnotifications>, which provides a central location for accessing regulatory filing applications and fulfilling regulatory filing obligations. Login to the Firm Gateway using the same username and password you currently use to access other FINRA applications.

For additional guidance, FINRA developed a tutorial for firms on electronic storage media filing requirements for firms, which is available at www.finra.org/web/groups/reg_systems/documents/regulatory_systems/p037894.swf.

Q-3. Have the underlying SEC Rules relating to the financial notifications changed?

A-3. No, only the manner in which notifications are filed or submitted to FINRA has changed.

Q-4. What would happen if a firm filed a financial notification after January 1, 2007, via fax or postal mail instead of electronically, due to technical problems?

A-4. Effective January 1, 2007, non-electronic filings do not meet FINRA's requirements and will not be considered filed. Therefore, a fax or hard-copy is *not* an acceptable method of filing a financial notification with FINRA. However, if a firm does not have the ability to submit the required attachments for Rules 17a-4(f)(2)(i), 17a-4(f)(3)(vii) and 17a-5(f)(4) (replacement of accountant) notifications in the requested PDF format, the firms should contact FINRA's Financial Responsibility Group at (202) 728-8221 for alternate filing instructions.

However, in all circumstances, firms previously designated to NYSE prior to the consolidation are encouraged to electronically submit all regulatory filings referenced in this *Notice* through the Financial Notifications System.

Q-5. What if a firm files a financial notification electronically, but wants to ensure delivery by sending a redundant fax or hard copy?

A-5. Please do not send redundant faxes or hard copies. There is no reason to call or resend the required notification to confirm delivery. To evidence submission, firms may print a copy of the notification filed with FINRA, which contains a confirmation number.

Q-6. How was entitlement at member firms determined for submitting financial notifications electronically?

A-6. Any individual authorized to submit a FOCUS Report has also been authorized to submit a financial notification designated under Rule 3170.

Individuals who want to submit notifications pursuant to Rule 3170, but were not entitled by their firms to file FOCUS Reports electronically as of January 1, 2007, will need to contact their firm's Regulatory Filing Applications administrator to be entitled to this application.

Q-7. Does the FINRA filing satisfy a firm's SEC filing requirement?

A-7. No. Firms *must file separately* with SEC headquarters in Washington, DC, and the appropriate regional office. The SEC accepts faxes and copies, but not electronic submissions.

Q-8. How do prospective FINRA members (i.e., applicants) notify FINRA of their intention to use electronic storage media (ESM) if they cannot access the system before their membership is effective?

A-8. Firms do not have a responsibility to provide financial notifications to FINRA until their membership has been approved. Firms may, however, include a reference to ESM within their New Member Application.

Q-9. Why do certain notifications (e.g., Rule 15c3-3(i)) provide fields for more than one date entry (i.e., a FROM DATE and TO DATE)?

A-9. In certain situations, firms may have experienced a deficiency that occurred over a period of time. Providing for a date range permits the firm to properly report the entire period of the deficiency, as opposed to filing multiple notifications. If a deficiency occurred on one day only, the firm would enter the **same** date in both the **FROM DATE** and **TO DATE** fields.

Q-10. How can a firm amend a filing?

A-10. A firm cannot amend an original filing per se; however, if a firm makes a mistake in their submission, it may correct it by submitting a new filing and explaining the reason for the subsequent filing in the comments portion of the template.

For example, if a firm files a notification for withdrawing \$680,000 in capital, but the correct amount is \$860,000, the firm would file a new notification with the correct amount of withdrawn capital and include an explanation in the comments field, such as: "This notification amends a filing made on MM/DD/YY in which we reported a withdrawal of capital of \$680,000. The correct amount is \$860,000."

Q-11. Who should firms contact if they have technology-related questions about the financial notifications application?

A-10. Technology-related questions relating to this matter should be directed to FINRA at (800) 321-6273. Please direct non-technical questions to your firm's Coordinator.

Endnotes

- 1 See Exchange Act Release No. 54654 (Oct. 26, 2006) (Order Approving Proposed Rule Change to Require Members to File Regulatory Notices with NASD Electronically; File No. SR-NASD-2006-060) (SEC Approval Order).
- 2 Electronic filing of these notifications with FINRA does not affect requirements in those rules to file notifications with the SEC or other securities regulatory agencies.

Principal Approval of Sales Material

SEC Approves Amendment to NASD Rule 2210 to Create an Exception to the Principal Approval Requirements for Certain Filed Sales Material

Effective Date: March 26, 2008

Executive Summary

Effective March 26, 2008, principal approval is no longer required for certain previously filed sales material. The amendment to NASD Rule 2210 also codifies FINRA staff's interpretation that a firm must maintain records of advertisements, sales literature and independently prepared reprints for a period beginning on the date of first use and ending three years after the date of last use. The changes to Rule 2210 are set forth in Attachment A.

Questions concerning this *Notice* should be directed to Thomas A. Pappas, Vice President and Director, Advertising Regulation, at (240) 386-4553; or Joseph P. Savage, Vice President and Counsel, Investment Companies Regulation, at (240) 386-4534.

Background & Discussion

NASD Rule 2210 (Communications with the Public) requires a member firm to have a registered principal approve in writing all advertisements and sales literature (collectively, "sales material") and independently prepared reprints prior to use. Firms also must file with the FINRA Advertising Regulation Department certain types of sales material, such as advertisements and sales literature concerning mutual funds or variable insurance products.

March 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Mutual Funds
- Variable Insurance Products
- Senior Management

Key Topic(s)

- Advertisements and Sales Literature
- Principal Approval Requirements
- Recordkeeping

Referenced Rules & Notices

- NASD Rule 2210

For funds and variable products that are sold through intermediary firms, a registered principal at the fund's or variable product's underwriter typically approves sales material internally and files the material with FINRA. FINRA Rules require registered principals at each of the intermediary firms that use the underwriter's sales material to re-approve in writing each of these items used by their firms. (The intermediary firm is not required to re-file the sales material, so long as it is used without material change.) If firms have selling agreements with multiple fund families and insurance companies, the number of items that require re-approval can easily be in the hundreds, and often thousands, per firm annually.

Based on recommendations made by FINRA's Small Firms Rules Impact Task Force,¹ and to eliminate what FINRA regards as a compliance redundancy, the amendment creates an exception to Rule 2210's registered principal approval requirements for intermediary firms that use the sales material of another firm. The exception applies only to sales material that another firm has filed with FINRA, and for which FINRA has issued a review letter finding that the material appears to be consistent with applicable standards.

An intermediary firm that relies on this exception may not materially alter the sales material or use it in a manner that is inconsistent with any conditions stated in the FINRA review letter. For example, if FINRA's review letter is based in part upon the representation by the filing firm that the sales material will be accompanied by a fund prospectus, the intermediary firm would be subject to a similar constraint.

Although FINRA anticipates that firms will use the exception primarily with respect to mutual fund and variable insurance product sales material, the exception is not limited to sales material for particular products. Thus, the exception also applies to sales material for other products, such as real estate investment trusts or direct participation programs, provided that the sales material meets the exception's requirements.

FINRA believes this change will save intermediary firms time and compliance resources. Of course, the amendment would not prevent firms from continuing to review some or all of such sales material if they so choose.²

The rule change also revises certain advertising recordkeeping requirements. Rule 2210(b)(2)(A) states that firms must maintain a copy of all sales material for a period of three years from the date of last use. FINRA staff has interpreted this provision to mean that the recordkeeping requirement begins on the date of first use, and that these records must include the dates of first and (if applicable) last use. The rule change codifies this position. Firms that are relying on the principal approval exception must keep a record of the name of the firm that filed the sales material and a copy of the related FINRA review letter.

Endnotes

- 1 NASD established the Small Firms Rules Impact Task Force in September 2006 to examine how existing NASD Rules impact smaller firms. In particular, the Task Force focused on possible opportunities to amend or modernize certain conduct rules that may be particularly burdensome for small firms, where such changes are consistent with investor protection and market integrity.
- 2 The rule change does not affect the contractual obligations that exist between underwriters and intermediary firms. Some dealer agreements may, for example, restrict the ability of underwriters and product wholesalers to send their sales material directly to an intermediary firm's sales force. These restrictions can facilitate the intermediary firm's ability to supervise its sales force. The rule change does not alter the underwriter's obligations to comply with these contractual restrictions.

ATTACHMENT A

New language is underlined; deletions are in brackets.

* * * * *

2000. BUSINESS CONDUCT

* * * * *

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

2210. Communications with the Public

(a) No Change.

(b) Approval and Recordkeeping

(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints

(A) A registered principal of the member must approve by signature or initial and date each advertisement, item of sales literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department ("Department").

(B) With respect to debt and equity securities that are the subject of research reports as that term is defined in Rule 472 of the New York Stock Exchange, [this requirement] the requirements of paragraph (A) may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(C) A registered principal qualified to supervise security futures activities must approve by signature or initial and date each advertisement or item of sales literature concerning security futures.

(D) The requirements of paragraph (A) shall not apply with regard to any advertisement, item of sales literature, or independently prepared reprint if, at the time that a member intends to publish or distribute it:

(i) another member has filed it with the Department and has received a letter from the Department stating that it appears to be consistent with applicable standards; and

(ii) the member using it in reliance upon this paragraph has not materially altered it and will not use it in a manner that is inconsistent with the conditions of the Department's letter.

(2) Record-keeping

(A) Members must maintain all advertisements, sales literature, and independently prepared reprints in a separate file for a period beginning on the date of first use and ending three years from the date of last use. The file must include:

(i) a copy of the advertisement, item of sales literature or independently prepared reprint, and the dates of first and (if applicable) last use of such material;

(ii) the name of the registered principal who approved each advertisement, item of sales literature, and independently prepared reprint and the date that approval was given, unless such approval is not required pursuant to paragraph (b)(1)(D); and

(iii) for any advertisement, item of sales literature or independently prepared reprint for which principal approval is not required pursuant to paragraph (b)(1)(D), the name of the member that filed the advertisement, sales literature or independently prepared reprint with the Department, and a copy of the corresponding review letter from the Department.

(B) No Change.

(c) through (e) No Change.

Short Interest Reporting Requirements

FINRA Consolidates the Collection of Short Interest Data

Effective Date: May 15, 2008

Executive Summary

Effective May 15, 2008, firms must report short interest positions in all securities—including NASDAQ, Amex, NYSE, ARCA and OTC equity securities—through a single source on a bi-monthly basis: FINRA's Web-based Regulation Filing Applications system (<https://regfiling.finra.org>). Firms are reminded that they must designate each issue symbol contained in their short interest reports with the correct exchange/market code. Also effective May 15, 2008, the market/exchange code of "Z" (Other) will be eliminated and certain other market/exchange codes will be temporarily unavailable in RFA. To enable firms to test their program changes, FINRA will make the RFA test site available from April 14, 2008 through May 2, 2008.

Questions regarding this *Notice* may be directed to:

- Legal Section, Market Regulation, at (240) 386-5126;
- Office of General Counsel, at (202) 728-8071;
- Yvonne Huber, Market Regulation, at (240) 386-5034; or
- Michele Bowan, Market Regulation, at (240) 386-4986.

Background and Discussion

Short Interest Reporting

NASD Rule 3360 and Incorporated NYSE Rule 421¹ require firms to report short interest positions² in all customer and proprietary accounts in NASDAQ, New York Stock Exchange (NYSE), NYSE Arca (ARCA) and Over-the-Counter (OTC) equity securities—as well as other listed securities

March 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Executive Representatives
- Legal
- Operations
- Senior Management
- Systems
- Trading
- Training

Key Topic(s)

- Short Interest Reporting

Referenced Rules & Notices

- NASD Rule 3360
- NYSE Rule 421
- NTM 06-20
- Regulatory Notice 08-05

not reported to another self-regulatory organization (SRO)—to FINRA twice a month.³ The mid-month short interest report is based on short positions held by firms on the settlement date of the 15th of each month. If the 15th falls on a weekend or another non-settlement date, the designated settlement date is the previous business day on which transactions settled. The end-of-month short interest report is based on short positions held on the last business day of the month on which transactions settle. FINRA must receive short interest reports no later than the second business day after each reporting settlement date.

Consolidating the Collection of Short Interest Reports

Currently, firms file short interest positions through FINRA's Regulation Filing Applications (RFA), the NYSE's Electronic Filing Platform (EFP) and/or the Securities Industry Automation Corporation (SIAC). Beginning with the May 15, 2008 short interest reporting settlement date, firms must report short interest positions in all NASDAQ, Amex, NYSE, ARCA and OTC equity securities, as well as other listed securities not reported to another SRO, to FINRA using RFA (<https://regfiling.finra.org>). RFA will be the only system for reporting short interest positions to FINRA in compliance with NASD Rule 3360 and Incorporated NYSE Rule 421; consequently, firms will no longer be able to use EFP or SIAC to file their short interest positions.

Concurrent with the implementation of the consolidated short interest collection process, firms will be required to file short interest positions for all securities to FINRA, no later than 6:00 p.m. Eastern Time by the designated due date. FINRA will then provide aggregated short interest data for all securities to the respective exchanges on one uniform date at the end of each short interest reporting cycle for dissemination purposes. This combined schedule will lengthen the short interest publication schedule currently in effect for Amex, NYSE and ARCA securities. See Attachment A for an updated short interest reporting schedule for May 2008 through December 2008.⁴

Prior to submitting a short interest position in an Amex, NYSE or ARCA security, firms must remove all spaces, special characters and lowercase letters from the issue symbol, as they are not currently accepted by RFA. Refer to the table below for some examples.

Issue symbol with spaces/ special characters	Issue symbol to be reported through RFA
ABC PRA	ABCPRA
ABC.PRA	ABCPRA
ABC.PR.A	ABCPRA
ABC\$A	ABCPRA
ABCpA	ABCPRA

Firms that do not have access to RFA should complete the appropriate entitlement forms, which can be found at www.finra.org/RegulatorySystems/FINRAEntitlementProgram/FormsConfirmationPackets/index.htm. Questions regarding the entitlement forms or process should be directed to the FINRA Entitlement Group at (301) 869-6699.

Questions regarding how to file short interest positions using RFA should be directed to the Short Interest Section of the Market Regulation Department at (240) 386-5126.

Exchange/Market Codes in Short Interest Reports

As discussed in *Notice to Members 06-20*, the use of accurate exchange/market codes is mandatory in a firm's short interest filing, and firms must include an exchange/market code for every security and short position in each filing. The exchange/market code must reflect the primary exchange or market in the United States on which the security is listed as of the designated settlement date. The exchange or market on which the short sale transactions that comprise the short interest positions were executed is not relevant and should not be considered.

Beginning with the May 15, 2008 reporting settlement date, the "Z" (Other) exchange/market code will be eliminated from RFA and firms will no longer be able to designate the exchange/market code of "Other" for any symbols in their short interest filings. Any issue symbols designated with a "Z" exchange/market code will be rejected by RFA and removed from the firm's short interest filing; consequently, firms will be required to resubmit the symbol with the proper market/exchange code. Failure to do so will cause the position to be omitted from the firm's short interest filing with FINRA and may result in a violation of NASD Rule 3360 or Incorporated NYSE Rule 421. Additionally, firms should note that for a temporary period, beginning with the May 15, 2008 short interest reporting settlement date, the only exchange/market codes that will be accepted by RFA are as follows:

Exchange/Market Code	Exchange/Market
A	New York Stock Exchange
B	American Stock Exchange
E	NYSE Arca
R	NASDAQ
S	Over-the-Counter

Until further notice, firms that maintain reportable short interest positions in securities that have a primary listing on any of the below-listed exchanges or markets must compile such positions in a spreadsheet.

Exchange/Market Code	Exchange/Market
C	Chicago Stock Exchange
D	Philadelphia Stock Exchange
F	Boston Stock Exchange
G	National Stock Exchange
I	International Securities Exchange
K	CBOE

The spreadsheet must contain the following data elements for each security:

- exchange/market code,
- CUSIP number,
- issue symbol,
- security name, and
- reportable short interest position.

In addition, the spreadsheet file should identify the relevant short interest reporting settlement date, as well as the reporting firm's NSCC number, CRD number and SEC number. This spreadsheet must be sent via email to ShortInterest@finra.org by the designated due date for the relevant short interest cycle.

Testing Relating to the Consolidation of Short Interest

FINRA recognizes that the consolidation of the collection of short interest reports will require firms to make modifications to their systems. Firms will have an opportunity to test their program changes from April 14, 2008 through May 2, 2008, using the RFA test site at <https://regfilingtest.finra.org>. Please refer to the RFA Message Center, <https://regfiling.finra.org>, for further information about testing. Firms that encounter technical problems, or otherwise require assistance, should contact the FINRA Help Desk at (800) 321-6273.

Endnotes

- 1 The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated, including NYSE Rule 421. The incorporated NYSE Rules apply solely to members of FINRA that are also members of the NYSE. These firms must also comply with NASD Rules.
- 2 Short positions to be reported are those resulting from short sales as the term is defined in SEC Rule 200(a) of Regulation SHO, subject to certain limited exceptions.
- 3 See *Intermarket Surveillance Group Notice to Members ISG 2007-01* (May 15, 2007).
- 4 A schedule of FINRA's designated settlement dates, as well as other relevant dates relating to short interest reporting, is available at www.finra.org/shortinterestdates.

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ATTACHMENT A

May 2008 through December 2008 – Short Interest Reporting Schedule

Settlement Date	Due Date	Exchange Receipt Date
May 15 (Thursday)	May 19 – 6:00 p.m. (Monday)	May 27 (Tuesday)
May 30 (Friday)	June 3 – 6:00 p.m. (Tuesday)	June 10 (Tuesday)
June 13 (Friday)	June 17 – 6:00 p.m. (Tuesday)	June 24 (Tuesday)
June 30 (Monday)	July 2 – 6:00 p.m. (Wednesday)	July 10 (Thursday)
July 15 (Tuesday)	July 17 – 6:00 p.m. (Thursday)	July 24 (Thursday)
July 31 (Thursday)	August 4 – 6:00 p.m. (Monday)	August 11 (Monday)
August 15 (Friday)	August 19 – 6:00 p.m. (Tuesday)	August 26 (Tuesday)
August 29 (Friday)	September 3 – 6:00 p.m. (Wednesday)	September 10 (Wednesday)
September 15 (Monday)	September 17 – 6:00 p.m. (Wednesday)	September 24 (Wednesday)
September 30 (Tuesday)	October 2 – 6:00 p.m. (Thursday)	October 9 (Thursday)
October 15 (Wednesday)	October 17 – 6:00 p.m. (Friday)	October 24 (Friday)
October 31 (Friday)	November 4 – 6:00 p.m. (Tuesday)	November 11 (Tuesday)
November 14 (Friday)	November 18 – 6:00 p.m. (Tuesday)	November 25 (Tuesday)
November 28 (Friday)	December 2 – 6:00 p.m. (Tuesday)	December 9 (Tuesday)
December 15 (Monday)	December 17 – 6:00 p.m. (Wednesday)	December 24 (Wednesday)
December 31 (Wednesday)	January 5, 2009 – 6:00 p.m. (Monday)	January 12, 2009 (Monday)

All Times: Eastern Time

New Member Application

FINRA Implements New Electronic Form NMA Filing Requirement

Effective Date: February 29, 2008

Implementation Date: June 26, 2008

Executive Summary

Beginning June 26, 2008, all applicants for FINRA membership must use the revised online Form NMA and comply with NASD Rule 1013 (New Member Application and Interview) as amended. The rule change was filed for immediate effectiveness on February 29, 2008. The text of NASD Rule 1013 as amended is set forth in Attachment A.

Questions regarding this *Notice* may be directed to Matthew E. Vitek, Counsel, Sales Practice Policy, at (202) 728-8481; or Allison Reid, Associate Director, Next Generation Examinations Program, at (212) 858-4418.

Questions regarding technical requirements and the Form NMA may be directed to FINRA's Gateway Call Center at (301) 590-6500.

Background and Discussion

In an effort to streamline the membership application process and make it more efficient, FINRA recently required membership applicants to complete and submit electronically, via the Electronic Filing System (EFS), FINRA's standardized membership application form (Form NMA). Previously, NASD Rule 1013 required Form NMA and other required application materials to be filed with the Department of Member Regulation (Department) at the district office in the district in which the applicant intended to have its principal place of business. Although Form NMA was forwarded electronically to the district offices, applicants still had to submit certain required application materials—such as Form BD,

March 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- New Member Application

Referenced Rules & Notices

- NASD Rule Series 1010
- NASD Rule 1012
- NASD Rule 1013
- NASD Rule 1014

fingerprint cards of associated persons, the new member assessment report, FINRA entitlement forms and the membership application fee—via first-class mail, overnight courier or hand delivery.¹

NASD Rule 1013 will now require that an application be filed directly with the Department. Additionally, FINRA will require applicants to send all hard-copy application materials to a central location within the Department. NASD Rule 1013 also eliminates the requirement that applicants submit the membership application fee by physical check. Instead, FINRA will require applicants to pay the fees electronically.

FINRA also amended the NASD Rule Series 1010 (Membership Proceedings) to reflect FINRA's change in corporate name and to otherwise delete references to "the Association." A copy of the rule text is contained in Attachment A.

Further outlined in this *Notice* are the details regarding the changes to the electronic application process and how to complete the revised Form NMA.

New Form NMA Structure

FINRA is changing Form NMA from a static electronic document to an interactive, user-friendly document that will provide a more tailored application experience. Additionally, FINRA is restructuring both the electronic Form NMA and the process pursuant to which application fees, forms and documents are filed. These changes represent FINRA's continuing emphasis on streamlining the capture of information from new member applicants and increasing clarity to applicants regarding the required information and documentation.

The revised Form NMA will consist of eight major sections:

- Section I. General Information
- Section II. Business Lines
- Section III. Personnel
- Section IV. Net Capital and Sources of Funding
- Section V. Contractual and Business Arrangements
- Section VI. Policies and Procedures
- Section VII. Facilities
- Section VIII. Recordkeeping

This restructuring classifies the information in the revised Form NMA into groups based on logical relationships, which creates a more user-friendly application while preserving FINRA's ability to analyze the application pursuant to the "Standards for Admission" in NASD Rule 1014. The restructuring, however, does not change the information applicants must submit pursuant to NASD Rule 1013 during the application process or the standards set forth in NASD Rule 1014 for granting an applicant's membership application. You may download a PDF of a blank, revised Form NMA at www.finra.org/BecomeAMember/SampleNMA.

Important Form NMA Features

The revised Form NMA will also capture the same types of information that are required under the currently available Form NMA; however, the increased level of detail required in the revised Form NMA will help the applicant file a more complete application with the initial submission and thus allow FINRA to conduct a more timely evaluation and make fewer information requests of the applicant during the course of the review.

The revised Form NMA is also designed to retrieve certain information from Forms BD and U4 filed by the applicant, including business lines, ownership, and associated persons. Therefore, it is important that this information be complete and accurate at the time the revised Form NMA is filed and updated as appropriate during the course of the application review process.

Participant Guide

To help prospective applicants become familiar with the revised Form NMA, FINRA has updated the New Membership Application Form NMA Participant Guide (Guide). This Guide provides important information on the filing process, detailed instructions on using and navigating the Form, as well as guidance on technical issues. The Guide does not, however, provide advice regarding the sufficiency of information submitted in the application, including whether the filing is substantially complete. The updated Guide is available at www.finra.org/BecomeAMember/NMAParticipantGuide.

Application Process Changes

FINRA is also altering the application process to require applicants to first fund a general application account, then submit required hard-copy forms, and then complete and submit Form NMA. These application process changes also will be implemented on June 26, 2008, the date applicants must begin using the revised Form NMA. These changes—which are briefly described below and in the sequence to be followed by the applicant—are covered in detail in the Guide.

1. **Funding the Applicant's CRD Account.** Applicants will be required to fund, via electronic funds transfer, the general account from which the application, examination, state and other registration fees will be drawn. Initial payment of the application fee and funding for the Applicant's CRD account will no longer be made by hard-copy checks.
2. **Submit Hard-Copy Forms.** Applicants will need to complete and submit to CRD at the same time the following forms: Notarized Form BD, the appropriate Entitlement Forms, Member Firm Email Notification Contact Form, and the New Member Assessment Report. Information on each of these forms is available on FINRA's Web site:
 - Form BD: www.finra.org/CRD/FormBD
 - FINRA Entitlement Forms
 - i Entitlement Agreement: www.finra.org/EntitlementAgree
 - ii Entitlement Forms for New Member Application, Web CRD and Regulation Filing: www.finra.org/EntitlementForms
 - Email Notification Contact Form: www.finra.org/BecomeAMember/EmailNotification
 - New Member Assessment Report: www.finra.org/BecomeAMember/Assessment

Applicants are required to submit the hard-copy forms together to the following address:

FINRA
Attn: Registration and Disclosure Department
9509 Key West Avenue
Rockville, MD 20850

Applicants will be required to complete and submit these forms before being granted entitlements to access and begin completion of Form NMA. Also, fingerprint cards will continue to be required in hard-copy form and should be submitted directly to CRD. More information is available at http://www.finra.org/CRD/E-Fingerprint_Vendors.

3. **Access Forms via the Firm Gateway.** The FINRA Firm Gateway provides consolidated access to many FINRA applications, including CRD and Form NMA. Upon notification that system entitlements have been granted (*i.e.*, following FINRA processing the applicant's hard-copy forms mentioned in 2. above), FINRA will provide applicants access to the Firm Gateway and they will be able to electronically submit: (i) Forms U4 for proposed associated persons; (ii) Forms BR for each proposed location; (iii) amended Form BD, as appropriate; and (iv) Form NMA. **Note that only the revised Form NMA, not the current Form NMA, is accessible via the Firm Gateway.**
4. **Confirmation Page.** Once the applicant completes and successfully submits the electronic Form NMA and all required attachments, the EFS will generate a confirmation page, which must be retained for future reference.

Applicants must begin using the revised Form NMA on June 26, 2008, as the current Form NMA will not be accessible to new filers after that date. However, new member applications submitted prior to that date should use the current Form NMA.

Endnote

- 1 See NASD Rule 1012(a)(2), which requires an applicant to file application documents and information by first class mail, overnight courier or hand delivery where FINRA has not otherwise prescribed an electronic or alternative filing process.

ATTACHMENT A

New language is underlined; deletions are in brackets.

* * * * *

1010. Membership Proceedings

1011. Definitions

Unless otherwise provided, terms used in the Rule 1010 Series shall have the meaning as defined in Rule 0120.

(a) “Applicant”

The term “Applicant” means a person that applies for membership in [the NASD] FINRA under Rule 1013 or a member that files an application for approval of a change in ownership, control, or business operations under Rule 1017.

(b) “Associated Person”

The term “Associated Person” means: (1) a natural person registered under NASD Rules; or (2) a sole proprietor, or any partner, officer, director, branch manager of the Applicant, or any person occupying a similar status or performing similar functions; (3) any company, government or political subdivision or agency or instrumentality of a government controlled by or controlling the Applicant; (4) any employee of the Applicant, except any person whose functions are solely clerical or ministerial; (5) any person directly or indirectly controlling the Applicant whether or not such person is registered or exempt from registration under [NASD] the FINRA By-Laws or NASD Rules; (6) any person engaged in investment banking or securities business controlled directly or indirectly by the Applicant whether such person is registered or exempt from registration under [NASD] the FINRA By-Laws or NASD Rules; or (7) any person who will be or is anticipated to be a person described in (1) through (6) above.

(c) “Department”

The term “Department” means the Department of Member Regulation of [NASD Regulation] FINRA.

(d) “Director”

The term “Director” means a member of the [NASD] FINRA Regulation Board.

(e) “district”

The term “district” means a district established by the [NASD] FINRA Regulation Board.

(f) “district office”

The term “district office” means an office of [NASD Regulation] FINRA located in a district.

(g) “FINRA Board”

The term “FINRA Board” means the Board of Governors of FINRA.

(h) FINRA Regulation Board”

The term “FINRA Regulation Board” means the Board of Directors of FINRA Regulation.

([g]i) “Governor”

The term “Governor” means a member of the [NASD] FINRA Board.

([h]j) “Interested[NASD] FINRA Staff”

The term “Interested[NASD] FINRA Staff” means an employee who directly participates in a decision under Rule 1014 or 1017, an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017, the District Director for the relevant district, and the head of the Department.

([i]k) “Material change in business operations”

No Change.

[(j) “NASD Board”]

[The term “NASD Board” means the Board of Governors of the NASD.]

[(k) “NASD Regulation Board”]

[The term “NASD Regulation Board” means the Board of Directors of NASD Regulation.]

(l) No Change.

(m) “sales practice event”

The term “sales practice event” means any customer complaint, arbitration, or civil litigation that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to [the Association] FINRA.

(n) No Change.

IM-1011-1. Safe Harbor for Business Expansions

This interpretive material concerns the types of business expansions that will not require a member to submit a Rule 1017 application to obtain [NASD's] FINRA's approval of the expansion. This safe harbor applies to: (1) firms that do not have a membership agreement, and (2) firms that have a membership agreement that does not contain a restriction on the factors listed below.

The safe harbor is not available to a member that has a membership agreement that contains a specific restriction as to one or more of the factors listed below. In that case, the agreement takes precedence because [NASD] FINRA has determined that a particular restriction should apply as to one or more of the factors, and [NASD] FINRA has issued a decision with a rationale for that restriction. Similarly, the safe harbor also does not apply if the member has a membership agreement that permits expansion beyond the limits set forth below (e.g., an Applicant requests and obtains approval for ten registered representatives in the first six months with an additional ten registered representatives in the next year); in such case, [NASD] FINRA has specifically considered the firm's expansion plans and approved them.

The safe harbor is not available to any member that has disciplinary history. For purposes of this Interpretation, "disciplinary history" means a finding of a violation by the member or a principal of the member in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the following provisions (or a comparable foreign provision) or rules or regulations thereunder: violations of the types enumerated in Section 15(b)(4)(E) of the Securities Exchange Act of 1934; Section 15(c) of the Securities Exchange Act of 1934; Section 17(a) of the Securities Act of 1933; SEC Rules 10b-5 and 15g-1 through 15g-9; NASD Rules 2110 (only if the finding of a violation is for unauthorized trading, churning, conversion, material misrepresentations or omissions to a customer, front-running, trading ahead of research reports or excessive markups), 2120, 2310, 2330, 2440, 3010 (failure to supervise only), 3310, and 3330; and MSRB Rules G-19, G-30, and G-37(b) & (c).

For those firms to which the safe harbor is available, the following types of expansions are presumed not to be a material change in business operations and therefore do not require a Rule 1017 application. For any expansion beyond these limits, a member should contact its district office prior to implementing the change to determine whether the proposed expansion requires an application under Rule 1017. Expansions in each area are measured on a rolling 12-month basis; members are required to keep records of increases in personnel, offices, and markets to determine whether they are within the safe harbor.

“Associated Persons involved in sales” includes all Associated Persons, whether or not registered, who are involved in sales activities with public customers, including sales assistants and cold callers, but excludes clerical, back office, and trading personnel who are not involved in sales activities.

Number of Associated Persons Involved in Sales	Safe Harbor — Increase Permitted Within One Year Period Without Rule 1017 Application
1–10	10 persons
11 or more	10 persons or a 30 percent increase, whichever is greater
Number of Offices (registered or unregistered)	
1–5	3 offices
6 or more	3 offices or a 30 percent increase, whichever is greater
Number of Markets Made	
1–10	10 markets
11 or more	10 markets or a 30 percent increase, whichever is greater

1012. General Provisions

(a) Filing by Applicant or Service by [NASD] FINRA

(1) No change.

(2) Except where [NASD] FINRA has otherwise prescribed an electronic or alternative filing process, an Applicant may file an application or any document or information requested under the Rule 1010 Series by first-class mail, overnight courier, or hand delivery. If the Department and the Applicant agree, the Applicant also may file a requested document or information by facsimile.

(3) [NASD] FINRA shall serve a notice or decision issued under the Rule 1010 Series by first-class mail on the Applicant or its counsel, unless a Rule specifies a different method of service.

(4) For purposes of the Rule 1010 Series, service by [NASD] FINRA or filing by an Applicant shall be deemed complete as follows:

(A) through (E) No change.

(b) Lapse of Application

(1) No change.

(A) through (C) No change.

(2) If an Applicant wishes to continue to seek membership or approval of a change in ownership, control, or business operations, then the Applicant shall be required to submit a new application and fee under Rule 1013 or 1017, respectively. [NASD] FINRA shall not refund any fee for a lapsed application.

(c) Ex Parte Communications

(1) The prohibitions against ex parte communications shall become effective when [NASD] FINRA staff has knowledge that an Applicant intends to file a written request for review by the National Adjudicatory Council under Rule 1015.

(2) Unless on notice and opportunity for an Applicant and Interested [NASD] FINRA Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by NASD Rules:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested [NASD] FINRA Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or a[n NASD] FINRA employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or a[n NASD] FINRA employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested [NASD] FINRA Staff an ex parte communication relevant to the merits of that proceeding.

(3) A Governor, a member of the National Adjudicatory Council or a Subcommittee thereof, or a[n NASD] FINRA employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) though (C) No change.

(d) Recusal or Disqualification

A Governor or a member of the National Adjudicatory Council or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

(1) The Chair of the [NASD] FINRA Board shall have authority to direct the disqualification of a Governor, and a majority of the Governors of the [NASD] FINRA Board excluding the Chair shall have authority to direct the disqualification of the Chair of the [NASD] FINRA Board.

(2) No change.

(e) No change.

1013. New Member Application and Interview

(a) Filing of Application

(1) How to File

An Applicant for [NASD] FINRA membership shall file its application in the manner prescribed by [NASD] FINRA with the Department of Member Regulation (“the Department”) [at the district office in the district in which the Applicant intends to have its principal place of business as defined in Rule 1011(l).] An Applicant shall submit an application that includes:

(A) through (B) No change.

(C) an original [NASD] FINRA-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2;

(D) No change.

(E) [a check for] payment of the appropriate fee;

(F) a detailed business plan that adequately and comprehensively describes all material aspects of the business that will be, or are reasonably anticipated to be, performed at and after the initiation of business operations, including future business expansion plans, if any, and includes:

(i) through (iii) No change.

(iv) the intended location of the Applicant’s principal place of business and all other offices, if any, whether or not such offices would be required to be registered under [the] NASD Rules[of the Association], and the names of the persons who will be in charge of each office;

(v) through (xii) No change.

(G) through (R) No Change.

(S) a[n NASD] FINRA Entitlement Program Agreement and Terms of Use and a[n NASD] FINRA Member Firm Account Administrator Entitlement Form.

(2) Uniform Registration Forms

Upon approval of the Applicant's [NASD] FINRA Member Firm Account Administrator Entitlement Form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under NASD Rules, any amendments to its Forms BD or U4, and any Form U5 electronically via Web CRD.

(3) Rejection of Application That Is Not Substantially Complete

If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefore. [NASD] FINRA shall refund the application fee, less \$350, which shall be retained by [NASD] FINRA as a processing fee. If the Applicant determines to continue to seek membership, the Applicant shall submit a new application and fee under this Rule.

(4) No change.

(b) Membership Interview**(1) Requirement for Interview**

Before the Department serves its decision on an application for new membership in [the Association] FINRA, the Department shall conduct a membership interview with a representative or representatives of the Applicant.

(2) through (4) No change.

(5) Updated Financial Documents

On or before the date of the membership interview, the Applicant shall file an updated trial balance, balance sheet, supporting schedules, and computation of net capital. The Applicant shall prepare such documents as of a date that is within 45 days before the date of the membership interview, unless the Applicant and the Department agree on a longer period. The Applicant shall promptly notify the Department in writing of any material adverse change in its financial condition that occurs before a decision constituting final action of [the Association] FINRA is served on the Applicant.

(6) through (7) No change.

1014. Department Decision

(a) Standards for Admission

After considering the application, the membership interview, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall determine whether the Applicant meets each of the following standards:

(1) through (9) No change.

(10) The Applicant has a supervisory system, including written supervisory procedures, internal operating procedures (including operational and internal controls), and compliance procedures designed to prevent and detect, to the extent practicable, violations of the federal securities laws, the rules and regulations thereunder, and NASD Rules. In evaluating the adequacy of a supervisory system, the Department shall consider the overall nature and scope of the Applicant's intended business operations and shall consider whether:

(A) through (B) No change.

(C) the Applicant has identified the functions to be performed by each Associated Person and has adopted procedures to assure the registration with [NASD] FINRA and applicable states of all persons whose functions are subject to such registration requirements;

(D) through (J) No change.

(11) through (12) No change.

(13) [NASD] FINRA does not possess any information indicating that the Applicant may circumvent, evade, or otherwise avoid compliance with the federal securities laws, the rules and regulations thereunder, or NASD Rules.

(14) No change.

(b) No change.

(c) Decision

(1) through (2) No change.

(3) Failure to Serve Decision

If the Department fails to serve a decision within 180 days after the filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the [NASD] FINRA Board requesting that the [NASD] FINRA Board direct the Department to serve a decision. Within seven days after the filing of such a request, the [NASD] FINRA Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the [NASD] FINRA Board may extend the 180 day time limit by not more than 90 days.

(d) No change.

(e) Service and Effectiveness of Decision

The Department shall serve its decision and the membership agreement on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of [NASD] FINRA is issued under Rule 1015 or 1016, unless otherwise directed by the National Adjudicatory Council, [the NASD] FINRA Board, or the Commission.

(f) Effectiveness of Restriction

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

(1) removed or modified by a decision constituting final action of [the Association] FINRA issued under Rule 1015, 1016, or 1017;

(2) stayed by the National Adjudicatory Council, the [NASD] FINRA Board, or the Commission.

(g) Final Action

Unless the Applicant files a written request for a review under Rule 1015, the Department's decision shall constitute final action by [NASD] FINRA.

1015. Review by National Adjudicatory Council

(a) through (b) No change.

(c) Membership Application Docket

The Department shall promptly record in [the Association's] FINRA's membership application docket each request for review filed with the National Adjudicatory Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(d) through (g) No Change.

(h) Abandonment of Request for Review

If an Applicant fails to specify the grounds for its request for review under Rule 1015(a)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the National Adjudicatory Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of [the Association] FINRA. Upon a showing of good cause, the National Adjudicatory Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

(i) No change.

(j) Decision

(1) through (2) No change.

(3) Issuance of Decision After Expiration of Call for Review Periods

The National Adjudicatory Council shall provide its proposed written decision to the [NASD] FINRA Board. The [NASD] FINRA Board may call the membership proceeding for review pursuant to Rule 1016. If the [NASD] FINRA Board does not call the membership proceeding for review, the proposed written decision of the National Adjudicatory Council shall become final. The National Adjudicatory Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The National Adjudicatory Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of [the Association] FINRA for purposes of SEC Rule 19d-3, unless the National Adjudicatory Council remands the membership proceeding.

(4) Failure to Issue Decision

If the National Adjudicatory Council fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the [NASD] FINRA Board requesting that the [NASD] FINRA Board direct the National Adjudicatory Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after the filing of such a request, the [NASD] FINRA Board shall direct the National Adjudicatory Council to serve its written decision immediately or to show good cause for an extension of time. If the National Adjudicatory Council shows good cause for an extension of time, the [NASD] FINRA Board may extend the 15 day time limit by not more than 15 days.

1016. Discretionary Review by [NASD] FINRA Board

(a) Call For Review By Governor

A Governor may call a membership proceeding for review by the [NASD] FINRA Board if the call for review is made within the period prescribed in paragraph (b).

(b) 15 Day Period; Waiver

A Governor shall make his or her call for review at the next meeting of the [NASD] FINRA Board that is at least 15 days after the date on which the [NASD] FINRA Board receives the proposed written decision of the National Adjudicatory Council. By unanimous vote of the [NASD] FINRA Board, the [NASD] FINRA Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the [NASD] FINRA Board then in office, the [NASD] FINRA Board may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review At Next Meeting

If a Governor calls a membership proceeding for review within the time prescribed in paragraph (b), the [NASD] FINRA Board shall review the membership proceeding not later than the next meeting of the [NASD] FINRA Board. The [NASD] FINRA Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(d) Decision of [NASD] FINRA Board, Including Remand

After review, the [NASD] FINRA Board may affirm, modify, or reverse the proposed written decision of the National Adjudicatory Council. Alternatively, the [NASD] FINRA Board may remand the membership proceeding with instructions. The [NASD] FINRA Board shall prepare a written decision that includes all of the elements described in Rule 1015(j)(2).

(e) Issuance of Decision

The [NASD] FINRA Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of [the Association] FINRA for purposes of SEC Rule 19d-3, unless the [NASD] FINRA Board remands the membership proceeding.

1017. Application for Approval of Change in Ownership, Control, or Business Operations

(a) through (f) No Change.

(g) Department Decision

(1) through (2) No change.

(3) If the Department fails to serve a decision within 180 days after filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the [NASD] FINRA Board requesting that the [NASD] FINRA Board direct the Department to issue a decision. Within seven days after the filing of such a request, the [NASD] FINRA Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the [NASD] FINRA Board may extend the time limit for issuing a decision by not more than 30 days.

(4) No change.

(h) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of [NASD] FINRA is issued under Rule 1015 or 1016, unless otherwise directed by the National Adjudicatory Council, the [NASD] FINRA Board, or the Commission.

(i) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the National Adjudicatory Council pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such review, and the National Adjudicatory Council's decision shall be subject to discretionary review by the [NASD] FINRA Board pursuant to Rule 1016. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by [NASD] FINRA.

(j) through (k) No Change.

* * * * *

1019. Application to Commission for Review

A person aggrieved by final action of [the Association] FINRA under the Rule 1010 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of [the Association] FINRA, unless the Commission otherwise orders.

* * * * *

Trade Reporting Notice

OTC Equity Security Transactions

Revised Policy for Disseminating Reports of Fewer Than 100 Shares

Effective Date: April 21, 2008

Executive Summary

Effective April 21, 2008, for OTC equity securities¹ that traded at or above \$175 per share during the fourth calendar quarter of 2007, FINRA will change the “unit of trade” from 100 shares to one share (such that transactions in these securities for fewer than 100 shares will no longer be considered “odd-lot transactions” for dissemination purposes), and will disseminate last sale information for all reported transactions in these securities via the Trade Data Dissemination Service (TDDS) feed. Going forward, FINRA will review trading activity at the end of each calendar quarter to determine whether additional OTC equity securities meet the stated dissemination criteria.

Questions regarding this *Notice* and FINRA’s OTC equity securities dissemination policy may be directed to FINRA Operations at (866) 776-0800.

Background

Pursuant to FINRA’s dissemination protocols, only reports of transactions that meet the “unit of trade” test are publicly disseminated. As a general matter, OTC equity securities have a unit of trade of 100 shares, and while transactions of fewer than 100 shares (commonly referred to as “odd-lot transactions”) in such securities are reported to FINRA,² they are not publicly disseminated via the TDDS feed.

March 18, 2008

Key Topic(s)

- Odd-Lots
- OTC Reporting Facility
- OTC Equity Securities
- Trade Reporting

Referenced Rules & Notices

- NASD Rule 6610
- NASD Rule 6620

FINRA believes that, consistent with the dissemination protocols for NMS stocks, disseminating last-sale information for odd-lot transactions would provide minimal market value, particularly with respect to low-priced OTC equity securities. However, with respect to high-priced OTC equity securities, many (if not all) transactions may be for fewer than the standard unit of trade of 100 shares. Thus, information regarding trades at these levels is more valuable to the market and investors, and in fact, trading data for such securities could effectively be unavailable to market participants if only trades of 100 or more shares were disseminated.

Accordingly, FINRA disseminates last-sale information for transactions of fewer than 100 shares in a limited number of high-priced OTC equity securities today. For these securities, the unit of trade has been designated as one share, such that any transaction of one or more shares will meet the unit of trade test for that security and be disseminated. For example, if OTC Equity Security ABCD has a unit of trade of one share, a transaction of 25 shares of ABCD would meet the unit of trade test for that security and last-sale information for the transaction would be disseminated. Under past practice, the unit of trade of OTC equity securities was changed on a case-by-case basis to facilitate the dissemination of trades of fewer than 100 shares. Typically, such changes were made in connection with securities trading above \$200 per share.

On December 19, 2007, FINRA filed with the Securities and Exchange Commission for immediate effectiveness a proposed rule change to adopt a more uniform policy regarding the dissemination of trade information for OTC equity securities.³ Specifically, for all OTC equity securities that traded at or above \$175 per share during the fourth calendar quarter of 2007, FINRA will designate the unit of trade as one (such that transactions in these securities for fewer than 100 shares will no longer be considered odd-lot transactions for dissemination purposes) and will disseminate last-sale information for all transactions of one or more shares in such securities.⁴ It is anticipated that the unit of trade for the vast majority of OTC Equity Securities will remain 100 shares.

Attached to this *Notice* is a list of the OTC equity securities that meet the stated dissemination criteria. This list is also available on the OTCBB Web site at www.otcbb.com. All OTC equity securities for which the unit of trade has previously been designated as one also are included in this list and will remain on this list regardless of whether they meet the new dissemination criteria.

Going forward, FINRA will update the list of OTC equity securities at the end of each calendar quarter based on that quarter's trading activity using the above criteria. While OTC equity securities may be added to the list, they generally will not be removed.⁵ FINRA believes that retaining OTC equity securities on the list, rather than re-evaluating each security's eligibility every calendar quarter, will achieve greater transparency and consistency with respect to trade data dissemination.

The revised dissemination policy is effective as of April 21, 2008.

Endnotes

- 1 NASD Rule 6610(d) defines OTC Equity Security as “any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting,” which effectively includes all securities quoted on the OTC Bulletin Board (OTCBB), securities quoted on the Pink Sheets, and securities traded but not otherwise quoted in a quotation medium in the OTC equity market.
- 2 See NASD Rule 6620.
- 3 See Securities Exchange Act Release No. 57143 (January 14, 2008), 73 FR 3783 (January 22, 2008) (notice of filing and immediate effectiveness of SR-FINRA-2007-034). The proposed rule change proposed to amend FINRA’s trade report dissemination policy only and did not require amendments to any rules.
- 4 Trading volume for OTC equity securities that meet the stated dissemination criteria and are currently not disseminated on a real-time basis will be included in the end-of-day aggregate volume.
- 5 FINRA may determine that an OTC equity security should be removed from the list if, *e.g.*, there has been a significant corporate action, such as a stock split, that has changed the pricing in the security such that a unit of trade of one is no longer appropriate, or if the OTC equity security was erroneously included on the list as a result of inaccurate prices included in the trade report(s) that qualified the security for dissemination of last-sale transaction information.

Attachment A

Symbol	Security Name	Market Category
ABKH	American Bank Holdings, Inc. (DE) New Common Stock	U
ACDEF	Acrodea Inc, Tokyo Ordinary Shares (Japan)	u
ACGFF	Accordia Golf Co Ltd Ordinary Shares (Japan)	u
ACNWF	Acca Networks Co Ltd Tokyo Ordinary Shares (Japan)	u
ACSZF	Access Company, Ltd. Tokyo (Japan) Ordinary Shares	u
ACXIF	Acciona Sa Ordinary Shares	u
ADKT	Adirondack Tr Co Common Stock	u
ADRS	Adrian Steel Co Common Stock	u
ADWYF	Adways Co Ltd Ordinary Shares (Japan)	u
AEICF	Aeria Inc Tokyo Ordinary Shares (Japan)	u
AENLF	Arsenal Holdings Plc Ordinary Shares (United Kingdom)	u
AEPRF	Ardepro Co Ltd Tokyo Ordinary Shares (Japan)	u
AERAY	Aeroflot Russian International Airlines Sponsored 144A GDR	u
AFAP	A F A Protective Sys Inc Common Stock	u
AFIPA	Amfi Corp Common Stock	u
AFNL	AmTrust Financial Corporation Common Stock	u
AHIUF	Asahi Industries Co Ltd Tokyo Ordinary Shares (Japan)	u
AKBLF	Alk-Abello A/S Shares -B- (Denmark)	u
ALIZF	Allianz Ag Muenchen Namen-Akt Vinkuliert Shares (Germany)	u
ALNKF	Arealink Co Ltd Tokyo Ordinary Shares (Japan)	u
ALXCF	Aplix Corp Tokyo Ordinary Shs (Japan)	u
AMFYF	Amtssparekassn Fyn Dkk100 Ordinary Shares	u
AMGSF	Asset Managers Co Ltd Tokyo Ordinary Shares (Japan)	u
AMGXF	Anges MG Inc Ordinary Shares	u
AMKAF	A.P. Moeller-Maersk A/S A Shares (Denmark)	u
AMKBF	A.P. Moeller-Maersk A/S B Shares (Denmark)	u
AMPJF	Amorepacific Corporation Ordinary Shares (South Korea)	u
AMRPF	Amorepacific Corp New Ordinary Shares (South Korea)	u
AMRT	American Mart Corp Common Stock	u
AMRWF	AmorePacific Corpnew PFD SHS Non-Voting (South Korea)	u
AOMFF	Alstom Ordinary Shares Prov Regroupement (France)	u
APMSF	Apamanshop.co Ltd Tokyo Ordinary Shares	u
APNIP	Alpine Group, Inc. (The) Convertible Preferred Series A	u
AQINF	AQ Interactive Inc, Tokyo Ordinary Shares (Japan)	u
ARVCF	Areva CIP Ordinary Shares	u
ASCN	Abescon Bancorp Common Stock	u
ASHG	Ash Grove Cement Co Common Stock	u
ASHGB	Ash Grove Cement Co Class B Common Stock	u
ASNBF	Asahi National Broadcasting Co Ltd Ordinary Shares	u

Symbol	Security Name	Market Category
ASTXF	Astmax Co Ltd, Tokyo Ordinary Shares (Japan)	u
ASUKF	Asukanet Co Ltd, Hiroshima Ordinary Shares (Japan)	u
ASXOF	Asax Co Ltd Tokyo Ordinary Shares (Japan)	u
ATCD	Altair Corp Delaware Common Stock	u
ATZNF	Artiza Networks Inc Tachikawa Ordinary Shares	u
AUNCF	Aun Consulting Inc, Tokyo Ordinary Shares (Japan)	u
AVCNF	Advance Create Co Ltd Ordinary Shares	u
AVLTF	Adval Tech Hldg Ord B Ordinary Shares	u
AVMEF	Advanced Media Inc Tokyo Ordinary Shares (Japan)	u
AVOA	Avoca Incorporated Common Stock	u
AVREF	Advance Residence Investment Corp, Tokyo Ordinary Shares (Japan)	u
AXILF	Alexandria Iron & Steel Ordinary Shares	u
AXLLF	Axell Corp Tokyo Ordinary Shares (Japan)	u
BALXF	Bals Corp Ordinary Shares	u
BBICP	Blockbuster Inc. 7.5% Perpetual Convertible Preferred Series	u
BBPFF	Bank BPH SA Ordinary Shares (Poland)	u
BBRIF	Best Bridal Inc Tokyo Ordinary Shares (Japan)	u
BCHHF	Bucher Holding Ag Niederweningen Namen Akt. Shares (Switzerland)	u
BCKGF	Backs Group Inc Tokyo Ordinary Shares (Japan)	u
BCRTF	Baccarat SA Reg Shs (France)	u
BDIVF	Bandai Visual Co Ltd Ordinary Shares	u
BHRB	Burke & Herbert Bank & Trust Company (VA) Common Stock	U
BICMF	Bic Camera Inc Tokyo Ordinary Shares (Japan)	u
BIJBF	Bijou Brigitte Modische Access Ordinary Shares	u
BKSRF	Bank Sarasin & Cie Ordinary Shares	u
BKUT	Bank Utica NY Common Stock	U
BKUTK	Bank Utica NY Non-Voting Common Stock	U
BLHWF	Belimo Holding Ag Wetzikon Ordinary Shares	u
BLIFF	Blife Investment Corp Ordinary Shares (Japan)	u
BMPTF	Bemap Inc Ordinary Shares	u
BMRMF	Bains De Mer Et Du Cer Monaco Ordinary Shares	u
BNFTF	Benefit One Inc Tokyo Ordinary Shares (Japan)	u
BNJAF	Bank Of Japan Ord Ordinary Shares	u
BOIVF	Bollore Investissement Ordinary Shares (France)	u
BOWE	Bowles Fluidics Corporation Common Stock	u
BPMUF	Basilea Pharmaceutica Ag Basel Namen-Akt.Shares (Switzerland)	u
BPRKF	Bell Park Co Ltd Ordinary Shares	u
BRCPF	Brasilagro Cia Brasileira De Propriedades Agricolas Ordinary	u
BREJF	Bre Bank SA Ordinary Shares	u

Symbol	Security Name	Market Category
BSND	Boston Sand & Gravel Co Common Stock	u
BTCP	Bactolac Pharmaceutical, Inc. Common Stock	u
BUKCF	Burckhardt Compression Holding Ag Risch Namen Akt Shares (Switzerland)	u
BVERS	Beaver Coal Co Ltd Sbi Common Stock	u
BWEL	Boswell J G Co Common Stock	u
BYCBF	Barry Callebaut Ag Reg Ordinary Shares	u
CAOX	California Orchards Co Common Stock	u
CAUXF	Construccion Y Auxiliar De Fe Ordinary Shares	u
CBCYB	Central Bancompany Class B Non-Voting Common Stock	u
CBDCF	Cybird Co Ltd Ordinary Shares	u
CBMI	CSB Bancorp Inc Common Stock (Michigan)	u
CBPA	Canton Bancorp, Inc. (PA) Common Stock	U
CBSZF	Cybernet Systems Co Ltd Ordinary Shares	u
CCRK	Coal Creek Company (The) Common Stock	u
CCVAJ	Country Club of Virginia Inc CDT-Cap Stk	u
CEAKF	C S Create Co Ltd Tokyo Ordinary Shares (Japan)	u
CENEF	Carenet Inc, Tokyo Ordinary shares (Japan)	u
CFIN	Citizens Financial Corporation Common Stock New	u
CFNCF	Cie Financiere Tradition Lausanne Act, Shares (Switzerland)	u
CFTKF	C4 Technology Inc, Tokyo Ordinary Shares (Japan)	u
CGPVF	Compagnie Generale De Geophysique Veritas (Ordinary Shares)	u
CHMMF	Cheil Communications Inc Ordinary Shares	u
CIEUF	Camaieu SA ACT	u
CIVPF	Crescendo Investment Corp, Tokyo Ordinary Shares (Japan)	u
CJPRF	Central Japan Railway Co Ordinary Shares	u
CJTKF	Chintai Jutaku News Co Ltd Tokyo Ordinary Shares (Japan)	u
CLFQM	Cleveland-Cliffs Inc. 3.25% Perp. Preferred Conv.	u
CMICF	CMIC Co Ltd Ordinary Shares	u
CMNFY	Corimon C.A. Sponsored ADR (Venezuela)	u
CNIN	Conbraco Inds Inc Common Stock	u
CNND	Canandaigua National Corporation Common Stock	U
COJPF	Coca Cola Central Japan Company Ltd Ordinary Shares	u
CPYOF	Chip One Stop Inc Yokohama Ordinary Shares (Japan)	u
CRDPF	Creed Corp Tokyo Ordinary Shares	u
CRFKF	Creed Office Investment Corp, Tokyo Ordinary Shares (Japan)	u
CSTW	Central Steel & Wire Co Common Stock	u
CUYTF	Colruyt Sa Halle Etablissee Fr Ordinary Shares	u
CYBFF	Cyber Firm Inc Naha Ordinary Shares (Japan)	u
CYBJF	Cyber Communications Inc Ordinary Shares	u
CYBRF	Cyberstep Inc, Tokyo Ordinary Shares (Japan)	u

Symbol	Security Name	Market Category
CYBZF	Cybozu Ordinary Shares	u
CYGIF	Cyber Agent Ltd Ordinary Shares	u
CYHC	Country Bank Holding Company, Inc. Common Stock	u
CYRBY	Cyrela Brazil Realty SA Sponsored ADR representing Ordinary Shares	u
DAESF	Daesung Industrial Co Ltd Ordinary Shares	u
DAVVF	Da Office Investment Corp Tokyo Ordinary Shares (Japan)	u
DARSF	Digital Arts Inc Ordinary Shares	u
DBOEF	Deutsche Boerse Ag Frankfurt Am Main Namen AKT (Germany Federal Republic)	u
DCCYF	DC Chemical Co Ltd Ordinary Shares	u
DCLBF	Dr.Cl:Labo Co Ltd Ordinary Shares	u
DCTUF	DA Consortium Inc Tokyo Ordinary Shares	u
DERXF	Daelim Industria Ordinary Shares	u
DGGSF	Daehan Flour Ordinary Shares	u
DGLTF	Digitalscape Co Ltd, Tokyo Ordinary Shares (Japan)	u
DIGM	Control Chief Holdings, Inc. Common Stock	u
DKIEF	Daiseki Eco Solution Co Ltd Nagoya Ordinary Shares (Japan)	u
DLGEF	Digital Garage Inc Ordinary Shares	u
DLKGF	Delek Group Ltd Ordinary Shares	u
DNACF	Dena Co Ltd Tokyo Ordinary Shares (Japan)	u
DNEAP	Dune Energy, Inc. Senior Preferred Conv 10%	u
DNTUF	Dentsu Inc Tokyo Ordinary Shares	u
DNVB	Denver Bankshares Inc Common Stock	u
DOHIF	Doosan Heavy Industries & Construction Company, Ltd. (South Korea) Ordinary Shares	u
DOSAF	Doosan Co Ltd Ordinary Shares (South Korea)	u
DPRTF	Dip Corp Tokyo Ordinary Shares (Japan)	u
DRECF	Drecom Co Ltd, Kyoto Ordinary Shares (Japan)	u
DRIRF	Dream Incubator Inc Ordinary Shares	u
DTLNF	Datalinks Corp, Tokyo Ordinary Shares (Japan)	u
DUAVF	Dassault Aviation Ord Ordinary Shares	u
DUBKF	Doubleclick Japan Inc Tokyo Ordinary Shares	u
DWANF	Dwango Co Ltd Tokyo Ordinary Shares (Japan)	u
EASVF	Easset Investment Corp., Tokyo Ordinary Shares (Japan)	u
ECLTF	eAccess, Ltd. Tokyo Ordinary Shares (Japan)	u
EGSHF	Energiedienst Holdings AG Laufenburg Namen AKT (German)	u
EJPNF	En Japan Inc Tokyo Ordinary Shares	u
EJPRF	East Japan Railway Co Ordinary Shares	u
ELFGF	Elf Gabon Act Nom Shares (Gabon)	u
ELFIF	E L Finl Corporation Ltd Ordinary Shares	u
EONAF	E On Ag Ordinary Shares	u

Symbol	Security Name	Market Category
EPlyf	EPS Company Ltd Tokyo Ordinary Shares	u
ERMAF	Eramet Ords Fgn Ordinary Shares	u
ESCF	ES Con Japan Ltd Osaka Ordinary Shares	u
ESEIF	E Seikatsu Co Ltd Tokyo Ordinary Shares (Japan)	u
ESHCF	ECash Corp, Tokyo Ordinary Shares (Japan)	u
ESSSF	Esso SA Ordinary Shares (France)	u
ETKYF	Etrade Securities Co Ltd Tokyo Ordinary Shares (Japan)	u
ETRZF	Electra Israel Ltd Ordinary Shares	u
EUPI	EUPA International Corporation New Common Stock	u
FBAK	First National Bank Alaska Common Stock	U
FBOO	First Bank of Ohio (OH) Common Stock	U
FCBN	First Citizens Bancorporation, Inc. (SC) Common Stock	U
FCHRF	Fischer Ag Schaff Georg Reg Sh Ordinary Shares	u
FCMUF	Fan Communications Inc Tokyo Ordinary Shares (Japan)	u
FCNCB	First Citizens BancShares, Inc. Common Stock, Class B	U
FCODF	Financiere De L Odet 100 Eur Par Ord Ordinary Shares	u
FCPA	Finance Co Pa Common Stock	u
FCRDF	FC Residential Investment Corp, Tokyo Ordinary Shares (Japan)	u
FCXGL	Freeport Mcmoran Copper & Gold Inc 5.5% Convertible Perpetual	u
FEGYF	First Energy Service Co Ltd, Tokyo Ordinary Shares (Japan)	u
FEIOF	Feintool International Holding Ag Lyss Reg Shares (Switzerland)	u
FIELF	Fields Corp Ordinary Shares (Japan)	u
FIETF	Fidex Corp Tokyo Ordinary Shares (Japan)	u
FINN	First National of Nebraska, Inc. Common Stock	u
FJSHF	Fujishoji Co Ltd, Osaka Ordinary Shares (Japan)	u
FJTNF	Fuji Television Network Inc Ordinary Shares	u
FKGLF	Fintech Flobal Inc Tokyo Ordinary Shares (Tokyo)	u
FLCOF	Fullcast Company Ltd Tokyo Ordinary Shares	u
FMBJ	First Menasha Bancshares Inc Common Stock	u
FMBL	Farmers & Merchants Bank (Long Beach, CA) Common Stock	U
FMCB	Farmers & Merchants Bancorp (Lodi, CA) Common Stock	U
FMIA	First Miami Bancorp Inc Common Stock	u
FNMFO	Federal National Mortgage Association Pfd Conv Ser 2004-I 5.	u
FNSE	First Natl Bk Shelby Nc Common Stock	u
FOTRF	Frontier Real Estate Invest, Tokyo Ordinary Shares (Japan)	u
FTCOF	FT Communications Co Ltd Tokyo Ordinary Shares (Japan)	u
FUNRF	Fund Creation Co Ltd, Tokyo Ordinary Shares (Japan)	u
FUORF	Fukuoka Reit Corp Ordinary Shares (Japan)	u
FUSYF	Future System Consulting Corporation Ordinary Shares	u
FUZAF	Funatsu Zaisan Consultants Co Ltd Tokyo Ordinary Shares (Japan)	u

Symbol	Security Name	Market Category
FWLBF	Foster Wheeler Ltd Preferred Conv Series B (Bermuda)	u
GALAF	Gala Incorporated Ordinary Shares	u
GBAAF	Gaba Corp, Tokyo Ordinary Shares (Japan)	u
GCAFF	GCA Co Ltd Ordinary Shares (Japan)	u
GDAIF	Gendai Agency Inc Hachioji Ordinary Shares (Japan)	u
GDHKF	GDH KK Tokyo Ordinary Shares (Japan)	u
GDVTZ	Gould Investors Lp Units	u
GDWLF	Goodwill Group Corporation (The) Ordinary Shares	u
GEDSF	Gedeon Richter Ltd Gic American Depository Receipt	u
GEOCF	Geo Co Ltd Ordinary Shares	u
GEODF	Geodis Ordinary Shares	u
GFPRF	Golf Partner Co Ltd, Tokyo Ordinary Shares (Japan)	u
GGLT	Giant Group, Ltd. Common Stock	u
GHCUF	Grandy House Corp, Utsunomiya Ordinary Shares (Japan)	u
GHSPF	Green Hospital Supply Inc Suita Ordinary Shares (Japan)	u
GMEOF	Gameon Co LTD, Tokyo Ordinary Shares (Japan)	u
GNHAF	Galenica Holding AG Bern Namen-AKT	u
GNOSF	Gentosha Inc Tokyo Ordinary Shares (Japan)	u
GOMEF	Gomez Consulting Co Ltd, Tokyo Ordinary Shares (Japan)	u
GORIF	Global One Real Estate Investment Corp. Ordinary Shares (Japan)	u
GRNVF	Gourmet Navigator Inc Tokyo Ordinary Shares (Japan)	u
GRTYA	Guarnty Corporation Class A	u
GUNGF	Gungho Online Entertainment Inc, Tokyo Ordinary Shares (Japan)	u
GVDBF	Givaudan Ag Ordinary Shares	u
GWJUF	Gwangju Shinsegae Co Ltd Ordinary Shares	u
HAARF	Hanmi Pharmaceutical Co Ltd Ordinary Shares (South Korea)	u
HBBHF	Honam Petrochemical Co Ltd Ordinary Shares (South Korea)	u
HCKG	Hocking Valley Bancshares, Inc (OH) Common Shares	u
HIKSF	Henriksen OG Henriksen Holding A/S Ordinary Shares B (Denmark)	u
HIRPF	Hi Corp, Tokyo Ordinary shares (Japan)	u
HMLN	Hamlin Bank & Trust Company (Smethport, PA) Common Stock	U
HNKYF	Hankyu Reit Inc, Osaka Ordinary Shares (Japan)	u
HONT	Honat Bancorp, Inc. Common Stock	U
HOORF	Hoosiers Corp Tokyo Ordinary Shares (Japan)	u
HPTB	High Point Bank Corp (NC) Common Stock	u
HRKKF	Harakosan Co Ltd Harakosan Co Ltd Shimonoseki (Japan)	u
HSYDF	Hamonic Drive Systems Inc Ordinary Shares (Japan)	u
HWRI	Hayward Inds Inc Common Stock	u
HYAIF	Hyundai Mipo Dockyard Co., Ltd. Ordinary Shares (South Korea)	u
HYEVF	Hyundai Elevator Co Ltd Ordinary Shares	u

Symbol	Security Name	Market Category
HYHZF	Hyundai Heavy Industries Ordinary Shares	u
HYKBF	Hypothekarbank Lenzburg Namen - AKT (Switzerland)	u
IACYF	Inter Action Corp Yokohama Ordinary Shares	u
IBKIF	Ing Bank It Fund Nv Amsterdam (Netherlands) Ordinary Shares	u
ICEC	Ice Cream Of The Stars Inc Common Stock	u
IDOSF	Idu Co Osaka Ordinary Shares (Japan)	u
IFCNF	INFICON Holding AG Ordinary Shares	u
IFFOF	Infocom Corp Ordinary Shares	u
IIJIF	Internet Initiative Japan, Inc. Ordinary Shares	u
IKYCF	Ikyu Corp Tokyo Ordinary Shares (Japan)	u
ILLXF	Intellex Co Ltd, Tokyo Ordinary Shares (Japan)	u
IMJCF	Imj Corp Tokyo Ordinary Shares (Japan)	u
INDN	Indians Inc Common Stock	u
INDQF	Index Corp Tokyo Ordinary Shares	u
INPGP	Interpublic Group Cos Inc Perp Preferred Conv Ser B 5.25%	u
IPNAF	Information Planning Co Ltd Osaka Ordinary Shares (Japan)	u
IPXHF	Inpex Holdings Inc Tokyo Ordinary Shares (Japan)	u
IRLCF	Israel Corp Ordinary Shares	u
IRRFH	Interroll Holdings SA Santonino Ordinary Shares (Switzerland)	u
ITCLF	Interspace Co Ltd, Tokyo Ordinary Shares (Japan)	u
ITELF	Intertrade Co Ltd Tokyo Ordinary Shares (Japan)	u
ITKYF	Intelligence Ltd Tokyo Ordinary Shares	u
ITMAF	Itmedia Inc, Tokyo Ordinary Shares (Japan)	u
ITPC	Intrepid Capital Corporation New Common Stock	u
ITXXF	ITX Corp Tokyo ITX Corp Tokyo (Japan)	u
IUCZF	Industrieholding Cham Ag Cham Ordinary Shares (Switzerland)	u
IWVTF	Intelligent Wave Inc Tokyo Ordinary Shares	u
JAPAF	Japan Tobacco Ordinary Shares	u
JAPRF	Japan Pure Chemical Co Ltd Tokyo Ordinary Shares (Japan)	u
JAPTF	Japan Automobile Auction Inc Tokyo Ordinary Shares (Japan)	u
JCCLF	J-Com Co Ltd, Osaka Ordinary Shares (Japan)	u
JDGCF	Japan Digital Contents Inc Ordinary Shares	u
JHAOF	Johansen As Brdr A&O Common Stock	u
JHOTF	Japan Hotel And Resort Inc, Tokyo Ordinary Shares (Japan)	u
JLGFF	Japan Logistics Fund Inc, Tokyo Ordinary Shares (Japan)	u
JNSTY	Jinhui Shipping & Trans Ltd American Depository Receipt	u
JORIF	Joint Reit Investment Corp Ordinary Shares (Japan)	u
JPNGF	Justplanning Inc Tokyo Ordinary Shares	u
JPRRF	Japan Prime Realty Investment Corp Ordinary Shares	u
JPXCF	Japan Excellent Inc Toyko Ordinary Shares (Japan)	u

Symbol	Security Name	Market Category
JREIF	Japan Real Estate Investment Inc Tokyo	u
JREPF	J-Rep Co Ltd, Tokyo Ordinary Shares (Japan)	u
JRFIF	Japan Retail Fund Investment Corp Ordinary Shares	u
JSRRF	Japan Single-Residence Reit Inc, Tokyo Ordinary Shares (Japan)	u
JSTBF	Jindal Steel Tubes Ltd Ordinary Shares (India)	u
JSTS	Justiss Oil Inc Common Stock	u
JUPIF	Jupiter Telecommunications Limited Ordinary Shares (Japan)	u
JWDTF	Japan Wind Development Co Ltd Ordinary Shs (Japan)	u
KABHF	Kaba Holding AG Ruemlang Ordinary Shares (Switzerland)	u
KBCLF	Kyungbang Co Ltd Ordinary Shares (South Korea)	u
KBUFC	Kabu.com Securities Co Ltd Tokyo Ordinary Shares (Japan)	u
KCRPY	Kao Corporation Sponsored ADR (Japan)	u
KDDIF	KDDI CORP Ordinary Shares	u
KDXRF	Kenedix Realty Investment Corp Ordinary Shares (Japan)	u
KEWL	Keweenaw Land Association, Limited Common Stock	u
KKDAF	K.K. Da Vinci Advisors K.K. Da Vinci Advisors (Japan)	u
KKKUF	Kakaku.com Inc Tokyo Ordinary Shs (Japan)	u
KKYXF	Keumkang Co Ordinary Shares	u
KLNEF	Korea Line Corp Ordinary Shares	u
KMERF	Komercni Banka As Ord Czk500 Komercni Banka AS (Czech Republic)	u
KNDXF	Kenedix Inc Tokyo Ordinary Shares (Japan)	u
KNKZF	Kws Kleinwanzlebener Saatzucht Ag Ordinary Shares (Germany)	u
KRRQF	Korea Zinc Co Ltd Ordinary Shares (South Korea)	u
KSBBF	Ksb Ag Pfd Nv Rts Ordinary Shares	u
KSUAN	Kansas City Southern 5.125% Perpetual Convertible Preferred	u
KSUAO	Kansas City Southern 4.25% Perp Conv Preferred Stock	u
KSVRF	Ksb Ag Pfd Nv Rts Ordinary Shares	u
KUBKF	Kubotek Corporation Ordinary Shares	u
KUCPF	Kura Corporation Ltd Sakai Ordinary Shares	u
KUIRF	Kuoni Reisen Hldg Reg Sf50par Ordinary Shares	u
KUNAF	Kali & Salz Ag Beteiligungs Ordinary Shares	u
KYCCF	Keyence Corp Ordinary Shares	u
KYTXF	Kyoto Kimono Common Stock	u
LAACZ	Laaco Ltd L P Uts Miscellaneous	u
LACYF	Land Co Ltd Yokohama Ordinary Shares (Japan)	u
LADBF	Land Business Co Ltd, Tokyo Ordinary Shares (Japan)	u
LBPHF	LTT Bio-Pharma Co Ltd Tokyo Ordinary Shares (Japan)	u
LCAAF	Leveraged Capital Hldgs Amster Shares Class A (Netherlands Antilles)	u
LCNTU	Louisiana Cent Oil & Gas Co Ut	u
LDSRF	Landstar Inc Ordinary Shares	u

Symbol	Security Name	Market Category
LDSVF	Lindt & Sprungli Ag Part Cert Ordinary Shares	u
LFGEF	Lafarge Sa ACT (France)	u
LGCOF	L G Construction Ordinary Shares	u
LGHHF	LG Household & Healthcare Ltd Ordinary Shares	u
LICT	LICT Corporation Common Stock	u
LMNR	Limoneira Co Common Stock	u
LNZNF	Lenzing Ag Ord Ordinary Shares	u
LOSPF	Lotte Shopping Co Ltd Ordinary Shares (South Korea)	u
LPRLF	La Parler Co Ltd Ordinary Shares	u
LPRRF	Laurent Perrier Tours-Sur-Marne Act. Shares (France)	u
LSKPP	Loral Skynet Corp 12% Preferred Series A	u
LTHYF	Link Theory Holdings Co Ltd Ordinary Shares (Japan)	u
LTTF	Lotte Confectionery Co Ltd Ordinary Shares	u
LTTGF	Lotte Chilsung Beverage Co Ltd Ordinary Shares	u
LTTTF	Lotte Chilsung Beverage Co Ltd Lotte Chilsung Beverage Pfd S	u
LUTHP	Lucent Technologies Capital Trust I-7.75% Convertible Trust	u
LVMEF	LCP Investment Corp Tokyo Ordinary Shares (Japan)	u
MAGOF	Man AG Muenchen Ordinary Shares (Germany)	u
MAJJ	Michael Anthony Jewelers, Inc. New Common Stock	u
MAOFF	Macromill Inc Tokyo Ordinary Shares (Japan)	u
MBXIF	Mebix Inc, Tokyo Ordinary Shares (Japan)	u
MCHB	Mechanics Bank (The) (CA) Common Stock	U
MCJKF	MCJ Co Ltd Kasukabe Ordinary Shares (Japan)	u
MCMCF	MK Capital Management Corp, Tokyo Ordinary Shares (Japan)	u
MEDYF	Megastudy Co Ltd Ordinary Shares (South Korea)	u
MHMI	MHM Services, Inc. Common Stock	u
MITEY	Mitsubishi Estate Co Ltd American Depository Receipt	u
MIXIF	Mixi Inc., Tokyo Ordinary Shares (Japan)	u
MKRMF	Merkur Holding Ag Reg Ordinary Shares	u
MMZUF	Mamezou Co Ltd Tokyo Ordinary Shares (Japan)	u
MNAT	Marquette National Corporation Common Stock	u
MNBP	Mars National Bank (PA) Common Stock	u
MNGYF	MOC Corp Nagoya Ordinary Shares (Japan)	u
MNPP	Merchants Natl Pptys Inc Common Stock	u
MNXBF	Monex Beans Holdings Inc Tokyo Ordinary Shares (Japan)	u
MREIF	Mid Reit Inc Osaka Ordinary Shares (Japan)	u
MRGIF	Mori Trust Sogo Reit Inc Tokyo Ordinary Shares (Japan)	u
MSJPF	Morningstar Japan Ordinary Shares	u
MSSGF	Message Co Ltd Kurashiki Ordinary Shares (Japan)	u
MTSWF	Mets Corp Tokyo Ordinary Shares	u

Symbol	Security Name	Market Category
MUASF	Mitsui & Associates Telepark Corp Tokyo Ordinary Shares (Japan)	u
MURGF	Mtd Capital Bhd Ordinary Shares	u
MYBUF	Meyer Burger Technology AG, Baar Namen -AKT (Switzerland)	u
MYTIF	MTI Ltd Tokyo Ordinary Shares (Japan)	u
MZHOF	Mizuho Financial Group Inc Tokyo Ordinary Shares	u
MZIAP	Milacron Inc 4% New Preferred Stock	u
NABZY	National Australia Bank Limited Common Stock	u
NACB	National Capital Bank of Washington (DC) Common Stock	u
NBCHF	Nobel Biocare Holding AG AKT	u
NBFJF	Nippon Building Fund Inc Ordinary Shares (Japan)	u
NCYIF	New City Residence Investment Corp, Tokyo Ordinary Shares (Japan)	u
NDASF	Noda Screen Co Ltd Ordinary Shares	u
NDEKY	Nitto Denko Corporation American Depository Receipt	u
NECZF	NEC Mobiling Ltd Ordinary Shares	u
NEFB	Neffs Bancorp Inc Common Stock	u
NFTYF	Nifty Corp, Tokyo Ordinary Shares (Japan)	u
NHETF	Nihon Enterprise Co Ltd Tokyo Ordinary Shares	u
NHMAF	Nihon M and A Center Inc Ordinary Shares (Japan)	u
NHNCF	NHN Corporation Ordinary Shares (South Korea)	u
NICMF	Nippon Commercial Investment Corp Ordinary Shares (Japan)	u
NIFVF	NIF Ventures Co Ltd Ordinary Shares	u
NILSF	JSC MMC Norilsk Nickel Ordinary Shares	u
NILSY	JSC MMC Norilsk Nickel Spons ADR	u
NINOF	Nikon Corp American Depository Receipt	u
NIPPF	Nippon Accommodations Fund Inc, Tokyo Ordinary Shares (Japan)	u
NMYMF	Niedermeyer Martin Co Ordinary Shares	u
NONCF	Nihon Ceratec Co Ltd Sendai Ordinary Shares (Japan)	u
NONEF	Net One Systems Co Ltd Ordinary Shares	u
NONGF	Nong Shin Co Ltd Ordinary Shares	u
NPGMF	Nippon Game Card Corp Tokyo Ordinary Shares (Tokyo)	u
NPIVF	Nippon Residential Investment Corp, Tokyo Ordinary Shares (Japan)	u
NPPHF	Nippon Hotel Fund Investment Corp Tokyo Ordinary Shares (Japan)	u
NPPNF	Nippon Unipac Holding Tokyo Ordinary Shares (Japan)	u
NPPXF	Nippon Tel & Tel Cp Ordinary Shares	u
NPROF	Nepro Japan Co Ltd, Tokyo Ordinary Shares (Japan)	u
NREOF	Nomura Real Estate Office Fund Inc Tokyo Ordinary Shares (Japan)	u
NRERF	Nomura Real Estate Residential Fund Inc, Tokyo Ordinary Shares	u
NRGEO	NRG Energy, Inc. Preferred Perp Conv	u
NSRGF	Nestle Sa Cham Et Vevey Ordinary Shares	u
NSYC	National Stock Yards Company Common Stock	u

Symbol	Security Name	Market Category
NTBP	New Tripoli Bancorp Inc Common Stock	u
NTDMF	Ntt DoCoMo Inc Ordinary Shares	u
NTDOF	Nintendo Co Ltd-Ord- Ordinary Shares	u
NTGUF	Netage Group Inc, Tokyo Ordinary Shares (Japan)	u
NTPRF	Netprice Ltd Tokyo Ordinary Shares (Japan)	u
NTTDF	N T T Data Comm Sys Ordinary Shares	u
NTUBF	NTT Urban Development Corp Ordinary Shares (Japan)	u
NTVLF	NetVillage Company Ltd Ordinary Shares	u
NWBM	Northwestern Bancorp, Inc. (MI) Common Stock	U
NWSCZ	News Corporation Finance Trust II Sr Exchangeable Bucs	u
NXCLF	Next Co Ltd, Tokyo Ordinary Shares (Japan)	u
NXCMF	Nextcom Kk Ordinary Shares	u
NYNNF	Ninety Nine Plus Inc Tokyo Ordinary Shares (Japan)	u
OBIF	Obic Co Ltd Ordinary Shares	u
ODKSF	ODK Solutions Co Ltd, Osaka Ordinary Shares (Japan)	u
OERLF	Oc Oerlikon Corporation Inc Namen-Akt Shares (Switzerland)	u
OHTFF	Oht Inc Fukayasu Ordinary Shares (Japan)	u
OKCTF	Okinawa Cellular Telephone Ordinary Shares	u
OPKYF	OPT Inc Tokyo Ordinary Shares (Japan)	u
ORSDF	Orascom Construction Industrie Reg S Global Depositary Receipt	u
ORXCF	Orix Corporation Ordinary Shares	u
ORXJF	Orix Jreit Inc Ordinary Shares	u
OSCUF	Osaka Securities Exchange Co Ltd, Osaka Ordinary Shares (Japan)	u
PAACF	Paraca Inc, Tokyo Ordinary Shares (Japan)	u
PCFOF	Pacific Management Corp Tokyo (Japan)	u
PCTRF	Prospect Residential Investment Corp Tokyo (Japan) Ordinary	u
PDER	Pardee Resources Co Inc Common Stock	u
PDRDF	Pernod Ricard Ord Ordinary Shares	u
PFGFF	Pacific Golf Group International Holdings KK Tokyo Ordinary	u
PGINF	Prestige International Inc Tokyo Ordinary Shares	u
PICJF	Premier Investment Company Ordinary Shares	u
PKXFF	POSCO Ordinary Shares (South Korea)	u
PLIAP	Pliant Corporation Redeemable Pfd Series AA	U
PLWN	Pinelawn Cemetery Common Stock	u
PLWTF	Panalpina Welttransport Holding Ag Binningen Namen Akt Share	u
PMDSF	Pharma Foods International Co Ltd, Kyoto Ordinary Shares (Japan)	u
PMMAF	Puma Ag Rudolf Dassler Sport Ordinary Shares	u
PMNVF	Prime Network Inc Nagoya Ordinary Shares	u
POEYF	Properst Co Ltd Ordinary Shares (Japan)	u
POGHF	Pilot Group Holdings Corp Ordinary Shares Tokyo (Japan)	u

Symbol	Security Name	Market Category
PONT	Pontiac Bancorp Inc Common Stock	u
PPRUF	PPR SA Ordinary Shares	u
PROUF	Produce Co Ltd, Nagaoka Ordinary Shares (Japan)	u
PSEPF	Dr Ing HC F Porsche Ag VORZ.AKT. OHNE STIMMRECHT (German Federal Republic)	u
PSNAF	Pasona Inc Ordinary Shares	u
PVCO	PVC Container Corporation Common Stock	u
QOLCF	Qol Co Ltd, Tokyo Ordinary Shares (Japan)	u
QUCT	Queen City Invst Inc Common Stock	u
RBTEF	Robertet Sa Ordinary Shares	u
RCCCO	Rural Cellular Corporation 12 1/4% Junior Exchangeable Preferred Stock	u
RCFCF	Reicof Co Ltd Ordinary Shares (Japan)	u
RCMRF	Recrm Research Co Ltd Tokyo Ordinary Shares	u
RHHBF	Roche Holdings AG Basel Ordinary Shares	u
RHHQY	Roche Hldgs Ltd. 144A Spons ADR Ex Roche Hldg Inc. LYONS	u
RHHVF	Roche Holdings AG Basel Ordinary Shares	u
RKUNF	Rakuten Inc Ordinary Shares	u
RKWBF	Rockwool Intl Ser A Ordinary Shares	u
RNDOF	Round One Corp Ordinary Shares	u
RPLIF	Re-Plus Inc Tokyo Ordinary Shares (Japan)	u
RPUSF	Re-Plus Residential Investment Inc, Tokyo Ordinary Shares (Japan)	u
RPWSF	Repower Systems AG Namen AKT	u
RSNHF	Resona Holdings Inc Osaka Ordinary Shares (Japan)	u
RSPAF	Risa Partners Inc Tokyo Ordinary Shares (Japan)	u
RSRV	Reserve Pete Co Common Stock	U
RTLLF	Rational Ag Landsberg Am Lech Ordinary Shares	u
RTRZF	Rieter Hld Chf20 (Regd) Ordinary Shares	u
SAHKF	Sapporo Hokuyo Holdings Inc Ordinary Shares	u
SAKYF	Star Mica Co Ltd, Tokyo Ordinary Shares (Japan)	u
SAUHF	Straumann Holding Ag Namen AKT (Switzerland)	u
SBBG	Seibels Bruce Group, Inc. (The) Common Stock	u
SBHGF	SBI Holdings Inc Ordinary Shares	u
SBNC	Southern Bancshares NC Inc Common Stock	u
SBRBF	Sberbank Rossi OAO GDR repstg 1/10 Shs Reg S (Russia)	u
SBSOF	SBS Co Ltd Tokyo Ordinary Shares (Japan)	u
SCGLF	Societe Generale (Ff 30) Ordinary Shares	u
SCJAF	Secured Capital Japan Co Ltd Tokyo Ordinary Shares (Japan)	u
SCWTF	Schweiter Technologies Ag Horgen Ordinary Shares	u
SDAXF	Shidax Corp Ordinary Shares	u
SDKLF	Shinsegae Co Ltd Ordinary Shares	u
SDLJ	Scottdale Bank & Trust Co Pa Common Stock	u

Symbol	Security Name	Market Category
SEBYF	Seb Sa Ordinary Shares	u
SECVF	Seche Environnement Sa Change Ordinary Shares (France)	u
SFFTF	Softfront Inc Ordinary Shares	u
SFFUF	Sun Frontier Fudousan Co Ltd Tokyo Ordinary Shares (Japan)	u
SGANF	S-Grant Co Ltd Tokyo Ordinary Shares (Japan)	u
SGSRF	SGS Societe Generale de Surveillance Holding SA Ordinary Shares	u
SHIWF	Shinwa Art Auction Co Ltd, Tokyo Ordinary Shares (Japan)	u
SIABF	Sia Abrasive Holdings Ag Ordinary Shares	u
SJAPF	Sun Japan Corp Tokyo Shs	u
SKCBF	Shinkin Central Bank Tokyo Pfd Subs Cert (Japan)	u
SKCXF	SK Corporation Ordinary Shares (South Korea)	u
SKFOF	Sika Finanz Ord Bearer Shares	u
SKKYF	SK Electronics Co Ltd Kyoto Ordinary Shares (Japan)	u
SKMTF	Sk Telecom Co Ltd Ord Ordinary Shares	u
SKPIF	Sky Perfect JSAT Corp Ordinary Shares (Japan)	u
SKTPP	Skytop Lodge Corporation Preferred Stock	u
SMFNF	Sumitomo Mitsui Financial Group Inc Ordinary Shares (Japan)	u
SMFYF	Somfy International SA Ordinary Shares (France)	u
SMTHF	Something Holdings Co Ltd, Tokyo Ordinary Shares (Japan)	u
SMYWF	Sammy Networks Co Ltd Tokyo Ordinary Shares (Japan)	u
SNTMF	So-Net M3 Inc Tokyo Ordinary Shares (Japan)	u
SNXTF	Sourcenext Corp Ordinary Shares	u
SOHKF	Sohken Homes Co Ltd Tokyo Ordinary Shares (Japan)	u
SOIKF	Soiken Inc Toyonaka Ordinary Shares (Japan)	u
SOLTF	Sosei Co Ltd Tokyo Ordinary Shares (Japan)	u
SPCSW	SpectraSite, Inc. Warrants 2/10/2010	u
SPIDF	Septeni Company Ltd Tokyo	u
SPXTF	Simplex Technology Inc Ordinary Shares (Japan)	u
SRIKF	Sri Sports Ltd Kobe Ordinary Shares (Japan)	u
SRXXF	Sparx Asset Management Co Ltd	u
SSNLF	Samsung Elec Co Ltd N-Vtg Ordinary Shares	u
SSNNF	Samsung Electronics Co Ltd Pfd Shares Non Voting	u
STBJF	Starbucks Coffee Japan Ltd Tokyo	u
STCMA	Stonecutter Mills Corp Cl A Common Stock	u
STSU	Sterling Sugars, Inc. New Common Stock	u
STTEF	Streettracks ETFS Sicav ETF Exchange Traded Funds	u
SUIYF	Suncity Co Ltd Sendai Ordinary Shares (Japan)	u
SULZF	Sulzer Ag Winterhur Part Ctf Ordinary Shares	u
SWBC	Sunwest Bank (CA) New Common Stock	U
SWDXF	Sunwood Corp Ordinary Shares	u

Symbol	Security Name	Market Category
SWGAF	Swatch Group Ag (The) AKT (Switzerland) Ordinary Shares	u
SWKA	Stanley Works (The) Equity Unit	u
SWZCF	Swisscom Ag Ittigen Reg Shs Ordinary Shares	u
SWZVF	Schweizerische National Versicherungs Gesells Basel Namen-Ak	u
SXIVF	Simplex Investment Advisors Inc Tokyo Ordinary Shares (Japan)	u
SYCMF	Sony Communication Network Corp Tokyo Ordinary Shares (Japan)	u
SYENF	Syngenta Ag Basel Ordinary Shares	u
SYHUF	Sanyo Housing Nagoya Co Ltd Ordinary Shares	u
SYLFF	Stylife Corp, Tokyo Ordinary Shares (Japan)	u
SYPOF	Systempro Co Ltd Ordinary Shares	u
SZGPF	Salzgitter AG Peine AKT Shares (Germany)	u
SZLMF	Schweizerische Lebensversicherungs und Rentenanstalt Zuerich	u
SZVZF	Samsung Fire & Marine Ins Pfd Ordinary Shares	u
SZZAF	Samchully Co Ltd Ordinary Shares (South Korea)	u
TCTHF	Tact Home Co Ltd Tokyo Ordinary Shares (Japan)	u
TGFRF	Thermador Groupe SA Ordinary Shares (France)	u
TGIVF	TGR Investment Inc Tokyo Ordinary Shares (Japan)	u
TGYFF	Tong Yang Confect Ordinary Shares	u
TKBIF	Takara Bio Inc Ohtsu Ordinary Shares (Japan)	u
TKEDF	Tokyo Electron Device Ltd Yokohama Ordinary Shares (Japan)	u
TKGVF	Take and Give Needs Co Ltd Take and Give Needs Co Ltd Tokyo	u
TKURF	Tokyu Reit Inc Tokyo Ordinary Shares (Japan)	u
TKWIF	Tae Kwang Industrial Co Ltd Ordinary Shares (South Korea)	u
TLWVF	Telewave Inc Tokyo Ordinary Shares (Japan)	u
TMLOF	Techno Mathematical Co LTD, Tokyo Ordinary Shares (Japan)	u
TMPSF	Tempstaff Co Ltd Tokyo Ordinary Shares (Japan)	u
TNECF	Thine Electronics Inc Tokyo Ordinary Shares	u
TOETF	Tosei Corp Tokyo Ordinary Shares (Japan)	u
TORLF	Toridoll.Corp, Kakogawa Ordinary Shares (Japan)	u
TOWP	Tower Properties Company New Common Stock	u
TPRYF	Top Reit Inc, Tokyo Ordinary Shares (Japan)	u
TRAQO	Terra Industries Inc. 4.25% Preferred Shares Perp. Conv. Series A	u
TRBOF	Turbolinux Inc, Tokyo Ordinary Shares (Japan)	u
TRKX	Trek Resources, Inc. Common Stock	u
TSTRP	TerreStar Corporation Preferred Convertible Series B	u
TSUKY	Toyo Suisan Kaisha Ltd American Depository Receipt	u
TYSRF	Tokyo Star Bank Ltd Ordinary Shares (Japan)	u
UKRNY	Ukrnafta Ord American Depository Receipt	u
UMICF	Umicore SA Ordinary Shares (Belgium)	u
UNBLF	Unibail Sa (Union du Credit Bail Immobilier) ACT (France)	u

Symbol	Security Name	Market Category
USJCF	USJ Co Ltd, Osaka Ordinary Shares (Japan)	u
USRE	USA Real Estate Investment Trust Common Stock	u
UTLGF	United Technology Holdings Co Ltd, Tokyo Ordinary Shares (Japan)	u
UUICF	United Urban Investment Corp Tokyo Ordinary Shares (Japan)	u
UVVZP	Universal Corporation 6.75% Convertible Perpetual Preferred	u
UZAPF	Unique Zurich Airport Ag Ordinary Shares	u
VCCLF	Valuecommerce Co Ltd, Tokyo Ordinary Shares (Japan)	u
VCHYF	V Technology Co Ltd Ordinary Shares	u
VGJNF	Verisign Japan K.K. Tokyo Ordinary Shares (Japan)	u
VLKAF	Volkswagen A G Ord Ordinary Shares	u
VLOUF	Valloourec S.A. Ord Ordinary Shares	u
VRNWF	Variosecure Networks Inc, Tokyo Ordinary Shares (Japan)	u
VVNGF	Village Vanguard Co Ltd Nagakutecho Ordinary Shares (Japan)	u
WACMF	Wacom Co Ltd Shs	u
WBCWF	Webcrew Inc Tokyo Ordinary Shares (Japan)	u
WDLFF	World Logi Co Ltd Osaka Ordinary Shares (Japan)	u
WJRYF	West Japan Railway Co Ordinary Shares	u
WKCMF	Wacker Chemie Ag Muenchen Ordinary Shares (Germany)	u
WKSAF	Works Applications Co Ltd Tokyo (Japan)	u
WLIC	Western Lime & Cement Common Stock	u
WNDLF	Wendel Investissement ACT (France) EUR	u
WNRP	West Suburban Bancorp, Inc. Common Stock	u
WOINF	Wowow Inc Tokyo Ordinary Shares	u
WTBFB	W T B Financial Corp Cl-A Common Stock	u
XAND	Xanadoo Company Common Stock	u
XHFNF	Xinhua Finance Limited Ordinary Shares (Cayman Islands)	u
XMSRZ	XM Satellite Radio Holdings Inc. Warrants to purchase Class	U
XNTCF	Xnet Corp Ordinary Shares	u
YACHF	Yachiyo Bank Ltd, Tokyo Ordinary shares (Japan)	u
YAHOF	Yahoo Japan Corp Ordinary Shares	u
YCRG	York Corrugating Co Common Stock	u
YMNMF	Yume No Machi Souzou Iinkai Co Ltd, Osaka Ordinary Shares (Japan)	u
YMZNF	Yamazen Co Ltd Ordinary Shares	u
YNOYF	Yoshinoya D&C Co Ltd Ordinary Shares	u
YUHNF	Yu Han Corporation Ordinary Shares	u
ZECSF	ZECS Co Ltd Shs	u
ZEHBF	Zehnder Holding Part Cfts Ordinary Shares	u
ZFSVF	Zuerich Financial Services Zuerich Ordinary Shares	u
ZPHRF	Zephyr Co Ltd Tokyo (Japan)	u
ZPLIF	Zappallas Inc Tokyo Ordinary Shares (Japan)	u
ZTKYF	Zentek Technology Japan Inc Tokyo (Japan)	u

Information Notice

Mid-Year Rate Adjustment for Fees Paid under Section 31 of the Exchange Act

Effective Date: April 1, 2008

Executive Summary

The SEC has determined the mid-year rate adjustment and, effective April 1, 2008, the Section 31 rate applicable to securities transactions will decrease from \$11.00 per million to \$5.60 per million.

Questions concerning this *Notice* may be directed to Rob Renner, FINRA Senior Director of Accounting Operations, at (240) 386-5303.

Discussion

On February 29, 2008, the Securities and Exchange Commission (SEC) announced in Fee Rate Advisory #7 for Fiscal Year (FY) 2008 (*see www.sec.gov/news/press/2008/2008-25.htm*) that the current Section 31 fee rate is being reduced. Accordingly, the new Section 31 fee rate of \$5.60 per million dollars that is applicable to securities transactions on the exchanges and over-the-counter (OTC) markets will take effect on April 1, 2008.

The Securities Exchange Act requires the SEC to make mid-year adjustments to the Section 31 fee rate if, after consultation with the Congressional Budget Office and the Office of Management and Budget, it estimates that the baseline estimate of dollar volume for an FY that was used to calculate the current annual rate (\$11.00 per million) is reasonably likely to be at least 10 percent greater or less than the actual dollar volume of securities transactions for that FY, and after consultation with the Congressional Budget Office and the Office of Management and Budget.

March 10, 2008

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Trading

Key Topics

- ▶ Section 31 Fee

Referenced Rules & Notices

- ▶ Section 3 of Schedule A to the By-Laws
- ▶ Section 31 of the Securities Exchange Act of 1934

Firms should note that the SEC will announce the fee rates for FY 2009 no later than April 30, 2008. The new rates will take effect October 1, 2008, or after the SEC's regular appropriation for FY 2009 has been enacted, whichever comes later. The SEC will issue further notices, as appropriate, and they will be posted at www.sec.gov.

FINRA obtains its Section 31 fees from its membership, in accordance with Section 3 of Schedule A to the By-Laws. Section 3 specifies that the amount assessed on member firms will be determined periodically in accordance with Section 31 of the Act.

Information Notice

Rulebook Consolidation Process

Executive Summary

Following the consolidation of NASD and NYSE Regulation into FINRA, FINRA established a process to develop a new consolidated rulebook, which is outlined in this *Notice*. The new FINRA Rules will apply to all FINRA members and will be proposed in phases to the SEC. As rules approved by the SEC become effective, they will replace the existing NASD Rules and incorporated New York Stock Exchange (NYSE) Rules.

Questions regarding this *Notice* should be directed to Patrice Gliniecki, Deputy General Counsel, Office of General Counsel (OGC), at (202) 728-8071; or Philip Shaikun, Associate Vice President and Associate General Counsel, OGC, at (202) 728-8451.

Discussion

General Process

FINRA has been working diligently to develop an expeditious and sensible approach to create a new consolidated rulebook, which seeks not only to harmonize and streamline existing rules, but also to give consideration to the rapidly evolving nature of the securities business and the broad diversity of firms subject to FINRA regulation. All the while, FINRA has remained focused on ensuring that FINRA's rules continue to fully reflect its commitment to its core mission of investor protection and market integrity.

March 12, 2008

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topics

- FINRA Manual
- Rulebook Consolidation

The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) the rules incorporated from NYSE (Incorporated NYSE Rules) (together referred to herein as the Transitional Rulebook).¹ The Incorporated NYSE Rules apply only to those members of FINRA that also are members of NYSE (Dual Members).² The new consolidated rulebook (Consolidated FINRA Rulebook) will consist only of FINRA Rules and will apply to all FINRA members, unless such rules have a more limited application by their terms. Structurally, the Consolidated FINRA Rulebook will feature a new organizational framework that groups and categorizes rules into more logical and related subject matter areas.

As part of the process to develop the Consolidated FINRA Rulebook, FINRA staff has been conducting a comprehensive review of all existing NASD and Incorporated NYSE Rules, guided by several analytical touchstones. First, the staff is identifying those NASD and Incorporated NYSE Rules that are obsolete or otherwise duplicative and should not be adopted as part of the Consolidated FINRA Rulebook.

Second, the staff is analyzing the member conduct, member application and registration, and financial and operational rules that apply to Dual Members to identify significant differences between the NASD and Incorporated NYSE Rules and determine the extent to which the existing rules should inform the final consolidated FINRA Rules. This process incorporates and builds on the product of the rule harmonization project between NASD and NYSE that was underway prior to the regulatory consolidation.

Third, FINRA staff is exploring whether one or a combination of approaches can be applied to the final consolidated FINRA Rules covering member conduct, member application and registration, and financial and operational requirements. These approaches include both a principles-based and tiered approach to the application of rules according to firm size and business model, as well as recognizing possible distinctions in application between retail and institutional customers. In developing the final consolidated rules, FINRA staff is also reviewing the regulatory approaches in certain international jurisdictions.

Finally, FINRA staff is identifying those rules that do not lend themselves as well to this type of analysis and are candidates to be transferred into the Consolidated FINRA Rulebook without substantive modification. These rules include certain procedural and marketplace rules, which are prescriptive by necessity. Of course, all rules in the Consolidated FINRA Rulebook remain subject to further amendments as circumstances, experience and events may warrant.

SEC Review and Approval

The SEC must approve FINRA rules prior to their becoming effective in the new Consolidated FINRA Rulebook.³ FINRA intends to obtain those approvals through a series of rule filings with the SEC. FINRA will remain sensitive to the practical considerations faced by members as it sets effective dates for these rules.

As noted above, as the SEC approves new rules for inclusion in the Consolidated FINRA Rulebook and they become effective, FINRA members will become subject to those rules. Members also will remain subject to the rules remaining in the Transitional Rulebook. (The NYSE Incorporated Rules in the Transitional Rulebook will continue to apply only to Dual Members.) As the Consolidated FINRA Rulebook expands with SEC approval and effectiveness of final FINRA Rules, the Transitional Rulebook will be reduced by the elimination of those rules that address the same subject matter of regulation. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

Consultation

With respect to future proposals related to the rulebook consolidation process, the FINRA Board of Governors will determine on a case-by-case basis whether to file such proposals directly with the SEC or first seek comment in a *Regulatory Notice*. Such determinations will be based on factors that include the subject matter of the proposal and the nature and extent of the proposed changes. For example, FINRA staff anticipates that FINRA would seek comment in a *Regulatory Notice* with respect to proposals relating to supervision and supervisory controls, research reports and research analysts, and communications with the public. In all cases, there will be an opportunity for notice and comment of proposed rule filings.

Irrespective of whether a proposal is filed directly with the SEC or addressed in a *Regulatory Notice*, FINRA intends to consult with its standing committees, the Small Firm Advisory Board, other industry representatives, other regulators and other interested parties to ensure that it is informed by diverse perspectives. Moreover, FINRA will highlight through various communications when proposals have been filed with the SEC, as well as when the SEC publishes such proposals in the *Federal Register*, to afford members and the public a timely opportunity to comment.

Endnotes

- 1 The NYSE currently maintains in the NYSE Manual comparable versions of the Incorporated NYSE Rules. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934 (Exchange Act), NASD, NYSE and NYSE Regulation entered into an agreement (Agreement) to reduce regulatory duplication for firms that are members of both FINRA and the NYSE (Dual Members) by allocating regulatory responsibilities for these rules to FINRA. FINRA has assumed examination, enforcement and surveillance responsibilities under the Agreement relating to compliance by Dual Members to the extent such responsibilities involve member firm regulation. See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities).
- 2 The Incorporated NYSE Rules continue to apply to persons affiliated with Dual Members to the same extent and in the same manner as they did before the consolidation. In applying the Incorporated NYSE Rules to Dual Members and such affiliated persons, FINRA has incorporated the related interpretative positions set forth in the *NYSE Rule Interpretations Handbook* and *NYSE Information Memos*.
- 3 There are limited exceptions specified in the Exchange Act.

Disciplinary and Other FINRA Actions

Firm Expelled, Individuals Sanctioned

Investment Management Corporation (CRD #37196, Bountiful, Utah), Brian Young Horne (CRD #1830136, Registered Principal, Centerville, Utah) and Kevin Dee Kunz (CRD #1274540, Registered Principal, Fruit Heights, Utah) submitted an Offer of Settlement in which the firm was expelled from FINRA membership, and Horne and Kunz were barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, the firm, Horne and Kunz consented to the described sanctions and to the entry of findings that Kunz, knowingly and willfully, caused the firm to participate as primary placement or sales agent in public offerings, even though the firm was suspended from participation in securities offerings as primary placement or sales agent until it complied with the independent consultant requirement imposed in a previous NASD (nka FINRA) decision.

The findings stated that the firm, acting through Kunz and Horne, processed commissions earned by firm representatives in the private placements through a non-member mortgage company that Horne owned. The findings also stated that Kunz functioned as a principal of the firm even though he was suspended in that capacity from an earlier NASD (nka FINRA decision). The findings also included that Horne, as the firm's president and compliance officer, knew of the independent consultant requirement in the earlier decision or acted with reckless disregard by failing to apprise himself of the sanctions imposed in the decision, but knowingly or recklessly permitted the firm to participate in the offerings without satisfying the independent consultant requirement. FINRA found that Horne knew, or should have known, that Kunz was not permitted to act as a general securities principal but failed to supervise Kunz to prevent him from functioning as a principal while suspended. **(FINRA Case #2005000960301)**

Firm and Individual Sanctioned

S.G. Martin Securities LLC (CRD #46908, Jericho, New York) and Emanuel Pantelakis (CRD #3074986, Registered Principal, Flushing, New York) submitted an Offer of Settlement in which the firm was ordered to pay \$25,294, plus interest, in restitution to investors and to retain an independent consultant to review its policies, systems and procedures (written and otherwise) and training related to sales practices and supervision, and to make recommendations which the firm should implement or suggest alternatives for approval by the consultant. Pantelakis was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, the firm and Pantelakis consented to the described sanctions and to the entry of findings that, through the actions of Pantelakis and registered representatives, the firm fraudulently misrepresented and omitted material facts to public customers in connection with the sale of securities.

Reported for March 2008

FINRA® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB).

The findings stated that the firm and Pantelakis failed to establish, maintain and enforce a supervisory system reasonably designed to enforce securities laws, regulations and NASD rules regarding the sales of securities to retail customers, and the firm's written supervisory procedures were not reasonably designed to supervise the registered representatives and principals involved in the sale of securities. The findings also stated that the firm and Pantelakis failed to reasonably supervise the sales activities of registered representatives and failed to establish, maintain or enforce any procedures to supervise Pantelakis. The findings also included that Pantelakis knowingly provided false testimony during a FINRA on-the-record interview. **(FINRA Case #2005000191701)**

Firm Fined, Individual Sanctioned

Purshe Kaplan Sterling Investments, Inc. (CRD #35747, Albany, New York) and Peter John Sheehan (CRD #1691364, Registered Principal, Watervliet, New York) submitted a Letter of Acceptance, Waiver and Consent (AWC) in which they were fined \$50,000, jointly and severally. The firm was censured and Sheehan was suspended from association with any FINRA member in any principal capacity for 30 days. Without admitting or denying the findings, the firm and Sheehan consented to the described sanctions and to the entry of findings that the firm, acting through Sheehan, failed to establish, maintain and/or enforce a supervisory system and written procedures reasonably designed to achieve compliance with securities laws, regulations and NASD rules concerning suitability reviews of customer mutual fund transactions, and failed to enforce written procedures providing for special supervision of registered representatives after customers filed complaints.

The suspension in any principal capacity was in effect from February 4, 2008, through March 4, 2008. **(FINRA Case #2006007370401)**

Firm and Individual Fined

Sisung Securities Corporation (CRD #25752, New Orleans, Louisiana) and Lawrence John Sisung Jr. (CRD #1285539, Registered Principal, Gretna, Louisiana) were fined \$10,000, jointly and severally. The firm was also fined an additional \$10,000. The Securities and Exchange Commission (SEC) imposed the sanctions following appeal of a National Adjudicatory Council (NAC) decision. The sanctions were based on findings that the firm, acting through Sisung, failed to record Sisung's political contributions in its books and records, or to report them to the Municipal Securities Rulemaking Board (MSRB). **(FINRA Case #C0520030036)**

Firms Fined

Berry-Shino Securities, Inc. (CRD #38098, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$157,085.97, which includes disgorgement of \$7,085.97 in compensation. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that the firm, acting through an individual, facilitated improper

market timing and impermissible late trading of mutual fund shares by firm customers. The findings stated that the firm, acting through the individual, accepted orders for mutual fund transactions after the close of trading for execution at that day's net asset value (NAV), thereby facilitating late trading. The findings also stated that the firm failed to supervise the individual and to establish, maintain and enforce a supervisory system and written procedures for his mutual fund trading business in a manner reasonably designed to achieve compliance with applicable laws, rules and regulations. **(FINRA Case #E3A20030495-02)**

Berry-Shino Securities, Inc. (CRD #38098, Scottsdale, Arizona) submitted an Offer of Settlement in which the firm was censured, fined \$40,000 and ordered to pay \$24,918.62, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected mutual fund transactions for public customers and charged transaction fees that were unreasonable and unfairly discriminatory. The findings stated that some of these transactions involved the purchase of mutual funds with sales loads and that the firm's imposition of charges in addition to the sales loads constituted the sale of mutual funds at prices other than the current public offering prices described in the funds' prospectuses. The findings also stated that the firm failed to report, or timely report, items that NASD Rule 3070(a) required to be reported, and failed to timely report customer grievances required to be reported pursuant to NASD Rule 3070(c). The findings also included that the firm failed to file required amendments to Applications for Securities Industry Registration or Transfer (Forms U4) and Uniform Termination Notices for Securities Industry Registration (Forms U5), and submitted amendments to Forms U4 and U5 late. FINRA found that the firm transacted an options business in a branch office without a qualified on-site principal. FINRA also found that the firm voluntarily created a heightened supervision plan for a registered representative but failed to implement the plan. **(FINRA Case #E3A20050037-02)**

Evolution Financial Technologies, LLC (CRD #104249, Iselin, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and required to revise its supervisory procedures regarding manipulative trading activity. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its supervisory system failed to provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning manipulative trading activity. The findings stated that the firm failed to establish, maintain and enforce supervisory procedures reasonably designed to monitor for and detect its traders' manipulative trading activity, despite having been apprised by FINRA of specific concerns relating to one of the firm's trader's use of odd-lot trading to achieve unfair, advantageous price gains at the expense of market makers who were utilizing proprietary trading systems that automatically decremented their bids and offers. The findings also stated that the firm's supervisory system did not include written supervisory procedures that provided for the identification of the person(s) responsible for supervision with respect to applicable rules, a statement of the supervisory steps(s) to be taken by the identified person(s), a statement as to how often such person(s) should take such step(s), and a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The findings also included that the firm submitted

reportable order events (ROEs) to the Order Audit Trail System (OATS) that OATS rejected for context or syntax errors, and the firm failed to repair any of the rejected ROEs. FINRA found that the firm failed to enforce its written supervisory procedures that specified that the “designated OATS principal [would] conduct a daily review of the OATS website” to identify and repair rejected ROEs, would “be responsible for the repair of the rejections and resubmitting the repaired data to OATS,” and would document the supervisory review of the OATS data “by printing ‘ROE Rejections Summary’ on the OATS Web interface the following day, with actions taken at the event of any rejections.” (FINRA Case #20050000069-01)

FOLIOfn Investments, Inc. (CRD #48015, Vienna, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$13,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report execution time to the Automated Confirmation Transaction Service (ACT) in last sale reports of transactions in NASDAQ National Market (NNM) and NASDAQ SmallCap securities. The findings stated that the firm failed to include the bunched order modifier (“B”) for aggregated trade reports submitted to ACT. (FINRA Case #20050006521-01)

Hill Thompson Magid & Co., Inc. (CRD #2202, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$87,500 and required to revise its written supervisory procedures regarding order handling, short sales and submission of electronic blue sheet data. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, with respect to trade reporting, it incorrectly designated last sale reports of transactions in designated securities to the Trade Reporting Facility (TRF) as “W,” failed to report the cancellation of one transaction in a designated security previously submitted to the TRF, failed to accept or decline transactions in reportable securities in the OTC Reporting Facility within 20 minutes after execution, failed to report the correct time of execution to the TRF in one last sale report of a transaction in a designated security, and failed to report the correct symbol indicating whether the firm executed transactions in reportable securities in a principal or agency capacity to the TRF and the OTC Reporting Facility. The findings stated that the firm incorrectly reported the second leg of “riskless” principal transactions in designated securities to NASDAQ and the OTC Reporting Facility because it incorrectly designated the capacity of such transactions as “agent,” and failed to report to the OTC Reporting Facility the cancellation of transactions in OTC equity securities previously submitted to the OTC Reporting Facility. The findings also stated that the firm failed to submit, for the offsetting, “riskless” portion of “riskless” principal transactions in designated securities, either a clearing-only report with a capacity indicator of “riskless principal” or a non-tape, non-clearing report with a capacity indicator of “riskless principal” to the OTC Reporting Facility. The findings also included that the firm incorrectly designated a last sale report of a transaction in an OTC equity security as “PRP” to the OTC Reporting Facility. With respect to short sales, the firm consented to findings that it executed short sale orders and failed to properly mark the order tickets as short, and effected short sales of securities registered on a national securities exchange at or below the price at which the last sale of each security, regular way, was reported pursuant to an effective

transaction reporting plan. FINRA found that the firm had a fail-to-deliver position in threshold securities at a registered clearing agency for 13 consecutive settlement days and failed to immediately close out the fail-to-deliver positions by purchasing securities of like kind and quantity, and the firm had a fail-to-deliver position in threshold securities at a registered clearing agency for 13 consecutive settlement days, and until the firm closed out the fail-to-deliver positions by purchasing securities of like kind and quantity, failed to borrow the security or enter into a bona fide arrangement to borrow the security prior to executing proprietary short sales in the securities. FINRA found that the firm failed to report the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt or cross to the NASDAQ Market Center (NMC), executed short sale transactions and failed to report each of the transactions to the NMC with a short sale modifier. In addition, FINRA found that the firm failed to report accurate trading information through the submission of electronic blue sheets in response to FINRA requests. Finally, FINRA determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning order handling, short sales and submission of electronic blue sheet data, and the firm failed to enforce its written supervisory procedures concerning best execution, SEC Rule 605 (disclosure of order execution information), NASD Rule 6130 (third party reporting), and NASD Rule 5262 (Intermarket Trading System/Computer Assisted Execution System (ITS/CAES) Market Maker rules). **(FINRA Case #20050024894-01)**

M&T Securities, Inc. (CRD #17358, Buffalo, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it purchased municipal securities for its own account from customers and/or sold municipal securities for its own account to customers at an aggregate price (including any markdown or markup) that was not fair and reasonable taking into consideration all relevant factors, including the best judgment of the broker, dealer or municipal securities dealer as to the fair market value of the securities at the time of the transactions, and of any securities exchanged or traded in connection with the transactions, the expense involved in effecting the transactions, the fact that the broker, dealer or municipal securities dealer is entitled to a profit, and the total dollar amount of the transactions. **(FINRA Case #20060062803-01)**

Merrill Lynch Professional Clearing Corp. (CRD #16139, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$35,000 and required to revise its written supervisory procedures regarding the three quote rule, and trade and OATS reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted New Order Reports and other reports to OATS that contained inaccurate, incomplete or improperly formatted data, and reported Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the related order routed to SuperMontage due to inaccurate, incomplete or improperly formatted data. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning the three quote rule, and trade and OATS reporting. **(FINRA Case #20060046100-01)**

Neuberger Berman, LLC (CRD #2908, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding trade reporting to the Trade Reporting and Compliance Engine (TRACE). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 30 minutes of the time of execution. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade reporting to TRACE. The findings also stated that the firm failed to report the lower of yield to call or yield to maturity for transactions in TRACE-eligible securities to TRACE. The findings also included that the firm failed to report information regarding purchase and sale transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS) in the manner prescribed by MSRB Rule G-14 RTRS Procedures and the RTRS Users Manual because it failed to report information about transactions to an RTRS Portal within 15 minutes of time of trade. **(FINRA Case #20050004554-01)**

Peacock, Hislop, Staley & Given, Inc. (CRD #21477, Phoenix, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it knowingly permitted an individual to continue to associate with the firm while statutorily disqualified, and permitted the individual to function as a municipal securities representative although he was not registered with FINRA or the MSRB in any capacity. **(FINRA Case #2007007461501)**

RBC Capital Markets Corporation (CRD #6579, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities it was required to report to TRACE. **(FINRA Case #20050007227-01)**

Reliance Securities, LLC (CRD #47079, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain and enforce adequate written supervisory procedures related to fee-based brokerage accounts, and overcharged accounts for fee-based services even though the SEC had previously found the firm to have overcharged customer accounts. **(FINRA Case #2006003957801)**

Sigma Financial Corporation (CRD #14303, Ann Arbor, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures regarding TRACE reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities executed on a business day during TRACE system hours to TRACE within 15 minutes of execution. The findings stated that the firm failed to report the

correct trade execution time for transactions in TRACE-eligible securities to TRACE. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning TRACE reporting. **(FINRA Case #20060061606-01)**

Strand, Atkinson, Williams & York, Inc. (CRD #1254, Portland, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it allowed registered representatives to effect transactions in its average price account in order to provide multiple customers of a single representative an average price execution. The findings stated that the firm failed to establish, maintain and enforce a supervisory system and written supervisory procedures regarding the use of the average price account. The findings also stated that the firm prepared brokerage order memoranda for customer transactions effected via the firm's average price account, but the memoranda lacked one or more required elements such as accurately denoting the time the order was received, the time the order was executed, the terms and conditions of the order, and whether the order was entered pursuant to an exercise of discretionary authority. The findings also included that the firm allowed registered representatives to exercise discretionary authority without prior written customer authorization when executing customer trades via the firm's average price account. **(FINRA Case #2006007078101)**

TD Ameritrade Clearing, Inc. (CRD #5633, Bellevue, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the corresponding new order the destination member firm submitted due to inaccurate, incomplete or improperly formatted data. **(FINRA Case #20060048452-01)**

UBS Securities LLC (CRD #7654, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to immediately display customer limit orders in NASDAQ securities in its public quotation, when each order was at a price that would have improved the firm's bid or offer in each security, or when the order was priced equal to the firm's bid or offer and the national best bid or offer for each security, and the size of the order represented more than a *de minimis* change in relation to the size associated with the firm's bid or offer in each security. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning limit order display. **(FINRA Case #20050001318-01)**

Individuals Barred or Suspended

Gregory Steven Azulphart (CRD #5118678, Associated Person, Portland, Oregon) was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The sanctions were based on findings that Azulphart failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from January 7, 2008, through July 6, 2008. (FINRA Case #2006005746701)

Andrew Cy Banks (CRD #1186771, Registered Representative, Ft. Lauderdale, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Banks consented to the described sanctions and to the entry of findings that he mismarked order tickets corresponding to discretionary transactions executed in a public customer's account as "unsolicited," when in fact the transactions were solicited. The findings stated that Banks exercised discretionary authority in the customer's account without prior written authorization, and failed to make and preserve accurate books and records.

The suspension in any capacity was in effect from February 4, 2008, through February 15, 2008. (FINRA Case #2007009447801)

Timothy Patrick Barry (CRD #2267209, Registered Representative, Appleton, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Barry consented to the described sanctions and to the entry of findings that he attempted to compensate public customers for losses incurred related to a delay in processing a stock sale. The findings stated that Barry wrote personal checks totaling \$7,000 to the customers without informing his member firm that he had attempted to compensate the customers, and without obtaining authority from his firm to settle the loss in this manner.

The suspension in any capacity was in effect from February 19, 2008, through March 3, 2008. (FINRA Case #20060063677-01)

Richard Nestor Beleutz (CRD # 2403229, Registered Principal, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000 and suspended from association with any FINRA member in any capacity for 45 days. Without admitting or denying the findings, Beleutz consented to the described sanctions and to the entry of findings that he facilitated hedge fund clients' market timing transactions in mutual funds by enabling the clients to execute numerous mutual fund trades in violation of trading restrictions intended to prevent market timing in mutual funds.

The suspension in any capacity is in effect from February 25, 2008, through April 9, 2008. (FINRA Case #E8A20040321-01)

John Thomas Blanchette (CRD #4421027, Registered Principal, Henderson, Kentucky) and Danny Ray Woosley (CRD #4379663, Registered Representative, Evansville, Indiana) submitted Letters of Acceptance, Waiver and Consent in which Blanchette and Woosley were fined \$5,000 each. Blanchette was suspended from association with any FINRA member in any capacity for 20 business days, and Woosley was suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Blanchette's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Blanchette and Woosley consented to the described sanctions and to the entry of findings that they engaged in private securities transactions without prior written notice to, and approval from, their member firm.

Blanchette's suspension in any capacity was in effect from February 4, 2008, through March 3, 2008. Woosley's suspension in any capacity was in effect from February 19, 2008, through March 3, 2008. **(FINRA Cases #20060054450-03/20060054450-04)**

James Wade Browne (CRD #1189996, Registered Representative, Dallas, Texas) and Kevin P. Calandro (CRD #1459109, Registered Representative, Dallas, Texas). Browne was fined \$25,000 and suspended from association with any FINRA member in any capacity for six months, and Calandro was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The NAC imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Browne and Calandro participated in private securities transactions without prior written notice to, and written approval from, their member firm.

This decision has been appealed to the SEC, and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #C0520050015)**

Timothy Joseph Clain (CRD #1172504, Registered Representative, Proctor, Vermont) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Clain's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Clain consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from January 22, 2008, through July 21, 2008. **(FINRA Case #2007008769101)**

Jason Adam Craig (CRD #4016543, Associated Person, Washington Township, Michigan) was barred from association with any FINRA member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Craig willfully failed to disclose material information on his Form U4.

This decision has been appealed to the SEC; the bar is in effect pending consideration of the appeal. **(FINRA Case #E8A2004095901)**

Gloria Michelle Crayton (CRD #2614765, Registered Representative, Hercules, California) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Crayton consented to the described sanction and to the entry of findings that she submitted payroll reimbursement claims totaling \$11,440 to an affiliate of her member firm for an individual who did not work for her, and Crayton did not actually incur the payroll expenses claimed. **(FINRA Case #20070082798-01)**

Jill Erin Dell (CRD #1518074, Registered Representative, Woodstock, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Dell's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Dell consented to the described sanctions and to the entry of findings that she deposited \$30,500 into a public customer's bank account through monthly payments of \$500 as purported income from a variable universal life policy to avoid a complaint from her member firm's customers. The findings stated that Dell's payments to the customer precluded a timely analysis of whether she had made misrepresentations and omitted material facts in connection with the sale of the policy to the customer.

The suspension in any capacity is in effect from February 4, 2008, through March 17, 2008. **(FINRA Case #2006006604001)**

Hossien Shane Dez Dezfolyzadeh (CRD #2466567, Registered Representative, Laguna Niguel, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Dezfolyzadeh's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Dezfolyzadeh consented to the described sanctions and to the entry of findings that without the customers' knowledge or consent, he signed their names to firm forms in order to transfer their customer accounts from his prior firm to his then current firm.

The suspension in any capacity is in effect from February 4, 2008, through August 3, 2008. **(FINRA Case #2007008657501)**

Scott Michael Epstein (CRD #4268699, Registered Representative, Marlboro, New Jersey) was barred from association with any FINRA member in any capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Epstein recommended and effected unsuitable mutual fund switch transactions without having reasonable grounds for believing that the transactions were suitable for public customers in view of the nature of the recommended transactions, and in light of the customers' financial situations, investment objectives, circumstances and needs.

This decision has been appealed to the SEC and the sanction is in effect pending consideration of the appeal. **(FINRA Case #C9B20040098)**

Charles Collingwood Fawcett IV (CRD #1576169, Registered Representative, Venetia, Pennsylvania) was barred from association with any FINRA member in any capacity. The SEC affirmed the NAC decision that imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Fawcett failed to respond to FINRA requests for information and to provide on-the-record testimony. **(FINRA Case #C9A20040024)**

Sheldon Anthony Goldberg (CRD #2110148, Registered Representative, Merrick, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for nine months. The fine must be paid either immediately upon Goldberg's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Goldberg consented to the described sanctions and to the entry of findings that he failed to timely amend his Form U4 to disclose material information.

The suspension in any capacity is in effect from February 19, 2008, through November 18, 2008. **(FINRA Case #2007007930401)**

Kyle Timothy Holland (CRD #2308543, Registered Principal, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any FINRA member in any capacity for 30 days. Holland was also suspended from association with any FINRA member as a Financial and Operations Principal (FINOP) for three months, and must requalify by examination before acting in a FINOP capacity. Without admitting or denying the findings, Holland consented to the described sanctions and to the entry of findings that a member firm, acting through Holland, engaged in a securities business while failing to maintain adequate net capital, and filed an inaccurate Financial and Operational Combined Uniform Single (FOCUS) report with FINRA. The findings stated that the firm, acting through Holland, failed to establish and maintain a reasonable supervisory system, including written procedures, related to the receipt and handling of customer stock certificates when public customers inadvertently forwarded their certificates to the firm instead of the clearing firm, and related to how the firm would instruct customers regarding the correct way to deposit stock certificates into their accounts. The findings also stated that Holland engaged in activities requiring principal registration while suspended in that capacity.

The suspension in any capacity is in effect from March 3, 2008, through April 1, 2008. The suspension in a FINOP capacity is in effect from March 3, 2008, through June 2, 2008. **(FINRA Case #20060054866-01)**

Gregory Arthur Horton (CRD #1362727, Registered Principal, Monmouth Beach, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Horton consented to the described sanction and to the entry of findings that, while exercising control over his customers' accounts at his member firm and while acting with the requisite scienter, he excessively traded the accounts, which resulted in annualized cost-to-equity ratios ranging from 21 percent to 244 percent.

The findings stated that as a result of Horton's churning of the accounts, many of the customers incurred substantial losses. (FINRA Case #2006004865001)

Jonathan Christopher Ilchert (CRD #2484719, Registered Representative, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Ilchert consented to the described sanction and to the entry of findings that he misrepresented material facts and engaged in manipulative, deceptive or other fraudulent devices in connection with recommendations that public customers invest in private securities offerings. The findings stated that Ilchert failed to respond to FINRA requests for an on-the-record interview. (FINRA Case #2006004996101)

James Robert Kelly (CRD #1323155, Registered Principal, Tampa, Florida) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for eight months. Without admitting or denying the allegations, Kelly consented to the described sanctions and to the entry of findings that he failed to provide complete and timely responses to FINRA requests for information. The findings stated that Kelly willfully failed to amend his Form U4 with material information. The findings also stated that Kelly filed an amendment to his Form U4 that included an optional comment regarding an AWC which constituted a public statement denying directly or indirectly an allegation in the AWC, and created the impression that the AWC was without factual basis, which was in violation of the terms of the AWC.

Kelly's suspension in any capacity is in effect from February 4, 2008, through October 3, 2008. (FINRA Case #2006005457801)

Vinh Gia Liu (CRD #5380655, Associated Person, Oakland, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Liu's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Liu consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from February 4, 2008, through May 3, 2008. (FINRA Case #20070098640-01)

Joseph Patrick Lovaglio (CRD #3234996, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Lovaglio consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information and documents. (FINRA Case #20070086505-01)

Jose Martin Lugo (CRD #5306323, Associated Person, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must

be paid either immediately upon Lugo's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Lugo consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from February 19, 2008, through August 18, 2008. (FINRA Case #2007009364201)

Kenneth Robert Mahoney (CRD #1911756, Registered Representative, Briarcliff Manor, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$49,123, which includes the disgorgement of financial benefits received totaling \$44,123, and suspended from association with any FINRA member in any capacity for six months. Without admitting or denying the findings, Mahoney consented to the described sanctions and to the entry of findings that he participated in private securities transactions with his member firm customers without prior written notice to, or prior written approval from, his member firm.

The suspension in any capacity is in effect from February 4, 2008, through August 3, 2008. (FINRA Case #2006004140201)

Raymond Edward Matthews (CRD #5086781, Registered Representative, Mansfield, Texas) submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Matthews consented to the described sanction and to the entry of findings that he forged the public customers' signatures on life insurance applications and failed to respond to FINRA requests for testimony. (FINRA Case #2006006553301)

Shawna Lee Mendoza (CRD #4870515, Associated Person, Moreno Valley, California) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Mendoza's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Mendoza consented to the described sanctions and to the entry of findings that she was instructed by registered representatives at her member firm to complete missing items and obtain new customer signatures on Point of Sale-Variable Life (POS) forms that the customers had previously signed in connection with their applications for variable universal life insurance policies. The findings stated that because Mendoza was unable to get timely responses from the customers and receive newly signed POS forms, she obtained information from other customer documents and, without the customers' knowledge and consent, photocopied their signatures to the POS forms and inserted more recent dates to make it appear that the customers had signed new POS forms. The findings also stated that Mendoza altered the dates on the POS forms next to the registered representatives' signatures without their knowledge and consent.

The suspension in any capacity is in effect from February 4, 2008, through May 3, 2008. (FINRA Case #2006006943001)

Frank Giorgio Muia (CRD # 2726899, Registered Representative, Huntington, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 days. Without admitting or denying the findings, Muia consented to the described sanctions and to the entry of findings that he borrowed \$2,700 from a public customer of his member firm without notifying or receiving written approval from his firm regarding the loan and in contravention of the firm's written supervisory procedures prohibiting borrowing monies or securities from a firm customer.

The suspension in any capacity is in effect from February 19, 2008, through March 19, 2008. **(FINRA Case #2007009609501)**

Bhupinder Singh Pannu (CRD #4696077, Registered Representative, Richmond, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any FINRA member in any capacity for three months. In light of Pannu's financial status, a \$2,500 fine was imposed. Twenty percent of the fine must be paid either immediately upon Pannu's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Pannu consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from February 4, 2008, through May 3, 2008. **(FINRA Case #20060067866-01)**

Ronald Pellegrino (CRD #832857, Registered Principal, Bellingham, Washington) was barred from association with any FINRA member in any principal capacity. The NAC imposed the sanction following appeal of an OHO decision. The sanction was based on findings that Pellegrino inadequately supervised registered representatives of his member firm when he failed to respond sufficiently to red flags indicating possible misconduct by registered representatives in the sale of unsuitable proprietary investment products, and failed to establish and maintain an adequate supervisory system.

This decision has been appealed to the SEC, and the sanction is in effect pending review. **(FINRA Case #C3B20050012)**

Ronald Leslie Salyer (CRD #409643, Registered Representative, Arlington, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 60 days. The fine must be paid either immediately upon Salyer's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Salyer consented to the described sanctions and to the entry of findings that he recommended and effected purchases of speculative securities without having reasonable grounds for believing the recommendations were suitable for the customers.

The suspension in any capacity is in effect from February 4, 2008, through April 3, 2008. **(FINRA Case #2006005673001)**

Alex Benton Seleznov (CRD #3187157, Registered Principal, Tolleson, Arizona) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Seleznov failed to respond to FINRA requests to appear for an on-the-record interview. The findings stated that Seleznov failed to ensure that his member firm operated with sufficient net capital. The findings also stated that a member firm, acting through Seleznov, filed materially inaccurate FOCUS reports. **(FINRA Case #2005003283101)**

Dennis Wayne Sharp (CRD #2204032, Registered Principal, Puyallup, Washington) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Sharp consented to the described sanction and to the entry of findings that he engaged in private securities transactions without prior notice to, and approval from, his member firm. The findings stated that Sharp represented to public customers that payments on promissory notes were guaranteed when he should have known that they were not guaranteed, and failed to inquire sufficiently into their status before making representations. The findings also stated that Sharp made recommendations to public customers without reasonable grounds for believing they were suitable for the customers on the basis of facts disclosed by them as to their other security holdings, financial situation and needs. **(FINRA Case #2006006587101)**

Michael J. Skrabis (CRD #4128727, Registered Principal, Orland Park, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months, with credit to be given for two months. Without admitting or denying the findings, Skrabis consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from February 4, 2008, through June 3, 2008. **(FINRA Case #2006007020501)**

Wesley Alvin Snyder (CRD #1628640, Registered Principal, Oley, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Snyder consented to the described sanction and to the entry of findings that he failed to respond to a FINRA request for information. **(FINRA Case #200701122201)**

Joseph P. Tiedeken Jr. (CRD #4310006, Registered Representative, Holland, Ohio) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Tiedeken failed to completely respond to FINRA requests for information and documents. The findings stated that Tiedeken borrowed \$11,000 from a public customer contrary to his member firm's written policy that prohibited its registered representatives from borrowing money or securities from customers. **(FINRA Case #2005003119501)**

Roger Chi Fung Tsui (CRD #5164562, Registered Representative, Kowloon, Hong Kong) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Tsui's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or

request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Tsui consented to the described sanctions and to the entry of findings that he possessed unauthorized materials during a General Securities Representative Qualification (Series 7) examination.

The suspension in any capacity is in effect from January 22, 2008, through January 21, 2010. (FINRA Case #20060069560-01)

Christopher A. Wiston (CRD #4891840, Registered Representative, Waterford Works, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Wiston's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Wiston consented to the described sanctions and to the entry of findings that he signed public customers' names on life insurance policy documents without their authorization or consent.

The suspension in any capacity is in effect from February 4, 2008, through August 3, 2008. (FINRA Case #2006006759201)

Brian Anthony Zirnheld (CRD #1249810, Registered Representative, Wheatfield, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for one year. In light of Zirnheld's financial status, a fine of \$10,000 has been imposed. The fine must be paid either immediately upon Zirnheld's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Zirnheld consented to the described sanctions and to the entry of findings that he recommended the purchase of a variable annuity to public customers without having reasonable grounds for believing that the recommendation was suitable based upon the customers' investment objectives, financial situation and needs. The findings stated that Zirnheld knowingly submitted a false written statement to his member firm claiming that at the time he made the unsuitable recommendation, he was not aware that both customers suffered from dementia.

The suspension in any capacity is in effect from February 19, 2008, through February 18, 2009. (FINRA Case #2006005319701)

Individual Fined

Shelly Sean Singhal (CRD #2234471, Registered Principal, Newport Beach, California) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$25,000. Without admitting or denying the findings, Singhal consented to the described sanctions and to the entry of findings that a member firm, acting through Singhal, established and had exclusive control over a trading account at another FINRA member to receive, hold and engage in securities transactions for its customers. The findings stated that proceeds of stock sales were processed through the firm's operating accounts before being delivered to the customers. The findings also stated that because the firm held customer funds, it was required to establish a Special Reserve Bank Account for the Exclusive Benefit of Customers to perform monthly reserve computations and make deposits into the Account in accordance with the formula set forth in SEC Rule 15c3-3a, but it failed to do so. **(FINRA Case #2006004663201)**

Decision Issued

The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of January 31, 2008. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed the decisions. Initial decisions whose time for appeal has not yet expired will be reported in the next Regulatory Notices.

Scott Lee Mathis (CRD #1362203 Registered Principal, New York, New York) was fined \$12,500 and suspended from association with any FINRA member in any capacity for three months and 10 business days. The suspensions shall run concurrently. The fines are payable upon re-entry into the industry. The sanctions were based on findings that Mathis willfully failed to disclose material information on his Form U4.

This decision has been appealed to the NAC and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #C1020040052)**

Complaints Filed

FINRA issued the following complaints. Issuance of a disciplinary complaint represents FINRA's initiation of a formal proceeding in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding these allegations in the complaint.

Delbert Foster Blount III (CRD #2991522, Registered Representative, Dandridge, Tennessee) was named as a respondent in a FINRA complaint alleging that he received \$317,825.61 from public customers for investment purposes but deposited their funds into his personal bank account without their knowledge or consent, thereby converting \$317,825.61 to his own use. The complaint alleges that in effecting his scheme, Blount made material misrepresentations in that he provided the customers with false account statements showing fictitious assets and false account values. The complaint also alleges that Blount, acting with scienter, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business that operated, or would operate, as a fraud or deceit upon purchasers or prospective purchasers. The complaint further alleges that Blount failed to respond to FINRA requests for information. **(FINRA Case #2006007525401)**

Richard Grant Cody (CRD #2794558, Registered Representative, Boston, Massachusetts) was named as a respondent in a FINRA complaint alleging that he engaged in unsuitable and excessive trading in public customers' accounts, resulting in significant commission income for him and loss of income for his customers. The complaint alleges that Cody effected transactions without having reasonable grounds for believing the transactions were suitable for the customers in view of the size and frequency of the transactions, the transaction costs incurred, the nature of the accounts and the customers' financial situation, investment objectives and needs. The complaint also alleges that Cody sent misleading account statements to the customers that his member firm had not approved. The complaint further alleges that Cody willfully failed to disclose material information on his Form U4. **(FINRA Case #2005003188901)**

Louis Michael Nolfo (CRD #2439250, Registered Principal, Boca Raton, Florida) was named as a respondent in a FINRA complaint alleging that in connection with the purchase or sale of securities, he exercised control over public customers' accounts, churned the accounts and effected numerous and excessive securities transactions in the accounts. The complaint alleges that Nolfo, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business that operated, or would

operate, as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance. The complaint also alleges that Nolfo used unsuitable margin levels in a customer's account in a manner that was reckless and inconsistent with the customer's objectives, financial situation and needs. The complaint further alleges that Nolfo failed to adequately and properly supervise the trading activity of a registered representative who engaged in excessive and unsuitable transactions.

(FINRA Case #2005001698202)

Stephen Matthew Sirianni (CRD #715867, Registered Representative, Wausau, Wisconsin) was named as a respondent in a FINRA complaint alleging that he participated in a private securities transaction for compensation, and failed and neglected to give written notice to, and receive written approval from, his member firm prior to engaging in such activities. The complaint alleges that Sirianni, while using the means and instrumentalities of interstate commerce to offer securities for sale, made material misrepresentations in the form of price predictions to induce transactions, which did occur. The complaint also alleges that Sirianni engaged in outside business activities, for compensation, and failed and neglected to give prompt written notice to his member firm. **(FINRA Case #E8A2004095401)**

Erica Latishia Tolbert (CRD #5109478, Associated Person, Atlanta, Georgia) was named as a respondent in a FINRA complaint alleging that she caused the issuance of a checkbook for public customers' account with her personal address as the delivery address, and either negotiated or caused checks to be negotiated by a third party, and converted proceeds of \$12,200 without the customers' authorization, knowledge or consent. The complaint alleges that Tolbert failed to respond to FINRA requests for information. **(FINRA Case #2007007580501)**

James Byongmin Yim (CRD #3137645, Registered Representative, Sparks, Nevada) was named as a respondent in a FINRA complaint alleging that he submitted requests to his member firm purportedly signed by public customers requesting the transfer of funds totaling \$1,328,000 from their accounts to other accounts, without the customers' knowledge, authorization or consent. The complaint alleges that Yim failed to respond to FINRA requests for information and to appear for an on-the-record interview. **(FINRA Case #20060063365-01)**

Firm Expelled for Failure to Pay Fines and/or Costs

Sterling Financial Investment Group, Inc.
Boca Raton, Florida
(January 23, 2008)

Firms Suspended for Failure to Supply Financial Information

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Benchmark Investments, Inc.
Arkadelphia, Arkansas
(January 7, 2008 – January 15, 2008)

INCAP Securities, Inc.
Baltimore, Maryland
(January 9, 2008 – February 15, 2008)

Firm Suspended for Failing to Pay Arbitration Awards

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Urchin Capital Partners LLC
San Francisco, California
(January 14, 2008)

Individual Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Richard Francis Kresge
Bayshore, New York
(January 8, 2008)

Individuals Barred Pursuant to NASD Rule 9552(h)

(If the bar has been vacated or revoked, the date follows the bar date.)

Joshua Kevin Englert
Westminster, Colorado
(January 31, 2008)

Mark Leon Henry
Joplin, Missouri
(January 8, 2008)

Thomas Brian Jordan
Helena, Alabama
(January 25, 2008)

Shon Charles Prejean
Houston, Texas
(November 21, 2007 – January 16, 2008)

Bridget Elaine Steele
Stafford, Texas
(January 8, 2008)

Albert Alexander Whitehead Jr.
Crestview, Kentucky
(January 2, 2008)

Jason Scott Woessner
Boca Raton, Florida
(January 14, 2008)

Individuals Suspended Pursuant to NASD Rule 9552(d)

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Brent Allen Burke
Carson City, Nevada
(January 22, 2008)

Rendell Eshey Draper
St. Charles, Missouri
(January 14, 2008)

Loris Kay Hager

Fargo, North Dakota
(January 10, 2008)

Thomas Denton Lillard

Germantown, Tennessee
(January 28, 2008)

Frank Rocco Rossi

Winthrop, Massachusetts
(January 22, 2008)

**Individuals Suspended Pursuant to
NASD Rule Series 9554 for Failure to
Comply with an Arbitration Award or
Settlement Agreement**

(The date the suspension began is listed
after the entry. If the suspension has
been lifted, the date follows the
suspension date.)

Bayan Alrachid

Santa Ana, California
(January 14, 2008)

James E. Bell

Houston, Texas
(January 31, 2008)

Daniel Scott Bookout

Greenwood, Indiana
(January 14, 2008)

Daniel Scott Bookout

Greenwood, Indiana
(January 31, 2008)

Andrew Taylor Bryan

St. Louis, Missouri
(January 31, 2008)

William Joseph Dacey

Melrose, Massachusetts
(January 31, 2008)

Timothy James Daly

Weston, Connecticut
(January 23, 2008)

Danny Bernard Daniels

Ft. Worth, Texas
(January 14, 2008)

Peter Raad Fader

San Francisco, California
(January 14, 2008)

Carlisle William Kelson Jr.

Elkhart, Indiana
(January 14, 2008)

Michael Hardwicke Lewis Sr.

Baton Rouge, Louisiana
(January 2, 2008)

Carl Dominic Martellaro

Chico, California
(January 31, 2008)

William Todd Mauney

Highland Village, Texas
(January 14, 2008)

Adam Matthew Novick

Hollywood, Florida
(January 23, 2008)

Bruce James Paura

Winter Park, Florida
(January 2, 2008)

Donald L. Popkes

West Hollywood, California
(January 31, 2008)

Donald Warner Reinhard

Alpharetta, Georgia
(January 2, 2008 – January 16, 2008)

William Joseph Spina

Greenbush, Massachusetts
(January 2, 2008)

Frederick Stratton Sundin

Cranston, Rhode Island
(January 31, 2008)

Bret Allen Swisher

Mansfield, Ohio
(January 23, 2008)

FINRA Fines 19 Firms a Total of \$2.8 Million for Inaccurate Advertised Trade Volume Information

The Financial Industry Regulatory Authority (FINRA) has fined 19 broker-dealers a total of \$2.8 million for substantially overstating their advertised trade volume to three private service providers.

FINRA compared the firms' advertised trade volume in selected securities with the firms' executed trade volume for the same securities in August 2006 and found substantial overstatements for each firm in one or more of the securities reviewed. FINRA also found that, prior to September 2006, all of the firms lacked an adequate supervisory system and procedures for communicating trade volume to such services.

The firms' overstated trade volumes were made available to market participants by the service providers. The service providers also used the firms' inaccurate advertised trade volumes to compile rankings and reports, including reports that rank the most active broker-dealers by security.

"Consistent with the obligation to report accurate trades to FINRA, when firms provide their trade volume to third party vendors for dissemination to market participants, it is critically important that firms take appropriate steps to ensure that their advertised trade volume is accurate" said Thomas Gira, FINRA Executive Vice President and Head of the Department of Market Regulation. In September 2006, FINRA published Notice to Members 06-50 to remind broker-dealers of that obligation.

In the actions announced today, eight firms were fined \$200,000 each (Broadpoint Capital, Inc., CIBC World Markets Corp., Lehman Brothers, Inc., Merrill Lynch, Pierce, Fenner & Smith, Inc., Needham & Company, LLC, Robert W. Baird & Co., Inc., Thomas Weisel Partners, LLC and UBS Securities, LLC). Six firms were fined \$150,000 each (Bear, Stearns & Co., Inc., BMO Capital Markets Corp., Cowen and Company, LLC, Deutsche Bank Securities, Inc., Leerink Swann & Company, Inc. and RBC Capital Markets Corp.). Four firms were fined \$50,000 each (Friedman, Billings, Ramsey & Co., Inc., Jefferies & Company, Inc., JMP Securities, LLC and Pacific Crest Securities, Inc.).

The fine for one firm, Piper Jaffray & Co., was reduced to \$100,000 because the firm conducted its own extensive internal investigation and then voluntarily provided the results to FINRA.

In concluding these settlements, the 19 firms neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

SMH Capital Fined \$450,000 for Procedural Failures Regarding Soft Dollar Payments, Distributing Improper Hedge Fund Sales Materials

Two SMH Brokers Fined \$200,000 for Improper Commission Sharing, One Broker Sanctioned for Registration Violation

The Financial Industry Regulatory Authority (FINRA) has fined SMH Capital Inc. (fka Sanders Morris Harris, Inc.) of Houston, TX, \$450,000 for failing to adopt adequate supervisory procedures and systems designed to address its prime brokerage and soft dollar services to hedge funds. As a result, SMH made improper payments of \$325,000 in soft dollars to a hedge fund manager.

The firm's failures also included drafting and distributing hedge fund sales materials that did not adequately disclose material investment risks to potential hedge fund investors. In addition, SMH entered into an improper compensation arrangement with two SMH brokers who also managed hedge funds, allowing them to share in commissions earned from fund trading contrary to representations made in the offering documents and a separate agreement.

In addition to the fine, SMH was ordered to retain an Independent Consultant to conduct a comprehensive review of the adequacy of the firm's policies, systems, procedures and training with regard to its hedge fund operation.

FINRA imposed \$100,000 fines and 20-day suspensions on Michael S. Rosen and Jack D. Seibald, the two brokers who helped manage SMH's prime brokerage services business while at the same time serving as the managers of a hedge fund that executed trades at SMH. Rosen and Seibald improperly received compensation from a profit pool derived, in part, from commissions on trading by their fund. This was contrary to the fund's private placement memorandum (PPM) and a separate contractual agreement. FINRA also imposed a 10-day suspension and \$15,000 fine on Anthony M. Gallo, an unregistered employee who engaged in activities that required securities industry registration.

"As broker-dealers increasingly provide services to hedge funds, they need to carefully tailor their supervisory systems and procedures to ensure they guard against conflicts of interest that result in securities law violations," said Susan L. Merrill, FINRA Executive Vice President and Chief of Enforcement. "SMH's inadequate procedures resulted in the firm making soft dollar payments without a reasonable inquiry into red flags indicating the payments were improper." FINRA found that SMH commenced its hedge fund services business in July 2000 and eventually established relationships with more than 15 different hedge funds, making the hedge fund business an important part of the firm's overall operations. SMH provided a platform of services to hedge fund managers including office space (complete with desks, computers, telephones and internet access), marketing assistance and capital introduction, with the fund managers paying for such services through commissions earned on trades directed to SMH.

The firm also operated soft dollar accounts for hedge funds that opted not to join SMH's prime brokerage services platform. These accounts collected a portion of the commissions earned when SMH executed trades for each fund. Fund managers could then submit, or cause to be submitted from third party service providers, invoices for products and services. SMH then paid the providers from the balances accumulated in the soft dollar accounts.

FINRA found that, by failing to have policies and procedures to police its soft dollar payments, SMH sent two improper soft dollar payments totaling \$325,000 to a hedge fund manager. The manager had submitted an invoice to SMH requesting that SMH issue one check for \$75,000 to an individual for "consulting services" and a second check for just under \$250,000 to the manager for "research expense reimbursement." The invoice raised several red flags. It requested that SMH pay the hedge fund manager directly for expenses that had purportedly been provided by a third party; it did not describe what research had been provided to the manager or who had provided the research; and it failed to describe the "consulting services" the individual provided. The hedge fund manager did not provide SMH with any invoice or backup documentation from the individual consultant or from any research provider to support the invoice. The invoice was suspect on its face.

Despite the red flags, SMH took no steps to determine whether the manager was relying on the soft dollar safe harbor under Section 28(e) of the Securities Exchange Act and, if not, whether the manager had disclosed to its clients that it was operating outside the safe harbor. Had SMH taken such steps, it would have revealed the invoice should not have been paid.

FINRA also found that Rosen and Seibald were employed as SMH brokers while managing a hedge fund that operated on SMH's prime brokerage services platform. To eliminate the conflict that arose from their dual roles, the fund's PPM as well as an October 2001 agreement between SMH, Rosen, Seibald and an outside firm that marketed the brokers' hedge fund prohibited Rosen and Seibald from sharing, in whole or in part, in any commissions SMH earned from trading for the hedge fund. In April 2002, contrary to the PPM and the agreement, SMH, Rosen and Seibald negotiated a new arrangement that allowed the two brokers to receive bonuses from a "profit pool" derived in part from the hedge fund's trading commissions. Nevertheless, Rosen and Seibald continued to disseminate the fund's PPM that incorrectly stated the brokers would not share in whole or in part in the fund's trading commissions.

FINRA also found that, as part of SMH's marketing assistance for its hedge fund clients, the firm's employees prepared and disseminated hedge fund sales materials to potential investors that failed to adequately disclose the risks inherent in hedge fund investing. Furthermore, these sales materials were not approved by a registered principal or signed, dated, and maintained in SMH's files for three years, as required by FINRA rules.

FINRA further determined that SMH failed to retain and preserve certain e-mails and instant messages of firm employees between January 2003 and December 2004, as required by federal securities laws and FINRA Rules. SMH's failure to retain these communications hampered FINRA's ability to investigate the firm's activities.

In settling this matter, SMH, Rosen, Seibald and Gallo neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

Rosen's suspension in any capacity was in effect from February 4, 2008, through February 23, 2008. Siebald's suspension in any capacity was in effect from February 25, 2008, through March 15, 2008. Gallo's suspension in any capacity was in effect from February 4, 2008, through February 13, 2008.

FINRA Fines Banc One for Unsuitable Variable Annuity Sales, Inadequate Supervision of Fixed-to-Variable Annuity Exchanges

Firm to Pay \$225,000 Fine, Make Restitution and Other Allowances to Customers

The Financial Industry Regulatory Authority (FINRA), as part of its ongoing efforts to curb abuses in the sale of variable annuities, has fined Banc One Securities Corporation (BOSC) of Chicago \$225,000 for making unsuitable sales of deferred variable annuities to 23 customers and for having inadequate systems and procedures governing annuity exchanges. Twenty-one of the 23 customers were over 70 years old.

In addition to the fine, FINRA is requiring the firm to allow each of the 23 customers to sell their variable annuities without penalty. Ordinarily, these variable annuities would have been subject to a six-year "surrender period" during which time the customers would have been required to pay surrender charges as high as 7 percent of the amount invested if they were sold in the first two years. The firm will also pay restitution of about \$6,500 to two customers who incurred surrender charges when exchanging annuities.

In 2006, BOSC merged with J.P. Morgan Securities, Inc.

"Variable annuities are complicated products with features such as surrender charges that can limit the customer's ability to access the invested funds," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement. "When firms are recommending annuities or annuity exchanges to elderly customers, they must act in the customers' best interests, taking into account all relevant factors—including the customers' ages and liquidity needs, surrender charges, product expenses and investment features. The exchanges at issue in this case appeared to have no real benefits to the customers, while subjecting them to new sales charges and locking up their money for a new, six-year surrender period."

FINRA found that in each of the 23 transactions between January 1, 2004, and June 30, 2005, BOSC representatives recommended that the customers exchange their fixed annuities then paying a minimum of 3 percent, for variable annuities. Following the exchange, the customers placed 100 percent of their assets into the fixed rate feature of the variable annuity, which paid a maximum of 3 percent—as recommended by BOSC representatives. All but one of the fixed annuities were beyond the surrender period—that is, the customers were not subject to any financial penalties if they withdrew any of their funds from the fixed annuity. Each of the newly purchased variable annuities was subject to a six-year surrender period requiring the customers to pay a penalty if they withdrew more than the sum of their earnings and 10 percent of their principal. FINRA found that each of these 23 recommendations was unsuitable, given the customer's age, investment objective, financial situation and income needs.

The settlement cites one example of an 80-year old customer who exchanged a fixed annuity earning 3 percent for a variable annuity, in which he invested the entire \$80,000 balance in the fixed income feature, which also paid 3 percent interest. This new variable annuity was subject to a six-year surrender period. Within the first year of owning the variable annuity, the customer withdrew \$9,000. Sixteen months after buying the variable annuity, the customer liquidated it and incurred a \$4,628 surrender fee.

FINRA further found that BOSC failed to adequately supervise these transactions and that the firm's supervisory system and procedures failed to require firm supervisors to obtain or consider certain critical information, such as the costs and benefits of features of the new and exchanged product, which are necessary for conducting the required suitability review of a variable annuity exchange.

In concluding this settlement, BOSC neither admitted nor denied the charges, but consented to the entry of FINRA's findings.