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Disciplinary and Other FINRA Actions

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Research Analysts

Foreign Research Analyst Exemption from the Research Analyst Qualification Examination

Effective Date: April 7, 2008

Executive Summary

Effective April 7, 2008, certain research analysts employed by a member firm's foreign affiliate who contribute to the preparation of a member firm's research reports¹ are exempt from the Research Analyst Qualification Examination per NASD Rule 1050 and Incorporated NYSE Rule 344.² The rule change supersedes an existing exemption that applies only to research analysts who are employed by foreign affiliates in certain FINRA-approved jurisdictions. The text of the amendment is set forth in Attachment A.

Questions regarding this *Notice* should be directed to Philip Shaikun, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8451; or Erika Lazar, Senior Attorney, Office of General Counsel, at (646) 315-8512.

Background and Discussion

NASD Rule 1050 and Incorporated NYSE Rule 344 (the Rules) require an associated person who functions as a research analyst to register as such with FINRA and pass a qualification examination (Series 86/87). The Rules provide a number of exemptions from the examination requirements,³ including an exemption for certain research analysts who are employed by a member firm's foreign affiliate and contribute to the preparation of a member's research report.

April 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Registration
- Research
- Senior Management

Key Topics

- Research Analysts
- Research Reports
- Supervision

Referenced Rules and Notices

- NASD Rule 1022(a)(5)
- NASD Rule 1050
- NASD Rule 2711
- NASD Rule 3010
- NYSE Rule 342
- NYSE Rule 344
- NYSE Rule Interpretation 344/02
- NYSE Rule 472

The rule change supplants the more limited existing exemption and applies to research analysts employed by a member's foreign affiliate residing anywhere outside of the United States, subject to certain conditions. More specifically, under the amended Rules, the requirements of NASD Rule 1050(a) and Incorporated NYSE Rule 344 do not apply to an associated person who:

- (1) is an employee of a non-member foreign affiliate of a member firm ("foreign research analyst");
- (2) resides outside the United States; and
- (3) contributes, partially or entirely, to the preparation of "globally branded" or foreign affiliate research reports, but does not contribute to the preparation of a member's research, including a "mixed-team" report, that is not globally branded.⁴

Eligibility for the exemption is conditioned on the member meeting the following supervisory, disclosure and recordkeeping requirements.

Supervisory Review

Member firms that publish or otherwise distribute globally branded research reports partially or entirely prepared by a foreign research analyst must subject such research to pre-use review and approval by a registered principal or supervisory analyst in accordance with NASD Rule 1022(a)(5) and Incorporated NYSE Rule 344.11, and interpretations thereto. In addition, the member firm is required to ensure that such research reports comply with NASD Rule 2711 and Incorporated NYSE Rule 472, as applicable.

Disclosure

In publishing or otherwise distributing globally branded research reports partially or entirely prepared by a foreign research analyst, a member firm must prominently disclose:

- (1) each affiliate contributing to the research report;
- (2) the names of the foreign research analysts employed by each contributing affiliate;
- (3) that such research analysts are not registered/qualified as research analysts with FINRA; and
- (4) that such research analysts may not be associated persons of the member firm and therefore may not be subject to the NASD Rule 2711 and Incorporated NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

The required disclosures must be presented on the front page of the research report or the front page must refer to the page on which the disclosures can be found. In electronic research reports, a member firm may hyperlink to the disclosures. All references and disclosures must be clear, comprehensive and prominent.

Recordkeeping

Member firms are required to establish and maintain records that identify those individuals who have availed themselves of the exemption, the basis for such exemption and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records creates an inference of a violation of NASD Rule 1050 and Incorporated NYSE Rule 344.

Member firms are also required to establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of NASD Rule 2711 and Incorporated NYSE Rule 472. Members must maintain these records in accordance with the supervisory requirements of NASD Rule 3010 and Incorporated NYSE Rule 342, and, in addition to such requirement, the failure to establish and maintain such records creates an inference of a violation of the applicable content, disclosure and supervision provisions of NASD Rule 2711 and Incorporated NYSE Rule 472.

The exemption does not affect the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules and regulations, and self-regulatory organization rules. And the fact that a foreign research analyst avails herself or himself of this exemption is not probative of whether that individual is an “associated person” for other purposes, including whether the foreign research analyst is subject to the NASD Rule 2711 and Incorporated NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

Endnotes

- 1 See Securities Exchange Act Release No. 57278 (February 6, 2008); 73 FR 8086 (February 12, 2008); Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 to Amend an Exemption to NASD Rule 1050 and NYSE Rule Interpretation 344/02 for Certain Research Analysts Employed By a Member’s Foreign Affiliate Who Contribute to the Preparation of a Member’s Research Report; File No. SR-FINRA-2007-010. See also File No. SR-FINRA-2008-012, a proposed rule change for immediate effectiveness to amend Incorporated NYSE Rule Interpretation 344/02 (Research Analysts and Supervisory Analysts) to make a non-substantive, technical change to the Interpretation text.
- 2 The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated (Incorporated NYSE Rules), including NYSE Rule 344 (Research Analysts and Supervisory Analysts). The Incorporated NYSE Rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as “Dual Members.” Dual Members also must comply with NASD Rules. Until the adoption of a Consolidated FINRA Rulebook, FINRA’s *Regulatory Notices* will address both NASD and the Incorporated NYSE Rules.
- 3 The Rules also currently provide exemptions from the Series 86 examination for certain applicants who have passed Levels I and II of the Chartered Financial Analyst examination or have passed Levels I and II of the Chartered Market Technician Examination and produce only “technical research reports” as that term is defined in the Rules.
- 4 A “globally branded” research report refers to the use of a single marketing identity that encompasses the member and one or more of its affiliates. A “mixed-team” research report refers to any member firm research report that is not globally branded and includes a contribution by a research analyst who is not an associated person of the member firm.

Attachment A

New language is underlined; deletions are in brackets.

1000. MEMBERSHIP, REGISTRATION AND QUALIFICATION REQUIREMENTS

* * * * *

1050. Registration of Research Analysts

(a) through (e) No Change.

(f) The requirements of paragraph (a) shall not apply to an associated person who; [is an employee of a non-member foreign affiliate who contributes to the preparation of a member's research report ("foreign research analyst"), provided the following conditions are met:

(1) the foreign research analyst resides and is employed in a jurisdiction that NASD has determined has registration and qualification requirements or other standards that reflect a recognition of principles that are consonant with this rule and the research analyst conflict of interest rules pursuant to Rule 2711;

(2) the foreign research analyst has satisfied all applicable registration and qualification requirements or other research-related standards in the jurisdiction in which the foreign research analyst resides and is employed;

(3) the NASD member ("U.S. member") whose research reports a foreign research analyst contributes in the preparation of has imposed on its affiliates and the foreign research analysts they employ all of the provisions of Rule 2711 and all other research-related standards the member imposes on its own research reports and research analysts;

(4) the annual compliance attestation submitted by the U.S. member pursuant to Rule 2711(i) must encompass the global application of Rule 2711 to the U.S. member's foreign affiliates that participate in the preparation of the U.S. member's research reports;

(5) all U.S. member research reports to which a foreign research analyst contributes in the preparation must be approved by a properly registered principal or supervisory analyst pursuant to Rule 1022; and

(6) in addition to the disclosure requirements of Rule 2711, each U.S. member research report to which a foreign research analyst contributes in the preparation shall include the following on the front page:

(A) a statement that:

“This research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member or member organization. These research analysts are not registered/qualified as a research analyst with the NYSE and/or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD.”

(B) disclosures identifying each affiliate contributing to the research report, the location of such affiliate, and the names of the research analysts employed by the affiliate that contributed to the preparation of the research report;

(C) a general description of the relationship between the contributing affiliates and the U.S. member; and

(D) a reference to the page on which a separate “Foreign Affiliate Disclosures” section can be found. Such section shall disclose information on the nature of the affiliation between the entities, the affiliates’ addresses, and the primary regulator in the jurisdiction(s) in which each affiliated entity is located.

(7) Members must establish and maintain records that identify those individuals who have availed themselves of the exemption in paragraph (f), specify the basis for such exemption, and evidence compliance with the conditions of paragraph (f).]

(1) is an employee of a non-member foreign affiliate of a member (“foreign research analyst”).

(2) resides outside the United States, and

(3) contributes, partially or entirely, to the preparation of globally-branded or foreign affiliate research reports but does not contribute to the preparation of a member's research, including a mixed-team report, that is not globally-branded.

Provided that the following conditions are satisfied:

(A) A member that publishes or otherwise distributes globally-branded research reports partially or entirely prepared by a foreign research analyst must subject such research to pre-use review and approval by a registered principal in accordance with NASD Rule 1022(a)(5) or a supervisory analyst pursuant to NYSE Rule 344.11. In addition, the member must ensure that such research reports comply with NASD Rule 2711, as applicable.

(B) In publishing or otherwise distributing globally-branded research reports partially or entirely prepared by a foreign research analyst, a member must prominently disclose:

(i) each affiliate contributing to the research report;

(ii) the names of the foreign research analysts employed by each contributing affiliate;

(iii) that such research analysts are not registered/qualified as research analysts with the NYSE and/or NASD; and

(iv) that such research analysts may not be associated persons of the member and therefore may not be subject to Rule 2711 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

(C) The disclosures required by paragraph (f)(3)(B) of this Rule must be presented on the front page of the research report or the front page must refer to the page on which the disclosures can be found. In electronic research reports, a member may hyperlink to the disclosures. References and disclosures must be clear, comprehensive and prominent.

(D) Members must establish and maintain records that identify those individuals who have availed themselves of this exemption, the basis for such exemption, and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records shall create an inference of a violation of Rule 1050. Members must also establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of Rule 2711. Members must maintain these records in accordance with the supervisory requirements of Rule 3010, and in addition to such requirement, the failure to establish and maintain such records shall create an inference of a violation of the applicable content, disclosure and supervision provisions of Rule 2711.

(E) Nothing in paragraph (f) of this Rule shall affect the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules and regulations and any self-regulatory organization rules.

(F) The fact that a foreign research analyst avails himself of the exemption in paragraph (f) shall not be probative of whether that individual is an associated person of the member for other purposes, including whether the foreign research analyst is subject to the Rule 2711 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

(G) A member that distributes non-member foreign affiliate research reports that are clearly and prominently labeled as such must comply with the third-party research report requirements in Rule 2711(h)(13).

(H) For the purposes of the exemption in paragraph (f), the terms “affiliate,” “globally-branded research report” and “mixed-team research report” shall have the following meanings:

(i) “Affiliate” shall mean a person that directly or indirectly controls, is controlled by, or is under common control with, a member.

(ii) “Globally-branded research report” refers to the use of a single marketing identity that encompasses the member and one or more of its affiliates.

(iii) “Mixed-team research report” refers to any member research report that is not globally-branded and includes a contribution by a research analyst who is not an associated person of the member.

* * * * *

Rule 344 RESEARCH ANALYSTS AND SUPERVISORY ANALYST

/01 No Change.

/02 Foreign Research Analysts

Exemption

The requirement [that]to register as a research analyst[as defined under] pursuant to NYSE Rule 344.10 [must be registered with, qualified by and approved by the Exchange] shall not apply [where such analyst is]to an associated person [of a member organization]who: (1) is an employee of a non-member foreign affiliate of [such]a member organization (“foreign research analyst”), (2) resides outside the United States and (3) [who]contributes, partially or entirely, to the preparation of [the member organization’s]globally-branded or foreign affiliate research reports [(“foreign research analyst”),]but does not contribute to the preparation of a member organization’s research, including a mixed-team report, that is not globally-branded, provided that the following conditions are satisfied:

- The foreign research analyst resides and is employed in a jurisdiction that the NYSE has determined has registration and qualification requirements or other standards that reflect a recognition of principles that are consonant with NYSE Rule 344 and the research analyst conflicts of interest provisions pursuant to NYSE Rule 472;
- The foreign research analyst has satisfied all applicable registration and qualification requirements or other research-related standards in the jurisdictions in which the foreign research analyst resides and is employed;

- Member organizations have imposed on affiliates that employ foreign research analysts, and the foreign research analysts all research-related standards that the member organization imposes on its research reports and research analysts, including the provisions of NYSE Rule 472;]

Supervisory Review

[•] Member organizations [and their affiliates]that publish or otherwise distribute globally-branded research reports partially or entirely prepared by a foreign research analyst must subject such research [reports]to pre-use review and approval by a supervisory analyst[, as required by NYSE Rule 472;] in accordance with NYSE Rule 344.11 or by a registered principal in accordance with NASD Rule 1022(a)(5). In addition, the member organization must ensure that such research reports comply with NYSE Rule 472, as applicable.

[• The annual attestation required under NYSE Rule 351(f) must include the global application of NYSE Rule 472 to foreign affiliates that employ foreign research analysts; and]

Disclosure

[• In addition to the disclosure requirements of NYSE Rule 472, each research report must include a disclosure on the front page stating that:

“This research report has been prepared in whole or part by foreign research analysts who may be associated persons of the member organization. These research analysts are not registered/qualified as a research analyst with the NYSE and/or NASD, but instead have satisfied the registration/qualification requirements or other research-related standards of a foreign jurisdiction that have been recognized for these purposes by the NYSE and NASD.”]

[Disclosure on the front page of each research report must identify:] In publishing or otherwise distributing globally-branded research reports partially or entirely prepared by a foreign research analyst, a member organization must prominently disclose:

- (1) each affiliate contributing to the research report;
- (2) [the location of such affiliate; and (3)]the names of the foreign research analysts employed by each contributing affiliate[.];

(3) that such research analysts are not registered/qualified as research analysts with the NYSE and/or NASD; and

(4) that such research analysts may not be associated persons of the member organization and therefore may not be subject to the NYSE Rule 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

The disclosures required by this Rule must be presented on the front page of the research report or the front page must refer to the page on which the disclosures can be found. In electronic research reports, a member may hyperlink to the disclosures. References and disclosures must be clear, comprehensive and prominent.

[The cover page must also contain general disclosure language describing the relationship between the contributing affiliates and the member organization.]

[The front page of the research report must also refer to a separate “Foreign Affiliate Disclosures” section (similar to the “Required Disclosure” section currently mandated by the NYSE and NASD under Rules 472 and 2711 respectively) located in close proximity to the “Required Disclosure” section. In this disclosure section, the member organization must disclose the following:

- (1) information on the nature of the affiliation with the affiliate;
- (2) each affiliate’s address; and
- (3) the primary regulator in the jurisdiction(s) in which each affiliate is located.]

Record Keeping

Member organizations must establish and maintain records that identify those individuals who have availed themselves of this exemption, the basis for such exemption, and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records shall create an inference of a violation of NYSE Rule 344.

Member organizations must also establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of NYSE Rule 472. Member organizations must maintain these records in

accordance with the supervisory requirements of NYSE Rule 342, and in addition to such requirement, the failure to establish and maintain such records shall create an inference of a violation of the applicable content, disclosure and supervision provisions of NYSE Rule 472.

Application of the Federal Securities Laws, Rules and Regulations and Self-Regulatory Organization Rules

The foregoing shall not affect the obligation of any person or broker-dealer, including a foreign broker-dealer, to comply with the applicable provisions of the federal securities laws, rules and regulations and any self-regulatory organization rules.

Effect of Exemption on Associated Person Status

The fact that a foreign research analyst avails himself of this exemption shall not be probative of whether that individual is an associated person of the member organization for other purposes, including whether the foreign research analyst is subject to the NYSE 472 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

Globally-Branded Research Report

A globally-branded research report refers to the use of a single marketing identity that encompasses the member organization and one or more of its affiliates.

Mixed-Team Research Report

A mixed-team research report refers to any member organization research report that is not globally-branded and includes a contribution by a research analyst who is not an associated person of the member organization.

Affiliate

For the purposes of this exemption, the term affiliate shall mean a person that directly or indirectly controls, is controlled by, or is under common control with, a member organization.

/03 - /04 No Change.

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Third-Party Research Reports

Member Firm Disclosure and Supervisory Review Obligations

Effective Date: April 7, 2008

Executive Summary

Effective April 7, 2008, an amendment to revise NASD Rule 2711(h)(13) and Incorporated NYSE Rule 472(k)(4) modifies a member's disclosure and supervisory review obligations when it distributes or makes available third-party research reports.¹ The rule change creates a category of "independent third-party research" and eliminates certain supervisory review requirements when a member distributes or makes available such research. The text of the amendment is set forth in Attachment A.

Questions regarding this *Notice* should be directed to Philip Shaikun, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8451; or Erika Lazar, Senior Attorney, Office of General Counsel, at (646) 315-8512.

Background and Discussion

NASD Rule 2711(h)(13) and Incorporated NYSE Rule 472(k)(4) (the Rules) set forth a member's disclosure and supervisory review obligations when the member distributes—*i.e.*, "pushes out"—or makes available a research report produced by a third party. The rule change makes several modifications to those requirements.

April 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Research
- Senior Management

Key Topic(s)

- Research Analysts
- Research Reports
- Supervision
- Third-Party Research Reports

Referenced Rules & Notices

- NASD Rule 2210
- NASD Rule 2711
- NYSE Rule 344
- NYSE Rule 342
- NYSE Rule 472

Definitions

Attention should be paid in this *Notice* and the Rules to the distinctions between a “third-party research report” and an “independent third-party research report.” A third-party research report is defined as a research report produced by a person or entity other than a member.

An independent third-party research report is defined as a research report in respect of which the person or entity producing the report (1) has no affiliation or contractual relationship with the distributing member or that member’s affiliates that is reasonably likely to inform the content of its research reports;² and (2) makes content determinations without any input from the distributing member or that member’s affiliates.

The second prong of the definition of independent third-party research report means that a distributing firm cannot have any input into the outcome of the research report. A member may have input into determining which companies or sectors are to be covered, but there may not be any explicit or implicit agreements, understandings or expectations as to any particular conclusions or recommendations of the resultant research reports.

Third-Party Disclosures

The Rules require a member firm that distributes a third-party research report to accompany the report with certain current applicable disclosures (third-party disclosures) as they pertain to the firm.³ Currently, the third-party disclosure requirements do not apply if a member firm makes available to its customers non-affiliate research either (1) upon request or (2) through a member-maintained Web site.

The rule change maintains those two exceptions for independent third-party research only and adds a third exception from making third-party disclosures for such research. The third exception arises when the registered representative has informed the customer, during the course of a solicited order, of the availability of an independent third-party research report and the customer requests such research report.

The disclosure requirements still pertain when a member firm “pushes out” independent third-party research reports—*i.e.*, does not meet one of the three exceptions—and to any third-party research report that does not meet the definition of independent third-party research report, irrespective of whether it is distributed or made available.

The rule change also provides that member firms may either accompany third-party research reports with the applicable disclosures or provide a Web address in the report that directs the recipient to a location where such disclosures can be found.

Supervisory Review and Approval of Third-Party Research

The current Rules require a registered principal or a supervisory analyst, approved pursuant to NYSE Rule 344, to approve by signature or initial any third-party research distributed by a member firm and to review such research to ensure that the applicable disclosures are complete and accurate (disclosure review) and the content of the research reports contains no untrue statement of material fact or is otherwise not false or misleading (content review).⁴

With respect to the disclosure review requirement, in view of the volume of third-party research reports distributed by many firms, FINRA has amended the Rules to establish a more principles-based standard of review: Member firms must establish written supervisory policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures. Thus, for example, a firm may employ spot-checking systems or other review mechanisms to ensure compliance with the disclosure review requirement.

The rule change eliminates the content review requirement when a member firm distributes independent third-party research. It also codifies FINRA's interpretation regarding the scope of the content review to provide that a member firm's approval of third-party research reports shall be based on a review to determine that the report does not contain any untrue statement of material fact or any false or misleading information that (1) should be known from a reading of the report or (2) is known based on information otherwise possessed by the member.

FINRA intends for the amendment to the Rules to promote the availability of independent third-party research—a valuable source of independent analysis for investors that can be compared with or supplement a firm's own research. At the same time, the amendment maintains member supervisory review in those circumstances where the firm's relationship with the research provider is such that the research is not wholly free from the control or influence of the member firm.

Endnotes

- 1 See Securities Exchange Act Release No. 57279 (February 6, 2008); 73 FR 8089 (February 12, 2008); Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 to Amend NASD Rule 2711 (Research Analysts and Research Reports) and NYSE Rule 472 (Communications With The Public) Regarding a Member's Disclosure and Supervisory Review Obligations When it Distributes or Makes Available Third-Party Research Reports; File No. SR-FINRA-2007-011.
- 2 For the avoidance of any doubt, FINRA staff wish to make clear that the first prong of the definitional test of independent third party research is meant to be read as excluding from the definition all research produced by (1) an affiliate; and (2) all other parties that have a contractual relationship with the distributing member firm or that firm's affiliates that is reasonably likely to inform the content of its research reports.
- 3 A distributing member firm must disclose the following, if applicable: (1) If the member firm owns 1 percent or more of any class of equity securities of the subject company; (2) if the member firm or any affiliate has managed or co-managed a public offering of securities of the subject company or received compensation for investment banking services from the subject company in the past 12 months, or expects to receive or intends to seek compensation for such services in the next three months; (3) if the member firm makes a market in the subject company's securities; and (4) any other actual, material conflict of interest of the research analyst or member firm of which the research analyst knows or has reason to know at the time the research report is distributed or made available.
- 4 Incorporated NYSE Rule 472(k)(4) requires a supervisory analyst approved pursuant to NYSE Rule 344 or a qualified person, designated pursuant to NYSE Rule 342(b)(1), to approve by signature or initial any third-party research distributed by a member organization and to complete the disclosure and content reviews.

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Attachment A

New language is underlined. Deleted language is bracketed.

2700. SECURITIES DISTRIBUTIONS

* * * * *

2711. Research Analysts and Research Reports

(a) through (g) No Change.

(h) Disclosure Requirements

(1) through (12) No Change.

(13) Third-Party Research Reports

(A) Subject to paragraph (h)(13)(B) of this Rule, if a member distributes or makes available any third-party research report[that is produced by another member, a non-member affiliate of the member or an independent third party], the member must accompany the research report with, or provide a web address that directs the recipient to, the current applicable disclosures, as they pertain to the member,[that are] required by paragraphs (h)(1)(B), (h)(1)(C), (h)(2)(A)(ii) and (h)(8) of this Rule. Members must establish written supervisory policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

(B) The requirements of paragraph (h)(13)(A) of this Rule shall not apply to independent third-party research reports[prepared by an independent third party that the member makes] made available by a member to its customers:

(i) [either]upon request;

(ii) in connection with a solicited order in which a registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security, and the customer requests such independent research; or

(iii) through a member-maintained web site.

(C) Subject to paragraph (h)(13)(D) of this Rule, [A]a registered principal (or supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange) must approve by signature or initial [any]all third-party research reports distributed by a member. The approval of third-party research shall be based on a review [All third-party research distributed by a member must be reviewed]by the designated principal (or supervisory analyst approved pursuant to NYSE Rule 344) to determine that [the applicable disclosures required by Rule 2711 are complete and accurate, and] the content of the research report, pursuant to Rule 2210(d)(1)(B), contains no untrue statement of material fact or is otherwise not false or misleading. For the purposes of this Rule only, a member's obligation to review a third-party research report pursuant to Rule 2210(d)(1)(B) extends to any untrue statement of material fact or any false or misleading information that:

a. should be known from reading the report;

or

b. is known based on information otherwise possessed by the member.

[is consistent with all applicable standards regarding communications with the public.]

(D) The requirements of paragraph (h)(13)(C) of this Rule shall not apply to independent third-party research reports distributed or made available by a member.

(E) For the purposes of this Rule, "third-party research report" shall mean a research report that is produced by a person or entity other than the member and "independent third-party research report" shall mean a third-party research report, in respect of which the person or entity producing the report:

(i) has no affiliation or business or contractual relationship with the distributing member or that member's affiliates that is reasonably likely to inform the content of its research reports; and

(ii) makes content determinations without any input from the distributing member or that member's affiliates.

(i) through (k) No Change.

Rule 472. Communications With The Public

(a) through (k)(3) No Change.

(k)(4) Third-Party Research Reports

(i) Subject to paragraph (k)(4)(ii) of this Rule, if a member organization distributes or makes available any third-party research report[s produced by another member organization, a non-member organization affiliate of a member organization, such as a foreign or domestic broker-dealer or investment adviser, or an independent third party], the member organization must accompany the research report with, or provide a web address that directs the recipient to, the current applicable disclosures, as they pertain to the member organization, [that are] required by paragraphs (k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d of this Rule. Member organizations must establish written supervisory policies and procedures reasonably designed to ensure the completeness and accuracy of all applicable disclosures.

[a. A supervisory analyst qualified under NYSE Rule 344 must approve, pursuant to Rule 472(a)(2), by signature or initial any third-party research distributed by a member organization; and

b. A supervisory analyst or qualified person designated pursuant to Rule 342(b)(1) (e.g., a person who has taken and passed the Series 9/10, or another examination acceptable to the Exchange which demonstrates competency relevant to assigned responsibilities, including the Series 24 if taken and passed after July 1, 2001) must review third-party research distributed by a member organization to determine that the disclosures required by Rule 472(k)(1)(i)c, (k)(1)(i)a, (k)(1)(i)b and (k)(1)(iii)d are complete and accurate, and that the content of the research report is consistent with all applicable standards regarding communications with the public.]

(ii) The requirements in paragraph (k)(4)(i) of this Rule shall not apply to independent third-party research reports [prepared by an independent third party that the member organization makes] made available by a member organization to its customers:

a. [either]upon request;

- b. in connection with a solicited order in which a registered representative has informed the customer, during the solicitation, of the availability of independent research on the solicited equity security, and the customer requests such independent research; or
- c. through a member organization-maintained website.

(iii) Subject to paragraph (k)(4)(iv) of this Rule, a supervisory analyst, qualified under NYSE Rule 344, or a qualified person, designated pursuant to Rule 342(b)(1), must approve by signature or initial all third-party research reports distributed by a member organization. The approval of third-party research shall be based on a review by the designated supervisory analyst or qualified person to determine that the content of the research report, pursuant to Rule 472(i), contains no untrue statement of material fact or is otherwise not false or misleading. For the purposes of paragraph (k)(4) of this Rule only, a member organization's obligation to review a third-party research report pursuant to Rule 472(i) extends to any untrue statement of material fact or any false or misleading information that:

1. should be known from reading the report; or
2. is known based on information otherwise possessed by the member organization.

(iv) The requirements of paragraph (k)(4)(iii) of this Rule shall not apply to independent third-party research reports distributed or made available by a member organization.

(v) For the purposes of this Rule, "third-party research report" shall mean a research report that is produced by a person or entity other than the member organization and "independent third-party research report" shall mean a third-party research report, in respect of which the person or entity producing the report:

- a. has no affiliation or business or contractual relationship with the distributing member organization or that member organization's affiliates that is reasonably likely to inform the content of its research reports; and
- b. makes content determinations without any input from the distributing member organization or that member organization's affiliates.

(l) through (m) No Change.

Supplementary Material .10 through .140 No Change.

* * * * *

Customer Complaint Reporting

Reporting of Customer Complaints Relating to Auction Rate Securities

Effective Date: April 1, 2008

Executive Summary

FINRA has added three new product categories for use by member firms in reporting customer complaints relating to auction rate securities. NASD Rule 3070(c) and incorporated NYSE Rule 351(d) require all members and member organizations to report, on a quarterly basis, statistical information regarding customer complaints.¹ This information is required to be filed by the fifteenth calendar day of the month following the end of the quarter.

Member firms are required to submit quarterly statistical reports under NASD Rule 3070(c) and incorporated NYSE Rule 351(d) using the new product categories beginning with second quarter reports that are due to FINRA by July 15, 2008. FINRA member firms may voluntarily use the three new product categories when reporting customer complaints for the first quarter of 2008.

Questions regarding this Notice may be directed to Stephen Kasprzak, Director & Special Counsel, Sales Practice Policy, at (646) 315-8505; or Gregory Taylor, Principal Rule Counsel, Sales Practice Policy, at (646) 315-8599.

Background & Discussion

Auction rate securities are variable rate securities generally issued through a "Dutch auction," with interest rates that are reset at short-term intervals—usually 7, 28 or 35 days.² Recently, many investors have not been willing to participate in the auctions for these securities due to concerns about the current credit market environment. As a result, investors holding these securities have not been able to liquidate their positions. Due to these current liquidity issues in the auction rate securities market, three new product categories were introduced to capture the reporting of related complaints. The categories parallel the characteristics of the underlying securities which are mainly municipal debt, corporate debt and closed-end funds.

April 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Bullet

Key Topics

- Auction Rate Securities
- Customer Complaint Reporting

Referenced Rules & Notices

- NASD Rule 3070
- NYSE Rule 351

New Product Codes & Descriptions

The product codes for reporting complaints under NASD Rule 3070(c) and incorporated NYSE Rule 351(d) now include the following new categories:

- ▶ **Auction Rate Securities—Municipal Debt—Code #39**
Debt instruments issued and backed by a state, city or other local government or their agencies with variable interest rates that are reset periodically through a “Dutch auction” process.
- ▶ **Auction Rate Securities—Corporate Debt—Code #40**
Debt instruments issued by a corporation for which the interest rates are reset through an auction, or preferred stocks for which dividends are reset through the same process.
- ▶ **Auction Rate Securities—Closed-end Funds—Code #41**
Investment companies traded in the secondary market with a limited number of shares for which the interest or dividend rates are reset through an auction.

Endnotes

- 1 FINRA has assumed regulatory responsibility for NYSE Rule 351 under an agreement pursuant to Section 17(d) of the Securities Exchange Act of 1934, and Rule 17d-2 thereunder.
- 2 A “Dutch auction” is a process by which securities are sold at the highest price at which sufficient bids are received to sell all securities offered. Generally, the securities will be sold at the clearing price established by the Dutch auction to all investors placing bids at or above the clearing price.

Unauthorized Proprietary Trading

Sound Practices for Preventing and Detecting Unauthorized Proprietary Trading

Executive Summary

In the wake of several recent cases involving allegations of unauthorized or “rogue” trading resulting in substantial losses by firms both in the United States and abroad, many FINRA firms are undertaking comprehensive reviews of their internal controls and risk management systems designed to prevent such trading activity. FINRA is issuing this *Notice* to highlight sound practices for firms to consider as they undergo that process. We also remind firms that even profitable unauthorized trading can result in regulatory exposure if it involves falsification of the firm’s books and records, failures in supervisory control systems, market manipulation or fraud. Therefore, internal control systems should be designed to address regulatory as well as business and reputational risk.

Questions regarding this *Notice* may be directed to:

- ▶ Laura Gansler, Associate Vice President, Emerging Regulatory Issues, at (202) 728-8275; or
- ▶ Rosemarie Fanelli, Surveillance Director, Risk Oversight and Operational Regulation, at (646) 315-8452;
- ▶ Kathryn Mahoney, Director, Emerging Regulatory Issues, at (212) 858-4101.

Background and Discussion

The risks associated with unauthorized proprietary trading by “rogue” traders are not new, and most firms that allow traders to commit the firms’ capital already have policies and procedures in place designed to prevent unauthorized trading. In 1999, the SEC, NYSE and NASD issued a Joint

April 2008

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Risk Management
- ▶ Senior Management
- ▶ Trading

Key Topic(s)

- ▶ Books & Records
- ▶ Internal Controls
- ▶ Risk Management
- ▶ Supervision
- ▶ Proprietary Trading

Referenced Rules & Notices

- ▶ NTM 99-92
- ▶ NYSE Rule 342
- ▶ NYSE Rule 351

Statement on Broker-Dealer Risk Management Practices that summarized weak and strong risk management practices identified through a survey of mid-sized and large firms.¹ In it, the regulators concluded that senior management must play a significant role in the adoption and maintenance of a comprehensive system of internal controls and risk management systems, and that those controls and systems must be adequately funded, independent of revenue-generating activities, and updated as changes in technology, the firm's business activities or other circumstances warranted.

Since then, many firms have refined and strengthened their internal controls around unauthorized trading. However, recent events highlight the importance of routinely reassessing the adequacy and effectiveness of those systems, particularly in light of the increasingly global nature of the financial services industry, the highly competitive trading environment and the complexity of many of the products being traded. In particular, the immediacy required as a result of pervasive electronic trading and market linkages has increased pressure on some firms to relax internal controls that might arguably affect a trader's competitive advantage in the short run, but protect the firm from undue risk in the long term.

Unauthorized trading under any circumstances, but especially in the case of proprietary trading, can pose significant risk from a business perspective, and it can create serious regulatory risk as well, even when the trading generates profits for the firm. Substantial losses can affect financial viability and several recent incidents appear to raise other regulatory concerns, including falsification of the firm's books and records, lapses in supervisory controls and fraud. Moreover, it is sometimes difficult to tell from early red flags whether suspicious trading activity is generating profits or losses; vigilance against regulatory exposure as opposed to simply focusing on business risk can help protect the firm against both. Therefore, a firm's internal controls around unauthorized proprietary trading should be designed to deter and detect all unauthorized trading by the firm's employees.² This deterrence is important even when the firm profits from that trading; firms that "look the other way" or reward profitable unauthorized trading are creating incentives for this prohibited behavior and the potential for future risk of loss.

Sound Practices

To assist firms in the process of reviewing and, where necessary, modifying, their current internal controls against unauthorized trading, we have recently solicited input from a range of firms regarding their internal controls, as well as the preliminary results of internal reviews. We are publishing those practices now with the expectation that doing so will help other firms as they undergo their own review process. While FINRA believes that these practices are worthy of consideration, we understand that their relevance and feasibility will vary depending on a firm's size and business model. We also note that this is not an exhaustive list, and is not intended to create a safe harbor from regulatory exposure or to discourage firms from completing their own comprehensive internal audits.

Mandatory Vacation Policies

An increasing number of broker-dealers have identified “sensitive” jobs, and adopted mandatory policies requiring employees in those positions, including traders, to be away from the office for a minimum amount of time, typically ten consecutive trading days. During that time away, the employee is barred from having physical or electronic access to the firm, its facilities, or systems. The theory behind this policy, which has been common in the banking industry, is that if an employee has engaged in unauthorized activity and is concealing it, the activity will likely be exposed in the firm’s trade reconciliation process within that time, because the employee is not able to continue the concealment while away from the firm and its systems.

A mandatory vacation policy must be enforced in order to be effective. In at least one recent well-publicized case, the firm had such a policy, but the trader involved had not taken the full, mandatory, consecutive vacation in several years. Exemptions should not be granted except in unusual circumstances and repeated requests for exemptions should be considered a red flag warranting additional monitoring. Firms also should assure that their systems support blocking employees on mandatory vacation from accessing firm systems.

A mandatory vacation policy may not be feasible or reasonable for all firms. However, we urge firms to consider it as part of their risk management procedures. If a firm determines not to adopt such a policy, it should consider other methods of identifying and reviewing the trading activity of traders who have not taken an extended vacation in the past year.

Heightened Scrutiny of Red Flags

As firms review their internal controls, they should pay attention to whether they are both adequately mining available trade data for red flags and following up on those red flags where appropriate. Among other things, firms should monitor, and, when necessary, conduct heightened scrutiny of:

- Trading limit breaches. At least one firm surveyed recently has implemented a tool that allows for monitoring of limit breaches by a trading book or individual trades in real-time, and can be set to generate alerts based on a range of parameters, including the notional value of a trade, share size (net/gross position), amount of orders or traders per day and total dollar value per day.
- Unrealized profit and loss (P&L) on unsettled transactions. Trading desk managers and financial control managers should pay careful attention to sizeable amounts of unrealized P&L and should understand the nature of the transactions creating these amounts.

- Unusual patterns of cancellations and corrections, particularly those involving multiple cancellations or corrections by the same trader or involving the same counter-party. Certain firms prohibit a front-office trader or salesperson from entering cancels and corrects into the trading system and limit the entry of these transactions to mid-office (*e.g.*, those involved in risk management) or back-office (*e.g.*, those involved in settlement services) personnel.
- Transactions in which confirmation and settlement do not occur on a timely basis, or where settlement is outside of normal cycles.
- Reports of aged unresolved reconciling items and aged outstanding confirmations.
- Reports of P&L that exceed a certain *de minimis* amount by traders who are supposed to be flat, or unusually large one-day P&L reports.
- The details underlying a trader's Value at Risk (VaR), including the long and short positions, on a daily or intra-day basis, as appropriate. Firms should also consider other risks associated with a trader's positions, such as liquidity risk, the adequacy of hedges and the risks associated with imperfect hedges. This includes understanding and reviewing the valuation of all positions, particularly positions in exotic instruments or instruments that have little or no market.
- Repeated or unusual requests by a trader to relax existing controls, including position or P&L limits.
- Trading in products that are outside of a trader's known expertise, without prior approval.
- Any other unusual or significant differences between a trader's account positions and the account activity, such as might be detected by comparison of gross and/or net position to the cash flows of positions; *i.e.*, margin/collateral calls to and from counterparties to the trades.
- A pattern of aged fails to deliver for long or short sales.

Whether these data points are reviewed manually, or with the use of automated surveillance tools, or some combination, a firm's controls should not just note deviations from normal trading patterns as red flags that might signal proprietary business risk, but as signals of possible regulatory risk as well. And, to the extent that firms use automated surveillance tools to identify such items, their internal control systems should include adequate and routine maintenance and testing of those systems.

Protection of Systems and Risk Management Information

In some cases, rogue traders have been able to falsify a firm's books and records to conceal illicit trading activity due to lapses in password security and other systems protections. Firms should make certain that each employee's access to systems is limited strictly to what is appropriate for the employee's function within the firm. This control should not be limited to traders; it should be in place for any employee whose role includes access to trading systems. If an employee's function changes within the firm, the firm should make sure that the employee's access changes accordingly. For example, if an employee moves from the back office to a trading desk, that employee's access should be changed to reflect his or her new role, and access to the back-office functions should be revoked. Firms should also make sure that access is suspended during any mandatory vacation period and cancelled promptly if the employee leaves the firm.

Firms also should protect information about surveillance or monitoring systems and procedures that might help employees circumvent those systems. For example, knowledge that the firm divides responsibility for reviewing certain trade monitoring functions by product type might help a trader who is creating fictitious trades to avoid detection by creating trades involving different products, so that the trades would not all be reviewed by the same personnel. In at least one recent case, a trader's intimate knowledge of back-office procedures and risk management procedures, including what would—and what would not—trigger heightened scrutiny, may have allowed him to avoid detection for a much longer period than he otherwise might have. Therefore, firms should limit knowledge about the details of their risk management procedures and systems to the extent possible and consider modifying them in response to personnel changes, such as a back office employee becoming a trader. Firms also should consider whether there are appropriate mechanisms in place to review all activity of a given trader.

Firms may want to consider more than a single password to allow access to certain systems. More sophisticated systems require three-factor authentication before access is allowed, including not only a password but also a security card or other I.D. such as a token ring, and a unique identifier such as a fingerprint. Firms need to weigh both the inconvenience and the cost of these additional security measures in determining which controls are appropriate.

Supervision and Accountability

Certain financial services companies have established matrix management structures such that employees may have both direct and dotted line reporting to multiple managers. While matrix management may make sense for an organization, it is important for employees to understand who they report to and what they are held accountable for in their day-to-day job responsibilities. Correspondingly, both the dotted line and the direct manager must have a clear sense of who is responsible for each aspect of the business. It is critical that responsibility for supervision of each aspect of the business be allocated to a specific manager and that these managers have frequent communications to understand their respective businesses. Documenting these supervisory responsibilities in writing is recommended.

Intercompany Transactions

Many FINRA firms are part of larger, complex financial services organizations. The FINRA member firm generally conducts a large number of intercompany transactions with its affiliates. Often the basic controls that are in place for third parties, including controls around credit risk and market risk, are waived for affiliated transactions. In light of the recent cases of unauthorized trading, firms may want to reevaluate whether certain third-party controls that limit their exposure would be appropriate for affiliated transactions. Further, reconciliations of intercompany transactions and balances should be performed on a regular basis.

Compliance Culture

As recent events have demonstrated, even the most rigorous internal controls and risk management procedures can fail if they are not effectively enforced and the effectiveness of that enforcement is directly related to the “tone at the top.” A corporate culture that marginalizes the individuals or departments responsible for trade reconciliation and risk management will undermine the effectiveness of even the most elaborate policies and procedures. In reviewing the adequacy of their internal controls around unauthorized proprietary trading by individual traders, firms should pay attention to any systemic or cultural dynamics that may undermine the effectiveness of those systems. For example:

- ▶ Do mid- and back-office functions have sufficient independence, clout and profile within the organization? To whom do they report?
- ▶ Are mid- and back-office personnel adequately trained and encouraged to raise issues about suspicious activity, even if it involves successful traders or activity that is generating profits for the firm, or doesn't technically violate any limits?
- ▶ If operations, compliance or internal audit personnel receive a questionable or inadequate response by a trader, are they encouraged to challenge such a response and/or raise the issue to their supervisors where appropriate?

- If the firm operates in a global context, do its internal controls take into account any cultural differences that might discourage adequate internal oversight or reporting? For example, anonymous reporting might be appropriate in certain environments.
- Do traders who have incurred losses have incentives to disclose them and limit the damage because they understand that the failure to disclose will be considered an egregious violation of the firm's policies and procedures and dealt with accordingly, or are they encouraged, even implicitly, to incur more risk in order to avoid disclosure?
- Are internal control functions adequately funded, and are those who perform them adequately compensated, in relation to the role that they are asked to perform within the firm?

Conclusion

As firms review their internal controls around unauthorized trading in the wake of recent incidents, FINRA urges them to consider the practices described above, and to rigorously examine the broader compliance culture within which those controls are enforced. FINRA also reminds firms of the importance of ensuring that program areas tasked with detecting and preventing unauthorized trading possess sufficient independence, clout and funding, especially during challenging market conditions.

Endnotes

- 1 See *NASD NTM 99-92* (November 1999) and *NYSE Information Memo 99-42* (September 1999).
- 2 FINRA member firms that are also members of the NYSE are subject to incorporated Rules 342.21 and 351(e), which require firms to review proprietary, employee and employee-related trading in NYSE-listed securities and related financial instruments, and to conduct "internal investigations" of trades that may violate securities laws and rules prohibiting insider trading and manipulative and deceptive devices. Members and member organizations are further required to file with the Exchange reports relating to such internal investigations pursuant to Rule 351(e).

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Gross Income Assessment

SEC Approves Rule Change to Amend FINRA's Gross Income Assessment

Effective Date: January 1, 2008

Executive Summary

On March 11, 2008, the SEC approved amendments to FINRA's Gross Income Assessment (GIA) with a retroactive effective date of January 1, 2008.¹ The amendments establish a new structure for the GIA that combines aspects of NASD's legacy GIA fee structure with the prior rate structure of NYSE Regulation's Gross FOCUS Fee (GFF). The amendments also made technical changes to Schedule A of the FINRA By-Laws.

Questions concerning this *Notice* should be directed to Finance, at (240) 386-5397; or the Office of General Counsel, at (202) 728-8071.

Background & Discussion

As a result of the consolidation of NASD and NYSE member regulation operations in 2007, FINRA had two streams of income funding its regulatory programs: (1) NASD-legacy member regulatory fees; and (2) certain NYSE fees that NYSE Regulation agreed to transfer to FINRA for the remainder of 2007. After careful review of the combined NASD and NYSE-transferred fees, FINRA proposed to amend its fee structure to:

- (1) eliminate duplicative registration fees for branch offices and registered representatives;
- (2) maintain NASD's legacy fee structures and levels for its Trading Activity Fee, Branch Office Assessment and Personnel Assessment; and
- (3) consolidate NASD's GIA rate structure with NYSE Regulation's GFF rate structure.

April 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topic(s)

- Regulatory Fees
- Gross Income Assessment
- Gross FOCUS Fees
- Registration Fees

Referenced Rules & Notices

- Notice 08-07
- Schedule A to the FINRA By-Laws

To effect these changes, both NYSE² and FINRA³ filed rule proposals with the SEC. On March 11, 2008, the SEC approved FINRA's proposal to establish a new GIA rate structure.⁴ Under the new structure, the minimum assessment under the GIA of \$1,200 remains, but the annual gross revenue ceiling has been increased from \$960,000 to \$1 million.⁵ Because FINRA previously committed to a GIA rebate of \$1,200 per year for five years, subject to annual Board approval, this effectively reduces the GIA to \$0 for the first \$1 million of annual gross revenue. For annual gross revenues assessed above \$1 million, the regressive rate structure of the legacy GIA and the flat NYSE GFF rate structure has been combined into a tiered rate structure.

Under the new GIA rate structure, member firms will be assessed a GIA of the total of:

- (1) \$1,200 on annual gross revenue up to \$1 million;
- (2) 0.1215 percent of annual gross revenue greater than \$1 million up to \$25 million;
- (3) 0.2599 percent of annual gross revenue greater than \$25 million up to \$50 million;
- (4) 0.0518 percent of annual gross revenue greater than \$50 million up to \$100 million;
- (5) 0.0365 percent of annual gross revenue greater than \$100 million up to \$5 billion;
- (6) 0.0397 percent of annual gross revenue greater than \$5 billion up to \$25 billion;
and
- (7) 0.0855 percent of annual gross revenue greater than \$25 billion.

Implementation

To minimize the impact of the new rate structure on member firms, FINRA will implement the new rate structure over a three-year period beginning this year. During this period, the change in the GIA paid to FINRA by each member will be subject to a cap based on the fees that the member firm would have paid under the prior rate structure(s):

- In 2008, the new rate structure will not affect a firm's GIA.
- In 2009, FINRA will apply a five-percent cap on any increase or decrease to a member firm's GIA resulting from the new rate structure.
- In 2010, FINRA will apply a ten-percent cap on any increase or decrease to a member firm's GIA resulting from the new rate structure.
- ‰ Beginning in 2011, each member firm's GIA will be calculated based solely on the new GIA rate structure set forth above without reference to the prior applicable rate structure(s).

Please note that during this implementation period, a firm's GIA may increase or decrease due to a change in the member firm's assessable revenue from year to year; however, any changes to the firm's GIA that results from the change in rate structure will be subject to the cap.

In addition, the new GIA rate structure will be phased in based on each firm's membership affiliation:

- For **NASD-only members** (as of July 30, 2007) and **FINRA members** (on or after July 30, 2007, excluding NYSE-only members required to become FINRA members pursuant to NYSE Rule 2), the cap will be calculated based on the GIA that the member firm would have paid under the prior NASD GIA rate structure.
- For **NYSE-only members** (as of July 30, 2007), the cap will be calculated based on the NYSE GFF that the firm would have paid under the prior NYSE GFF rate structure.⁶
- For **Dual Members** (*i.e.*, firms that were members of both NASD and NYSE as of July 30, 2007), the cap will be calculated based on the GIA and the NYSE GFF that the firm would have paid under the prior NASD GIA rate structure and the prior NYSE GFF rate structure.

Overall Impact

FINRA estimates that the new GIA rate structure, along with the elimination of certain NYSE fees, will result in aggregate fee reductions to FINRA member firms of approximately \$25 million annually—approximately \$18.6 million from the elimination of NYSE Regulation's registration fees and approximately \$6.4 million from the \$1,200 GIA rebate given to all FINRA member firms. FINRA estimates that, under the new GIA rate structure, 93 percent of member firms will have either an unchanged or reduced GIA. Certain firms with annual gross revenue exceeding \$35 million, however, will have an increase to their GIA under the new GIA rate structure.

Endnotes

- 1 See Securities Exchange Act Release No. 57474 (March 11, 2008), 73 FR 14517 (March 18, 2008) (Order Approving SR-FINRA-2008-001).
- 2 See Securities Exchange Act Release No. 57093 (January 3, 2008), 73 FR 1654 (January 9, 2008) (Notice of Filing and Immediate Effectiveness of SR-NYSE-2007-127). In addition to the registration fees for branch offices and registered representatives, NYSE also eliminated its Regulation T credit extensions fee, statutory disqualification fees, FOCUS feedback fee, regulatory element fee and the Series 7 qualification exam fees from the NYSE Price List.
- 3 See Securities Exchange Act Release No. 57259 (February 1, 2008), 73 FR 7340 (February 7, 2008) (Notice of Filing of SR-FINRA-2008-001).
- 4 See Securities Exchange Act Release No. 57474 (March 11, 2008), 73 FR 14517 (March 18, 2008). FINRA's proposed rule changes also included technical amendments to Schedule A to the FINRA By-Laws to change references from "NASD" to "FINRA" throughout Schedule A.
- 5 Gross revenue for assessment purposes is set out in Section 2 of Schedule A to the FINRA By-Laws, which defines gross revenue as total income as reported on FOCUS form Part II or IIA, excluding commodities income.
- 6 In calculating the cap based on the GFF that a firm would have paid under the prior NYSE GFF rate structure, FINRA will use only that portion of the GFF that would have been transferred by NYSE to FINRA in 2007 (*i.e.*, 75 percent of the GFF paid by the firm).

Proposed Changes to Forms U4 and U5

FINRA Requests Comment on Proposed Changes to Forms U4 and U5

Comment Period Expires: May 27, 2008

Executive Summary

FINRA requests comment on proposed changes to Forms U4 and U5. The proposed changes, which were developed by a working group composed of regulators and industry participants (the Working Group), are intended to benefit regulators, investors and the industry. Proposed revisions, among other things, would require firms to report, as customer complaints, allegations of sales practice violations made in arbitration claims and civil lawsuits against registered persons who are not named as parties in those proceedings. The proposals also include revisions to Forms U4 and U5 designed to ease, clarify or facilitate reporting requirements and other technical and/or conforming changes.

Questions concerning this *Notice* should be directed to Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821; or Stefanie M. Watkins, Senior Counsel, Registration and Disclosure, at (240) 386-4824.

Action Requested

FINRA encourages all interested parties to comment on to the proposed changes to Forms U4 and Form U5. Comments must be received by May 27, 2008. Member firms and other interested parties can submit their comments using the following methods:

- Mail comments in hard copy to the address below; or
- Email written comments to pubcom@finra.org.

April 2008

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Legal
- Registered Representatives
- Senior Management

Key Topic(s)

- BrokerCheck
- Central Registration Depository (CRD® or CRD system)
- Form U4
- Form U5
- Uniform Registration Forms

Referenced Rules & Notices

- NASD IM 8310-2

To help FINRA process and review comments more efficiently, persons commenting on these proposed changes should use only one method. Comments sent by hard copy should be mailed to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1500

Important Notes:

The only comments that will be considered are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, comments will be posted on the FINRA Web site one week after the end of the comment period.¹

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.²

Proposed Revisions

Proposed Revisions to Question 14I on Form U4 and Question 7E on Form U5 to Require the Reporting of Allegations of Sales Practice Violations Made Against Registered Persons in a Civil Lawsuit or Arbitration in Which the Registered Person Is Not a Named Party

The proposed changes to the Uniform Forms revise the customer complaint questions to elicit reporting of arbitrations and litigations that do not name a registered person as a party, but nonetheless allege sales practice violations against such person(s) in the text of the arbitration claim or civil complaint. The proposed revisions would have firms treat these matters as customer complaints.

Under the current reporting structure, a firm is not required to report on a registered person's Form U4 (Uniform Application for Securities Industry Registration or Transfer) that a customer has alleged a sales practice violation against such person in the body of a lawsuit or arbitration claim, unless the registered person also has been named as a defendant/respondent. Likewise, a firm is not required to report on Form BD that it has been named as a respondent in a consumer-initiated arbitration or to report that a sales practice violation was alleged against one of its registered persons under these circumstances. As a result, this form of "customer complaint" against a registered person or firm is currently unreported via the Uniform Registration Forms and, therefore, unavailable to regulators or prospective broker-dealer employers of the registered person via the Central Registration Depository (CRD®) or to the public through BrokerCheck.

Specifically, Question 14I(1) on the Form U4 requires a “yes” answer only if the registered person has ever been named as a respondent or defendant in an investment-related, consumer-initiated arbitration or civil litigation that alleged that he or she was involved in one or more sales practice violations³ and which:

- (1) is still pending;
- (2) resulted in an arbitration award or civil judgment against the person, regardless of amount; or
- (3) was settled for an amount of \$10,000 or more.

Question 7E(1) on Form U5 (Uniform Termination Notice for Securities Industry Registration) is worded similarly.

Question 14I(2) requires a “yes” answer if the registered person has ever been the subject of an investment-related, consumer-initiated complaint not otherwise reported under Question 14I(1) that alleged that he or she was involved in one or more sales practice violations and which was settled for \$10,000 or more.

Regulators have interpreted Question 14I(1) on Form U4 and Question 7E(1) on Form U5 to mean that even if a registered person is identified in the body of an arbitration claim or lawsuit as the person responsible for the alleged sales practice violation(s), the event is not required to be reported on the person’s Form U4 or U5 because he or she was not specifically named as a respondent/defendant in the arbitration or civil litigation.⁴ In other words, a “yes” answer to Question 14I(1) on Form U4 and Question 7E(1) on Form U5 is currently required only when the customer has sued a registered person or filed an arbitration claim naming the registered person as a respondent.

If the customer has sued or filed an arbitration claim against the firm only and not the registered person, a “yes” answer currently is not required on these questions, even if the customer has identified the registered person in the body of the lawsuit or arbitration as the person responsible for the alleged sales practice violation(s).⁵ If, however, a customer files a written complaint with a firm alleging that a registered person is responsible for the same sales practice violation(s), the firm and the registered person are responsible for reporting that customer complaint on the person’s Form U4 (Question 14I(3)) or Form U5 (Question 7E(3)), provided the complaint meets the threshold reporting requirements.

The same holds true for settlements. If a customer complaint against a registered person is settled (either by the person or the person's firm) for \$10,000 or more, the event is reported on the registered person's Form U4 or U5 under Questions 14I(2) or 7E(2), respectively. If the firm settles an arbitration or civil lawsuit for \$10,000 or more, and the person described in the complaint or claim as the person responsible for the alleged sales practice violation(s) is not a named respondent/defendant, the matter is not reported on any Uniform Registration Form and is thus unavailable to the public through BrokerCheck, and is also unavailable to regulators or prospective broker-dealer employers of the person through the CRD system. The inconsistent treatment regarding the reporting of alleged sales practice violations is difficult to reconcile on principle: in both instances a sales practice violation has been alleged. Moreover, this reporting inconsistency raises practical concerns because the practice of making a firm the sole respondent in an arbitration claim is becoming more prevalent in circumstances where the allegations involve sales practice violation(s) against a registered person.

After considerable discussion, the Working Group developed proposed revisions to Questions 14I(2) and (3) on Form U4 and Questions 7E(2) and (3) on Form U5 that are intended to address this issue. FINRA is seeking comment on the Working Group's proposal to require firms to report allegations of sales practice violations against a registered person in an arbitration or litigation, notwithstanding the fact that the customer or the customer's counsel has not named the registered person as a party in the action. More specifically, the proposed questions address this reporting inconsistency by adding "arbitration claim or civil litigation" to "customer complaint" in Questions 14I(2) and (3) on Form U4 and Questions 7E(2) and (3) on Form U5. The proposed change would require the reporting of alleged sales practice violations made by a customer against persons identified in the body of a complaint or arbitration claim, even when those persons are not named as parties.

As proposed by the Working Group, Questions 14I(2) and (3) on Form U4 would read as follows (the italicized terms would have the same meaning as they do on the current Forms U4 and U5):⁶

14I(2) Have you ever been the subject of an *investment-related*, consumer-initiated complaint, arbitration claim or civil litigation, not otherwise reported under question 14I(1) above, which alleged that you were *involved* in one or more *sales practice violations*, and that was settled for an amount of \$10,000 or more, or resulted in an arbitration award or civil judgment against the named respondent(s), regardless of amount?

14I(3) Within the past twenty-four (24) months, have you been the subject of an *investment-related*, consumer-initiated, written complaint, arbitration claim or civil litigation, not otherwise reported under question 14I(1) or (2) above, which:

(a) alleged that you were *involved* in one or more *sales practice violations* and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint, arbitration claim or civil litigation must be reported unless the *firm* has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or;

(b) alleged that you were *involved* in forgery, theft, misappropriation or conversion of funds or securities?

As proposed by the Working Group, Questions 7E(2) and (3) on Form U5 would read as follows (the italicized terms would have the same meaning as they do on the current Forms U4 and U5):⁷

7E(2) In connection with events that occurred while the individual was employed by or associated with your *firm*, was the individual the subject of an *investment-related*, consumer-initiated complaint, arbitration claim or civil litigation, not otherwise reported under question 7(E)(1) above, which alleged that the individual was *involved* in one or more *sales practice violations*, and that was settled for an amount of \$10,000 or more, or resulted in an arbitration award or civil judgment against the named respondent(s), regardless of amount?

7E(3) In connection with events that occurred while the individual was employed by or associated with your *firm*, was the individual the subject of an *investment-related*, consumer-initiated, written complaint, arbitration claim or civil litigation, not otherwise reported under questions 7(E)(1) or 7(E)(2) above, which:

(a) would be reportable under question 14I(3)(a) on Form U4, if the individual were still employed by your *firm*, but which has not previously been reported on the individual's Form U4 by your *firm*; or

(b) would be reportable under question 14I(3)(b) on Form U4, if the individual were still employed by your *firm*, but which has not previously been reported on the individual's Form U4 by your *firm*.

“Yes” answers to revised Questions 14I(2) or 14I(3) on Form U4 and Questions 7E(2) and 7E(3) on Form U5 would indicate that the registered person, though not named as a respondent/defendant in a customer-initiated arbitration or civil lawsuit, was either named in or could be reasonably identified from the body of the “arbitration claim or civil litigation” as a registered person who was involved in one or more of the alleged sales practice violations. A firm would be required to report a “yes” answer only after it has made a good faith determination after a reasonable investigation that the alleged sales practice violation(s) involved the registered person.⁸

FINRA proposes that reports of alleged sales practice violations made by a customer against persons identified in the body of a complaint or arbitration claim (as described above) would be treated the same way that customer complaints are currently treated. For example, such matters would be required to be reported no later than 30 days after receipt by the firm. In addition, as is currently the practice with respect to customer complaints reported to CRD, registered persons would have an opportunity to provide context on the reported matter on Form U4; persons not currently registered with a FINRA member firm, but who were registered within the previous two years, would be afforded an opportunity to provide context on the reported matter through a Broker Comment.⁹ Such matters would be disclosed through BrokerCheck consistent with NASD Interpretive Material 8310-2. To the extent such a matter becomes non-reportable (if, for example, the arbitration or litigation is dismissed and the dismissal is not part of a settlement, or it is settled for less than the dollar amount designated on Form U4), it would, like other customer complaints that become non-reportable, be eligible for disclosure through BrokerCheck as an Historic Complaint, provided certain criteria are met.¹⁰ FINRA proposes that firms would be required to respond to these proposed questions on a prospective basis only. FINRA would draft new interpretive guidance or modify existing interpretive guidance as appropriate to address filing or interpretive issues.

Proposed Revisions to Question 14I on Form U4 and Question 7E on Form U5 to Raise the Dollar Threshold from \$10,000 to \$15,000

Currently, Questions 14I(1)(c) and 14I(2) on Form U4 and Questions 7E(1)(c) and 7E(2) on Form U5 require customer complaints to be reported only when they have been settled for \$10,000 or more. Recognizing that the monetary threshold for settlements of customer complaints was set some time ago and has never been adjusted for inflation, members of the Working Group are considering raising the existing settlement amount to \$15,000 to more accurately reflect the business criteria (including the cost of litigation) firms consider when deciding to settle claims.

Proposed Revisions to the Initial Form U5 to Allow Firms to Amend the “Reason for Termination” and the “Date of Termination”

Currently, firms are explicitly precluded from changing the Reason for Termination and Date of Termination sections of Form U5 absent a court order or an arbitration award that meets certain criteria. Since 2000, firms have had the ability to add a Registration Comment (essentially, a note on the person’s CRD record) to report an error in connection with the filing of either the reason for, or date of, termination. The Registration Comment explains the reason for the change, but does not amend the original reason for/date of termination.

After reviewing the Registration Comments reported by firms since 2000, the Working Group concluded that it would be beneficial for firms and regulators to permit firms to amend the reason for, or date of, termination because:

- (1) the majority of requests to change a reason for, or date of, termination are a result of clerical errors made by a firm; and
- (2) the inaccurate information originally reported currently remains on a person’s CRD record unless the person is able to obtain an arbitration award or a court order directing that the original entry be expunged or changed.

The proposed change would require firms to provide a reason for the amendment. To monitor such amendments, including those reporting terminations for cause, FINRA staff is proposing to notify other regulators and the broker-dealer currently employing the person (if the person is with another firm) when a reason for termination or date of termination has been amended.

Technical, Conforming and Other Changes to Forms U4 and U5

FINRA is proposing various technical, conforming and other changes to Forms U4 and U5. These changes are generally intended to clarify the information elicited by regulators and to facilitate reporting by firms and regulators.

FINRA proposes changing “free text” fields to discrete fields on the Disclosure Reporting Pages (DRPs) of Forms U4 and U5. The proposed changes to the DRPs will not change the information currently elicited; however, the presentation of the DRPs will change. For example, a completeness check will prevent a filing from being submitted without a firm having provided information in response to the allegations and disposition detail questions. FINRA anticipates that this will reduce the need for additional communications between FINRA staff and firms that occur when DRP filings are incomplete, and generally will make the filing process more efficient.

FINRA also proposes adding to Section 7 (Disclosure Questions) of Form U5 an optional Certification Checkbox that would enable firms to affirmatively represent that all required disclosure has been reported on a person and the record is current at the time of termination. The checkbox would allow the firm to bypass the process of re-reviewing a person’s entire disclosure history for purposes of filing Form U5 if there is no new or updated disclosure to report at the time of the person’s termination.

Endnotes

- 1 *See Notice to Members 03-73* (November 2003) (NASD announces Online Availability of Comments). Personal identifying information, such as names or email addresses, will not be edited from submissions. Submit only information that you wish to make publicly available.
- 2 Section 19 of the Securities Exchange Act (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has authority to summarily abrogate these types of rule changes within 60 days of filing. *See* Exchange Act Section 19 and the rules thereunder.
- 3 *See* “Explanation of Terms,” which, in part, defines “sales practice violation” as “any conduct directed at or involving a customer which would constitute a violation of any rules for which a person could be disciplined by any self-regulatory organization...”
- 4 *See* Question 4 under the 14I(1) set of questions on Forms U4/U5 Interpretive Guidance on FINRA’s Web site at www.finra.org.
- 5 Moreover, in addition to not being reportable on Forms U4 or U5, such a matter is not reportable on Form BD because Form BD does not require the reporting of any customer-initiated complaints, arbitrations or civil litigations. FINRA notes, however, that certain summary information about arbitration awards rendered in claims brought by customers against firms may be obtained through BrokerCheck.
- 6 The italicized “explained terms” have the following meanings:
Firm: a broker-dealer, investment adviser, or issuer, as appropriate.
Investment-related: securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures sponsor, bank or savings association).
Involved: an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.
Sales Practice Violations: any conduct directed at or involving a customer that would constitute a violation of any rules for which a person could be disciplined by any *self-regulatory organization*; any provision of the Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale or purchase of a security or in connection with the rendering of investment advice.
- 7 *See supra* note 3.

Endnotes (cont'd)

- 8 In this regard, the Working Group discussed adding instructions to the Forms that would provide guidance to firms on when an affirmative answer to the proposed questions was appropriate. The instruction would indicate that a “yes” answer would be required where (1) the Statement of Claim or Complaint specifically mentions a registered representative by name and alleges the registered representative was *involved* in one or more *sales practice violations*; or (2) the Statement of Claim or Complaint does not mention a registered representative by name, but the firm has made a good faith determination after a reasonable investigation that the *sales practice violations* alleged *involve* one or more particular registered representatives.
- 9 Individuals who currently are not registered with FINRA, but who have been FINRA-registered within the last two years and who are, therefore, available on BrokerCheck, may submit a Broker Comment to provide an update or context to information that is disclosed through BrokerCheck. Individuals who currently are registered with FINRA, are associated with a member firm, and who wish to provide an update or context to information that is disclosed through BrokerCheck are required to file an amended Form U4.
- 10 See NASD IM-8310-2(b)(7).

Partial Redemptions of Auction Rate Securities

FINRA Issues Guidance to Broker-Dealers on Partial Redemptions of Auction Rate Securities

Executive Summary

In response to current market conditions, some issuers are offering partial redemptions of auction rate securities. This *Notice* reminds firms that when allocating partial redemptions of auction rate securities among their customers, they must adopt procedures that are reasonably designed to treat customers fairly and impartially, and must put their customers' interests ahead of their own.

Questions regarding this *Notice* may be directed to Kathryn Mahoney, Director, Office of Emerging Regulatory Issues, at (212) 858-4101; or Ivette Lopez, Vice President, Office of Investor Education, at (202) 728-8928.

Background and Discussion

Auction rate securities (ARS) are long-term or perpetual variable rate securities with interest rates that reset at short-term intervals—usually seven, 14, 28 or 35 days through a “Dutch auction” process. Recently, many investors have not been willing to participate in the auctions for these securities due to concerns about the current credit market environment. As a result, many auctions have “failed,” leaving investors holding these securities unable to liquidate their positions. In some cases, failed auctions have resulted in issuers paying high interest rates, or dividends in the case of auction rate preferred shares.

April 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topic(s)

- Auction Rate Securities
- Partial Redemptions
- Securities Callable in Part

Referenced Rules & Notices

- MSRB Rule G-17
- NASD Rule 2110
- NYSE Rule 402.03

In response, some issuers of ARS, including certain closed-end funds, have announced redemptions of shares, generally at par value. In some cases, the issuer only offers to redeem some but not all of the outstanding shares. In the case of such partial redemptions, the Depository Trust Company (DTC) allocates redemptions among broker-dealers for which it is holding shares. Broker-dealers receiving allocations of redemptions from DTC then sub-allocate them among their customers holding the securities. In a partial redemption, it is possible that a broker-dealer holding shares may not receive an allocation for redemption in the DTC allocation process.

NASD Rule 2110 requires firms to observe high standards of commercial honor and just and equitable principles of trade when conducting business with their customers. At a minimum, in the context of partial redemptions of auction rate securities, NASD Rule 2110 requires a firm to adopt procedures that are reasonably designed to allocate the shares it receives among its customers on a fair and impartial basis.

FINRA member firms that are also members of the NYSE are subject to incorporated NYSE Rule 402.30 for securities callable in part, which specifies the use of “an impartial lottery system in which the probability of a customer’s bonds or preferred stocks being selected as called is proportional to the holdings of all customers of such securities held in bulk by or for the member organization.” While NYSE Rule 402.30 is directly applicable only to such dual members, the procedures outlined in it illustrate one way to satisfy other firms’ obligations under NASD Rule 2110.

In addition, when a redemption is offered on terms favorable to shareholders, both just and equitable principles of trade and NYSE Rule 402.30 prohibit a firm from redeeming shares for its proprietary accounts, or those of an affiliate or employee, before all of its customers’ shares have been redeemed. Likewise, if a redemption or call is made on unfavorable terms, a firm may not exclude its positions from the pool of those that may be called or put itself “last in line.” We also note that the Municipal Securities Rulemaking Board (MSRB) Interpretive Notice Concerning Application of Rule G-17 to Use of Lotteries to Allocate Partial Calls to Securities Held in Safekeeping states that a municipal securities dealer which uses a lottery that excludes the dealer’s proprietary accounts when the call is exercised at a price below the current market value is acting in violation of Rule G-17, the MSRB’s fair dealing rule.

Finally, NYSE Rule 402.30 requires that firms subject to it disclose to their customers the procedures that the firm will follow when an issuer of auction rate securities initiates a partial redemption of an issue. Other firms are encouraged to adopt that policy as well. The related disclosure should also cover the rights of customers relative to these procedures, and the possibility that the firm may not receive allocation rights in the DTC process.

Conclusion

When allocating redemptions in the context of a partial redemption of ARS, firms must follow procedures that are reasonably designed to treat customers fairly and impartially, and that put their customers' interests ahead of their own.

Election Notice

District Elections

Election Results for District Committees and District Nominating Committees

Executive Summary

The purpose of this *Election Notice* is to announce the names of the newly elected District Committee and District Nominating Committee members. Each of the candidates nominated by the Regional Nominating Committees has been duly elected to terms beginning on June 1, 2008.¹ The newly elected District Committee members will serve three-year terms,² and the newly elected District Nominating Committee members will serve one-year terms. The names of the new committee members and the specific terms to which they were elected are listed in Attachment A.

The newly elected committee members were selected from a pool of 262 individuals who initially submitted their names to the various Regional Nominating Committees for consideration. We appreciate the substantial interest shown by all of the candidates participating in the District Elections, and thank everyone for their continuing support of the self-regulatory process.

The FINRA District Committees serve an important role in the self-regulation process by, among other things, alerting staff to industry trends that could be a potential regulatory concern; consulting with FINRA staff on proposed policies and rule changes brought to a District Committee for its views; serving on disciplinary panels in accordance with FINRA Rules; and promoting FINRA's mission and stated positions.

Questions concerning this *Notice* may be directed to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA at (202) 728-8949, or via email at CorporateSecretary@finra.org.

April 11, 2008

Suggested Routing

- Compliance
- Legal
- Operations
- Registration
- Senior Management

Note: This *Notice* was distributed electronically to the Executive Representative of each FINRA member firm and is posted on FINRA's Web site at www.finra.org/Notices/Election/041108. Executive Representatives should circulate this *Notice* to their firm's branch managers.

Endnotes

- 1 No additional candidates came forward to contest the election of the Regional Nominating Committee nominees. Pursuant to Section 8.19 of FINRA Regulation's By-Laws, in an uncontested election the candidates nominated by the Regional Nominating Committees shall be considered elected.
- 2 Some District Committee members were elected to fill existing vacancies and therefore may serve less than a three-year term, as indicated on Attachment A.

Attachment A

Newly Elected District Committee and District Nominating Committee Members

District 1

Northern California (the counties of Monterey, San Benito, Fresno and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties) and Hawaii

Christian A. Zrull, District Director (415) 217-1100
One Montgomery Street, Suite 2100, San Francisco, CA 94104 (415) 956-1931 fax

District Committee Members Elected to Terms Expiring May 31, 2011

Christopher Aguilar	Merriman Curhan Ford & Co.	San Francisco, CA
Stephen Chipman	Foothill Securities, Inc.	Mountain View, CA
Philip J. Economopoulos	Howe Barnes Hoefer & Arnett, Inc.	San Francisco, CA

Alternate

Herbert Kurlan	VT Brokers, LLC	San Francisco, CA
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Howard A. Bernstein	Pacific Growth Equities, LLC	San Francisco, CA
William A. Evans	Stone & Youngberg, LLC	San Francisco, CA
Warren E. Gordon	Charles Schwab & Co.	San Francisco, CA
Bruce W. Nollenberger	Nollenberger Capital Partners, Inc.	San Francisco, CA
Daniel W. Roberts	Roberts & Ryan Investments Inc.	San Francisco, CA

Alternate

William A. Svoboda	Deutsche Bank Alex. Brown	San Francisco, CA
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District 2

Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye) and the former U.S. Trust Territories

David A. Greene, District Director (213) 229-2300
 300 South Grand Avenue, Suite 1600 (213) 617-3299 fax
 Los Angeles, CA 90071-3126

District Committee Members Elected to Terms Expiring May 31, 2011

Donna B. Lawson	First Allied Securities, Inc.	San Diego, CA
Kerry E. Cunningham	Financial Network Investment Corporation	El Segundo, CA
Westley H. King	Centarus Financial, Inc.	Orange, CA

District Committee Member Elected to Serve the Remainder of a Term Expiring May 31, 2009

Mitchell W. Howard	First Wilshire Securities Management, Inc.	Pasadena, CA
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Alternate

S. Kendrick Dunn, Jr.	Pacific Select Distributors, Inc.	Newport Beach, CA
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Stephen B. Benton	Financial Network Investment Corporation	El Segundo, CA
James M. Dillahunty	Fixed Income Securities, LP	San Diego, CA
Kenneth R. Hyman	Partnervest Securities, Inc.	Santa Barbara, CA
Valorie A. Seyfert	CUSO Financial Services, LP	San Diego, CA
Bryan R. Plank	Merrill Lynch, Pierce, Fenner & Smith Incorporated	San Diego, CA

District 3

Arizona, Colorado, New Mexico, Utah and Wyoming

**Joseph M. McCarthy, Vice President and Regional Director
West Region**

370 17th Street, Suite 2900, Denver, CO 80202-5629

(303) 446-3100
(303) 620-9450 fax

Alaska, Idaho, Montana, Oregon and Washington

Michael E. Lewis, District Director

601 Union Street, Suite 1616, Seattle, WA 98101-2327

(206) 624-0790
(206) 623-2518 fax

District Committee Members Elected to Terms Expiring May 31, 2011

James R. Cannon	AIG Financial Advisors, Inc.	Phoenix, AZ
Adam M. Carmel	Larimer Capital Corporation	Denver, CO
Paige W. Pierce	RW Smith & Associates, Inc.	Sandy, UT

District Committee Member Elected to Serve the Remainder of a Term Expiring May 31, 2009

Steven S. Iversen	NEXT Financial Group, Inc.	Albuquerque, NM
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Alternate

Russell R. Diachok	Geneos Wealth Management, Inc.	Centennial, CO
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Gregory R. Anderson	MCL Financial Group, Inc.	Denver, CO
Curtis J. Hammond	Morgan Stanley & Co., Corporation	Bellevue, WA
Craig A. Jackson	Financial Network Investment Corporation	Roseburg, OR
Harry L. Striplin	Paulson Investment Company, Inc.	Portland, OR
Arlene M. Wilson	D.A. Davidson & Co.	Great Falls, MT

District 4

Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota

Thomas D. Clough, Associate Vice President and District Director (816) 421-5700
120 W. 12th Street, Suite 800, Kansas City, MO 64105 (816) 421-5029 fax

District Committee Members Elected to Terms Expiring May 31, 2011

Christopher A. Cokinis	ING Financial Partners, Inc.	Des Moines, IA
Cheryl L. Heilman	Ameritas Investment Corp.	Lincoln, NE
James E. Nelson	Minnesota Valley Investments	Redwood Falls, MN

District Committee Member Elected to Serve the Remainder of a Term Expiring May 31, 2009

Jennifer R. Relien	Thrivent Investment Management, Inc.	Minneapolis, MN
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Alternate

Amy L. Webber	Cambridge Investment Research, Inc.	Fairfield, IA
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Kenneth M. Cherrier	Woodbury Financial Services, Inc.	Woodbury, MN
Joseph D. Fleming	RBC Dain Rauscher Inc.	Minneapolis, MN
Mark T. Lasswell	Wells Fargo Brokerage Services, LLC	Minneapolis, MN
Allen J. Moore	SMITH HAYES Financial Services Corporation	Lincoln, NE
Minoos Spellerberg	Princor Financial Services Corporation	Des Moines, IA

District 5

Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Tennessee

Keith E. Hinrichs, District Director

1100 Poydras Street, Energy Centre, Suite 850
New Orleans, LA 70163

(504) 522-6527
(504) 522-4077 fax

District Committee Members Elected to Terms Expiring May 31, 2011

Rush F. Harding, III	Crews & Associates, Inc.	Little Rock, AR
Phillip H. Palmer	First Independent Financial Services, Inc.	Tulsa, OK
Sarah Sherck	Avondale Partners, LLC	Nashville, TN

Alternate

Mark Sheridan	Johnson Rice & Company, LLC	New Orleans, LA
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Michaela D. Myers	NAFA CapitalMarkets, LLC	Oklahoma City, OK
James S. Jones	Crews & Associates, Inc.	Little Rock, AR
Henry M. "Trey" Fyfe, III	Duncan-Williams, Inc.	Memphis, TN
F. Eugene Woodham	Sterne, Agee & Leach, Inc.	Birmingham, AL
R. Patrick Shepherd	Avondale Partners, LLC	Nashville, TN

Alternate

Jennifer Carty Scola	Carty & Company, Inc.	Memphis, TN
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District 6

Texas

**Virginia F.M. Jans, Senior Vice President
and Regional Director, South Region**

(972) 701-8554
(972) 716-7646 fax

12801 N. Central Expressway, Suite 1050, Dallas, TX 75243

District Committee Members Elected to Terms Expiring May 31, 2011

Darla Bartkowiak	Amherst Securities Group, LP	Austin, TX
Frederick T. Greene	Raymond James Financial Services, Inc.	The Woodlands, TX
Wilson Williams	WFG Investments, Inc.	Dallas, TX

Alternate

Jane Bates	Global Financial Services, LLC	Houston, TX
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Cynthia E. Besek	Maplewood Investment Advisors, Inc.	Dallas, TX
Bryan T. Emerson	Starlight Investments, LLC	Houston, TX
Brent T. Johnson	Multi-Financial Securities Corporation	Houston, TX
William H. Lowell	Lowell & Company, Inc.	Lubbock, TX
Michael A. Pagano	1st Global Capital Corp.	Dallas, TX

Alternate

Sennett Kirk, III	Kirk Securities Corporation	Denton, TX
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District 7

Georgia, North Carolina and South Carolina

Daniel J. Stefek, Associate Vice President and District Director (404) 239-6100
 One Securities Centre, Suite 500, 3490 Piedmont Road, NE (404) 237-9290 fax
 Atlanta, GA 30305

Florida, Puerto Rico, the Canal Zone and the Virgin Islands

Mitchell C. Atkins, Vice President and District Director (561) 443-8000
 Crystal Corporate Center, 2500 N. Military Trail, Suite 302 (561) 443-7995 fax
 Boca Raton, FL 33434

District Committee Members Elected to Term Expiring May 31, 2011

Richard K Bryant	Capital Investment Group, Inc.	Raleigh, NC
Matthew A. Guerrise	FMSBonds, Inc.	Boca Raton, FL
Raymond H. Smith, Jr.	Smith, Brown & Groover, Inc.	Macon, GA

District Committee Member Elected to Serve the Remainder of a Term Expiring May 31, 2009

Ruth A. Burgess	INVEST Financial Corp.	Tampa, FL
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Alternate

Caroline Wisniewski	Bridge Capital Associates, Inc.	Norcross, GA
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Richard G. Averitt	Raymond James Financial Services, Inc.	St. Petersburg, FL
William G. McMaster	Scott & Stringfellow, Inc.	Columbia, NC
Charles F. O'Kelley	Atlantic Coast Securities Corporation	Tampa, FL
Kenneth W. McGrath	Popular Securities, Inc.	San Juan, PR
Alan L. Maxwell, Jr.	Wachovia Capital Markets, LLC	Charlotte, NC

Alternate

C. John O'Bryant III	Stifel, Nicolaus & Company, Incorporated	Raleigh, NC
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District 8

Illinois, Indiana, Kentucky, Michigan, Ohio and Wisconsin

Carla A. Romano, Senior Vice President and Regional Director (312) 899-4400
Midwest Region (312) 899-4399 fax
55 West Monroe Street, Suite 2700, Chicago, IL 60603-5052

District Committee Members Elected to Terms Expiring May 31, 2011

Jeffrey F. Freiburger	Robert W. Baird & Co.	Milwaukee, WI
Edward A. Horwitz	Horwitz & Associates, Inc.	Riverwoods, IL
James P. Miller	SII Investments, Inc.	Appleton, WI

Alternate

Gary K. Moss	Stifel, Nicolaus & Company, Inc.	Indianapolis, IN
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Richard M. Arceci	ValMark Securities, Inc.	Akron, OH
Michael E. Bosway	City Securities Corporation	Indianapolis, IN
Mari Buechner	Coordinated Capital Securities, Inc.	Madison, WI
Ronald J. Dieckman	J.J.B. Hilliard, W.L. Lyons, Inc.	Louisville, KY
Thomas M. McDonald	Thomas McDonald Partners, LLC	Cleveland, OH

Alternate

Joseph R.V. Romano	Romano Brothers & Co.	Evanston, IL
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District 9

New Jersey and New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City)

Gary K. Liebowitz, Senior Vice President and Regional Director (732) 596-2025
North Region (732) 596-2001 fax
 581 Main Street, 7th Floor, Woodbridge, NJ 07095

Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia

Robert B. Kaplan, District Director (215) 963-1992
 1835 Market Street, Suite 1900, Philadelphia, PA 19103 (215) 963-7442 fax

District Committee Members Elected to Terms Expiring May 31, 2011

Nancy L. H. Boyd	Lincoln Investment Planning, Inc.	Wyncote, PA
Celeste Leonard	First Montauk Securities Corp.	Red Bank, NJ
Sarah McCafferty	T. Rowe Price Investment Services, Inc.	Baltimore, MD

Alternate

Kenneth I. Schindler	Prudential Investment Management Services, LLC	Iselin, NJ
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Michael T. Corrao	Knight Equity Markets, LP	Jersey City, NJ
A. Louis Denton	Petersen Investments, Inc.	Blue Bell, PA
Richard Grobman	Oppenheimer & Co. Inc.	Philadelphia, PA
John P. Meegan	Hefren-Tillotson, Inc.	Pittsburgh, PA
Stephen M. Youhn	Lincoln Financial Advisors Corporation	Philadelphia, PA

District 10

New York (the counties of Nassau and Suffolk, and the five boroughs of New York City)

Hans L. Reich, Senior Vice President and Regional Director (212) 858-4000
New York Region (212) 858-4078 fax
 One Liberty Plaza, 49th Floor, 165 Broadway, New York, NY 10006

District Committee Members Elected to Terms Expiring May 31, 2011

Cynthia Dowling	SEB Enskilda, Inc.	New York, NY
Eric L. Kriftcher	Banc of America Securities LLC	New York, NY
Thomas J. Santucci	Royal Alliance Associates, Inc.	Garden City, NY
David M. Sobel	Abel/Noser Corp.	New York, NY

District Committee Member Elected to Serve the Remainder of a Term Expiring May 31, 2010

James A. Brodie	Jesup & Lamont Securities Corp.	New York, NY
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Alternate

Vlad Uchenik	Safdie Investment Services Corp.	New York, NY
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

Lon T. Dolber	American Portfolios Financial Services	Holbrook, NY
Judith R. MacDonald	Rothschild Inc.	New York, NY
Howard R. Plotkin	Lehman Brothers Inc.	New York, NY
Clifford H. Goldman	Marco Polo Securities Inc.	New York, NY
Howard Spindel	Integrated Management Solutions USA LLC	New York, NY

Alternate

Shana Madoff	Bernard L. Madoff Investment Securities LLC	New York, NY
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District 11

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont

Frederick F. McDonald, Jr., District Director (617) 532-3401
 99 High Street, Suite 900, Boston, MA 02110 (617) 451-3524 fax

District Committee Members Elected to Terms Expiring May 31, 2011

Vincent M. Manzi	State Street Global Markets, LLC	Boston, MA
Victoria L. Olson	Prudential Annuities Distributors	Shelton, CT
Stephen L. Schardin	Charles River Brokerage, LLC	Burlington, MA

District Committee Member Elected to Serve the Remainder of a Term Expiring May 31, 2010

David J. Freniere	LPL Financial Corporation	Boston, MA
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District Committee Member Elected to Serve the Remainder of a Term Expiring May 31, 2009

Edward J. Wiles, Jr.	Genworth Financial Securities Corp.	Stamford, CT
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Alternate

Michael J. Mahoney	John Hancock Funds, LLC	Boston, MA
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District Nominating Committee Members Elected to Terms Expiring May 31, 2009

David K. Booth	Jefferson Pilot Securities Corp.	Concord, NH
John I. Fitzgerald	Leerink Swann, LLC	Boston, MA
Joseph Gritzer	USI Securities, Inc.	Glastonbury, CT
Thomas Horack	Sun Life Financial Distributors	Wellesley Hills, MA
Curtis L. Snyder	American Technology Research, Inc.	Greenwich, CT

Information Notice

FINRA Implements Changes to OTC Reporting Facility and OTC Bulletin Board Invoice Processes

Effective Date: April 1, 2008

Executive Summary

FINRA's process for generating and mailing certain invoices related to charges for usage of the ORF and the OTCBB will change on April 1, 2008.

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

Discussion

Effective April 1, 2008, a threshold, currently set at \$100, will apply to invoices related to charges for usage of the OTC Reporting Facility (ORF) and the OTC Bulletin Board (OTCBB).

For the January through May and July through November billing periods, all charges accrued during a monthly period (plus accruals from any prior periods) that fall below \$100 will no longer generate an invoice for that month. Rather, the balance will be rolled over to subsequent months until the threshold is reached.

For the June and December billing periods, all invoices will be generated and mailed, regardless of the amount accrued. Invoices with balances greater than \$100 will continue to be generated monthly.

April 1, 2008

Suggested Routing

- Finance
- Senior Management
- Trading

Key Topics

- OTC Reporting Facility
- OTC Bulletin Board

Disciplinary and Other FINRA Actions

Firms Fined, Individuals Sanctioned

Kensington Capital Corp. (CRD #1742, Brooklyn, New York), Abram Joseph Silver (CRD #1137930, Registered Principal, Brooklyn, New York) and Jeffrey Mitchel Simon (CRD #2778935, Registered Representative, Brooklyn, New York) submitted an Offer of Settlement in which the firm was censured, fined \$85,000, \$10,000 of which was jointly and severally with Simon, and required to retain an independent consultant to conduct a comprehensive review of the adequacy of the firm's trading and Anti-Money Laundering (AML) policies, systems and procedures (written and otherwise), and its training related to trading and AML. Silver was fined \$10,000, suspended from association with any FINRA member in any principal capacity for 90 business days and immediately upon the completion of the 90-day principal suspension, Silver has agreed not to serve in the capacity of Chief Compliance Officer for six months. Silver must also complete 25 hours of AML continuing education within 12 months, and provide FINRA with written proof of his completion of the continuing education within 30 days. Simon was suspended from association with any FINRA member in any capacity for six months, and must requalify by exam as a general securities representative (Series 7) and/or as an equity trader limited representative (Series 55) before again becoming associated with any FINRA member in those capacities.

Without admitting or denying the allegations, the firm, Silver and Simon consented to the described sanctions and to the entry of findings that the firm, acting through Simon, aided and abetted a market manipulation of a thinly traded over-the-counter bulletin board (OTCBB) common stock orchestrated by an individual previously barred from the securities industry, and his brother who had a retail account at the firm. The findings stated that the firm, acting through Silver and another individual, failed to establish and implement AML policies and procedures reasonably designed to monitor, analyze and investigate suspicious transactions, and to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder. The findings also stated that the firm, acting through Silver, failed to establish, maintain, and enforce a supervisory system and written supervisory procedures appropriate to its market making and retail trading business and the activities of its registered representatives so as to comply with federal securities laws, regulations and applicable NASD Rules relating to market making and trading. The findings also included that because Silver failed to reasonably supervise Simon's trading and market making activities, the firm, acting through Simon, rendered substantial assistance to the stock price manipulation.

Silver's suspension in any principal capacity is in effect from March 17, 2008, through July 23, 2008. Simon's suspension in any capacity is in effect from March 17, 2008, through September 16, 2008. **(FINRA Case #2005000094003)**

Reported for April 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 Robins Group LLC (CRD #41894, Portland, Oregon) and Marcus Whitney Robins (CRD #870347, Registered Principal, Portland, Oregon) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000, \$5,000 of which was jointly and severally with Robins. Robins was suspended from association with any FINRA member in any capacity for 20 business days and fined an additional \$31,458.59, which includes disgorgement of \$16,458.59 in financial benefits received. Without admitting or denying the findings, the firm and Robins consented to the described sanctions and to the entry of findings that the firm permitted research analysts, including Robins, to execute sales of securities in research analyst accounts in a manner inconsistent with their recommendations, as reflected in the most recent research reports the firm published. The findings stated that the firm permitted research analysts, including Robins, to execute transactions of securities issued by companies that the research analysts followed in research analyst accounts 30 days before and five days after the publication of a research report concerning the companies. The findings also stated that the firm authorized stock transactions that NASD Rule 2711(g)(3) prohibited, purportedly based on an unanticipated change in the personal financial circumstances of the beneficial owner of the research analyst account, and failed to maintain written records regarding the transactions and the justification for permitting them for three years after the dates when the transactions were approved. The findings also included that the firm, acting through Robin, published research reports another analyst had written regarding a company, but the report did not disclose that the company had compensated the analyst within the past 12 months. FINRA found that the firm published research reports regarding a company and failed to disclose that the company had compensated a business entity affiliated with the firm within the past 12 months. FINRA also found that Robins published magazine articles, which a research analyst considered to be public appearances, and failed to disclose to the publisher that he or a member of his household had a financial interest in the securities of the companies, and the firm failed to maintain records of the articles sufficient to demonstrate Robins' compliance with the applicable disclosure requirements of NASD Rule 2711(h) for three years after the articles were published. In addition, FINRA determined that the firm failed to adopt or implement written supervisory procedures reasonably designed to ensure that it and its employees comply with NASD Rule 2711. Moreover, FINRA found that the firm published on its Web site an inaccurate list of its registered persons, including its research analysts, and the companies covered by their research, because some of the persons had terminated their association with the firm.

The suspension in any capacity was in effect from March 17, 2008, through April 14, 2008. **(FINRA Case #2005001863901)**

Firms Fined

Great Point Capital LLC (CRD #114203, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$175,000, ordered to disgorge \$21,628.45 and was required to revise its written supervisory procedures regarding manipulation and pre-opening quotations and trading. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, acting through its chief compliance officer, it failed to reasonably and properly supervise the pre-opening quoting and trading activity of equity traders at the firm. 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 manipulation and pre-opening quotations and trading. **(FINRA Case #20050001741-01)**

ING Financial Advisers, LLC (CRD #34815, Windsor, Connecticut) 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 failed to timely file summary and statistical information for numerous public customer complaints that the firm received. The findings stated that the firm's supervisory system was not reasonably designed to ensure that summary and statistical information concerning customer complaints was filed in accordance with NASD Rule 3070. The findings also stated that the firm's supervisory system failed to provide for reasonable follow-up and review to ensure that required customer complaint filings were made. **(FINRA Case #2007007182602)**

Merrill Lynch, Pierce, Fenner & Smith, Incorporated (CRD #7691, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$175,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely and consistently update its client account record management system relating to investment advisory and fee-based accounts, and failed to establish a reasonable supervisory system to update the relevant client profiles in its system. The findings stated that the firm failed to establish a reasonable system to monitor for the proper completion of the manual process to update profiles, failed to have adequate written procedures detailing the process, and failed to implement a reasonable system of follow-up and review to ensure that the changes were made. The findings also stated that the firm's operational problems resulted in its failure to make changes in account proxy delivery addresses and/or remove traits that suppressed trade confirmation delivery in the firm's record systems. The findings included that proxy materials were misdelivered when clients changed programs, and clients did not receive trade confirmations after they terminated enrollment in such programs. FINRA found that although affected clients continued to receive monthly account statements about transactions in their accounts, the monthly statements were not produced prior to or contemporaneously with securities transactions. FINRA also found that the firm failed to consistently and timely update information in its client account record management system. **(FINRA Case #2007009456801)**

Pershing LLC (CRD #7560, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$95,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it employed persons who were statutorily disqualified because it failed to submit the fingerprints of temporary workers who were working for the firm for a background check to the Federal Bureau of Investigation (FBI), and failed to promptly notify the New York Stock Exchange (NYSE) of its association with persons subject to statutory disqualification. The findings stated that the firm failed to establish, maintain and enforce written procedures, including a system of follow-up and review of its business activities, with respect to its hiring of temporary workers to achieve compliance with federal securities laws, NASD and NYSE Rules relating to association with statutorily disqualified individuals. **(FINRA Case #2007009522001)**

Pickering Energy Partners, Inc., nka Tudor, Pickering, Holt & Co. Securities, Inc. (CRD #129772, Houston, Texas) 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 conducted a securities business while failing to maintain its minimum net capital requirement. The findings stated that the firm filed an inaccurate Financial and Operational Combined Uniform Single (FOCUS) report. **(FINRA Case #2007007453101)**

Seslia Securities (CRD #30624, St. Thomas, Virgin Islands) 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 retain instant messages in violation of Securities and Exchange Commission (SEC) Rule 17a-4, and failed to maintain records documenting the content of its continuing education programs (firm element) and covered registered persons' completion of the programs. **(FINRA Case #2007007154201)**

Track Data Securities Corporation (CRD #103802, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$50,000 and required to revise its written supervisory procedures regarding SEC Rule 605 (disclosure of order execution information), NASD Rule 4613A and Interpretative Material 4613-1 (multiple market participant IDs), trade reporting modifiers, NASD Rule 6630(e) (third-party trade reporting), NASD Rules 4623(c) and 4623A(c) (electronic communications network (ECN) display rules) and trading during a trading halt. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in securities and, for each order, failed to make an affirmative determination that the firm would receive delivery of the security on the customer's behalf or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings stated that the firm failed to submit required information to the Order Audit Trail System (OATS); submitted Route or Combined Order/Route Reports to OATS that the OATS system was unable to link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data; and reported execution reports to OATS that contained inaccurate, incomplete or improperly formatted data so that the OATS system was unable to link the execution

reports to the related trade reports in a FINRA trade reporting system. The findings also stated that the firm reported to the Trade Reporting Facility (TRF) last sale reports of transactions in designated securities that it was not required to report. The findings also included that the firm made available a report on the covered orders in national market system securities it received for execution from any person that included incorrect information as to the average realized spread, number of totaled covered orders, total covered shares, total cancelled shares and order classification.

FINRA found that the firm executed short sale transactions and failed to report each of the transactions to the TRF with a short sale modifier. FINRA also found 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 SEC Rule 605 (disclosure of order execution information), NASD Rule 4613A and Interpretative Material 4613-1 (multiple market participant IDs), trade reporting modifiers, NASD Rule 6630(e) (third-party trade reporting), NASD Rules 4623(c) and 4623A(c) (ECN display rules) and trading during a trading halt. In addition, FINRA determined that the firm failed to enforce its written supervisory procedures regarding OATS clock synchronization, SEC Rules 17a-3, 17a-4 and NASD Rule 3110. Moreover, FINRA found that the firm failed, within 10 seconds of receipt of the order, to transmit to FINRA's Alternative Display Facility, order information for orders received from another broker-dealer. **(FINRA Case #20050008081-01)**

UBS Financial Services Inc. (CRD #8174, Weehawken, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$110,000, required to pay \$2,719.65, plus interest, in restitution to public customers, and required to revise its written supervisory procedures regarding short sales and short interest reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with customers, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings stated that the firm executed short sale orders and failed to properly mark the order tickets as short. The findings also stated that the firm accepted customer short sale orders in securities and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings also included that the firm executed short sale transactions and failed to report each of the transactions to the TRF with a short sale modifier. FINRA found 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 short sales and short interest reporting. FINRA also found that the firm submitted incorrect short interest reports to FINRA and transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, in that the reports erroneously reported, or failed to report, display flags to OATS. **(FINRA Case #20041000031-01)**

Individuals Barred or Suspended

John Hutchison Arnette (CRD #7458, Registered Representative, Dallas, Texas) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Arnette failed to appear for FINRA on-the-record interviews. The findings stated that Arnette engaged in private securities transactions without prior written notice to, and approval from, his member firm. **(FINRA Case #2005002734201)**

Gene Michael Askins (CRD #5172158, Associated Person, Elmhurst, 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, Askins consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Uniform Application for Securities Industry License or Transfer (Form U4) and failed to respond to FINRA requests for information. **(FINRA Case #2007007607801)**

Tarrant McCutchen Augustine (CRD #1081795, Registered Representative, Hershey, 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, Augustine consented to the described sanction and to the entry of findings that he created and sent falsified account statements to a public customer that inflated the value of the customer's mutual fund. **(FINRA Case #2007009299901)**

Joseph Dalyn Bailey (CRD #4608681, Registered Representative, Mustang, Oklahoma) 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, Bailey consented to the described sanction and to the entry of findings that he deposited monies from a premium trust account into his personal checking account without the policy holders' authorization, knowledge or consent. The findings stated that Bailey failed to respond to FINRA requests for documents and failed to respond promptly to requests for information. **(FINRA Case #2006006935302)**

Justin Matthew Barlup (CRD #5012726, Registered Representative, Anchorage, Alaska) 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, Barlup consented to the described sanction and to the entry of findings that he caused a bank to issue cashier's checks totaling \$500,000 payable to his relative and signed the checks, knowing that the bank had received no offsetting payments for the checks, thereby converting \$500,000 of the bank's funds to his own use and benefit. The findings stated that Barlup failed to respond to FINRA requests for information. **(FINRA Case #2007007716601)**

Walter J. Becker (CRD #16443, Registered Principal, Fresno, California) 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, Becker consented to the described sanction and to the entry of findings that he recommended the purchase of securities to public customers without reasonable grounds for believing the recommendations were suitable based upon the customers' financial situation and

needs. The findings stated that Becker omitted to disclose material information to the customers prior to their purchase of the securities. The findings also stated that Becker applied some or all of the proceeds from the securities to his personal use. **(FINRA Case #20050025094-01)**

Alex Lee Bernal (CRD #5266422, Associated Person, Santa Barbara, 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 Bernal'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, Bernal consented to the described sanctions and to the entry of findings that he failed to disclose material facts on an application for employment he submitted to his member firm.

The suspension in any capacity is in effect from March 17, 2008, through September 16, 2008. **(FINRA Case #2007009433401)**

Stephen Joseph Berry (CRD #1232555, Registered Representative, Hollis, New Hampshire) 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, Berry consented to the described sanction and to the entry of findings that he recommended and effected purchases of speculative securities in public customers' accounts without reasonable grounds for believing the recommendations were suitable. The findings stated that Berry failed to respond to FINRA requests for information. **(FINRA Case #2007009957001)**

Dean Robert Bordeaux (CRD #4204454, Registered Representative, Peoria, Illinois) 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 12 months. The fine must be paid either immediately upon Bordeaux'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, Bordeaux consented to the described sanctions and to the entry of findings that he solicited the purchase of a security to his customers although it was not blue-sky registered in Illinois during the relevant period. The findings stated that Bordeaux mismarked order tickets for purchases of the security in some of his customers' accounts as "unsolicited" when, in fact, the trades were solicited and caused Non-Solicitation Letters to be sent to some of the customers who purchased the security. The findings also included that the Non-Solicitation Letters stated that Bordeaux had not solicited in any way, nor had the purchase been made on the basis of any recommendation of information from his member firm, its Research Department, or any of its employees when, in fact, he knew that he had solicited these purchases at the time he caused these letters to be sent to his firm's customers.

The suspension in any capacity is in effect from March 17, 2008, through March 16, 2009. **(FINRA Case #2007009423701)**

Mellon Daniel Bryant (CRD #4741516, Registered Representative, Fort Worth, Texas) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Bryant failed to respond to FINRA requests for information. The findings stated that Bryant willfully failed to disclose material information on his Form U4. (FINRA Case #2006006368001)

DeVon Jerrod Carlson (CRD #2875123, Registered Representative, DeSoto, Kansas) 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, Carlson consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information. (FINRA Case #20070089708-01)

Angelo David Castricone (CRD #3022052, Registered Representative, Scotia, New York) 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 10 business days. Without admitting or denying the findings, Castricone consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, without providing prompt written notice to his member firm.

The suspension in any capacity is in effect from April 7, 2008, through April 18, 2008. (FINRA Case #2008012269801)

John Shim Cho (CRD #4480149, Registered Representative, Skokie, Illinois) 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, Cho consented to the described sanction and to the entry of findings that he received \$8,400 from a public customer for assisting him in avoiding overdrafts in his business checking account. The findings stated that Cho affixed the customer's signature to checking account withdrawal slips to withdraw the funds from the customer's business checking account as payment for avoiding overdrafts in the account. (FINRA Case #2006007065701)

David Skaggs Curtis (CRD #3045672, Registered Representative, Morganfield, Kentucky) 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. The fine must be paid either immediately upon Curtis' 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, Curtis 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 March 17, 2008, through June 16, 2008. (FINRA Case #2006007438601)

Gregory Orlan Dartez (CRD #4827097, Registered Representative, Allen Texas) and Jerry Glenn Griggs (CRD #2451366, Registered Representative, Grapevine, Texas) submitted Letters of Acceptance, Waiver and Consent in which they were barred from association with any FINRA member in any capacity. Without admitting or denying the findings,

Dartez and Griggs consented to the described sanctions and to the entry of findings that they wrote and disseminated press releases touting the securities of an oil and gas company that were not fair and balanced, and failed to provide a sound basis for evaluating the facts regarding the securities. The findings stated that the press releases omitted material facts, including the company's recent revenues, causing the press releases to be misleading. **(FINRA Cases #20060066266-01/20060066266-02)**

Richard Joseph Delzer (CRD #5097434, Registered Representative, Elyria, Ohio) 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, Delzer consented to the described sanction and to the entry of findings that he withdrew \$9,000 from public customers' accounts without their knowledge or consent, and used the funds for his own benefit or for some benefit other than the customers. **(FINRA Case #2007008760801)**

Lesly Charles Deverson (CRD #4075977, Registered Principal, Elmont, New York) 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, Deverson consented to the described sanction and to the entry of findings that he forged public customers' signatures on redemption checks and misappropriated the customers' funds totaling \$713.70. **(FINRA Case #2007009191501)**

Steven Dubinsky (CRD #2699892, Registered Principal, Dix Hills, New York) and Michael John Pata (CRD #2699862, Registered Principal, Huntington Bay, New York) submitted Letters of Acceptance, Waiver and Consent in which each was fined \$5,000 and suspended from association with any FINRA member in any principal capacity for 10 business days. Without admitting or denying the findings, Dubinsky and Pata consented to the described sanctions and to the entry of findings that they failed to properly supervise a registered representative who was engaged in excessive trading in customer accounts.

Dubinsky's suspension in any principal capacity was in effect from February 19, 2008, through March 3, 2008. Pata's suspension in any principal capacity was in effect from March 4, 2008, through March 17, 2008. **(FINRA Cases #ELI2004035401/ELI2004035402)**

David Neil Frand (CRD #3224947, Registered Representative, Parkland, 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 three months. The fine must be paid either immediately upon Frand'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, Frand consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from March 17, 2008, through June 16, 2008. **(FINRA Case #2007008109101)**

Beatriz Fresquez (CRD #4879159, Registered Representative, Edinburg, Texas)

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, Fresquez consented to the described sanction and to the entry of findings that she converted funds from a public customer by ordering an automatic teller machine (ATM) card for the customer, creating a personal identification number (PIN) number for the card and using the card to withdraw \$23,323.50 from the customer's bank account. The findings stated that Fresquez also used bank counter withdrawal forms to withdraw \$42,923.50 from the account without the customer's knowledge or consent. The findings also stated that Fresquez failed to respond to FINRA requests for information. **(FINRA Case #2007010423101)**

Mary Denise Gustavson (CRD #4950885, Registered Representative, McKinney, Texas)

was barred from association with any FINRA member in any capacity. The sanction was based on findings that Gustavson assisted a public customer in obtaining a loan from a bank and to ensure that the customer obtained the loan, she retrieved a financial statement from a third person and pasted the customer's name and date of birth over the third person's name and date of birth to make it appear as if it were the customer's financial statement. The findings stated that Gustavson copied the altered document and submitted the copy to the bank to support the customer's loan application. The findings also stated that Gustavson failed to respond to FINRA requests for information. **(FINRA Case #2006007458501)**

Ray Wesley Hager (CRD #2802640, Registered Principal, Morrison, Illinois) 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, Hager consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information. **(FINRA Case #20060057354-01)**

Warren Karl Hansen (CRD #3014245, Associated Person, Boca Raton, Florida) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Hansen failed to respond to FINRA requests for information and documents. **(FINRA Case #2005001085001)**

William Anthony Kaso (CRD #3147471, Registered Representative, Pembroke Pines, 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 seven months, with credit to be given for six months. Without admitting or denying the findings, Kaso consented to the described sanctions and to the entry of findings that he failed to timely respond to FINRA requests for information.

The suspension in any capacity is in effect from March 17, 2008, through April 16, 2008. **(FINRA Case #2006005016102)**

John Alvin Kelsey (CRD #4554701, Registered Representative, La Crosse, Wisconsin) 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, Kelsey consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for documents and information. **(FINRA Case #20070090270-01)**

Christopher Shawn Kyle (CRD #4536575, Registered Principal, Ocala, 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 six months. The fine must be paid either immediately upon Kyle'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, Kyle consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from March 3, 2008, through September 2, 2008. (FINRA Case #2007008617101)

Jeffrey Michael Laster (CRD #2386216, Registered Representative, Florham Park, 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, Laster consented to the described sanction and to the entry of findings that he submitted a falsified letter in another registered representative's name requesting a hardship withdrawal of \$3,308 from that representative's trading account without his authorization or consent. The findings stated that Laster forged the registered representative's signature on the letter and on the check that was subsequently issued as a result of his request and received the proceeds. (FINRA Case #2007009113301)

Julianna Lynn Makuch (CRD #2812856, Registered Representative, Clermont, Florida) 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 four months. The fine must be paid either immediately upon Makuch'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, Makuch consented to the described sanctions and to the entry of findings that instead of requiring employees to execute new corrected investment-option selection forms for 401(k) retirement savings plans, she completed the forms using information provided on the original employee forms and affixed a photocopy of the employee's signature on the new forms.

The suspension in any capacity is in effect from March 3, 2008, through July 2, 2008. (FINRA Case #2006005191201)

Susan A. Mann (CRD #2213721, Registered Representative, Victor, New York) 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 10 business days. Without admitting or denying the findings, Mann consented to the described sanctions and to the entry of findings that she borrowed \$10,000 from a public customer contrary to her member firm's written supervisory procedures prohibiting its representatives from borrowing money from customers. The findings stated that Mann failed to inform her firm of the loan or otherwise obtain permission.

The suspension in any capacity was in effect from March 17, 2008, through March 31, 2008. (FINRA Case #2007010717301)

Joel S. Mitchell (CRD #4250337, Registered Principal, Lanoka Harbor, 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, Mitchell consented to the described sanction and to the entry of findings that he changed a public customer's address for her individual retirement accounts to his own address without her authorization or consent, entered numerous unauthorized redemptions of mutual fund shares in the accounts, forged the customer's signature on checks totaling \$44,697.70, then converted the proceeds for his own use and benefit. The findings stated that Mitchell improperly opened several credit card accounts in the customer's name, listed himself as an authorized user and obtained \$63,169.16 in cash advances, which he misappropriated for his own use and benefit. **(FINRA Case #2007009448901)**

Paula Ludwig Nordquist (CRD #5123181, Associated Person, Largo, Florida) 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, Nordquist consented to the described sanction and to the entry of findings that she effected unauthorized withdrawals totaling \$3,500 from a public customer's bank account and used the funds for her own use and benefit. **(FINRA Case #2007009038901)**

Stephen G. Rittenberg (CRD #3092989, Registered Representative, Westwood, Massachusetts) 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. The fine must be paid either immediately upon Rittenberg'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, Rittenberg consented to the described sanctions and to the entry of findings that he prepared and distributed unapproved sales literature at seminars for active and retired educators. The findings stated that the sales literature failed to disclose Rittenberg's member firm, and a principal at his firm did not review the sales literature and evidence its review in writing. The findings stated that some of the customer information questionnaires Rittenberg prepared for distribution at the seminars were misleading because they claimed that any information provided would be held confidential when that was not the case.

The suspension in any capacity was in effect from March 3, 2008, through April 1, 2008. **(FINRA Case #2006006533901)**

Xadimul R. Samba (CRD #5181951, Associated Person, Memphis, Tennessee) 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. The fine must be paid either immediately upon Samba'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, Samba consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4. The findings stated that Samba failed to timely respond to FINRA requests for information.

The suspension in any capacity is in effect from March 17, 2008, through March 16, 2009. (FINRA Case #2006006643801)

Daniel Joseph Schneider (CRD #2753359, Registered Supervisor, Marietta, Georgia) 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 140 days. The fine must be paid either immediately upon Schneider's reassociation with a FINRA member firm following the 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, Schneider consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in public customers' accounts.

The suspension in any capacity is in effect from February 19, 2008, through July 7, 2008. (FINRA Case # 20070094420)

George Sepero (CRD #4324398, Registered Representative, Hackensack, 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, Sepero consented to the described sanction and to the entry of findings that he effected unauthorized securities transactions in public customers' accounts and provided false testimony during a FINRA on-the-record interview. (FINRA Case #2006005804301)

Donna Marie Shurot (CRD #1443423, Registered Representative, Gilbert, Arizona) 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, Shurot consented to the described sanction and to the entry of findings that she received \$58,000 from a public customer to purchase a life insurance policy, deposited the funds in her own personal account at her member firm, transferred \$58,479 to her IRA account at the firm and failed to submit a life insurance application for the customer to the firm. The findings stated that Shurot caused another member firm to transfer \$6,712 from a deceased customer's account at that firm by completing a request for redemption form, without authorization from the customer's estate, and included instructions on the form that the funds be made payable to an account belonging to Shurot at her member firm. (FINRA Case #2006006753101)

Timothy James Stauffer (CRD #3220484, Registered Representative, Centerville, Ohio) 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, Stauffer consented to the described sanction and to the entry of findings that he misappropriated \$523,822.50 from his member firm's public customers by obtaining letters of authorization (LOA) signed in blank by the customers and subsequently, without authorization, filled in the LOA to direct that checks or wire transfers be paid out of the customer's account. The findings stated that Stauffer wrongfully used an ATM debit card issued to his brother's account to misappropriate \$8,134 by ATM withdrawals from the account. The findings also stated that Stauffer failed to respond to FINRA requests to provide testimony. (FINRA Case #20070094652)

William Jerome Svete (CRD #4612785, Associated Person, Mentor, Ohio) 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 15 business days. The fine must be paid either immediately upon Svete'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, Svete consented to the described sanctions and to the entry of findings that he actively engaged in the management of his member firm's securities business without being registered with FINRA in a principal capacity.

The suspension in any capacity was in effect from March 17, 2008, through April 7, 2008. (FINRA Case #E062005003201)

Ellerd Bruce Tomte (CRD #3195759, Registered Representative, Park Rapids, Minnesota) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for four months. Without admitting or denying the allegations, Tomte consented to the described sanctions and to the entry of findings that he failed to tell public customers that his member firm would not agree to him charging an hourly fee in lieu of receiving commissions for securities transactions in their account, but received \$23,723.02 in commissions for the transactions he recommended and executed in their account. The findings stated that Tomte gave the customers excuses for why he could not give them an accounting of the hours he was purportedly charging to work on their account. The findings also stated that Tomte submitted correspondence to the customers that contained exaggerated or unwarranted statements or claims without approval from his firm, in violation of his firm's written supervisory procedures.

The suspension in any capacity is in effect from April 7, 2008, through August 6, 2008. (FINRA Case #E0420040478-01)

Dana Dewitt Toney (CRD #2617246, Registered Representative, Las Vegas, Nevada) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Toney failed to respond to FINRA requests for information. The findings stated that Toney engaged in outside business activities without providing his member firm with prior written notice. (FINRA Case #2006006995801)

Vincent Michael Uberti (CRD #2618595, Registered Principal, Fountain Valley, California) was fined \$20,000, suspended from association with any FINRA member in any capacity for six months, barred from association with any FINRA member in any capacity, and must requalify by examination as a general securities representative and a general securities principal should he return to the securities industry. The sanctions were imposed by the National Adjudicatory Council (NAC) in a decision on remand from the SEC. The sanctions were based on findings that Uberti issued research reports on companies that fraudulently failed to disclose material information and contained misleading, exaggerated and false statements. The findings stated that Uberti failed to disclose that the firm had received compensation for preparing and disseminating the reports.

Uberti has appealed this decision to the SEC, and the sanctions, except for the bar, are not in effect pending consideration of the appeal. **(FINRA Case #CAF20020048)**

John James Walsh (CRD #4626228, Registered Representative, Centereach, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$26,500, which includes disgorgement of \$18,820 in commissions, and suspended from association with any FINRA member in any capacity for 60 days. Walsh must also requalify by examination as a general securities representative. In addition, Walsh was ordered to pay \$3,456, plus interest, in restitution to a public customer. The fine and restitution are due and payable either immediately upon Walsh's reassociation with a member firm following the suspension, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Without admitting or denying the findings, Walsh consented to the described sanctions and to the entry of findings that he exercised discretion in securities transactions in a public customer's account, without the customer's prior written authorization and his member firm's prior written acceptance of the account as discretionary. The findings stated that Walsh executed an unauthorized equity sale in a customer's account without the customer's knowledge or consent.

The suspension in any capacity is in effect from March 17, 2008, through May 15, 2008. **(FINRA Case #2007011095801)**

Juergen Weber (CRD #2617323, Registered Representative, Virginia Beach, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,888, of which \$888 represents disgorgement of compensation received from unauthorized transactions, and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Weber'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, Weber consented to the described sanctions and to the entry of findings that he executed unauthorized transactions in public customers' accounts. The findings stated that Weber exercised discretion in public customers' accounts without their written authorization and his member firm's written acceptance of the accounts as discretionary.

The suspension in any capacity will be in effect from February 19, 2008, through May 18, 2008. **(FINRA Case #2007009411401)**

Fredrick Anthony Woods Jr. (CRD #4602685, Registered Representative, Winston-Salem, North Carolina) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Woods submitted loan applications to a bank on public customers' behalf and photocopied their signatures from their bank signature cards onto the loan documents before submitting them to the bank, without their knowledge, consent or authorization. The findings stated that Woods failed to respond fully to FINRA requests for information. **(FINRA Case #2006005689501)**

Ibrahim Ziblim (CRD #5311046, Registered Representative, Newark, 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, Ziblim consented to the described sanction and to the entry of findings that he created an ATM card for a banking customer's account without the customer's authorization or consent, and subsequently used the card to withdraw \$1,000 from the account, converting the proceeds for his own use and benefit. **(FINRA Case #2007010930401)**

Individuals Fined

Donald Fruehauf Chamberlin Jr. (CRD #1357783, Registered Principal, St. Louis, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$10,000 and, in the event that he becomes associated with a FINRA member firm at anytime in the future, must, within 30 days of such association, advise the compliance officer of the firm of the securities industry bars imposed on his father and brother. Without admitting or denying the findings, Chamberlin consented to the described sanctions and to the entry of findings that he negligently allowed his father and brother, who were both barred from association with any broker, dealer or investment adviser pursuant to a settlement with the SEC, to engage in securities-related activity with public customers. **(FINRA Case #2008012114301)**

Garry Bruce Lindboe (CRD #309834, Registered Principal, Martinsville, Indiana) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$25,000, of which \$2,500 was jointly and severally. Without admitting or denying the findings, Lindboe consented to the described sanctions and to the entry of findings that a member firm, acting through Lindboe, operated a securities business without employing a properly registered financial and operations principal (FINOP). The findings stated that the firm, acting through Lindboe, failed to prepare a general ledger and a trial balance from February 2003 through October 2007. **(FINRA Case #2007007331101)**

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 this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding these allegations in the complaint.

Nathan James Lorne (CRD #3277561, Registered Representative, Denver, Colorado) was named as a respondent in a FINRA complaint alleging that he knowingly and willfully made unauthorized withdrawals totaling \$12,101 from a trade association's bank account while serving as a chapter treasurer without the authorization or knowledge of the trade association's Board of Directors, and hid the withdrawals by submitting false financial reports at association meetings, thereby converting customer funds to his

personal use. The complaint alleges that Lorne engaged in outside business activities without providing prompt written notice to his member firm, and made false representations in compliance certifications to his member firm that he was not engaged in any outside business activity nor served as an officer, director or employee of any organization. (FINRA Case #2006005523401)

Louis Steven Majano Jr. (CRD #2520626, Registered Representative, Roslyn Heights, New York) was named as a respondent in a FINRA complaint alleging that he made unauthorized withdrawals from a public customer's account totaling \$20,500 without the customer's knowledge or consent, and failed to respond to FINRA requests for information. (FINRA Case #2007008964101)

Mission Securities Corporation (CRD #41779, San Diego, California) and Craig Michael Biddick (CRD #2382884, Registered Principal, Rancho Santa Fe, California) were named as respondents in a FINRA complaint alleging that without the knowledge, authorization, consent of, or notice to, public customers, the firm, acting through Biddick, transferred common stock shares from customer accounts to the firm's proprietary trading account and did not provide any customer with compensation for the transferred shares. The complaint alleges that without the customers' knowledge, authorization or consent, the firm, acting through Biddick, sold some of the transferred shares and received \$39,940 in sales proceeds in its proprietary trading account, and used the proceeds toward firm operating expenses including, but not limited to, compliance with SEC Rule 15c3, thereby misusing customer securities. The complaint also alleges that the firm, acting through Biddick, utilized the instrumentalities of interstate commerce to engage in securities business while failing to maintain minimum net capital. The complaint further alleges that the firm and Biddick failed to comply with the Taping Rule by not providing notice to customers and potential customers engaged in telephone communications with the firm that the firm was recording incoming and outgoing calls. (FINRA Case #2006003738501)

Max Morehouse (CRD #5289368, Registered Representative, Huntington Station, New York) was named as a respondent in a FINRA complaint alleging that he made withdrawals totaling \$240 from a public customer's bank account for his personal use, by using a temporary ATM card he linked to the account, without the customer's knowledge or consent. (FINRA Case #2007010607601)

Paul William Roles (CRD #2847856, Registered Representative, New York, New York) was named as a respondent in a FINRA complaint alleging that he inputted inaccurate information on numerous new account applications for a public customer that provided an exaggerated picture of the customer's investment objectives, risk profile, net worth and investment experience. The complaint alleges that Roles inputted the inflated descriptions of the customer's financial situation in order to pursue an aggressive investment strategy on her behalf that was unsuitable in light of her true financial situation. The complaint also alleges that Roles' trading activity in the account was excessive in size and frequency in view of the customer's financial circumstances and investment objectives. (FINRA Case #2005002151001)

Shane Michael Turner (CRD #4639366, Registered Representative, Boise, Idaho) was named as a respondent in a FINRA complaint alleging that he engaged in private securities transactions without prior written notice to, and approval from, his member firms. The complaint alleges that Turner received \$20,000 from a public customer to be placed in a real estate investment trust, but instead placed the funds in a securities brokerage account in his own name, thereby making improper use of the customer's funds. The complaint also alleges that Turner received \$60,000 from investors to purchase an investment contract and provided the customers with a purported account statement representing that Turner, as writing agent, had purchased an annuity for the customers, thereby falsely representing to the customers that he had purchased the annuity on their behalf. The complaint further alleges that Turner opened a securities account at a member firm other than his own without notifying his member firms in writing of the other firm, and without notifying the other firm in writing of his association with other member firms. In addition, the complaint alleges that Turner failed to respond to FINRA requests for information. **(FINRA Case #2006005347401)**

Josue Amaro Villarreal (CRD #4743080, Registered Representative, Dallas, Texas) was named as a respondent in a FINRA complaint alleging that he received \$6,083.05 from public customers to pay for their policy premiums, and converted the funds to his own use and benefit. The complaint alleges that Villarreal failed to respond to FINRA requests for information. **(FINRA Case #2006006947101)**

Firm Expelled for Failure to Supply Financial Information

U-Trade Brokerage, LLC
Franklin Lakes, New Jersey
(February 14, 2008)

Firm 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.)

Beller Securities Corp.
Dix Hills, New York
(February 26, 2008)

Individuals Revoked for Failing to Pay Fines and/or Costs Pursuant to NASD Rule 8320

(If the revocation has been rescinded, the date follows the revocation date.)

James Lewis Weiland
Loveland, Ohio
(April 27, 1990 – February 26, 2008)

John Foster Wilkinson
Birmingham, Michigan
(December 11, 2006 – February 15, 2008)

Individuals Barred Pursuant to NASD Rule 9552(h)

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

Barry Lee Bellan
South Bend, Indiana
(February 26, 2008)

Randy Scott Plumley
Blossvale, New York
(February 22, 2008)

Tiffany Lynne Simon
Columbus, Ohio
(February 14, 2008)

John Andrew Trout
St. Claire Shores, Michigan
(February 25, 2008)

Todd Allyn Williams
Akron, Ohio
(February 28, 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.)

Sean Christopher Brack
Normal, Illinois
(February 4, 2008)

Amil Duane Demrow
Fort Collins, Colorado
(February 11, 2008)

Wilfred Junior Ignace
Brooklyn, New York
(December 3, 2007 – February 27, 2008)

Victor L. Whang
Chesterfield, Michigan
(February 11, 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.)

Daniel Scott Bookout
Greenwood, Indiana
(February 1, 2008)

John Edwin Craine
Lexington, Kentucky
(February 6, 2008)

Chad Austin Curtis
Ft. Lauderdale, Florida
(February 6, 2008)

Christopher Edward Frazier
Littleton, Colorado
(February 28, 2008 – March 10, 2008)

Wayne Hubert Lieberz
Woodbury, New York
(February 6, 2008)

Michael J. Pinckes
Hollywood, Florida
(February 13, 2008 – February 15, 2008)

Martin Rybak
Bronx, New York
(February 13, 2008)

Stephen David Stroud
Galveston, Texas
(February 12, 2008)

Edward Joseph Wetzel
Butler, Pennsylvania
(February 28, 2008)

FINRA Charges Broker for Misappropriating Almost \$400,000 from 97-Year-Old Widow and Her Charitable Foundation

Broker and His Wife Also Face Additional Related Charges

The Financial Industry Regulatory Authority (FINRA) has charged registered representative John Edward Mullins, of Margate, NJ, with misappropriating almost \$400,000 from a 97-year-old nursing home resident who was a Mullins' client for more than 20 years, as well as from her charitable foundation. The customer has recently passed away. Broker Kathleen Maria Mullins, John Mullins' wife, was also charged with wrongdoing.

In addition to the misappropriation, FINRA charged John Mullins with attempting to misappropriate funds from his employer relating to improper expense submissions, accepting an unauthorized \$100,000 loan from the client, and making misstatements on his firm's annual compliance questionnaires and Form U4 in an apparent effort to conceal his officer and trustee status with the charitable foundation. Kathleen Mullins was charged with accepting a loan from the customer and making misstatements on her Form U4 and annual compliance questionnaires. In addition, both were charged with failure to adhere to high standards of commercial honor and just and equitable principles of trade.

"Seniors are among the most vulnerable to financial wrongdoing," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement. "In this instance, an unprincipled broker took advantage of a trusting, elderly customer and her charitable foundation at a time when she was hospitalized and her health was failing. We will seek the strongest possible sanctions for this reprehensible, deceitful conduct."

In its complaint, FINRA alleges that shortly after the customer's husband died in December 1999, the customer established a charitable foundation to receive and administer funds for the benefit of charities devoted to the promotion of musical arts in Philadelphia and the New Jersey Shore. From its creation, the Mullins both served as trustees and officers of the foundation. When the customer initially entered a nursing home in 2000, the Mullins were provided power of attorney over the customer's assets, including the ability to conduct banking transactions and withdraw funds.

FINRA further alleges that from about April 2006 through July 2006—when the customer became ill and was hospitalized—Mr. Mullins misappropriated almost \$400,000 from his longstanding client. With the elderly customer's health deteriorating, he took advantage of her condition by using her checking account and debit cards to pay for his and his wife's personal expenses, including paying down \$375,000 in their joint mortgage credit-line account.

The complaint charges that beyond paying off the mortgage credit-line, Mr. Mullins began to use the customer's checks and debit cards largely to make purchases for himself and his wife. These purchases and debits included: \$14,120 in ATM cash withdrawals, \$11,264 for meals at restaurants, delicatessens and purchases at confectionary shops, \$4,653 for groceries and \$1,046 for gasoline. John Mullins signed either the customer's name, or his own name, to debit card receipts.

In addition to the customer's personal assets, the complaint charges, funds were also misappropriated from the charitable foundation account, set up by the customer at the brokerage firm that employed the Mullins'. For example, John Mullins used the customer's foundation account debit card to purchase approximately \$16,500 in gift certificates. He then redeemed \$5,500 in gift certificates to pay down a retail store account bill, and redeemed \$4,000 in Hotel gift certificates during a vacation to London that he took with his wife.

Under FINRA Rules, a firm or individual named in a complaint can file a response and request a hearing before a FINRA disciplinary panel. Possible remedies include a fine, censure, suspension, or bar from the securities industry, disgorgement of gains associated with the violations, and payment of restitution. The issuance of a disciplinary complaint represents the initiation of a formal proceeding by FINRA 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 this complaint is unadjudicated, interested persons may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint.

Oppenheimer & Co. to Pay \$4.5 Million to Settle FINRA Market Timing Charges

Improper Trades Made on Behalf of Hedge Fund Client; Over 60 Mutual Fund Companies to Receive Restitution

The Financial Industry Regulatory Authority (FINRA) announced that Oppenheimer & Co. will pay a fine of \$250,000 for supervisory and other failures in connection with improper market timing of mutual fund shares from January through September 2003. The firm will also pay \$4.25 million in restitution to more than 60 mutual fund companies.

"Market timing harms long-term fund investors who ultimately bear the brunt of higher costs long after market timers have moved on to the next quick trade," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement.

"Oppenheimer's lack of appropriate supervisory systems and controls led to the firm's failure to heed hundreds of warnings and requests it received from mutual funds and life insurance companies for the firm's brokers to cease this trading for hedge funds."

Market timing is short-term buying and selling of mutual fund shares to take advantage of inefficiencies in mutual fund pricing. Market timing can harm long-term mutual fund shareholders because it can dilute the value of their shares. While not illegal per se, market timing is prohibited by the vast majority of mutual funds.

FINRA found that Oppenheimer failed to prevent a group of five traders' improper, short-term trading of mutual funds on behalf of hedge fund customers—activity that yielded about \$9 million in gross revenue for the firm. Oppenheimer also failed to establish, maintain or enforce supervisory systems and written procedures to detect and prevent improper market timing activities, or to maintain required books and records of the short-term trading of mutual funds through other firms' trading platforms.

During the relevant period, the group maintained about 580 accounts for 15 hedge fund customers in an attempt to circumvent market timing trading blocks put in place by the mutual funds. The multiple accounts also served to conceal the true identity of the account holders and allowed the group to spread timing money across accounts, instead of trading one lump sum, which the mutual funds might have rejected.

For example, between April 2003 and September 2003, the group opened 37 accounts for one hedge fund customer so the customer could continue trading in a particular fund despite receiving notices prohibiting further trading from the fund. From April 1, 2003 to April 25, 2003, the group executed market timing trades in the Seligman Fund in 10 of the customer's accounts. As a result, on April 25, 2003, Seligman blocked trading in those accounts for 90 days due to a pattern of excessive trading.

FINRA found that, in an effort to evade the trading restrictions, on May 6, 2003, the group opened six new accounts for that same customer and continued trading in the Seligman Fund in both the new and the blocked accounts. On May 28, 2003, Seligman blocked those six new accounts for 90 days, again due to excessive trading. To evade the most recent blocks, the group executed trades in the mutual fund in 10 additional accounts for the same customer, leading the Seligman Fund, on June 30, 2003, to block those new accounts from further trading for 90 days.

FINRA also found that the group used 51 different registered representative numbers to create the appearance that the trades were coming from registered representatives who had not previously been blocked from trading.

Oppenheimer received about 200 communications from 65 mutual fund companies advising the firm that short-term trading activity was detrimental to long-term shareholders. Some communications indicated that the group was no longer permitted to trade at all within the mutual funds' family of funds. Nevertheless, the firm failed to monitor the group's activities, allowing improper market timing practices to continue. FINRA also found that the group used "omnibus" trading platforms operated by Schwab and Fidelity to disguise the group's identity so it could continue market timing in funds that had blocked or rejected the group's customers' trades. During the relevant period, the group placed approximately 3,700 improper trades on behalf of 99 accounts in 173 mutual funds through the Schwab and Fidelity trading platforms. Additionally, the firm failed to create or maintain records of the group's trading through the Schwab and Fidelity platforms.

FINRA further found that the group sold variable annuity contracts to its hedge fund clients to allow them to use the annuity sub-accounts as yet another vehicle for market timing mutual funds. During the relevant period, the group—with the approval of at least some senior managers—purchased 159 variable annuity contracts on behalf of their hedge fund clients. Oppenheimer received at least 17 communications from the life insurance companies that issued the contracts restricting the group's trading. Despite these communications, the firm failed to prevent the group from market timing in annuity sub-accounts.

Oppenheimer settled this action without admitting or denying the charges, but consented to the entry of FINRA's findings.

All five traders involved in the improper market timing have been barred from the securities industry for failure to cooperate with the regulatory investigation of the misconduct at Oppenheimer. One trader has appealed the bar to the Securities and Exchange Commission.

FINRA Settles with Five Firms for Supervisory Failures, Improper Mutual Fund Sales to More than 5,300 Households; Tens of Millions of Dollars to be Returned to Customers

Merrill Lynch, Prudential Securities, Pruco and UBS Fined a Total of \$2.4 Million; Wells Fargo Investments Receives Credit for Remedial Steps Previously Taken

FINRA announced has settled cases against five firms for mutual fund sales and supervisory violations—including improper sales of Class B and Class C mutual fund shares and failure to have supervisory systems designed to provide all eligible investors with the opportunity to purchase Class A mutual fund shares at net asset value (NAV) through NAV transfer programs.

For the share class sales violations, FINRA imposed an \$800,000 fine against Prudential Securities and a \$750,000 fine against UBS Financial Services, Inc. for improper sales of Class B and Class C mutual fund shares. A \$100,000 fine was imposed against Pruco Securities for improper sales of Class B shares. In resolving the Class B and Class C share matters, these firms also agreed to remediation plans that will address over 27,000 fund transactions in the accounts of 5,300 households.

To resolve the NAV violations, Merrill Lynch, Prudential Securities, UBS and Wells Fargo agreed to remediation plans for eligible customers who qualified for, but did not receive, the benefit of NAV transfer programs. It is estimated that total remediation to customers will exceed \$25 million.

In addition, FINRA fined Prudential Securities, UBS, and Merrill Lynch \$250,000 each for failure to have reasonable supervisory systems and procedures to identify and provide opportunities for investors to obtain sales charge waivers through NAV transfer programs. From 2001 through 2004, many mutual fund families offered NAV transfer programs that eliminated front-end mutual fund sales charges for certain customers. Customers who redeemed fund shares for which they had paid a sales charge were permitted to use the proceeds to purchase Class A shares of a new mutual fund at NAV—that is, without paying another sales charge. FINRA found that, as a result of inadequate supervisory systems at Merrill Lynch, Wells Fargo and UBS from 2002 through 2004, and at Prudential Securities from 2002 to 2003, certain customers eligible for the NAV programs incurred front-end sales loads that they should not have paid, or purchased other share classes that unnecessarily subjected them to higher fees and the potential of contingent deferred sales charges.

Although FINRA found that Wells Fargo Investments failed to have reasonable supervisory systems and procedures relating to NAV transfer programs, FINRA did not impose a fine because of the firm's proactive remedial actions taken upon its discovery of—and before FINRA's inquiry into—the violative conduct. When Wells Fargo discovered it had failed to provide certain eligible customers with NAV pricing, the firm

initiated a review of its mutual fund sales and acted promptly and in good faith to repay customers and correct its system and procedures. As part of this process, Wells Fargo paid more than \$612,000 in restitution to investors in Class A shares.

“Firms have an obligation to consider all relevant factors when recommending mutual fund investments, to ensure that they recommend the share class that is most advantageous to the customer,” said Susan L. Merrill, Executive Vice President and Chief of Enforcement. “The supervisory problems here led not only to the sales of inappropriate mutual fund share classes, but to the failure to identify special sales charge waiver programs on mutual fund purchases. We are pleased that through these settlements, millions of dollars will be returned to customers.”

In recommending the purchase of mutual funds, a firm must assess the suitability of the class of shares to be purchased as well as the suitability of the particular fund. Primary considerations include the investment amount, the expected holding period of the investment, the applicable sales loads, fees and expenses associated with each class and the effect of such factors on the ultimate return on investment to the investor.

Each firm settled these matters without admitting or denying the allegations, but consented to the entry of FINRA's findings.