

Notices

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Disciplinary and Other FINRA Actions

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Continuing Education

Securities Industry/Regulatory Council on Continuing Education Issues Firm Element Advisory Update

Executive Summary

This *Notice* advises firms of the second-quarter 2008 Securities Industry/Regulatory Council on Continuing Education Firm Element Advisory, which identifies regulatory and sales practice topics that firms should consider in their Firm Element training plans. Topics updated or added since the prior Advisory are indicated in the document as such.

The updated Firm Element Advisory is available at www.cecouncil.com/publications/council_publications/FEA_Semi_Annual_Update.pdf.

Questions concerning this *Notice* should be directed to:

- cecounciladmin@finra.org;
- Joseph Sheirer, Director, Continuing Education, FINRA, at (646) 315-8691; or
- Roni Meikle, Director, Continuing Education, FINRA, at (646) 315-8688.

Background/Discussion

The Securities Industry/Regulatory Council on Continuing Education (the Council) publishes the Firm Element Advisory (FEA) to highlight current regulatory and sales practice issues for possible inclusion in Firm Element training plans. The topics have been identified from a review of industry regulatory and self-regulatory organization publications and announcements of significant events.

June 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Continuing Education
- Legal
- Registration
- Senior Management

Key Topic(s)

- Continuing Education
- Firm Element

The Advisory topics are not exhaustive and are intended as a guide to firms when they determine what to include in their training plans. Firms should consider the specific nature of their business, clients, products and services when creating their training plans.

The updated FEA is available on the Council's Web site at www.cecouncil.com/publications/council_publications/FEA_Semi_Annual_Update.pdf.

In addition to the FEA, the Council offers the Firm Element Organizer as a resource that can assist firms in developing their Firm Element training plans. The Firm Element Organizer is a Web-based tool that enables the search of an extensive database of regulatory resources related to specific investment products or services and is available at www.cecouncil.com/firm_element/organizer.

Illiquid Investments

Guidance Relating to Illiquid Investments

Executive Summary

FINRA is providing guidance to member firms on obligations that may arise in connection with customer requests to sell generally illiquid securities and informing customers of buy interest in such securities.

Questions concerning this *Notice* should be directed to the Office of General Counsel at (202) 728-8071.

Discussion

Recently, questions have been raised regarding a firm's obligations when it receives a customer's unsolicited instruction to liquidate a position in an illiquid security when the customer is aware of specific buying interest in that security.¹ There is no FINRA rule that would require a firm to refuse to follow the customer's instruction under these circumstances, even if the firm believes the market or price for the security is not favorable at that time. In those instances, the firm should fully disclose the pricing risks to the customer and receive a written acknowledgment that the customer understands those risks.

FINRA also recognizes that there may be valid reasons for a firm to delay, or obtain more information, before following a customer's instructions (*e.g.*, if the firm has reason to doubt the identity of the person giving the instruction). However, a firm's refusal to follow the customer's unsolicited instruction to sell to a specific buyer may violate NASD Rule 2110.² When the following conditions are present, firms should not delay or decline executing such a transaction in an illiquid security:

- (1) the customers on both sides of the transaction have indicated their understanding that the firm is not recommending the transaction or making a suitability determination;

June 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Registered Representatives
- Senior Management

Key Topic(s)

- Illiquid Investments

Referenced Rules & Notices

- NASD Rule 2110
- NASD Rule 2310
- NTM 01-23

- (2) the customers understand that the firm cannot reach a view as to the sufficiency or competitiveness of pricing; and
- (3) there are no legitimate concerns as to the ability of both sides to settle the proposed transaction.

Customers may also learn of buy interest from their firm. In informing customers of buy interest, firms should also consider appropriate disclosure, including, as applicable, information regarding the firm's inability to make a representation as to the nature, fairness or sufficiency of the pricing; and any pecuniary interest the firm may have in the transaction. If the firm recommends the transaction to a customer, the firm has additional obligations and must ensure that the transaction is suitable pursuant to NASD Rule 2310.³

Endnotes

- 1 The guidance in this *Notice* is limited to unsolicited instructions. Whether a customer order is solicited is dependent upon the specific facts and circumstances.
- 2 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.
- 3 Whether a transaction is "recommended" depends upon the facts and circumstances. Firms may wish to review the guidance in *NASD Notice to Members 01-23* (April 2001) regarding the content, context and manner of presentation of customer communications and when those communications are recommendations for purposes of the suitability rule.

Trading Ahead of Customer Orders

SEC Approves Exemption from the Requirements in NASD IM-2110-2 and NASD Rule 2111 for Certain Regulation NMS-Compliant Intermarket Sweep Orders

Effective Date: May 6, 2008

Executive Summary

Effective May 6, 2008, the requirements in NASD Interpretive Material (IM) 2110-2 (Trading Ahead of Customer Limit Order) and NASD Rule 2111 (Trading Ahead of Customer Market Orders) do not apply to certain proprietary trades that are the result of intermarket sweep orders.¹ The text of the amended rules is set forth in Attachment A of this *Notice*.

Questions regarding this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126; or the Office of General Counsel at (202) 728-8071.

June 2008

Notice Type

- Rule Amendment

Suggested Routing

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

Key Topic(s)

- Intermarket Sweep Orders
- Limit Orders
- Limit Order Protection
- Manning Rule
- Market Orders
- Market Order Protection
- Regulation NMS

Referenced Rules & Notices

- NASD IM-2110-2
- NASD Rule 2111
- NTM 07-19

Background and Discussion

IM-2110-2 (referred to as the “Manning Rule”) generally prohibits a member firm from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better.² The legal underpinnings for the Manning Rule are a member firm’s basic fiduciary obligations and the requirement that a firm must, in the conduct of its business, “observe high standards of commercial honor and just and equitable principles of trade.” The same principles on which the Manning Rule is based apply to the treatment of customer market orders pursuant to Rule 2111, which generally prohibits a member that accepts and holds a customer market order from trading for its own account at prices that would satisfy the customer market order, unless the firm immediately thereafter executes the customer market order.

On May 6, 2008, the SEC approved amendments to IM-2110-2 and Rule 2111 that establish a new exemption relating to ISOs. As amended, the requirements in IM-2110-2 and Rule 2111 do not apply to trading for a member firm’s own account that is the result of an ISO routed in compliance with Rule 600(b)(30)(ii) of Regulation NMS where the customer order is received **after** the member routed the ISO.³ The intent of the exemption is to facilitate member firm compliance with Rule 611 of Regulation NMS without compromising important limit and market order protection requirements. The exemption, therefore, is based on the assumption that the turnaround time from when an ISO is sent out to execute against the full displayed size of a protected quote and the response time to the sender is extremely short, generally because such orders are marked with a time-in-force of Immediate-or-Cancel (IOC). Accordingly, to the extent that a member firm may route an ISO order with a time-in-force greater than IOC, any portion of the member firm’s order that is not executed immediately would no longer fall within the terms of the exemption, and any subsequent executions must comport with the obligations under IM-2110-2 and Rule 2111.

Also as amended, the requirements in IM-2110-2 and Rule 2111 do not apply to trading for a member firm’s own account that is the result of an ISO where the member firm executes the ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO. In this regard, the exemption applies only to the consenting customer’s order and does not allow the member firm to trade ahead of any other unexecuted customer orders that were received by the firm prior to the time that the firm routed the relevant ISO order.

The amendments became effective on May 6, 2008, the SEC approval date.

Endnotes

- 1 See Securities Exchange Act Release No. 57784 (May 6, 2008), 73 FR 27587 (May 13, 2008) (order approving SR-FINRA-2007-039).
- 2 The SEC approved changes to IM-2110-2 that, among other things, expand its scope to OTC equity securities. See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR-NASD-2005-146). See also *NASD Notice to Members 07-19* (April 2007). See also File Nos. SR-FINRA-2007-038, SR-FINRA-2007-023, SR-NASD-2007-041 and SR-NASD-2007-039.
- 3 Rule 600(b)(30) of Regulation NMS defines an ISO as a limit order for an NMS stock that meets the following requirements: (i) when routed to a trading center, the limit order is identified as an ISO; and (ii) simultaneously with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders also must be marked as ISOs.

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Attachment A

Below is the text of the rule changes. New language is underlined.

* * * * *

IM-2110-2. Trading Ahead of Customer Limit Order

(a) through (c) No change.

(d) Intermarket Sweep Order Exemption

A member shall be exempt from the obligation to execute a customer limit order in a manner consistent with this interpretation with regard to trading for its own account that is the result of an intermarket sweep order routed in compliance with Rule 600(b)(30)(ii) of Regulation NMS ("ISO") where the customer limit order is received after the member routed the ISO. A member also shall be exempt with respect to trading for its own account that is the result of an ISO where the member executes the ISO to facilitate a customer limit order and that customer has consented to not receiving the better prices obtained by the ISO.

* * * * *

2111. Trading Ahead of Customer Market Orders

(a) through (f) No change.

(g) The obligations under this rule shall not apply to trading for a member's own account that is the result of an intermarket sweep order routed in compliance with Rule 600(b)(30)(ii) of Regulation NMS ("ISO") where the customer market order is received after the member routed the ISO. The obligations under this rule also shall not apply with respect to trading for a member's own account that is the result of an ISO where the member executes the ISO to facilitate a customer market order and that customer has consented to not receiving the better prices obtained by the ISO.

(h) Nothing in this rule changes the application of Rule 2320 with respect to a member's obligations to customer orders.

Systems Changes and Requirements for Extension of Time Requests

FINRA Consolidates the Collection and Processing of Regulation T and SEC Rule 15c3-3 Extension of Time Requests

Effective Date: November 17, 2008

Executive Summary

FINRA has integrated the legacy NYSE Regulation and NASD extension of time processing systems into one combined system. Effective November 17, 2008, all requests for an extension of time must be filed through the new system, known as the “Reg T” system, which is accessible through FINRA’s Firm Gateway.

Through FINRA’s Reg T system, firms will have the ability to submit extension of time requests by completing an online request form, uploading a file via the File Upload page on the system, or transmitting a file via a batch processing feed using File Transfer Protocol (FTP). In addition, clearing firm members must submit their monthly reporting of correspondent firms’ extensions to transactions ratio by completing an online form accessible via the FINRA Firm Gateway. Upon completion of the integration, the legacy NYSE Regulation filing platforms and the batch file submission processed through the Securities Industry Automation Corporation (SIAC) will be eliminated.

This *Notice* also details new data field requirements for the Reg T system.

June 2008

Notice Type

- Guidance

Suggested Routing

- Compliance
- Institutional
- Legal
- Operations
- Registered Representatives
- Senior Management
- Systems

Key Topic(s)

- Extension Processing

Referenced Rules & Notices

- NASD Rule 3160
- Regulation T §§ 220.4 and 220.8
- SEC Rule 15c3-3
- NTM 06-62

Questions concerning this *Notice* should be directed to:

- ▶ Rudolph Verra, Managing Director, Risk Oversight and Operational Regulation, at (646) 315-8811;
- ▶ Glen Garofalo, Director, Credit Regulation, at (646) 315-8464;
- ▶ Steve Yannolo, Principal Credit Specialist, Credit Regulation, at (646) 315-8621; or
- ▶ Vincent Rotolo, Senior Credit Specialist, Credit Regulation, at (646) 315-8576.

Background & Discussion

Regulation T, issued by the Federal Reserve Board (FRB) pursuant to the Securities Exchange Act of 1934 (Exchange Act), governs, among other things, the extension of credit by broker-dealers to customers to pay for the purchase of securities.¹ SEC Rule 15c3-3 requires, among other things, broker-dealers to promptly obtain and maintain physical possession or control of customer securities and designates periods of time within which broker-dealers must satisfy any deficiency (including those that arise from a customer “long” sale for which the customer has not delivered the securities within the requisite time period) by buying-in or otherwise obtaining possession or control of the securities.²

Under SEC Rule 15c3-3(n), a self-regulatory organization (SRO) may extend certain specified periods to buy-in a security, for one or more limited periods commensurate with the circumstances, where the SRO: (1) is satisfied that the broker-dealer is acting in good faith in making the request; and (2) exceptional circumstances warrant such action.³ Regulation T has a similar standard to allow an extension of time for payment for purchase of securities.⁴

Pursuant to NASD Rule 3160, all clearing member firms for which FINRA is the designated examining authority (DEA) must submit requests for extension of time under Regulation T or SEC Rule 15c3-3(n) to FINRA. Since the SRO designated as a firm’s DEA has responsibility for examining its members’ compliance with applicable financial responsibility rules such as Regulation T and SEC Rule 15c3-3, requiring a firm to submit extension requests to its DEA helps to ensure that the DEA receives complete extension information to assist it in performing this regulatory function. As further detailed below, each clearing firm member for which FINRA is the DEA also must file a monthly report with FINRA indicating all broker-dealers for which it clears that exceed a given ratio of requested extensions of time to total transactions.

Personnel preparing extensions of time requests are expected to obtain supporting documentation authorizing or requesting them to apply for an extension of time on behalf of a customer. Firms are reminded that a customer is not entitled to an extension of time. As noted above, extensions of time may only be requested in exceptional circumstances, and firms are responsible for determining the appropriateness of requesting any such extension.

Integration of Extension Processing Systems

Consolidation of FINRA's extension of time processing protocols and related technology is part of the integration of NASD and the member firm regulation operations of NYSE Regulation. Historically, firms requested extensions of time through (1) FINRA's current Reg T system (available via the Firm Gateway and Regulation Filing Applications (RFA) system), (2) NYSE's eMEX system (via the Electronic Filing Platform (EFP)), or (3) SIAC. The new integrated approach will allow FINRA to more efficiently process, monitor and service firms that request extensions of time on transactions. Firms that requested "Firm to Firm" extensions via the NYSE's EFP system will now be able to request such extensions using the same interface, within the Reg T system, as that used for customer extensions. As of November 17, 2008, all requests for an extension of time must be filed through FINRA's Reg T system. As discussed below, firms will have the ability to request extensions of time directly through the Web site by completing an online request form, uploading a file on the Web site, or transmitting a file via a batch processing feed using FTP.

Firms that use a service bureau to submit extension requests on their behalf through SIAC must ensure that this *Regulatory Notice* is promptly communicated to their service bureaus so that any programming changes are effective by November 17, 2008.

Expanded File Format/Layout and Data Elements

The batch file formats that are currently used for FINRA's existing system and the NYSE's EFP application have been expanded and some new data requirements have been added to the new format and file layout. These same data fields will also be required from members that file via FTP. The following is a list of the new and/or expanded data elements:

- ▶ **Request Type:** Firms must indicate the rule type that pertains to each request. The field must be completed by inserting "REGT" or "15C3," depending on the rule associated with the request for the extension of time.
- ▶ **Multi-Request Count:** This field requires the extension iteration number to be entered by the member. For example, the first Regulation T extension for a transaction is 1, and a second extension request is 2.
- ▶ **Issue Symbol or CUSIP:** Either the Issue Symbol or the CUSIP of the transaction for which the extension of time is being requested will be required for all extensions. Previously, this data field was only required for "Firm to Firm"/15c3-3 extensions of time. *Note: Only one Issue Symbol or CUSIP is required in the case of multiple transactions for a specific trade date.*

- ▶ **Settlement Date:** The firm must provide the settlement date of the transaction for which the extension of time is being requested.
- ▶ **Quantity:** Firms must enter the number of shares or contracts associated with the Issue Symbol or the CUSIP selected above. Previously, this data field was only required for “Firm to Firm”/15c3-3 extensions of time. *Note: Only the number of shares or contracts associated with the Issue Symbol or CUSIP selected above is required in the case of multiple transactions for a specific trade date.*
- ▶ **Amount:** Firms must enter the total dollar amount of credit extended to this account for the specified trade date. If this total amount due is \$1,000 or less, no extension request(s) need be made. For a second extension of time with respect to the same transaction, the total dollar amount must not exceed the value on the original request.
- ▶ **Registered Representative’s Central Registration Depository (CRD) Number:** This field is required for all Regulation T and SEC Rule 15c3-3(m) customer extension requests.
- ▶ **Branch CRD Number:** This field captures one of two branch CRD numbers depending on whether the extension request is: (1) on behalf of a customer of the clearing firm, or (2) on behalf of a customer of the correspondent firm. For a clearing firm submitting extension of time requests for its own customer, this field represents the CRD number of the branch office of the clearing firm where the registered representative assigned to the account is located. For a clearing firm submitting extension of time requests for customers of a correspondent firm, this field represents the CRD number of the office of the clearing firm that processed the extension request. Since this field is required for all Regulation T and SEC Rule 15c3-3(m) customer extension requests and therefore cannot be left blank, if the office of the clearing firm that processed the extension request does not have a branch CRD number, then the clearing firm must submit, first, the branch CRD number of its main office, or if such CRD number does not exist, then the clearing firm must submit the CRD number of the clearing firm’s branch office that is closest in proximity to the clearing firm’s main office.
- ▶ **Correspondent Firm Flag:** This field is required for all Regulation T and SEC Rule 15c3-3(m) customer extension requests. The field must be completed with a “Y” for yes when the request is being made on behalf of a correspondent firm or “N” for no when no correspondent firm is involved.
- ▶ **Correspondent Firm CRD Number:** This field is required for all Regulation T and SEC Rule 15c3-3(m) customer extension requests if the Correspondent Firm Flag is “Y.”

- **Correspondent Branch CRD Number:** Firms must provide the CRD number of the correspondent firm's branch office where the registered representative assigned to the account is located. This field is required for all Regulation T and SEC Rule 15c3-3(m) customer extension requests if the Correspondent Firm Flag is "Y."
- **Customer Type:** Firms must indicate the type of customer for whom the extension request is being filed with one of the following values:
 - S – Domestic Individual;
 - T – Domestic Company;
 - P – Foreign Individual; or
 - I – Foreign Company.

The Customer Type is required for Regulation T and SEC Rule 15c3-3(m) extension requests only.

- **Customer Social Security Number (SSN)/Tax Identification Number (TIN):** This field is required if the Customer Type is "S" or "T." The firm should complete the SSN number for Domestic Individual (S) and the TIN for Domestic Company (T). This field is required for all Regulation T and SEC Rule 15c3-3(m) extension requests. *Note: This data field currently is required in FINRA's system, but is labeled as "Customer Number."*
- **Account Number:** This field represents the customer account number at the broker-dealer filing such request. It is required for all Regulation T and SEC Rule 15c3-3(m) extension requests.
- **Rule Type:** Firms must indicate the relevant paragraph—(d)(2),(d)(3),(h) or (m) of SEC Rule 15c3-3—to which the extension of time request relates.
- **Deficiency Date:** Firms must indicate the date on which the firm discovered the deficiency if the Rule Type is (d)(2) or (d)(3). The deficiency date must be one or two business days prior to the extension of time request date.
- **Payable Date:** Firms must indicate the date on which dividends are to be paid if the Rule Type is (d)(3).
- **Contra Broker Dealer CRD Number:** Firms must indicate the CRD number of the broker-dealer failing to deliver the securities if the Rule Type is (d)(2).
- **Receivable From:** Firms must indicate the name of the party from whom the dividend, stock split, etc., is due if the Rule Type is (d)(3).

The new file format for all of the data elements can be found in Attachment A to this *Notice*. The additional data collected by FINRA will enhance its member surveillance and examination capabilities. The file format indicates all of the data elements that will be required, regardless of whether a firm submits extension of time requests via the Web site using the upload process or via FTP batch submissions. If a firm transmits an extension file using the old format, the transmission will be rejected. Members that currently file extension of time requests via the NYSE EFP system or SIAC will need to make changes to the file format to provide the new information outlined in Attachment A. In particular, FINRA notes that failure to provide the required CRD numbers will result in denied extensions. *Therefore, it is important that both carrying and clearing and correspondent broker-dealers ensure that they obtain the appropriate CRD numbers that will be required when submitting extension of time requests.*

Monthly Reporting Requirement Regarding Correspondent Firm Extensions

NASD Rule 3160(b) requires each clearing firm member for which FINRA is the DEA to file a monthly report with FINRA indicating all broker-dealers for which it clears (*i.e.* correspondent firms) that have overall ratios of requests for extensions of time as noted by Regulation T and SEC Rule 15c3-3 to total transactions for the month that exceed 2 percent.⁵ A template within the Reg T application permits clearing firms to submit the required reports regarding their correspondent firms' extension requests. The template is set forth in Attachment B of this *Notice*. The monthly report will require clearing firms to identify, among other things:

- ▶ the correspondent broker-dealer's CRD number;
- ▶ the number of extension requests for the correspondent broker-dealer for the calendar month;
- ▶ the number of transactions for the correspondent broker-dealer for the calendar month; and
- ▶ the ratio of the number of extensions requested to total transactions.

Firms must submit the monthly report directly through the FINRA Web site no later than five business days following the end of the preceding calendar month.⁶ For months when no correspondent broker-dealer for which it clears exceeds the criteria, the clearing firm should submit a report indicating such.⁷

FINRA will monitor the number of Regulation T and SEC Rule 15c3-3 extension requests for each firm to determine whether to impose prohibitions on further extensions of time. As further detailed below, FINRA will prohibit further extensions of time for correspondent firms that exceed a 3 percent ratio of the number of extension requests to total transactions for the month (notwithstanding the fact that the monthly report described above identifies correspondent firms that have ratios of extensions of time

requests to total transactions exceeding 2 percent for the month).⁸ In addition, FINRA will prohibit further extensions of time for clearing firms that exceed a 1 percent ratio of extensions requested to transactions.⁹

More specifically, to the extent that firms exceed the applicable threshold limits (1 percent for clearing firms and 3 percent for correspondent firms), FINRA will inform them that their ability to receive extensions for their customers will be stopped for a 90-day period if the firm does not reduce the number of subsequent requests below the applicable limit by the next reporting period.¹⁰ FINRA believes that these limits are appropriate in light of the standard set forth in Regulation T and SEC Rule 15c3-3 that extensions of time may only be granted under “exceptional circumstances.” While FINRA does not at this time contemplate any changes to the thresholds referenced herein, any future changes to these parameters will be published in a subsequent *Regulatory Notice*.

Reports

Firms will have access, via the same Reg T system, to online extension reports that will include information based on all of the submitted data elements. Firms will be able to query for extensions that are granted, denied and/or rejected, as well as accounts that have been “finalized.”¹¹ Firms submitting batch files via FTP batch upload will be able to access a copy of the extension report electronically.

Testing

FINRA understands that the integration of the extension processing systems will require firms to make modifications to their systems. FINRA will make the Reg T Customer Test Environment (CTE) available for firms to test their programming changes beginning late October or early November 2008 at <https://regfilingtest.finra.org>. For firms that will transmit files via FTP, FINRA will accept test data files transmitted through its testing environment during this same time period. Please refer to the Message Center, <https://regfiling.finra.org>, for further information about testing. For firms that are not familiar with the Reg T system and FTP submission process, a fact sheet outlining the process is available at www.finra.org/web/groups/reg_systems/documents/regulatory_systems/p038475.pdf. Users will need a FINRA user ID and password to access CTE. Firms that encounter technical problems, or need to request a FINRA user ID and password, should contact the FINRA Help Desk at (800) 321-6273.

Training

FINRA recognizes that firms may need additional support with the changes addressed in this *Notice*, and intends to make any necessary training available. FINRA will issue a further notification as such training becomes available.

Endnotes

- 1 12 CFR 220.4(c) and 220.8(d). Regulation T provides that a customer has one payment period (currently five business days) to submit payment for purchases of securities in a cash account or in a margin account.
- 2 17 CFR 240.15c3-3.
- 3 See SEC Rule 15c3-3(n), authorizing SROs to extend the periods of time to buy-in a security specified in SEC Rules 15c3-3(d)(2), (d)(3), (h) and (m).
- 4 Under Regulation T, a firm's examining authority may grant an extension unless the examining authority believes that the broker-dealer is not acting in good faith or that the broker-dealer has not sufficiently determined that exceptional circumstances warrant such action. See Regulation T §§ 220.4(c) and 220.8(d).
- 5 See *NASD Notice to Members 06-62*. Self-clearing firms that do not clear for other firms are not required to file these reports because such firms do not have any correspondent broker extension information to provide to FINRA.
- 6 See NASD Rule 3160(b).
- 7 FINRA's system has the functionality to permit a clearing firm to submit a "non-applicable" report for any months in which none of the firm's correspondents exceed the 2 percent ratio. FINRA encourages clearing firms to submit such report, as appropriate, so it is clear to FINRA staff that the firm did not neglect to file a required report.
- 8 The 2 percent threshold provides FINRA with an "early warning" notice as to the concentrations of extension requests for correspondent firms. FINRA will use the information submitted by the clearing firms in the NASD Rule 3160(b) monthly report to monitor correspondent firms' compliance with the 3 percent threshold.
- 9 FINRA will calculate the 1 percent ratio using the number of extensions requested pursuant to Regulation T and SEC Rule 15c3-3 to transactions as reported by the clearing firm on field 4980 of the FOCUS II Report.
- 10 For example, if a correspondent firm exceeds the applicable threshold for the month of July 2008, its clearing firm would report that fact to FINRA by August 7, 2008 (*i.e.*, five business days after the end of the month). FINRA would advise the correspondent firm that it had exceeded its threshold and that it must reduce the number of subsequent requests below the limit by the end of August 2008. If the correspondent firm exceeds the applicable threshold for the month of August 2008, its clearing firm would report that fact to FINRA by September 8, 2008 (*i.e.*, five business days after the end of the month) and the 90-day suspension would start at that time.
- 11 The term "finalized" refers to individual customers who have reached their allowable limit of extensions; *i.e.*, the customer has received five Regulation T extensions or nine SEC Rule 15c3-3 extensions in the preceding 12 months.

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Attachment A

FINRA Reg T/15c3 Upload Format

The FINRA REGT record format uses three types of records. There should be only one Header and a Trailer Record for each REGT Filing. A Detail Record is used to report each REGT and/or 15C3 extension request.

NOTE: If a firm or service provider submits multiple filings in a single file, and any of the filings are rejected, the status of the job will show as Rejected (even if four out of five filings are accepted). It is the submitter's responsibility to make sure that all filings are submitted correctly.

Header Record

A Header record must always be the first record of each filing submitted to FINRA. Firms must populate the third field in Header Record with "REGT." All fields are required.

Field	Type	Positions	Format	R/O	Description
Record Type	Char (1)	1	"H"	R	"H" Identifies this as a Header Record.
Firm CRD#	Integer (8)	2 – 9		R	Firm CRD Number of the firm requesting the extensions that follows.
File Identifier	Char (4)	10 – 13	"REGT"	R	Identifies the file as a REGT file.

Detail Record

One Detail Record is required for each extension request being made by the firm identified in the preceding Header Record. There must be at least one Detail Record for each Header Record in the file.

Layout for REGT and 15C3 Extension Requests

NOTE: When filing a secondary (or subsequent) request (Multi Request Count > 1), all data fields in the table below MUST match the value supplied in the original request except those fields marked with an asterisk (*) following the name, or the request shall NOT be GRANTED. In the case of CUSIP/Issue Symbol (**), as long as the value supplied maps to the same security, either can be provided on a subsequent request.

Keys to reading this chart: R/O stands for Required (R) or Optional (O).

Name	Type	Pos	Format	Reg-T R/O	15C3 R/O	Description
Record Type	Char (1)	1	"D"	R	R	"D" identifies this as an Extension Request Detail Record.
Request Type	Char (4)	2-5	"REGT" or "15C3"	R	R	Must have the value "REGT" or "15C3."
Request Date	Date	6-13	yyyymmdd	R	R	Must equal the current system date. Request Date should be the date of submission. (NOTE: For secondary extensions, this must be the original Request Date.)
Multi Request Count*	Number (1)	14	1	R	R	Counts extension iteration number. The original is 1, a second extension request is 2, a third request is 3, etc.
Reason Code*	Number (3)	15-17		R	R	Right-justified, zero filled (01 should be 001).
Requested Days*	Number (2)	18-19		R	R	Any request submitted with a value greater than the maximum number of days allowed for the Reason Code supplied will be denied.
Issue Symbol**	Char (14)	20-33		O	O	Required to have either Symbol or CUSIP.
CUSIP**	Char (16)	34-49		O	O	Required to have either Symbol or CUSIP.
Quantity	Number (12)	50-61		R	R	Enter the quantity associated with the CUSIP or Issue Symbol selected above.
Amount*	Number (14)	62-75		R	R	Enter the total dollar amount of credit extended to this account for the specified trade date. If this total amount due is \$1,000 or less, no extension request(s) need be made. For secondary extension requests the total dollar amount must not exceed the value on the original request.

Char fields must be left justified and space-filled. Number fields must be right justified and zero-filled.

Keys to reading this chart: R/O stands for Required (R) or Optional (O).

Name	Type	Pos	Format	Reg-T R/O	15C3 R/O	Description
Trade Date	Date	76-83	yyyymmdd	R	R	
Settlement Date	Date	84-91	yyyymmdd	R	R	
Account Type	Char (1)	92	C/M	R	N/A	Cash (C) or Margin (M)
New Issue Flag	Char (1)	93	Y/N	R	N/A	If it is a New issue, the Request date should be 5 days from Settlement date
Registered Rep CRD#	Number (12)	94-105		R	O	Required for 15C3 Rule Type M.
Branch CRD#	Number (10)	106-115		R	O	Required for 15C3 Rule Type M.
Correspondent Firm Flag	Char (1)	116	Y/N	R	O	Required for 15C3 Rule Type M.
Correspondent Firm CRD#	Number (8)	117-124		O	O	Required if Correspondent Firm Flag is "Y." Required for 15C3 Rule Type M.
Correspondent Branch CRD#	Number (10)	125-134		O	O	Required if Correspondent Firm Flag is "Y." Required for 15C3 Rule Type M.
Customer Type	Char (1)	135		R	O	In 15c3-3 Forms, the Customer Info data is optional for Rule Type codes of D2, D3, and H. The Customer Info section is required with Rule Type of M. Valid Values are: S - Domestic Individual T - Domestic Company P - Foreign Individual I - Foreign Company
SSN / TIN	Number (9)	136-144		O	O	Required if Customer Type is "S" or "T." SSN number for Domestic Individual (S). TIN for Domestic Company (T). For Customer Types Required for 15C3 Rule Type M.
Account Number	Char (30)	145-174		R	O	Customer Account Number. Acts as Unique Customer Identifier for Foreign Customer Required for 15C3 Rule Type M.

Keys to reading this chart: R/O stands for Required (R) or Optional (O).

Name	Type	Pos	Format	Reg-T R/O	15C3 R/O	Description
Company Name	Char (36)	175-210		O	O	Required if Customer Type is Domestic Company (T) or Foreign Company (I). Required for 15C3 Rule Type M.
Last Name	Char (25)	211-235		O	O	Required only if Customer Type is Domestic individual (S) or Foreign Individual (P). Required for 15C3 Rule Type M.
First Name	Char (25)	236-260		O	O	Required only if Customer Type is Domestic individual (S) or Foreign Individual (P). Required for 15C3 Rule Type M.
Middle Initial	Char (1)	261		O	O	Optional only if Customer Type is Domestic individual (S) or Foreign Individual (P), otherwise leave blank. Optional for 15C3 Rule Type M.
Rule Type	Char (2)	262-263		N/A	R	Select a SEC rule type from the list. Available rule types are D2, D3, H and M.
Deficiency Date	Date	264-271	yyyymmdd	N/A	O	Enter the date on which the firm discovered the deficiency. Required for Rule Type D2 or D3. The Deficiency Date must be 1 or 2 business days prior to the request date.
Payable Date	Date	272-279	yyyymmdd	N/A	O	Enter the date on which dividends are to be paid. Payable date is required if the rule type selected is D3.
Contra Broker Dealer CRD#	Number (8)	280-287		N/A	O	If the rule type is D2, enter the CRD ID of the broker-dealer failing to deliver the securities.
Receivable From	Char (50)	288-337		N/A	O	If the rule type is D3, enter the name of the party from whom the dividend, stock split, etc., is due.

Trailer Record

A Trailer Record is required for each filing (even if there is only one filing) in a file.

Field	Name	Type	Positions	R/O	Format	Description
1.	Record Type	Char (1)	1	R	"T"	"T" identifies this as a Trailer Record.
2.	Total Records	Number (5)	3-7	R		Total number of records in the filing, including the header record, but excluding the trailer record. This should be right justified.

Attachment B

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FINRA Test Firm Firm ID: 99999999

Request for Extension Of Time Monthly Report

CRD Number: 99999999 Firm Name: FINRA Test Firm
 Month ending: **May 2008** Contact Name:
 Data to File: YES NO Contact Number:

The following broker/dealer(s) on whose behalf we carry accounts as correspondent have a ratio for the month of the number of extensions requested to total transactions exceeding two percent (2%).

[Click here to add](#) more row(s) [Check CRD ID](#)

CRD #	No of EXTN	No of Trans	Ratio	Correspondent's Name	Delete
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>		<input checked="" type="checkbox"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>		<input checked="" type="checkbox"/>

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 Environment: q01, Build: software (2008.2.0.1.162) metadata (2008.2.0.1.162)

Minor Rule Violation Plan (MRVP) Amendment

SEC Announces Approval of Amendment to FINRA's MRVP to Include Violations of Options Position and Exercise Limits and Contrary Exercise Advice Procedures

Effective Date: June 6, 2008

Executive Summary

Effective June 6, 2008, FINRA's MRVP was expanded to include violations of options position and exercise limits and contrary exercise advice procedures.¹ The amended text of IM-9216, which describes FINRA's MRVP, is set forth in Attachment A of this *Notice*.

Questions concerning this *Notice* should be directed to Stan Macel, Assistant General Counsel, Office of General Counsel, at (202) 728-8056.

Background & Discussion

On June 6, 2008, the Securities and Exchange Commission (SEC) approved a rule change amending NASD Interpretive Material 9216 (IM-9216), which sets forth FINRA's MRVP. The MRVP allows FINRA to impose a fine of up to \$2,500 on any member firm or person associated with a member firm for a minor violation of the rules identified in IM-9216. The rule change amends IM-9216 to include the following violations in FINRA's MRVP:

- (1) options position and exercise limits under NASD Rule 2860(b)(3) and (b)(4), and
- (2) contrary exercise advice procedures under NASD Rule 2860(b)(23).

June 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Options
- Registered Representatives
- Senior Management

Key Topic(s)

- MRVP
- Violations of Options Position and Exercise Limits
- Violations of Contrary Exercise Advice Procedures

Referenced Rules & Notices

- NASD IM-9216
- NASD Rule 2860

The purpose of the MRVP is to provide meaningful sanctions for minor or technical violations of rules when the initiation of a formal disciplinary proceeding would be more significant than warranted. Minor rule violation letters also represent a useful tool for implementing the concept of progressive discipline.

Inclusion of a rule in the MRVP does not mean that all violations of that rule should be treated as minor rule violations, and, in fact, significant violations would not be handled under the MRVP. Accordingly, under the MRVP, FINRA retains the discretion to bring full disciplinary proceedings for any violation of a rule included in the MRVP.

FINRA's options rule contains provisions imposing limits on the size of an options position, and limits on the number of options contracts that can be exercised into shares of the underlying security during a fixed period. To address inadvertent violations of these provisions, due to, among other things, miscounting, technical problems or a misinterpretation of the position limit calculation methodologies that in the judgment of FINRA do not materially affect the market, FINRA has included violations of options position and exercise limits as eligible for disposition under the MRVP. Violations of these provisions deemed to have a manipulative effect or intent would not be treated as minor rule violations.

Options issued by The Options Clearing Corporation (*i.e.*, exchange-traded options) have specific terms regarding whether options that can be settled only by delivery of the asset underlying the option (typically an equity security) will be automatically exercised at settlement. The options rule has detailed "contrary exercise advice" (CEA) procedures describing the manner in which an option holder can elect not to exercise an option that normally would be exercised, or exercise an option contract that normally would expire worthless. To prevent option holders from unfairly exploiting after-hours news or market information that affects the price of the underlying security, the CEA notices must be submitted to the broker-dealer and by the broker-dealer to the OCC by certain specified cut-off times. Occasionally, due to technical problems or other inadvertent errors, firms fail to submit CEA notices within the applicable time limits. In such instances, FINRA proposes to have the flexibility to treat these violations as minor rule violations. Violations of the CEA rules that exploit or are intended to exploit after-hours news would not be treated as minor rule violations.

Endnote

- 1 See Exchange Act Rel. No. 57935 (June 6, 2008), 73 F.R. 34061 (June 16, 2008) (SR-FINRA-2008-023).

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ATTACHMENT A

Below is the text of the proposed rule change. New language is underlined; deletions are in brackets.

* * * * *

9200. DISCIPLINARY PROCEEDINGS

* * * * *

IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SE[C]A Rule 19d-1(c)(2)

Any member of FINRA that is also a member of the New York Stock Exchange LLC (“NYSE”) (“Dual Member”) (including any persons affiliated with such member) may be subject to a fine under NASD 9216(b) with respect to any rule listed in this IM-9216 that applies to such member or person. However, any Dual Member that was not also a member of NASD as of July 30, 2007 and that does not engage in any activities that would have required it to be an NASD member (and its affiliated persons that are not otherwise subject to NASD rules) shall only be subject to a fine under NASD Rule 9216(b) with respect to the following rules listed in this IM-9216: any NYSE rule, SEC Exchange Act rule, NASD By-Law or Schedule to the By-Laws, or the NASD Rule 8000 Series.

Any member of FINRA that is not also a member of the NYSE (and its associated persons that are not otherwise subject to NYSE rules) may be subject to a fine under NASD Rule 9216(b) with respect to any rule listed in this IM-9216, with the exception of the NYSE rules.

- NASD Rules 2210, 2211, and 2220, and IM-2210-1, -2210-2, -2210-3, -2210-4, -2210-5, -2210-7, and -2210-8 — Communications with the public.
- NASD Rule 3360 — Failure to timely file reports of short positions on Form NS-1.
- NASD Rule 3110 — Failure to keep and preserve books, accounts, records, memoranda, and correspondence in conformance with all applicable laws, rules, regulations and statements of policy promulgated thereunder, and with NASD Rules.
- NASD Rules 8211 and 8213 — Failure to submit trading data as requested.

- Article IV of the NASD By-Laws — Failure to timely submit amendments to Form BD.
- Article V of the NASD By-Laws — Failure to timely submit amendments to Form U4.
- Article V of the NASD By-Laws — Failure to timely submit amendments to Form U5.
- NASD Rule 1120 — Failure to comply with the Firm Element of the continuing education requirements.
- NASD Rule 2860(b)(3) and (b)(4) – Failure to comply with options position and exercise limits.
- NASD Rule 2860(b)(23) – Failure to comply with contrary exercise advice procedures.
- NASD Rule 3010(b) — Failure to timely file reports pursuant to the Taping Rule.

Information Notice

Continuing Education Planning

Executive Summary

On June 3, 2008, the Securities Industry/Regulatory Council on Continuing Education (the Council) released the semi-annual Firm Element Advisory (see *Regulatory Notice 08-29*). The Council suggests that firms consult the Firm Element Advisory when developing their Firm Element training needs analysis.

FINRA offers a range of training resources that address many of the topics that the Council has outlined in the Firm Element Advisory. These may be suitable for Firm Element training and are available on demand through www.finra.org.

FINRA's training resources are offered in several formats and are available for free or a nominal charge:

- ▶ **Podcasts:** Short audio recordings on specific targeted topics, which can be heard online or downloaded to a portable media player (see www.finra.org/podcasts).
- ▶ **Webcasts:** Online streaming video presentations that take about 10 minutes to watch; monthly completion tracking reports are available (see www.finra.org/webcasts).
- ▶ **E-Learning Courses:** More in-depth online training featuring assessment tests, real-time completion tracking and certificates of completion (see www.finra.org/elearning). Available in two options:
 - ▶ Text-based: In-depth, 25- to 30-minute modules that include decision-based learning scenarios.
 - ▶ Video: Streamlined, 15-minute presentations on rule requirements and that include brief scenarios.

June 9, 2008

Suggested Routing

- ▶ Compliance
- ▶ Continuing Education
- ▶ Legal
- ▶ Training

Key Topics

- ▶ Continuing Education
- ▶ Firm Element

Referenced Rules & Notices

- ▶ Notice 08-29

- **Online Workshops:** 90-minute video workshops available on demand. These are previously recorded panel discussions with industry experts and include links to related online resource materials (see www.finra.org/onlineworkshops).
- **Phone-In Workshops:** 60- to 75-minute teleconferences available on demand. These are previously recorded presentations by regulators and industry experts (see www.finra.org/phoneinworkshops).

**Firm Element
Advisory Topics**

FINRA Offering

Firm Element Advisory Topics	FINRA Offering
<p>Anti-Money Laundering</p>	<p>For staff working with retail customers:</p> <p>AML—Retail: Exploring New Risks (E-Learning)</p> <p>AML—Retail: Recognizing and Escalating Suspicious Activity (E-Learning)</p> <p>AML—Retail: The Responsibility to Know Your Customer (E-Learning)</p> <p>AML—Retail: Recognizing Red Flags (E-Learning)</p> <p>AML: Do You Know Your Customer (Webcast)</p> <p>AML: Examples of Red Flags (Webcast)</p> <p>For staff working with institutional customers:</p> <p>AML—Institutional: Exploring New Risks (E-Learning)</p> <p>AML—Institutional: Identification and Reporting Issues (E-Learning)</p> <p>AML—Institutional: Identifying and Managing Higher-Risk Clients (E-Learning)</p> <p>AML—Institutional: Recognizing Red Flags (E-Learning)</p> <p>AML—Institutional: Know Your Customer (Webcast)</p> <p>For staff working in operations:</p> <p>Anti-Money Laundering for Operations Staff (Webcast)</p> <p>AML—Operations: Recognizing Red Flags (E-Learning)</p> <p>For compliance staff:</p> <p>What to Expect: Anti-Money Laundering (Webcast)</p> <p>AML Compliance (Online Workshop)</p>

Firm Element Advisory Topics	FINRA Offering
Communications	Communications with the Public: What a Registered Representative Should Know (Webcast) Communications with the Public: An Introduction to Compliance Issues (E-Learning) What to Expect: Filing Communications for Review (Webcast)
Approval of Filed Sales Material	Principal Approval of Sales Material (Podcast)
Designations	Seniors: Communications (Podcast)
Electronic Communications	Electronic Communications: Reviewing Correspondence (Podcast) Electronic Communications: What and Who (Podcast) Electronic Communications: Introduction to Supervision (Podcast)
“Free Lunch” Seminars	Seniors: Free Lunch (Podcast)
Corporate Finance and Institutional Business Fairness Opinions	Fairness Opinions (Podcast)
Finance and Operations Recordkeeping Requirements	Record Retention Relief (Podcast)
Transaction Reporting	Transaction Reporting (Phone-in Workshop)
Gifts and Business Entertainment	Business Gifts (E-Learning and Webcast)
Insurance/Annuities Life Settlements	Life Settlements (Webcast)
Sales of Unregistered Equity-Indexed Annuities	Equity Indexed Annuities (Webcast)
Margin and Margin Accounts	Margin Accounts (Webcast)

Firm Element Advisory Topics	FINRA Offering
Markups/Markdowns	Debt Mark-Ups (E-Learning) Debt Mark-Ups (Webcast to be released fall 2008) Debt Securities Mark-Up Interpretation (Podcast)
Research	Third-Party Research Reports (Podcast) Foreign Research Analyst Exemption (Podcast)
Sales Practices and Supervision 529 College Savings Plans	529 College Savings Plan Sales Practices (E-Learning) 529 Plans: The In-State Versus Out-of-State Decision (Webcast)
Municipal Securities Supervisory Requirements	MSRB Issues (to be released fall 2008) (E-Learning and Webcast)
New Products	Hedge Funds: Understanding Sales Practice Responsibilities (E-Learning) Structured Products (E-Learning and Webcast to be released fall 2008) New Product Suitability Considerations (Webcast) Equity Indexed Annuities (Webcast) Compliance Considerations for New Products (Online Workshop)
Proprietary Trading	Unauthorized Proprietary Trading (Podcast)
Supervising Recommenda- tions of Newly Associated Registered Representatives	Supervision of Recommendations After a New Registered Representative Changes Firms (Podcast)
Variable Annuities	Variable Annuities: Sales Practice Issues for 1035 Exchanges (E-Learning) Variable Annuities: Suitability and Disclosure for New Purchases (E-Learning) Variable Annuities: Requirements for Representatives (E-Learning and Webcast)

Firm Element Advisory Topics	FINRA Offering
Variable Annuities (continued)	<p>Variable Annuities: Requirements for Supervisors (E-Learning and Webcast)</p> <p>Rule 2821: Deferred Variable Annuities (Phone-In Workshop)</p>
Senior Investors	<p>Senior Investor Suitability Considerations (E-Learning)</p> <p>Retail Supervision: Sales to Senior Investors Retail (E-Learning)</p> <p>Supervisory Considerations for Working with Seniors (E-Learning and Webcast)</p> <p>Considerations for Working with Seniors (Webcast)</p> <p>Protecting Seniors (Podcast)</p> <p>Seniors: Diminished Capacity (Podcast)</p> <p>Seniors: Free Lunch (Podcast)</p> <p>Seniors: Supervision (Podcast)</p> <p>Seniors: Suitability (Podcast)</p> <p>Seniors: Communications (Podcast)</p> <p>Compliance Practices to Protect Senior Investors (Online Workshop)</p>

Disciplinary and Other FINRA Actions

Firm Fined, Individual Sanctioned

Penn Plaza Brokerage, Ltd. (CRD #22366, New York, New York) and Leonard Thomas D'Angelo (CRD #60569, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000, jointly and severally with D'Angelo. D'Angelo was suspended from association with any FINRA member in any capacity for 10 business days and suspended from association with any FINRA member in any principal capacity for 45 days. Without admitting or denying the findings, the firm and D'Angelo consented to the described sanctions and to the entry of findings that the firm, acting through D'Angelo, signed and submitted Uniform Applications for Securities Industry Registration or Transfer (Forms U4) to FINRA on behalf of an individual who was statutorily disqualified from associating with any member pursuant to Article III, Section 4(g) of FINRA's By-Laws. The findings stated that the firm and D'Angelo submitted the Forms U4 while aware of the individual's securities fraud-related criminal history and allowed the individual to become associated with the firm.

The suspension in any capacity was in effect from May 5, 2008, through May 16, 2008. The suspension in any principal capacity is in effect from May 19, 2008, through July 2, 2008. **(FINRA Case #2006004375702)**

Firms Fined

D.J. St. Germain Co., Inc. (CRD #3255, Springfield, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$75,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to execute a Trade Reporting and Compliance Engine (TRACE) participant application agreement and failed to report all of its TRACE-eligible self-cleared corporate securities transactions to TRACE. The findings stated that the firm failed to report all of its self-cleared municipal securities transactions to the Municipal Securities Rulemaking Board (MSRB). The findings also stated that the firm failed to maintain a reasonable supervisory system and written supervisory procedures related to TRACE and MSRB reporting requirements; failed to ensure its written supervisory procedures were updated, maintained and enforced; and failed to ensure that they were reasonably designed to achieve compliance with applicable federal securities laws, rules and regulations related to TRACE and MSRB reporting requirements. **(FINRA Case #2007007176601)**

Reported for June 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).

E*Trade Securities, LLC (CRD #29106, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$500,000 and required to revise its written supervisory procedures regarding the Order Audit Trail System (OATS). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit any New Order or Route Reports to OATS using the firm's market participant identifier. Instead, the firm's affiliate filed a New Order Report that identified the firm as the routing firm. The findings stated that the order receipt times the firm and its affiliate captured for orders received during normal market hours were virtually simultaneous. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning OATS. **(FINRA Case #20070076245-01)**

European American Equities, Inc. (CRD #45097, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it served as a placement agent that facilitated the sale of private offerings to public customers and raised \$100 million without implementing an Anti-Money Laundering (AML) Customer Identification Program (CIP). The findings stated that the firm failed to conduct adequate independent testing of its AML compliance program on an annual basis and failed to conduct adequate AML training for appropriate personnel during 2005 and 2006. **(FINRA Case #2007007286201)**

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$55,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions which the firm failed to report to the NASDAQ Market Center (NMC) with a short sale modifier, and failed to report the correct symbol indicating whether transactions were a buy, sell, sell short, sell short exempt or cross for transactions in reportable securities to the NMC. The findings stated that the firm submitted route or combined order/route reports to OATS that the OATS system was unable to link to the corresponding new order the destination member firm submitted due to inaccurate, incomplete or improperly formatted data. The findings also stated that the firm failed to report the correct contra-party's identifier for transactions in TRACE-eligible securities to TRACE, and failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of execution time. **(FINRA Case #20041000190-01)**

Jefferies & Company, Inc. (CRD #2347, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$500,000, required to pay \$450,511.66, plus interest, in restitution to a customer and required to revise its supervisory procedures regarding recordkeeping, trade confirmations to customers, fair pricing and FINRA's markup policy. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it bought a distressed corporate debt security from a customer for its own account and later sold the same security for its own account to a customer and failed to sell the security at a price that was fair, taking into consideration all relevant circumstances, including market conditions at the time of the transaction, the expense involved and

that the firm was entitled to a profit. The findings stated that, in its fixed-income area, the firm failed in many instances to create and maintain memoranda of brokerage orders for orders that did not result in an execution, failed to reflect the accurate order entry time and/or order execution time on brokerage order memoranda, failed to reflect any order entry time and/or order execution time on brokerage order memoranda and failed to create and maintain any memoranda for some brokerage orders. The findings also stated that the firm failed in many instances to provide customers either at or before the completion of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and that additional information was available upon request. The findings also included that the firm failed to report the correct execution time for transactions in TRACE-eligible securities to TRACE and the correct number of bonds for one transaction in a TRACE-eligible security, and reported a transaction in a TRACE-eligible security with a special price modifier not applicable to the transaction to TRACE. FINRA found that the firm's supervisory system for its high-yield and distressed-bond desk did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning recordkeeping, trade confirmations to customers, fair pricing and FINRA's markup policy. FINRA also found that in certain instances, the firm could not produce any documentation indicating that any supervisory review relating to fair pricing and FINRA's markup policy had been conducted. (FINRA Case #20050001683-03)

J.P. Morgan Securities Inc. (CRD #18718, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$150,000 and required to revise its written supervisory procedures regarding NASD Rule 3310. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it advertised its trade volume for securities in private service providers and its aggregate trade volume (buy and sell) for equity securities advertised in the providers substantially exceeded its executed trade volume for the securities. The findings stated that the firm did not determine whether the trade volume that it advertised in these services accurately reflected its executed trade volume. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning NASD Rule 3310. The findings also included that the firm did not supervise the trade volume that it advertised in these systems. (FINRA Case #20060067541-01)

J.P. Morgan Securities Inc. (CRD #18718, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$185,000, ordered to pay \$299, plus interest, in restitution to customers and required to revise its written supervisory procedures regarding short sale reporting, TRACE trade reporting, trade reporting of municipal securities, riskless principal trade reporting, and best execution. Without admitting or denying the sanctions, the firm consented to the described sanctions and to the entry of findings that it executed numerous short sale transactions and failed to report them to the Automated Confirmation Transaction Service (ACT) with a short sale modifier due to a technology issue that inaccurately treated principal short sales as long sales. The findings stated that the firm submitted

to OATS New Order Reports and related subsequent reports where the timestamp for the related subsequent report occurred prior to the receipt of the order so that the OATS system was unable to create an accurate time-sequenced record from the receipt of the order through its resolution. The findings also stated that the firm failed to report the correct contra-party's identifier for transactions in TRACE-eligible securities to TRACE and failed to timely report Reportable Order Events (ROES) to OATS. The findings also included that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in Over-the-Counter (OTC) equity securities to the OTC Reporting Facility and failed to designate some of them as late.

FINRA found that the firm failed to execute orders fully and promptly. In addition, FINRA found that the firm failed to report reports of transactions in municipal securities to the Real-time Transaction Reporting System (RTRS) and improperly reported transactions that it should not have. FINRA also found that the firm failed to report to the Trade Reporting Facility (TRF) the correct symbol indicating whether transactions were a buy, sell, sell short, sell short exempt or cross for transactions in reportable securities; failed to report whether it executed transactions in reportable securities in a principal or agency capacity; failed to report the correct execution time to the OTC Reporting Facility in one late last sale report of a transaction in an OTC equity security; failed to provide written notification disclosing to its customers its correct capacity in transactions; failed to submit required route reports to OATS and inaccurately submitted execution reports and a cancel report. In addition, FINRA determined that the firm executed sell orders and improperly marked the orders as short exempt; failed to submit to the TRF, for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities, either a clearing-only report with a "riskless principal" capacity indicator or a non-tape, non-clearing report with a "riskless principal" capacity indicator; incorrectly reported to the TRF principal transactions when each was partially a principal transaction and partially a riskless principal transactions and failed to submit for the offsetting, "riskless" portion of "riskless" principal transaction in designated securities either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a "riskless principal" capacity indicator; failed to report the correct number of shares to the TRF of designated securities transactions in last sale reports; incorrectly reported to the TRF the second leg of a "riskless" principal transaction in designated securities because it incorrectly designated the capacity as "principal;" failed to provide written confirmation of transactions in municipal securities disclosing the correct yield to its customers; and failed to accept or decline in the TRF or OTC Reporting Facility transactions in reportable securities within 20 minutes after execution that it had an obligation to accept or decline as the order entry firm (OEID). Moreover, 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 and MSRB rules concerning short sale reporting, TRACE trade reporting, trade reporting, riskless principal trade reporting, and best execution. **(FINRA Case #20041000011-01)**

Lazard Capital Markets LLC (CRD #134736, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$30,000 and required to revise its written supervisory procedures regarding limit order protection, limit order display and quote dissemination, short sale reporting, disclosure of order

routing information, disclosure of order execution information and OATS reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it made available reports on the covered orders in National Market System (NMS) securities it received for execution that included incorrect information as to not held orders. The findings stated that the firm submitted incorrect reports to OATS and accepted short sale orders in equity securities from another person, or effected short sales in equity securities for its own account, without documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD and SEC rules concerning limit order protection, limit order display and quote dissemination and short sale reporting. The findings also included that the firm failed to provide documentary evidence that during one month, it performed the supervisory reviews set forth in its written supervisory procedures concerning disclosure of order routing information, disclosure of order execution information and OATS reporting. **(FINRA Case #20060040925-01)**

Lehman Brothers Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$125,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accurately compute its net capital, and filed Financial Operational & Combined Uniform Single (FOCUS) reports with the New York Stock Exchange (NYSE) reflecting a net capital figure that incorrectly included \$1.49 billion of debt covered by supplemental subordinated indentures. The findings stated that the firm failed to make and/or preserve accurate books and records reflecting and/or relating to its net capital and excess net capital. **(FINRA Case #2007009486201)**

Lime Brokerage LLC (CRD #104369, New York, New York) 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 accepted customer short sale orders in NASDAQ SmallCap Market 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. **(FINRA Case #20070090222-02)**

Oppenheimer & Co. Inc. (CRD #249, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed short sale transactions and failed to report them to the TRF, formerly the NMC, with a short sale modifier. The findings stated that the firm accepted short sale orders in equity securities, or effected short sales in equity securities for its own account without borrowing the security or entering into a *bona fide* arrangement to borrow the security; or without reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and without documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. The findings also stated that the firm had fail-to-deliver positions in threshold securities at a registered clearing agency for 13 consecutive settlement days

and failed to immediately thereafter close out the fail to deliver positions by purchasing securities of like kind and quantity. The findings also included that the firm continued to have fail-to-deliver positions in the securities, which it failed to close out at the registered clearing agency. (FINRA Case #20050017145-01)

Schottenfeld Group LLC (CRD #128103, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit ROEs to OATS. 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 OATS reporting. (FINRA Case #20050035481-01)

SIG Securities, L.L.C. nka Summitalliance Securities, L.L.C. (CRD #45915, Dallas, Texas) 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 effected transactions in TRACE-eligible securities and failed to report any of the trades to TRACE. The findings stated that the firm failed to establish, maintain and enforce a system and procedures reasonably designed to achieve compliance with applicable securities laws and NASD rules regarding trade reporting of TRACE-eligible securities. (FINRA Case #2007007167101)

State Street Global Markets, LLC (CRD #30107, Boston, Massachusetts) 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 made available a report on the covered orders in NMS securities that it received for execution that included incomplete and incorrect information as to the number of covered orders and the classification of orders. (FINRA Case #20060042020-01)

Individuals Barred or Suspended

Kim Alan Almendinger (CRD #1037944, Registered Representative, Cleveland, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$15,000, which includes disgorgement of \$7,650 in proceeds from the sale of stock, and suspended from association with any FINRA member in any capacity for six weeks. In light of Almendinger's financial status, the fine imposed was \$15,000. The fine must be paid either immediately upon Almendinger'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, Almendinger consented to the described sanctions and to the entry of findings that he recommended a security to customers who bought shares of the security during the same period that Almendinger also bought shares for his own account. The findings stated that one of Almendinger's relatives received shares of the same stock from a promoter for the issuer, and that the stocks were placed in an account at a non-member financial institution. Almendinger had a financial interest in the account. The findings also stated that Almendinger failed to notify his member

firm, in writing, of the existence of the account and the transactions, including the receipt of the shares of stock and their sale. The findings also included that Almendinger failed to provide written notice to his member firm describing the transactions in detail and his role in the transactions.

The suspension in any capacity was in effect from May 5, 2008, through June 13, 2008. (FINRA Case #20050001915-01)

Cody Lynn Ashley (CRD #4711870, Registered Representative, San Angelo, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two months. Without admitting or denying the findings, Ashley consented to the described sanctions and to the entry of findings that he signed a public customer's name to an annuity replacement form without the customer's knowledge or authorization.

The suspension in any capacity is in effect from May 19, 2008, through July 18, 2008. (FINRA Case #2007010400501)

Charles Edward Atwell (CRD #1208702, Registered Principal, Easley, South Carolina) 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, Atwell consented to the described sanction and to the entry of findings that he made unsuitable recommendations to public customers in connection with the sale of variable universal life policies without having a basis for making the recommendations given the customers' financial needs and circumstances. The findings stated that Atwell made material misrepresentations or omitted material facts concerning the transactions, including failure to disclose surrender fees, interest fees charged for withdrawals and large premium amounts to keep the policies from lapsing. The findings also stated that Atwell's total compensation from the unsuitable recommendations to the customers was \$138,973.83. (FINRA Case #2005001491701)

Andrew William Baum (CRD #2087276, Registered Representative, Beverly Hills, California) 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, Baum consented to the described sanction and to the entry of findings that he failed to respond to a FINRA request to provide documents and to attend an on-the-record interview. (FINRA Case #20070108993-01)

Kenyon Raymond Blocher (CRD #23722, Registered Principal, Indianapolis, Indiana) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$4,500 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Blocher consented to the described sanctions and to the entry of findings that he engaged in a securities transaction in public customers' account without the customers' knowledge or consent, and in the absence of written or oral authorization for Blocher to exercise discretion in the account.

The suspension in any capacity was in effect from April 21, 2008, through May 2, 2008. (FINRA Case #2007008415001)

James Robert Brown (CRD #2515229, Registered Principal, Plano, Texas) 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 principal or supervisory capacity for 90 days. Without admitting or denying the findings, Brown consented to the described sanctions and to the entry of findings that he failed to supervise registered representatives' activities, failed to investigate "red flags" of possible misconduct by the representatives and failed to enforce heightened supervisory measures against one of the representatives. The findings stated that Brown failed to put systems or procedures in place to ensure that another representative did not continue to make misrepresentations to public customers.

The suspension in any principal or supervisory capacity is in effect from May 19, 2008, through August 16, 2008. (FINRA Case #2005001502702)

Hal Butts Jr. (CRD #4029277, Registered Principal, Marietta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000, suspended from association with any FINRA member in an Introducing Broker-Dealer (IB)/Financial and Operations Principal (FINOP) capacity for three months, and must re-qualify by exam as an IB/FINOP. The fine must be paid either immediately upon Butts' 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, Butts consented to the described sanctions and to the entry of findings that he failed to ensure that his member firm accurately computed its net capital, maintained accurate books and records, and filed accurate FOCUS reports. The findings stated that Butts allowed the firm to conduct a securities business while failing to maintain its required minimum net capital.

The suspension in an IB/FINOP capacity is in effect from May 5, 2008, through August 4, 2008. (FINRA Case #2007008048101)

Scott William Carothers (CRD #1899247, Registered Principal, Parkland, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in a FINOP capacity for six months. The fine must be paid either immediately upon Carothers' 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, Carothers consented to the described sanctions and to the entry of findings that he allowed his member firm to conduct a securities business while failing to maintain its required minimum net capital. The findings stated that Carothers caused his firm to make an inaccurate FOCUS filing and to have inaccurate books and records.

The suspension in a FINOP capacity is in effect from May 19, 2008, through November 18, 2008. (FINRA Case #2006003678602)

Frederic Ray Chavez (CRD #1419917, Registered Representative, San Antonio, Texas) 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 90 days. The fine must be paid either immediately upon Chavez' 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, Chavez consented to the described sanctions and to the entry of findings that he failed to inform his member firm about a public customer's complaint—as his firm's procedures required—and entered into a settlement agreement with the customer in which he agreed to pay her \$60,000 to settle her complaint without his firm's knowledge or approval.

The suspension in any capacity is in effect from April 21, 2008, through July 19, 2008. **(FINRA Case #2006007383801)**

Vincent Chen (CRD #5331593, Associated Person, Bayside, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Chen's reassociation with a FINRA 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, Chen 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 May 5, 2008, through November 4, 2008. **(FINRA Case #2007009171701)**

Paul Jeremy Cromley (CRD #4083154, Registered Principal, Jackson, Tennessee) 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 Cromley'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, Cromley consented to the described sanctions and to the entry of findings that he sold mutual fund positions in a public customer's account and purchased shares in another mutual fund, without the customer's knowledge or consent and in the absence of written or oral authorization to exercise discretion in the account.

The suspension in any capacity was in effect from May 5, 2008, through June 3, 2008. **(FINRA Case #2007010728901)**

Angel Cruz (CRD #1988787, Registered Principal, San Francisco, California), Anthony Joseph Martinez (CRD #1568443, Registered Principal, Lake Grove, New York) and Jericho Guazon Nicolas (CRD #2030192, Registered Representative, San Francisco, California) were barred from association with any FINRA member in any capacity. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The findings stated that Cruz, Martinez and Nicolas participated in a fraudulent scheme to trade ahead of customers' orders and reap risk-free trading profits; made material omissions in their communications with a public customer; and caused their member firm to issue false trade confirmations. The findings also stated that Martinez failed to provide a customer with best execution. **(FINRA Case #CAF040052)**

Duane McKay Deane (CRD #4924221, Associated Person, Woodbridge, New Jersey) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Deane improperly obtained and misused \$8,800 by using his corporate credit card for cash advances to pay for personal items and failed to make payments to the credit card company or reimburse his member firm. The findings stated that Deane failed to respond to FINRA requests for information. **(FINRA Case #2006007483801)**

Aileen Nicole Dugan (CRD #3036090, Registered Representative, Rye, New Hampshire) 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 30 days. Without admitting or denying the findings, Dugan consented to the described sanctions and to the entry of findings that she signed a trustee's name on a variable life insurance policy asset allocation form without the trustee's authorization or consent, and submitted the form to the insurance company.

The suspension in any capacity was in effect from May 5, 2008, through June 3, 2008. **(FINRA Case #2007008637901)**

Terry L. Edlen (CRD #4469076, Registered Representative, Springfield, 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, Edlen consented to the described sanction and to the entry of findings that, in order to increase his production and earn additional commissions, he completed and traced a public customer's signature on documents in connection with the purchase of a term life insurance policy, and paid the initial premium for the policy without the customer's knowledge and consent. **(FINRA Case #2007008631401)**

Davis Allen Estes (CRD #2329026, Registered Representative, Stafford, Virginia) 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, Estes consented to the described sanction and to the entry of findings that he received a \$58,000 check from a public customer for investment purposes and instead of investing the money, deposited the check into his personal account without the customer's knowledge or authorization. The findings stated that Estes failed to respond to FINRA requests for information and documents, and failed to appear to testify. **(FINRA Case #2007010939801)**

Michael Walter Firehock (CRD #4413978, Registered Representative, Hopewell Junction, New York) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Firehock'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 allegations, Firehock 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 Firehock engaged in outside business activities without prompt written notice to his member firm, and submitted documents with false information to his member firm that claimed that he was no longer involved in outside business activities.

The suspension in any capacity is in effect from April 21, 2008, through April 20, 2010. (FINRA Case #2006004978301)

Darin Michael Forgacs (CRD #2643825, Registered Representative, Livonia, Michigan) 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, Forgacs consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information and documents. (FINRA Case #20070085061-01)

Kevin Thomas Forrester (CRD #4094887, Registered Representative, Phoenix, Maryland) 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, Forrester consented to the described sanction and to the entry of findings that he received \$1 million from public customers to invest on the customers' behalf but, instead, converted the bulk of the funds to his own use and benefit and used some of the funds to repay other persons who had given him funds for investment. The findings stated that Forrester failed to respond to FINRA requests for documents and information. (FINRA Case #2007008478903)

Charles Rodney George (CRD #1024791, Registered Supervisor, St. Louis, Missouri) 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, George consented to the described sanction and to the entry of findings that he engaged in deceptive practices to facilitate a payment of funds from a customer through improper means, including omitting material information pertaining to his financial history and making material misrepresentations concerning collateral and his ability to repay a purported loan. The findings stated that George falsely represented on his member firm's compliance certifications that he had not borrowed money from any public customers. The findings also stated that George requested that a notary public, who was an employee of the firm, notarize a signature previously completed by a firm customer who was not present at the time of the notarization. (FINRA Case #2007009521501)

Nevin Jon Gillette (CRD #1505851, Registered Principal, Sterling, 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, Gillette consented to the described sanction and to the entry of findings that he fraudulently induced public customers to invest between \$2.5 and \$7 million in guaranteed investment contracts (GICs) and created false account statements that supposedly verified that the GICs had been purchased. The findings stated that Gillette used the mails or other instruments of interstate commerce or the facilities of a national exchange to employ a device, scheme or artifice to defraud, and engaged in acts, practices and courses of business that operated as a fraud or deceit upon person in connection with the purchase or sale of securities, in that he used the telephone system to falsely tell investors that he would use their funds to invest in GICs. The findings also stated that Gillette converted the money and used the funds for his own purposes. The findings also included that Gillette wired \$354,717.19 into an investor's

bank account in an attempt to settle a customer complaint so that he could continue his fraudulent scheme. FINRA found that Gillette failed to respond to FINRA requests for information. **(FINRA Case #2006007067401)**

Shawn M. Gruber (CRD #4943125, Registered Representative, Springfield, Ohio) was fined \$5,000, suspended from association with any FINRA member in any capacity for three months and must requalify by exam in all capacities. The fine is due and payable when Gruber returns to the securities industry. The sanctions were based on findings that Gruber signed public customers' names on life insurance policy applications and related medical questionnaires without the knowledge or consent of the insured or the customer.

The suspension in any capacity is in effect from May 5, 2008, through August 3, 2008. **(FINRA Case #2006007513001)**

Scott Perry Hailperin aka Scott Perry Halperin (CRD #1421253, Registered Representative, Maitland, Florida) 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, Hailperin consented to the described sanction and to the entry of findings that he received \$7,000 from a public customer for investment purposes but, instead, converted some of the funds to his own use and benefit. **(FINRA Case #2006005161001)**

Aric Kyle Heiselman (CRD #4453249, Registered Representative, Lancaster, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Heiselman's reassociation with a FINRA member firm following his 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, Heiselman consented to the described sanctions and to the entry of findings that in order to transfer a public customer's Individual Retirement Account (IRA) from a broker-dealer to his member firm, he instructed his assistant to impersonate the customer in a conversation with the firm's representative. The findings stated that Heiselman falsely identified himself on the telephone as the same customer with a representative of another brokerage firm to complete a requested rollover of the customer's 401(k) account to Heiselman's firm.

The suspension in any capacity was in effect from April 21, 2008, through June 2, 2008. **(FINRA Case #2007009474901)**

Brad Robert Iannacchione (CRD #4082480, Registered Principal, New Kensington, 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, Iannacchione consented to the described sanction and to the entry of findings that he forged public customers' initials and/or signatures on account documents. **(FINRA Case #2007010414801)**

Leonard Johnson (CRD #5286860, Associated Person, Baltimore, Maryland) 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, Johnson consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. The findings stated that Johnson failed to respond to FINRA requests for information. **(FINRA Case #2007008697601)**

Katherine Patricia Kozub (CRD #4709011, Registered Representative, Parma, Ohio) submitted an Offer of Settlement in which she 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 Kozub'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 allegations, Kozub consented to the described sanctions and to the entry of findings that she completed a Firm Element Continuing Education test on another registered representative's behalf in violation of NASD rules.

The suspension in any capacity is in effect from May 19, 2008, through June 17, 2008. **(FINRA Case #2005003511203)**

Paul S. Kuklinski (CRD #4755396, Registered Representative, Santa Barbara, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$200,000, which included disgorgement of unlawful profits of \$185,972.67, and barred from association with any FINRA member in any capacity. The fine must be paid prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Kuklinski consented to the described sanctions and to the entry of findings that he executed purchases or sales of securities issued by companies he followed 30 calendar days before, and five calendar days after, the publication of a research report he authored concerning the relevant company. The findings stated that Kuklinski executed securities transactions in a manner inconsistent with his recommendations in the most recent published research report concerning the relevant company. The findings also stated that Kuklinski opened a personal securities account at a member firm although he was associated with another member firm, and failed to notify either firm in writing of his association or relationship with the other. **(FINRA Case #20070083155-01)**

Dening Suzanne Lohez (CRD #2920965, Registered Representative, New York, New York) submitted an Offer of Settlement in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Lohez' reassociation with a FINRA member firm following her 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 allegations, Lohez consented to the described sanctions and to the entry of findings that she possessed unauthorized materials while taking the general securities representative examination.

The suspension in any capacity is in effect from May 5, 2008, through May 4, 2010. **(FINRA Case #2006005954101)**

Louis Steven Majano Jr. (CRD #2520626, Registered Representative, Roslyn Heights, 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, Majano consented to the described sanction and to the entry of findings that he made unauthorized withdrawals totaling \$20,500 from a public customer's account. The findings stated that Majano failed to respond to FINRA requests for information. **(FINRA Case #2007008964101)**

Ralph A. Mancero (CRD #5268965, Registered Representative, Elmwood 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, Mancero consented to the described sanction and to the entry of findings that he misappropriated \$50 of a public customer's funds that he received to deposit in the customer's bank account, but he failed to do so. **(FINRA Case #2007010610101)**

Adam Donald March (CRD #5228950, Registered Representative, North Tonawanda, 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, March consented to the described sanction and to the entry of findings that he signed public customers' names on insurance applications without their authorization or consent. The findings stated that March failed to appear for a FINRA on-the-record interview. **(FINRA Case #2007009891601)**

Andrew John Mariani (CRD #3254418, Registered Representative, Wellington, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Mariani consented to the described sanction and to the entry of findings that he knowingly conspired with another individual to unjustly enrich themselves by inducing people to invest money on the basis of materially false pretenses, representations and promises, and omissions of material facts. **(FINRA Case #2008012418201)**

Eric W. Mason (CRD #4637122, Registered Representative, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$175,000, which includes disgorgement of \$157,832.58 in benefits received, and suspended from association with any FINRA member in any capacity for one year. Without admitting or denying the findings, Mason consented to the described sanctions and to the entry of findings that he entered priced limit orders in NASDAQ securities for a proprietary account at his member firm at prices intended to impact the pre-opening best bid or offer (BBO), knowing that the full price and size of the orders would be reflected in the public quotation system as the best prices and sizes at which a market participant was willing to buy or sell the securities, and induced other market participants to reflect bids (offers) similar to the price of the displayed limit orders. The findings stated that Mason intentionally entered non-displayable odd lot limit orders to buy or sell securities into NASDAQ on the opposite side of the market, creating a crossed market knowing that the non-displayed orders would be executed against other participants' quotations during the pre-opening spin, and did buy and sell on an automated basis

during the pre-opening spin. The findings also stated that after the displayed quotations had induced other market participants to enter similar quotations, and prior to the pre-opening spin, Mason intentionally and knowingly canceled most of the displayed priced limit orders he had entered into NASDAQ and, in some instances, prior to the pre-opening spin, updated the original displayed order with another displayed order, canceling the original displayed order. The findings also included that by engaging in this course of conduct, Mason bought (sold) shares of the securities at prices that were lower (higher) than he would have otherwise been able to buy (sell) the securities, thereby receiving a financial benefit of \$157,832.58.

Mason's suspension in any capacity is in effect from May 5, 2008, through May 4, 2009. **(FINRA Case #20050001741-02)**

Malvinder Sonny Matharu (CRD #2650655, Registered Supervisor, Redondo Beach, California) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Matharu'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 allegations, Matharu consented to the described sanctions and to the entry of findings that he failed to respond to questions during a FINRA on-the-record interview.

The suspension in any capacity is in effect from April 21, 2008, through April 20, 2010. **(FINRA Case #C0220050006)**

Blair Christopher Mielke (CRD #1878222, Registered Representative, Newburgh, Indiana) 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. Without admitting or denying the findings, Mielke consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, and written approval from, his member firm.

The suspension in any capacity is in effect from May 19, 2008, through November 18, 2008. **(FINRA Case #20060054450-05)**

Gregory Thomas Murray (CRD #343607, Registered Principal, Scottsdale, Arizona) 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, Murray consented to the described sanction and to the entry of findings that he failed to appear to testify at a FINRA disciplinary hearing. **(FINRA Case #2007009702901)**

Paul Douglas Paratore (CRD #2054004, Registered Representative, Webster, New York) was barred from association with any FINRA member in any capacity. The NAC imposed the sanction following appeal of a Hearing Panel decision. The NAC imposed separate bars against Paratore for converting \$3,772.71 of a public customer's insurance premiums and settling four customer's complaints without the member firm's knowledge or authorization. **(FINRA Case #2005002570601)**

Richard Steven Petrell (CRD #715635, Registered Representative, Jamesville, 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, Petrell consented to the described sanction and to the entry of findings that he obtained over \$17,000 from his member firm by submitting falsified expense reimbursement requests. **(FINRA Case #2007008318201)**

Franklin Brent Porter (CRD #829580, Registered Representative, Salt Lake City, Utah) 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. The fine must be paid either immediately upon Porter'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, Porter consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, contrary to his member firm's written procedures that require that representatives obtain the firm's prior written permission. The findings stated that Porter's firm never received, reviewed or approved a written request.

The suspension in any capacity was in effect from April 21, 2008, through May 2, 2008. **(FINRA Case #2007008195901)**

John Michael Repine (CRD #1010844, Registered Principal, Spring Hill, Kansas) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Repine engaged in deceptive market timing by assisting hedge funds in circumventing restrictions that mutual fund companies imposed. The findings stated that Repine failed to respond truthfully to FINRA requests for information and documents. **(FINRA Case #E0420030634-04)**

Alice May Rice (CRD #2429664, Registered Representative, Fairmont, West Virginia) 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, Rice consented to the described sanction and to the entry of findings that she received \$100,000 from a public customer to purchase an equity-indexed annuity and instead of investing the money, used the funds for her own benefit. **(FINRA Case #2008012281401)**

Walter Alan Sayers (CRD #5228083, Associated Person, Tampa, 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 four months. The fine must be paid either immediately upon Sayers' 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, Sayers consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from April 21, 2008, through August 20, 2008. **(FINRA Case #2006006902501)**

Dale Eugene Shields II (CRD #5101892, Associated Person, Middletown, Ohio) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 business days. Without admitting or denying the allegations, Shields consented to the described sanctions and to the entry of findings that he provided false information on his Form U4.

The suspension in any capacity was in effect from April 21, 2008, through June 2, 2008. (FINRA Case #2006005506601)

Aurora Javier Tucay (CRD #5306540, Associated Person, Chicago, Illinois) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Tucay withdrew \$8,000 from her cash drawer and the vault at her member firm's bank affiliate without permission, and used the funds for her own purposes. The findings stated that Tucay failed to respond to FINRA requests for information. (FINRA Case #20070092769)

James Douglas Walker (CRD #1446801, Registered Representative, Phoenix, Arizona) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Walker'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 allegations, Walker consented to the described sanctions and to the entry of findings that he engaged in private securities transactions, for compensation, without prior written notice to, or written approval from, his member firm.

The suspension in any capacity is in effect from April 21, 2008, through October 20, 2008. (FINRA Case #2006004754302)

Joshua Caine Wimberley (CRD #4536480, Registered Representative, Houston, Texas) 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, Wimberley consented to the described sanction and to the entry of findings that he received checks totaling \$948 from public customers as payment of insurance premiums but, instead, deposited the checks into his personal bank account and made personal use of the funds without the customers' knowledge or consent. (FINRA Case #2007009237401)

Steven Wood (CRD #3073759, Registered Supervisor, Encino, California) 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, Wood consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information and documents, and to appear for a FINRA on-the-record interview. (FINRA Case #2007007809101)

David Wu (CRD #726970, Registered Representative, San Francisco, 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 10 business days. Without admitting or denying the findings, Wu consented to the

described sanctions and to the entry of findings that he purchased securities issued by companies he followed in his capacity as a research analyst 30 calendar days before, and ending five calendar days after, the publication of research reports concerning one or more of the companies.

The suspension in any capacity was in effect from May 19, 2008, through June 2, 2008. (FINRA Case #20060037540-02)

Decision Issued

The following decision has been issued by the Office of Hearing Officers and has been appealed to or called for review by the NAC as April 30, 2008. The may NAC may increase, decrease, modify or reverse the finding and sanctions imposed in the decisions. Initial decisions whose time for appeal has not yet expired will be reported in the next issue of FINRA Notices.

Shane Alexander Selewach (CRD #2936484, Registered Principal, Hyannis, Massachusetts) was barred from association with any FINRA member in any capacity and ordered to provide full restitution to the public customers from whom he borrowed funds to the extent those customers have not been repaid. The sanctions were based on findings that Selewach misused public customers' funds by depositing \$71,000 intended for investment purposes into an account he controlled and used the funds for various personal expenses. The findings stated that Selewach borrowed \$158,500 from public customers, contrary to his member firm's supervisory procedures that specifically prohibit registered representatives from borrowing money from customers, other than immediate family members.

This decision has been appealed to the NAC and the sanctions are not in effect pending consideration of the appeal. (FINRA Case #2006005005301)

Complaints Filed

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

Kevin Lee Mathis (CRD #2858756, Registered Principal, San Antonio, Texas) was named as a respondent in a FINRA complaint alleging that he converted to his own use and misappropriated over \$60,000 from a deceased public customer's account by submitting documents that bore the customer's forged signature, and engaged in unauthorized transactions in the customer's account. The complaint alleges that Mathis failed to respond to FINRA requests to give testimony. (FINRA Case #2007008650301)

Thomas James Mulvey Jr. (CRD #1851436, Registered Representative, Lincoln, Rhode Island) was named as a respondent in a FINRA complaint alleging that he engaged in unauthorized transactions in a customer's account, in that he liquidated all of the customer's mutual fund shares and then invested \$75,000 in proceeds in a variable annuity without discretionary authorization or power of attorney. The complaint alleges that Mulvey falsely certified on a firm form that he had obtained identification information directly from the customer. The complaint also alleges that Mulvey inserted false information on the form and submitted the form to his member firm, causing it to maintain a false record. **(FINRA Case #2006007021201)**

Charles William Wannan III (CRD #2453110, Registered Representative, Hicksville, New York) was named as a respondent in a FINRA complaint alleging that he engaged in a pattern of unsuitable and excessive trading in public customers' accounts. The complaint alleges that Wannan filed false and inaccurate information on new account forms for the customers without their knowledge, authorization or consent, causing his member firm's books and records to be inaccurate. **(FINRA Case #ELI2004035403)**

Kelly Demetrius Wright (CRD #2062526, Registered Principal, Chicago, Illinois) was named as a respondent in a FINRA complaint alleging that he exercised discretion in effecting stock and option transactions in public customers' accounts without prior written authorization from the customers and his member firm. The complaint alleges that Wright executed securities transactions in the customers' accounts that were not suitable for the customers in view of the customers' financial situation and investment objectives. The complaint also alleges that Wright, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, employed devices schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to made the statements made, in light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers or prospective purchasers. The complaint further alleges that Wright engaged in outside business activities and did not provide his member firm with written notice of this activity. **(FINRA Case #2005000346102)**

Firm Expelled for Failure to Pay Fines and/or Costs Pursuant to NASD Rule 8320

Dublind Securities, Inc.
Greenwich, Connecticut
(April 23, 2008)

Firms Suspended for Failure to Supply Financial Information

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

Brookstreet Securities Corporation
San Juan Capistrano, California
(April 21, 2008)

Golf Host Securities, Inc.
Palm Harbor, Florida
(April 10, 2008 – April 16, 2008)

Huntington Party Securities, Ltd.
Stamford, Connecticut
(April 10, 2008)

L. Dwight Searcy
Naples, Florida
(April 21, 2008)

Quantum Securities, Inc.
Boca Raton, Florida
(April 10, 2008)

River Capital Markets, LLC
Bloomfield Hills, Michigan
(April 21, 2008)

Upstream Capital Partners, LP
Irving, Texas
(April 10, 2008)

Westland Securities, LLC
Scottsdale, Arizona
(April 10, 2008)

Firm Suspended Pursuant to NASD Rule 9553 for Failure to Pay Annual Assessment Fees

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

Fifth Street Capital, LLC
Austin, Texas
(March 26, 2008 – April 2, 2008)

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

Aditya B. Mukerji
Oakland, California
(April 23, 2008)

Juan Carlos Murillo
Miami Beach, Florida
(April 23, 2008)

Nestor Joseph Olivier
Saddle River, New Jersey
(April 23, 2008)

Florence Sarah Pollard
La Jolla, California
(April 23, 2008)

Individual Barred Pursuant to NASD Rule 9552(h)

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

Coco Chanel Worthy
Atlanta, Georgia
(April 10, 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.)

Robert Joseph Alaniz
Glendale, Arizona
(April 28, 2008)

Robert Quincy Brown
Jacksonville, Florida
(April 24, 2008)

Stacy Noel Famageltto
Aurora, Ohio
(April 21, 2008)

Mark Francis Healey
New York, New York
(April 28, 2008)

Rex Eugene Peterson
Muskogee, Oklahoma
(April 4, 2008)

Anthony Antwon Reed
Pontiac, Michigan
(April 14, 2008)

John Thomas Sadowski Jr.
Daytona Beach, Florida
(April 28, 2008)

Erica D. Smith
Granville, Ohio
(April 25, 2008)

Stephen Wesley Taylor
Sneads Ferry, North Carolina
(April 14, 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.)

Robert Dorsey Bell
Atlanta, Georgia
(April 17, 2008)

Gauro Coen
Jamaica Plain, Massachusetts
(July 26, 2007 – April 25, 2008)

Allen Myles Darby
Cornelius, North Carolina
(April 24, 2008)

Mark Randolph Delvalle
Merrick, New York
(April 17, 2008)

John Derek Elwin
Lake Worth, Florida
(April 24, 2008)

Steven Joseph Emsley
Ponte Vedra Beach, Florida
(April 24, 2008 – April 29, 2008)

Joseph Desmond Fitzgerald III
New York, New York
(April 2, 2008)

Carl Frazier Hyde Jr.
Prospect, Kentucky
(April 2, 2008)

William Edward Kassar Jr.
Lattingtown, New York
(April 3, 2008)

John Joseph Kennedy
Wayne, Pennsylvania
(April 2, 2008)

David Kotowski
Cold Spring Harbor, New York
(April 24, 2008)

Larry Ray Margozewitz
San Antonio, Texas
(April 2, 2008)

Glen James Meyer
Mt. Sinai, New York
(April 2, 2008)

James Thomas Patten
Bernardsville, New Jersey
(April 24, 2008)

Jacob Philip Perdie
Highland Beach, Florida
(April 17, 2008)

Cary Noah Reichbach
Boca Raton, Florida
(April 9, 2008)

Vanessa Rivera-Laboy
San Juan, Puerto Rico
(April 24, 2008)

Crystal Lynn Steele
Richmond, Texas
(April 24, 2008)

Kenneth John Strachan
Sunapee, New Hampshire
(April 24, 2008)

John Alex Vasiliadis
Boca Raton, Florida
(April 16, 2008)

FINRA Hearing Panel Dismisses 2004 Sales Practices Complaint Against H&R Block Financial Advisors

A Financial Industry Regulatory Authority (FINRA) Hearing Panel dismissed a November 2004 complaint against H&R Block Financial Advisors alleging sales practices and supervisory violations relating to sales of Enron Corporation bonds during the one-month period immediately preceding Enron's filing for bankruptcy protection on Dec. 2, 2001.

The panel ruled that FINRA's Department of Enforcement failed to show by a preponderance of evidence that H&R Block registered representatives misrepresented or omitted material facts in connection with sales of Enron bonds, or that the firm failed to implement adequate supervisory systems and procedures.

The panel issued a detailed, 54-page decision, which can be found at <http://www.finra.org/web/groups/enforcement/documents/enforcement/p038391.pdf>.

FINRA's National Adjudicatory Council Affirms \$5 Million Fine Against American Funds Distributors for Violating FINRA's Anti-Reciprocal Rule

A \$5 million fine imposed against American Fund Distributors (AFD) for directed brokerage in 2006 will stand, according to a ruling issued by the National Adjudicatory Council (NAC), the appeals body of the Financial Industry Regulatory Authority (FINRA).

The NAC upheld a FINRA Hearing Panel decision finding that AFD violated FINRA's

Anti-Reciprocal Rule when it directed more than \$98 million in brokerage commissions between 2001 and 2003 to the 46 retail securities firms that were the top sellers of its mutual funds.

AFD is the principal underwriter and distributor of American Funds, a family of 29 mutual funds. In ruling on AFD's appeal of the Hearing Panel decision, the NAC concluded that AFD arranged for the direction of a specific amount or percentage of brokerage commissions to other securities firms conditioned upon those firms' sales of American Funds shares, an "outright" violation of FINRA's Anti-Reciprocal Rule.

The NAC also concluded that AFD's requests and arrangements for the direction of brokerage, conditioned upon sales, was directly at odds with the goal of the Anti-Reciprocal Rule, which is "to curb conflicts of interest that might cause retail firms to recommend investment company shares based upon the receipt of commissions from that investment company."

In the decision, the NAC emphasized that AFD tracked, monitored, and facilitated the directed brokerage payments by identifying the top-selling retail firms of American Funds, providing its investment adviser with the amount of commissions to be sent, and monitoring its investment adviser's trading with, and the payment of commissions to, the selected retail firms throughout the year. The NAC also highlighted the fact that AFD directed commissions to "step-out firms" — retail firms that had no capability to execute portfolio trades for American Funds, but nevertheless obtained commissions indirectly from clearing firms that did execute the trades.

In assessing sanctions, the NAC articulated its concern that directed

brokerage arrangements, like those employed by AFD “tended to undermine the rules of fair competition envisioned by the rule.” The NAC explained that “AFD’s target commission payments amounted to undisclosed additional sales commissions that would harm other mutual funds families’ ability to compete in the market to sell their mutual funds to the investing public” and “triggered the potential for preferential treatment for American Funds’ mutual funds to the disadvantage of other mutual funds in the industry.”

The NAC also found that AFD’s conduct was intentional, not negligent as the Hearing Panel had concluded. “The evidence demonstrates that AFD deliberately formed directed brokerage arrangements with the top-selling retailers of American Funds’ mutual funds,” the NAC’s decision says. “AFD tracked (its investment adviser’s) trading activity with the retail firms and monitored the execution of these arrangements to ensure proper crediting of the targeted commission payments. AFD also ceased payments to step-out firms, and modified its calculation of target commissions, as regulators began to question the use of directed brokerage in the mutual fund industry. There is no evidence in the record to support a finding that AFD’s conduct was negligent.”

Although the NAC emphasized these and other aggravating factors, it noted that there was no evidence that AFD was unjustly enriched, that American Funds’ shareholders were harmed, or that AFD placed unwarranted trades or paid excessive commissions. The NAC concluded that AFD’s violations, while “not egregious, were quite serious” and that a “substantial” fine of \$5 million was appropriate based on the facts and circumstances of the case.