

Notices

Regulatory Notices

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Trade Reporting and Compliance Engine (TRACE)

SEC Approves Amendments to Eliminate Yield Reporting to TRACE and FINRA Will Disseminate Standard Yield in Real-Time TRACE Data

Effective Date: November 3, 2008

Executive Summary

On September 12, 2008, the Securities and Exchange Commission approved an amendment to NASD Rule 6230 (Transaction Reporting).¹ Effective November 3, 2008, member firms will no longer report yield to TRACE and FINRA will calculate and disseminate a Standard Yield in TRACE data.

The text of the rule amendment is set forth in Attachment A.

Questions regarding this *Notice* should be directed to:

- Patrick S. Geraghty, Director, Fixed Income, Market Regulation, at (240) 386-4973;
- Elliot R. Levine, Associate Vice President and Counsel, Transparency Services, at (202) 728-8405; or
- Sharon Zackula, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8985.

October 2008

Notice Type

- Rule Amendment

Suggested Routing

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

Key Topic(s)

- TRACE Data
- TRACE-Eligible Security
- Transaction Reporting
- Yield

Referenced Rules & Notices

- NASD Rule 6230
- SEC Rule 10b-10

Background & Discussion

Currently, a member firm that executes a transaction in a TRACE-eligible security is required to report yield under NASD Rule 6230(c)(13). Also, currently disseminated TRACE data includes the yields reported by firms. FINRA has amended NASD Rule 6230(c) to eliminate the requirement to report yield when a transaction in a TRACE-eligible security is reported to TRACE. In addition, FINRA amends its dissemination practices for TRACE data. Instead of disseminating a member-reported yield, FINRA will disseminate a Standard Yield that is calculated in the TRACE System (Standard Yield) for each transaction in a TRACE-eligible security, with limited exceptions.

Background on Standard Yield. Standard Yield for each transaction is calculated based on uniform assumptions, using a method adopted by many professional market participants.² Generally, for principal transactions, Standard Yield is calculated based upon the reported price inclusive of markup, and, for agency trades, is calculated based upon the reported price plus any reported commission. As a general rule, FINRA will not disseminate a Standard Yield when transactions occur in the types of debt securities that were set forth in NASD Rule 6230(c)(13) prior to this amendment.³

FINRA believes that disseminating Standard Yields will enhance the usefulness of disseminated TRACE data to market participants. Because the yields are calculated according to a single formula and a uniform set of assumptions, market participants, especially those who are not market professionals, may find the data more informative. For customers that have purchased TRACE-eligible securities, deleting member-reported yields from disseminated TRACE data and replacing them with Standard Yields will not limit their access to relevant yield information. Under SEC Rule 10b-10, a customer currently receives yield information in the customer's confirmation.⁴ That yield is specifically calculated, reflecting the price and various fees the customer was charged by the member firm, as required in SEC Rule 10b-10.⁵

Vendors. FINRA requires TRACE data vendors and redistributors to display yield in real-time TRACE data. Currently, certain vendors disseminate a yield that they calculate and they want to continue to do so after November 3, 2008, instead of disseminating the Standard Yield calculated by FINRA's TRACE System. FINRA will permit this flexibility, provided that a vendor that displays a yield other than the Standard Yield discloses that the vendor is disseminating a yield other than the Standard Yield.

The amendment to NASD Rule 6230(c) and the change to FINRA's dissemination practices to disseminate Standard Yield in TRACE data will become effective on November 3, 2008.⁶

Endnotes

- 1 See Securities Exchange Act Release No. 58520 (September 11, 2008), 73 FR 54193 (September 18, 2008)(order approving File No. SR-FINRA-2008-040).
- 2 FINRA's TRACE System calculates Standard Yield using a calculation library that is widely used by professionals in the securities industry. All yields are calculated and disseminated, applying uniform rules, standards and practices that are generally accepted in the industry (e.g., the Standard Yield is calculated as the internal rate of return according to a discounted cash flow model, the calculation uses a day count of 30/360, and Standard Yield is the lower of yield to call (if the bond is callable) or yield to maturity, or so-called "yield-to-worst").
- 3 For example, Standard Yield will not be disseminated if the TRACE-eligible security (1) is in default; (2) has a floating interest rate; (3) has an interest rate that will or may be "stepped-up" or "stepped-down" and the amount of increase or decrease is an unknown variable; (4) is a pay-in-kind (PIK) security; (5) is a security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable; or (6) is a security for which FINRA determines that disseminating a yield would provide inaccurate or misleading information concerning the price of, or trading in, the security. See also paragraph (13) of Rule NASD 6230(c) (to be deleted effective November 3, 2008).
- 4 17 CFR 240.10b-10.
- 5 Id.
- 6 If a member firm executes a transaction before November 3, 2008, but reports it to TRACE on or after November 3, 2008, yield must be reported to TRACE. However, when information regarding the transaction reported "as/of" is disseminated by TRACE, the disseminated yield will be the Standard Yield.

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Attachment A

New language is underlined; proposed deletions are in brackets.

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

* * * * *

6230. Transaction Reporting

(a) through (b) No Change.

(c) Transaction Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) through (10) No Change.

(11) Stated commission; and

(12) Such trade modifiers as required by either the TRACE rules or the TRACE users guide.]; and]

[(13) The lower of yield to call or yield to maturity. A member is not required to report yield when the TRACE-eligible security is a security that is in default; a security for which the interest rate is floating; a security for which the interest rate will be or may be increased (*e.g.*, certain “step-up bonds”) or decreased (*e.g.*, certain “step-down bonds”) and the amount of increase or decrease is an unknown variable; a pay-in-kind security (“PIK”); any other security where the principal or interest to be paid is an unknown variable or is an amount that is not currently ascertainable, or any other security that the Association designates if the Association determines that reporting yield would provide inaccurate or misleading information concerning the price of, or trading in, the security.]

(d) through (f) No Change.

* * * * *

Reg T Extension of Time Requests

FINRA Revises the Effective Date to Collect and Process Certain CRD Numbers in Connection with Regulation T and SEC Rule 15c3-3 Extensions of Time Requests

Effective Date: April 1, 2009

Executive Summary

This *Notice* announces a revised effective date for submission of certain Central Registration Depository (CRD) numbers, specifically, registered representative and correspondent firm branch CRD numbers, in connection with Regulation T extension of time requests filed on behalf of correspondent firms. In addition, FINRA is also revising the effective date for member firms to collect and process contra broker-dealer CRD numbers in connection with extensions of time requests filed pursuant to SEC Rule 15c3-3(d)(2).¹ As a result, FINRA will allow firms to provide alternate information with respect to these fields beginning November 17, 2008, when the new Reg T System becomes effective (see *Regulatory Notice 08-32*). Effective April 1, 2009, firms must provide all applicable CRD numbers in extension of time requests.

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.

October 2008

Notice Type

- Guidance

Suggested Routing

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

Key Topics

- Extension Processing

Referenced Rules & Notices

- NASD Rule 3160
- Regulation T §§ 220.4 and 220.8
- SEC Rule 15c3-3
- NTM 06-62
- Regulatory Notice 08-32

Background & Discussion

On June 23, 2008, FINRA issued *Regulatory Notice 08-32*, which described the integration of the legacy NYSE Regulation and NASD extension of time processing systems into a single system. Effective November 17, 2008, member firms must file all requests for extension of time through the new system—known as the Reg T System—which is accessible through FINRA's Firm Gateway.

The *Notice* also described the data fields that member firms must populate when submitting extensions of time requests with FINRA. Effective November 17, 2008, member firms must populate all data fields discussed in *Notice 08-32* in extension of time requests. FINRA is, however, extending the deadline to April 1, 2009, for member firms to provide certain CRD numbers and is allowing firms to provide alternate information with respect to selected fields as discussed below. Effective April 1, 2009, member firms must provide all CRD numbers noted below in extension requests.

Expanded Data Elements

The following data elements described in *Notice 08-32* are affected by this change:

- ▶ **Registered Representative's CRD Number:** This field is required for all Regulation T and SEC Rule 15c3-3(m) customer extension requests. Effective November 17, 2008, for self-directed accounts with no registered representative assigned to the account, a firm must enter "999999999999" (12 characters) into this field. Effective November 17, 2008, a clearing firm filing an extension of time on behalf of its own customer must populate this field with the registered representative's CRD number associated with the account. However, if an extension of time is filed by a clearing firm on behalf of a correspondent firm, then the clearing firm may populate this field with either: (1) the correspondent firm's registered representative's CRD number associated with the account; or (2) the registered representative number that it currently uses.² Effective April 1, 2009, the clearing firm *must* provide the correspondent firm's registered representative's CRD number associated with the account.
- ▶ **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" for yes when the request is being made on behalf of a correspondent firm. Effective November 17, 2008, a clearing firm filing an extension of time request on behalf of a correspondent firm may populate this field with either: (1) the correspondent firm's branch CRD number; or (2) the correspondent firm's branch code.³ Effective April 1, 2009, the clearing firm *must* provide the correspondent firm's branch CRD number.

- **Contra Broker-Dealer CRD Number:** Firms must indicate the CRD number of the broker-dealer failing to deliver the securities if the extension of time is being requested pursuant to SEC Rule 15c3-3(d)(2). Effective November 17, 2008, a clearing firm filing an extension of time can populate this field with either: (1) the contra broker-dealer's CRD number; or (2) the contra-broker-dealer's clearing number (DTCC number). Effective April 1, 2009, the clearing firm *must* provide the contra broker-dealer's CRD number.

FINRA reminds member firms that they must populate all data fields described in *Notice 08-32* in extension of time requests effective November 17, 2008, *including the correspondent firm CRD number*.⁴ FINRA also reminds member firms that it will deny extensions if the firms fail to provide the required data. It is important that firms ensure they obtain the appropriate information that will be required when submitting extension of time requests.

Firms that use a service bureau to submit extension requests on their behalf must ensure that this *Regulatory Notice* is promptly communicated to their service bureaus so that the programming changes affecting registered representative, correspondent firm branch and contra broker-dealer CRD numbers are effective by the new deadline, April 1, 2009.

Testing

FINRA will make the Reg T Customer Test Environment (CTE) available for firms to test their programming changes beginning October 20, 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 the same time period. Additional testing for the programming for the fields that will become mandatory on April 1, 2009, will be available beginning late February or early March 2009. 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 http://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

As noted in *Notice 08-32*, training for the online application will be available via an online tutorial beginning on November 1, 2008. Firms can access the tutorial at www.finra.org/compliancetools.

Frequently Asked Questions

If you have additional questions, please see the Frequently Asked Questions (FAQ) at www.finra.org/regt.

Endnotes

- 1 See SEC Rule 15c3-3(d)(2) which requires a broker-dealer to take prompt steps to obtain physical possession or control of securities failed to be received for more than 30 calendar days through a buy-in procedure or otherwise.
- 2 Firms generally assign an internal number to each of their registered representatives. These numbers are unique to each firm, and are often used in various reporting and statements that may be disseminated by the firm. Firms supply these numbers when requesting customer extensions in FINRA's current extension processing systems.
- 3 Firms generally assign an internal number to each of their branch offices. These numbers are unique to each firm, and are often used in various reporting and statements that may be disseminated by the firm. Some firms supply these numbers when requesting customer extensions in FINRA's current extension processing systems.
- 4 As described in *Regulatory Notice 08-32*, this field is required for all Regulation T and SEC Rule 15c3-3(m) customer extension requests if the Correspondent Firm Flag is "Y."

Guidance on Special Purpose Acquisition Companies

Executive Summary

Special purpose acquisition companies (SPACs) are shell companies that raise capital in initial public offerings (IPOs) for the purpose of merging with or acquiring an operating company. The SPACs market has undergone rapid growth in recent years. In 2007, 22 percent of all initial public offerings in the United States were issued by SPACs totaling over \$12 billion in raised capital. While SPACs' percentage of the capital raised in the IPO market so far in 2008 declined to 12 percent, they continue to be significant vehicles for raising capital in the public market. SPAC IPOs differ significantly from traditional equity IPOs, with unique conflicts of interest and incentives for SPAC managers, underwriters and financial advisors. Firms and their customers who invest in SPACs should be aware of these differences before participating in a SPAC IPO.

This *Notice* provides guidance on the structure, trends and conflicts of interest associated with SPACs and reminds firms¹ of their suitability and disclosure obligations when participating in this market.

Questions regarding this *Notice* should be directed to: Joseph E. Price, Vice President, Corporate Financing, at (240) 386-4623 or Lisa Jones Toms, Counsel, Corporate Financing, at (240) 386-4661.

Background & Discussion

SPACs are companies without any revenue or operating history that use investors' funds to acquire or merge with an operating company. SPACs can operate as blank check companies, which the SEC defines as companies that either have no specific business plan or purpose, or have indicated that their business plan is to engage in a merger or acquisition with an unidentified company or companies, and are issuing "penny stock" as defined in Exchange Act Rule 3a51-1. If a SPAC meets the definition of a blank check company, it would be required to comply with Rule 419

October 2008

Notice Type

- Guidance

Suggested Routing

- Advertising
- Compliance
- Corporate Finance
- Registered Representatives
- Senior Management
- Trading
- Training

Key Topics

- IPO
- Secondary Market Trading
- Special Purpose Acquisition Companies

Referenced Rules & Notices

- SEA Rule 419
- SEA Rule 3a51-1
- SEA Section 11
- NASD Rule 2720

under the Securities Act of 1933, which requires investors' funds to be held in escrow, filing of a post-effective amendment upon execution of an acquisition agreement, and the return of the escrowed funds if an acquisition has not occurred within 18 months of the effective date of the initial registration statement. Most SPACs, however, are not required to comply with Rule 419 because they are structured so that they can rely on an exception from the definition of "penny stock" or they meet other exceptions for listed companies.

In a traditional IPO, the prospectus focuses on historical facts about the issuer and its past performance. Underwriters market the offering after announcing an initial price range. The price at which shares are offered to the public should reflect both demand for the shares and estimates of future performance of the issuer. Underwriters conduct significant and thorough due diligence on the issuer and assume liability under section 11 of the Securities Act for the information disclosed in the prospectus.

By contrast, SPAC securities are offered at a unit price, typically \$6, \$8 or \$10 per unit. SPACs do not "pre-identify" possible acquisition targets and the underwriters do not undertake any due diligence on acquisition targets. While some SPACs are specific about the industries or regions in which they will seek an operating company, others are open-ended.

A SPAC typically must complete an acquisition within 18 to 24 months, and must use at least 80 percent of its net assets for any such acquisition. If it fails to do so, then it must dissolve. When a SPAC dissolves, it returns to investors their pro rata share of the assets in escrow. In most cases, investors will receive nearly all of their principal invested, but will not share in any of the returns generated from the funds held in escrow as such proceeds are used to cover the operating expenses of the SPAC.

This 18- to 24-month deadline is designed to help investors by forcing a timely return of most of their capital if a suitable acquisition is not completed. However, it also puts SPAC management under severe time pressure to identify a target and complete a transaction.²

If a SPAC's managers can identify an appropriate acquisition target, they must then obtain approval through a shareholder vote. Investors are sent proxy materials disclosing the details of the proposed acquisition. A SPAC's public shareholders may vote in favor of the acquisition, or vote against the acquisition. If the shareholders vote against the acquisition, they may elect to have their shares converted into a pro rata portion of the IPO proceeds, which are held in an escrow account.

While the proxy statement sent to SPAC shareholders contains current audited financial information and other material information about the acquisition target, there are significant differences in the liability and disclosure obligations regarding a company that becomes public by acquisition by a SPAC and one that becomes public through a traditional IPO. In a traditional IPO, underwriters conduct significant and thorough due diligence on a company and assume liability for the information disclosed in the registration statement. There may be no similar “gatekeeper” function by underwriters in connection with the acquisition target of a SPAC.

SPACs present different risks depending on what point in the SPAC “life cycle” the investor purchases shares. We discuss below some of the risks that a firm must consider at the various stages of a SPAC’s life cycle if it recommends SPAC securities to its customers.

Initial Public Offering

During the IPO stage, investors purchase units representing one or more shares of common stock and one or more warrants exercisable for one share of common stock at a discount to the offering price. Typically, a SPAC will trade as a single unit following the IPO. After a certain period, often 90 days following the IPO, the common stock and warrants trade separately.

SPAC IPOs have certain risks, which must be disclosed to investors and which must be the subject of the broker-dealer’s suitability analysis. For example, SPAC IPOs present the following two risks:

- The risk that SPAC managers are unqualified or incompetent, a risk made more pronounced by lack of any operating history or past performance of the SPAC.
- The risk that no acquisition will occur and the SPAC will be liquidated. The SPAC structure, which requires most of investor’s funds to be held in escrow and returned if an acquisition is not completed, does provide some downside protection. Moreover, investors may be able to sell their SPAC units in the secondary market. However, investors must either bear the opportunity cost of waiting for a determination about whether an acquisition will occur or sell in the secondary market before the outcome is determined.

Of the approximately 149 SPACs that have been issued as of May 31, 2008, only 48 have completed an acquisition. Moreover, many SPACs, including most of the SPACs that have gone effective since 2003, have not completed an acquisition.³

Whenever a firm recommends SPAC securities to investors it must ensure that all registered persons understand the features of the securities in order to perform a suitability analysis before executing a transaction. Investors, particularly retail investors if they are offered SPAC securities, should fully understand the risks associated with SPACs.

FINRA rules require firms to have reasonable grounds for believing that a recommendation for a securities transaction is suitable for its customers. In meeting their suitability obligations, firms should consider whether they should adopt any special suitability guidelines for SPACs.

Firms also must ensure that marketing materials used by the firm provide an accurate and balanced description of SPACs. Some of the marketing materials reviewed by FINRA staff have referred to the potential for price appreciation in SPAC shares based on a change in valuation from a private to public company. Firms that distribute these marketing materials must ensure that they provide a fair description of all risks associated with the investment, including the risk that the acquisition may not occur or that the customer's investment may decline in value even if the acquisition is completed.

Escrow Account

Following the IPO, nearly all of the SPAC proceeds are held in an escrow account to be used to complete an acquisition. The escrow account typically invests in money market funds or short-term U.S. government securities. The SPAC assets are released from escrow when the shareholders approve an acquisition or the SPAC is dissolved.⁴

If a SPAC fails to complete an acquisition within the specified time period, it must dissolve. When a SPAC dissolves, it returns to investors their pro rata share of the assets in escrow. In most cases, investors will receive nearly all of their principal invested, but will not share in any of the returns generated from the funds held in escrow as such proceeds are used to cover the operating expenses of the SPAC.

Secondary Market Trading

A SPAC unit typically has two components: shares of common stock and a warrant, which trade separately within weeks of the IPO. The common shares often trade at a discount to the cash held in escrow. Warrants are exercisable only upon successful completion of an acquisition and typically will expire worthless if the SPAC is liquidated.

Purchasing the common stock and warrants in the secondary market raises different issues. The characteristics of the common stock likely depend on whether the stock is purchased before or after an acquisition target has been announced. Naturally, an investment before the announcement of an acquisition is a bet on whether an acquisition target will be announced and whether it is an attractive investment.

However, there can be much uncertainty concerning any future acquisition. Even after an acquisition target is announced, there typically is a delay, which can be weeks before audited financial statements regarding the acquisition target are available through the preliminary proxy filing. In addition, the acquisition terms and arrangements may change during the proxy filing and review period.

Purchasing warrants in the aftermarket is a highly speculative investment that is generally suitable only for sophisticated investors who can assume and understand the risk that an acquisition will not be completed and the warrants will expire worthless. Purchasing warrants after the announcement of an acquisition may present special risks. FINRA research indicates that SPAC share prices slightly outpace the market on the day an acquisition target is announced.

The release of more complete information occasionally leads to a decline in the price of the SPAC's common stock. Investors who purchase in the secondary market after an acquisition announcement may suffer a loss if the value of the shares subsequently declines. FINRA research indicates that most SPAC share prices significantly lag the market after the acquisition is completed.

Proxy Solicitation

The announcement of a potential acquisition is a critical stage in a SPAC's life cycle. SPAC management stands to gain a significant equity interest in the target company but must first market the deal and gain approval from a majority or supermajority of its shareholders before it can close on the acquisition. For underwriters, one-half of the underwriter's fee can be contingent upon completion of the acquisition and often the underwriter will receive a separate fee for services as an adviser to the acquisition.

If a SPAC's management identifies an appropriate acquisition target, it must then seek a shareholder vote. An acquisition by a SPAC typically requires the approval of at least 60 percent of the shareholders and some deals require 80 percent. Investors are sent proxy materials disclosing the details of the proposed acquisition.

An investor who votes against an acquisition is entitled to a pro rata return of the funds held in escrow. If the investor decides that he will vote against the acquisition and the SPAC's securities are trading at a premium in the secondary market, however, it may be in the investor's best interest to sell his securities in the secondary market.⁵

SPAC underwriters generally should not engage in proxy solicitation if payment of part of the underwriting fee or an advisory fee is contingent upon the successful completion of the acquisition. In such a case, a SPAC underwriter would have a conflict of interest if it recommended that a customer vote "yes" on the proposed acquisition.

Completion of an Acquisition

SPAC sponsors, unless they have purchased shares of the SPAC's common stock, do not receive a pro rata distribution from the escrow account if an acquisition is not completed. In addition, they are typically prohibited from selling their shares in the secondary market prior to completion of the acquisition. These mechanisms, along with their 20 percent equity stake in the SPAC, may help to align management and investors' interest in completing an acquisition. However, SPAC managers have a strong incentive to buy a company, even at inflated values, since they will get 20 percent of the company at a nominal price.

At the acquisition stage of a SPAC's life, firms are required to disclose these incentives and all of the conflicts that the firm may face as a sponsor or adviser of a SPAC prior to recommending the sale or purchase of SPAC shares to its customers. The firm must also consider the implications under FINRA's conflicts of interest rule, NASD Rule 2720, if the acquisition is successful.⁶

Endnotes

- 1 This *Notice* refers to broker-dealers and their associated persons collectively as “firms” unless otherwise specified.
- 2 Some recent SPACs have adopted automatic extensions of six months or longer if an acquisition is announced before the deadline, and have decreased the percentage of “yes” votes required to approve an acquisition from 80 percent to 60 percent.
- 3 For more information about the SPAC market, see “State of the SPAC: A Flight to Quality, A Primer for a Growing Industry,” SPAC Research Partners (April 9, 2008).
- 4 A portion of the interest earned in the account may be withdrawn to pay some of the SPAC’s working capital expenses prior to an acquisition.
- 5 Even if the shares are not trading at a premium, by selling in the market the customer would earn a quicker return of capital than if he votes “no” and exercises his redemption rights.
- 6 NASD Rule 2720 requires a qualified independent underwriter to conduct due diligence in an offering in which a participating member has a conflict of interest or offerings in which the issuer proposes to acquire a broker-dealer that would become publicly owned as a result of the acquisition.

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Research Analysts and Research Reports

FINRA Requests Comment on Proposed Research Registration and Conflict of Interest Rules

Comment Period Expires: November 14, 2008

Executive Summary

As part of the process of developing a new, consolidated rulebook (the Consolidated FINRA Rulebook),¹ FINRA is requesting comment on proposed research analyst conflict of interest rules.

The text of proposed FINRA Rules 1223 and 2240 is set forth in Attachment A.

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

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by November 14, 2008.

Member firms and other interested parties can submit their comments using the following methods:

- Emailing comments to pubcom@finra.org; or
- Mailing comments in hard copy to:

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

October 2008

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Registration
- Research
- Senior Management

Key Topic(s)

- Registration
- Research Analysts
- Research Reports
- Supervision

Referenced Rules & Notices

- NASD Rule 1050
- NASD Rule 2210
- NASD Rule 2711
- NYSE Rule 344
- NYSE Rule 342
- NYSE Rule 472

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this Notice will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.²

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.³

Background

NASD Rule 2711 (Research Analysts and Research Reports) and Incorporated NYSE Rule 472 (Communications with the Public) (the Rules) set forth requirements to foster objectivity and transparency in equity research and provide investors with more reliable and useful information to make investment decisions. The Rules were intended to restore public confidence in the validity of research and the veracity of research analysts, who are expected to function as unbiased intermediaries between issuers and the investors who buy and sell their securities. The trustworthiness of research had eroded due to the pervasive influences of investment banking and other conflicts that became apparent during the market boom of the late 1990s.

The current NASD and Incorporated NYSE Rules have no significant differences. Generally, the Rules require clear, comprehensive and prominent disclosure of conflicts of interest in research reports and public appearances by research analysts. The Rules further prohibit certain conduct – investment banking personnel involvement in the content of research and determination of analyst compensation, for example – when the conflicts are considered too pronounced to be cured by disclosure. Several of the Rules' provisions implement the mandates of the Sarbanes-Oxley Act of 2002 (SOx), which proscribes certain conduct and requires some specific disclosures in research reports and public appearances.

NASD Rule 1050 (Registration of Research Analysts) and Incorporated NYSE Rule 344 (Research Analysts and Supervisory Analysts) require any person associated with a member firm and who functions as a research analyst to be registered as such and pass the Series 86 and 87 exams, unless an exemption applies. A research analyst is defined for the purposes of those rules as “an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.”

In December 2005, in response to a Securities and Exchange Commission (SEC or Commission) Order, FINRA and the NYSE submitted to the SEC a joint report on the operation and effectiveness of the research analyst conflict of interest rules. The report concluded that the Rules have been effective in helping to restore integrity to research by minimizing the influences of investment banking and promoting transparency of other potential conflicts of interest. Evidence suggested that investors are benefiting from more balanced and accurate research to aid their investment decisions. The report also recommended certain changes to the Rules to strike an even better balance between ensuring objective and reliable research on the one hand, and permitting the flow of information to investors and minimizing costs and burdens to member firms on the other. Many of those recommendations are the subject of a FINRA rule filing pending before the SEC (Joint Report Filing) that would be superseded by the proposal in this *Notice*.

Proposal

FINRA proposes replacing the existing Rules with a single rule in the Consolidated FINRA Rulebook and rewriting the research rules in a more streamlined and flexible fashion within the confines set forth in SOx. Within this structure, the new rule would broaden the obligations on member firms to identify and manage research conflicts. It also would incorporate several aspects of the Joint Report Filing and resolve the few differences between that filing and a substantially similar one filed with the SEC by NYSE to amend its Rule 472. Among other things, the proposal additionally codifies an existing interpretation regarding selective dissemination of research and provides further guidance on the subject. The proposal also extends the exemption for firms with limited investment banking activity to include certain aspects related to research analyst compensation determination.

The most significant proposed changes are described generally below. However, FINRA urges member firms to carefully review the entire attached proposed rule text to understand the full extent of the proposed changes. FINRA notes that the proposal renumbers the new rules as FINRA Rules 1223 and 2240. It also reorganizes new Rule 2240 and includes a “Supplementary Material” section that contains some existing rule language and guidance.

Definitions

FINRA proposes to maintain the definitions in the existing Rules, with a few modifications. The proposal:

- ▶ makes minor changes to the definition of “investment banking services” to clarify that such services include all acts in furtherance of a public or private offering on behalf of an issuer.
- ▶ incorporates a proposed change from the Joint Report Filing to the definition of “research analyst account” to clarify that the definition does not apply to a registered investment company over which a research analyst has discretion or control, provided that the research analyst or a member of that research analyst’s household has no financial interest in the investment company, other than a performance or management fee.
- ▶ incorporates the Joint Report Filing proposed change to the definition of “research report” to exclude sales material regarding open-end registered investment companies that are not listed or traded on an exchange and public direct participation programs.
- ▶ moves into this section the definitions of “third-party research report” and “independent third-party research report” that are now in a separate provision of the Rules.

Identifying and Managing Conflicts of Interest

The proposal creates a new section entitled “Identifying and Managing Conflicts of Interest.” The section includes an overarching provision that requires member firms to establish, maintain and enforce policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to the preparation, content and distribution of research reports and public appearances by research analysts. A second provision sets forth more specifically what those policies and procedures must address. They must promote objective and reliable research that reflects the truly held opinions of research analysts and prevent the use of research or research analysts to manipulate or condition the market or favor the interests of the member firm or certain current or prospective clients.

SOx requires rules to prohibit or restrict certain conduct related to the preparation, approval and distribution of research reports and the determination of research analysts’ compensation. The proposal therefore requires at a minimum that the above-referenced policies and procedures be reasonably designed to achieve compliance with the SOx conduct and structural mandates. However, in contrast to the more prescriptive manner in which the current Rules implement the SOx requirements, the proposal provides firms with more flexibility to adopt policies and procedures to effectuate those mandates in a manner consistent with the member firm’s size and organizational structure.

Thus, the proposal requires firms to establish, maintain and enforce policies and procedures that at a minimum:

- prohibit prepublication review, clearance and approval of research reports by persons engaged in investment banking activities and prohibit or restrict such review, clearance and approval by other persons not directly responsible for the preparation, content and distribution of research reports, other than legal and compliance personnel;
- limit the supervision and compensatory evaluation of research analysts to persons who are not engaged in investment banking services transactions;
- establish information barriers and other safeguards to insulate research analysts from pressure by investment banking personnel and other persons who might be biased in their judgment or supervision;
- prevent direct or indirect retaliation against research analysts as a result of content of a research report that may adversely affect a current or prospective client relationship; and
- define quiet periods of at least 10 days after an initial public offering (IPO) during which a member firm must not publish or otherwise distribute research reports, and research analysts must not make public appearances relating to the issuer if the firm has participated as an underwriter or dealer in the offering.⁴

The proposal retains the current requirement that a committee that reports to the member firm's board of directors – or if none exists, a senior executive officer – review and approve the compensation of any research analyst who is primarily responsible for preparation of the substance of a research report. This committee may not have representation from a member firm's investment banking department and may not consider contributions to a member firm's investment banking business in assessing a research analyst's compensation. The committee must consider, among other things, the productivity of the research analyst and the quality and accuracy of his or her research and must document the basis for each research analyst's compensation.

With respect to the quiet-period provision, FINRA notes that the proposal differs from the Joint Report Filing, which proposed a 25-day IPO quiet period for all underwriters and dealers. However, like the Joint Report Filing, the proposal eliminates the 10-day quiet period after secondary offerings. The proposal also eliminates the current quiet periods 15 days before and after the expiration, waiver or termination of a lock-up agreement. FINRA believes that research issued during such periods potentially offers valuable market information, and the other provisions of the research rules and SEC Regulation AC provide sufficient protection that such research will honestly reflect the analyst's beliefs and be free from other conflicts that would undermine the value or integrity of research issued during these periods.⁵

Additionally, the proposal requires firms to adopt policies and procedures to restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity, including prohibiting participation in the solicitation of investment banking business, road shows and other marketing on behalf of an issuer. This standard largely maintains the existing proscriptions regarding research analyst conduct. The proposal also maintains the current prohibition against promises of particular research or a recommendation or rating as inducement for receipt of business or compensation and prohibits prepublication review by a subject company for purposes other than verification of facts.

Personal Trading Restrictions

The proposal creates a more flexible supervisory approach with respect to research analyst account trading in securities of companies a research analyst covers. The current Rules prohibit ownership of pre-IPO shares in a research analyst's coverage area; impose specific blackout periods during which a research analyst account may not trade covered securities; prohibit trading against recommendation; and require pre-approval by legal and compliance of transactions in covered securities by persons who oversee research analysts. The current Rules carve out specific investments from the trading restrictions and also set forth particular exceptions to the provisions with approval of legal and compliance.

The proposal instead requires firms to establish policies and procedures that restrict or limit research analyst account trading in securities a research analyst covers, any derivatives of such securities and funds whose performance is materially dependent upon the performance of such securities. Such policies and procedures must ensure that research analysts and others with the ability to influence the content of research reports don't benefit in their trading from the knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report. Firms further are required to define financial hardship circumstances, if any, in which a firm would permit a research analyst to trade against his or her recommendation.

Content and Disclosure in Research Reports

With a couple of modifications and exceptions, the proposal mostly maintains the content and disclosure requirements of the current Rules. This is due in large part to SOx, which mandates disclosure in research reports and public appearances of a research analyst's financial interest in a subject company; whether the research analyst or the member firm or its affiliates has received any compensation from the subject company; whether the issuer has been a client of the member firm within a year of the date of publication of the research report or public appearance and the types of services provided to the issuer; whether the research analyst received compensation with respect to a research report based upon the investment banking revenues of the firm; and other material conflicts.

Certain provisions – the distribution of ratings and price chart requirements, for example – have been maintained because FINRA believes they provide valuable information to investors to assess the objectivity of a research report and the accuracy of a research analyst's past recommendations, ratings or price targets.

The proposal requires a member firm to ensure that purported facts in its research reports are based on reliable information. Otherwise, the proposal adopts, with some language modifications, the existing content requirements:

- ▶ Any recommendation, rating or price target must have a reasonable basis in fact and be accompanied by a clear explanation of the valuation method utilized and a fair presentation of risks that may impede its achievement.
- ▶ Ratings must be clearly defined in each research report and include any time horizon or benchmark on which the rating is based.
- ▶ Irrespective of the rating system employed, a member firm must include in each research report that includes a recommendation or rating the percentage of all securities rated by the member firm to which the member firm assigns a “buy”, “hold” or “sell” rating.
- ▶ A member firm must disclose in each research report the percentage of subject companies within each of the “buy,” “hold” and “sell” categories for which the firm provided investment banking services within the previous twelve months.
- ▶ If a research report contains a rating or price target, the member firm must include a price chart that shows the stock price movement of the subject company's security in relation to the dates on which the firm assigned or changed a rating or price target.

With respect to disclosure of potential conflicts, the proposal requires a member firm to disclose in any research report all conflicts that reasonably could be expected to influence the objectivity of the research report and that are known or should have been known by the member firm or research analyst on the date of distribution. The proposal includes among such conflicts most of those that must be disclosed under the current Rules, including those related to receipt of investment banking and non-investment banking compensation and market making.

The proposal modifies the requirement to disclose when a member firm or its affiliates owns securities of the subject company. The proposal requires disclosure if a member firm or its affiliates maintain a “significant financial interest in the debt or equity of the subject company,” including, at a minimum, if the member firm or its affiliates beneficially own 1 percent or more of any class of common equity securities of the subject company. The determination of beneficial ownership continues to be based upon the standards used to compute ownership for the purposes of the reporting requirements under Section 13(d) of the Exchange Act.

The proposal retains the general exception to the disclosure requirements in circumstances where disclosure would reveal material non-public information regarding specific potential future investment banking transactions of the subject company. The proposal also continues to permit a member firm that distributes a research report covering six or more companies (compendium report) to direct the reader in a clear manner as to where the applicable disclosures can be found. While an electronic compendium research report may hyperlink to the disclosures – as is the case for any electronic research report – a paper-based compendium report must include a toll-free number or a postal address where the reader may obtain the disclosures. Paper research reports may additionally include a Web address where the disclosures can be found.

FINRA notes that except for electronic research reports, the proposal does not permit Web-based disclosure. The Joint Report Filing proposed such disclosure, but the SEC staff informed FINRA that it interprets SOx to require disclosures in the research report itself, except as noted above. The SEC staff further indicated that it did not intend to use its exemptive authority under the Exchange Act to allow such Web-based disclosure. FINRA continues to advocate Web-based disclosure as more efficient and effective and will consider amending the proposal should the SEC staff change its position.

Public Appearances

The proposal groups in a separate provision the disclosures required when a research analyst makes a public appearance. The required disclosures effectively remain the same as under the current Rules, with one exception: consistent with the above-referenced provision with respect to disclosure in research reports, a research analyst would be required to disclose if a member firm or its affiliates maintain a “significant financial interest in the debt or equity of the subject company,” including, at a minimum, if the member firm or its affiliates beneficially own 1 percent or more of any class of common equity securities of the subject company, as computed in accordance with Section 13(d) of the Exchange Act. The proposal also adopts the requirement under NASD Rule 2711 to maintain records of public appearances sufficient to demonstrate compliance by research analysts with the applicable disclosure requirements. The more prescriptive recordkeeping requirements of Incorporated NYSE Rule 472 would be deleted under the proposal.

Disclosure Required by Other Provisions

With respect to both research reports and public appearances, member firms and research analysts would continue to be required to comply with applicable disclosure provisions of NASD Rule 2210, Incorporated NYSE Rule 472 and the federal securities laws.

Termination of Coverage

The proposal retains in its entirety the provision in the current Rules that requires a member firm to promptly notify its customers if it intends to terminate coverage of a subject company. Such notification must be made using the means of dissemination equivalent to those a member firm ordinarily uses to distribute research reports to its various customers. If practicable, the notice must be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final recommendation or rating. If impracticable to provide a final research report, recommendation or rating, a firm must disclose to its customers the reason for terminating coverage.

Distribution of Member Firms' Research Reports

The proposal codifies an existing interpretation of NASD Rule 2110 and provides additional guidance regarding selective – or tiered – dissemination of a firm's research reports. In that regard, the proposal requires firms to establish policies and procedures to ensure that a research report is not distributed to internal trading personnel or a particular customer or class of customers in advance of other customers that are entitled to receive the research report. The proposal includes further guidance to explain that firms may provide different research products and services to certain classes of customers, provided the firm discloses its research dissemination practices to all customers. A member firm may, by way of example, differentiate its research product offerings based on the recommendations provided to its trading versus its investing clients, the depth of research content (but not the ultimate recommendation) provided to certain classes of customer as determined by the member or whether such different classes of customers will receive certain research services at all. A firm may not, however, differentiate the timing of the availability of research to any customer within the class of customers eligible to receive a particular research report or product. FINRA understands, however, that customers may actually receive at different times research reports originally made available at the same time because of the mode of delivery elected by the customer eligible to receive such research services (e.g. in paper form versus electronic). However, member firms may not “game” the mode of delivery in order to preference certain customers over others in the timing of receipt of reports.

Distribution of Third-Party Research Reports

The proposal incorporates in their entirety the current provisions regarding distribution and supervision of third-party research. A detailed discussion of those provisions can be found in *Regulatory Notice 08-16*.

Exemption for Firms with Limited Investment Banking Activity

The proposal extends the exemption for firms with limited investment banking activity to include the provision that prohibits investment banking personnel involvement in determining a research analyst's compensation and the requirement that a committee review and approve such compensation.

The current rule exempts such firms – those that over the previous three years, on average per year, have managed or co-managed 10 or fewer investment banking transactions and generated \$5 million or less in gross revenues from those transactions – from the provisions that prohibit a research analyst from being subject to the supervision or control of an investment banking department employee because the potential conflicts with investment banking are minimal. FINRA believes it follows logically to allow those who supervise research analysts under such circumstances also to be involved in the determination of those analysts' compensation. The proposal still prohibits these firms from compensating a research analyst based upon specific investment banking services transactions or contributions to a member firm's investment banking services activities.

Exemption from Registration Requirements for Certain “Research Analysts”

As in the Joint Report Filing, the proposal exempts from the registration and qualification requirements personnel who produce “research reports” but whose primary job is something other than a research analyst (*e.g.* a registered representative or trader). The existing research rules, in accordance with the SOx mandates, are constructed such that the author of a communication that meets the definition of a “research report” is a “research analyst,” irrespective of his or her title or primary job. FINRA believes that the registration and qualification requirements were intended for those individuals whose principal job function is to produce research, while the balance of the research rules are intended to foster objective analysis, transparency of certain conflicts and to provide beneficial information to investors. As such, the proposed exemption extends only to the registration requirements.

Attestation Requirement

The proposal deletes the requirement to attest annually that the firm has in place supervisory policies and procedures reasonably designed to achieve compliance with the applicable provisions of the rules, including the compensation committee review provision. FINRA notes that firms would remain obligated pursuant to have a supervisory system reasonably designed to achieve compliance with all applicable securities laws and regulations.

Endnotes

- 1 The current FINRA rulebook includes (1) NASD Rules and (2) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). For more information about the rulebook consolidation process, see *Information Notice 03/12/08 (Rulebook Consolidation Process)*.
- 2 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *NASD Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
- 3 Section 19 of the Securities Exchange Act of 1934 (SEA or Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
- 4 Firms still would be required to comply with any additional quiet periods that the federal securities laws impose.
- 5 The proposal does not incorporate an element of the Joint Report Filing that would have required an additional attestation that a member has a bona fide reason for issuing research during those 15-day periods before and after the expiration, waiver or termination of a lock-up agreement.

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Attachment A

Below is the text of Proposed FINRA Rules 1223 and 2240. With respect to Proposed FINRA Rule 1223, new language is underlined; proposed deletions are in brackets.

* * * * *

[1050.] FINRA Rule 1223. Registration of Research Analysts¹

(a) All persons associated with a member who are to function as research analysts shall be registered with [NASD]FINRA. Before registration as a Research Analyst can become effective, an applicant shall:

(1) be registered pursuant to NASD Rule 1032 as a General Securities Representative; and

(2) pass a Qualification Examination for Research Analysts as specified by the Board of Governors.

(b) For the purposes of this Rule 1223[1050], “research analyst” shall mean an associated person whose primary job function is to provide investment research and who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.

(c) Upon written request pursuant to the Rule 9600 Series, [NASD]FINRA will grant a waiver from the analytical portion of the Research Analyst Qualification Examination (Series 86) upon verification that the applicant has [passed]:

(1) passed Levels I and II of the Chartered Financial Analyst (“CFA”) Examination; or

(2) [if the applicant functions as a research analyst who prepares only technical research reports as defined in paragraph (e),] passed Levels I and II of the Chartered Market Technician (“CMT”) Examination, if the applicant functions as a research analyst who prepares only technical research reports as defined in paragraph (e); and

(3) [has] either functioned as a research analyst continuously since having passed the Level II CFA or CMT examination or applied for registration as a research analyst within two years of having passed the Level II CFA or CMT examination.

1 The draft text is marked to show changes between NASD Rule 1050 and proposed FINRA Rule 1223. The proposal would delete the corresponding provisions in Incorporated NYSE Rule 344 and Rule Interpretation 344.

(d) An applicant who has been granted an exemption pursuant to paragraph (c) still must become registered as a General Securities Representative and then complete the regulatory portion of the Research Analyst Qualification Examination (Series 87) before that applicant can be registered as a Research Analyst.

(e) For the purposes of paragraph (c)(2), a “technical research report” shall mean a research report, as that term is defined in Rule [2711]2240(a)([8]10), that is based solely on stock price movement and trading volume and not on [the]a subject company’s financial information, business prospects, contact with a subject company’s management, or the valuation of a subject company’s securities.

(f) The requirements of paragraph (a) shall not apply to an associated person who:

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

(2) resides outside the United States, and

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

Provided that the following conditions are satisfied:

(A) A member that publishes or otherwise distributes globally[-] branded research reports partially or entirely prepared by a foreign research analyst must subject such research to pre-use review and approval by a registered principal in accordance with NASD Rule 1022(a)(5) or a supervisory analyst pursuant to NYSE Rule 344.11. In addition, the member must ensure that such research reports comply with [NASD]Rule [2711]2240, as applicable.

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

(i) each affiliate contributing to the research report;

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

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

(iv) that such research analysts may not be associated persons of the member and therefore may not be subject to Rule [2711]2240 restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

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

(D) Members must establish and maintain records that identify those individuals who have availed themselves of this exemption, the basis for such exemption, and evidence of compliance with the conditions of the exemption. Failure to establish and maintain such records shall create an inference of a violation of Rule 1223[1050]. Members must also establish and maintain records that evidence compliance with the applicable content, disclosure and supervision provisions of Rule 2240[2711]. Members must maintain these records in accordance with the supervisory requirements of Rule 3010, and in addition to such requirement, the failure to establish and maintain such records shall create an inference of a violation of the applicable content, disclosure and supervision provisions of Rule 2240[2711].

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

(F) The fact that a foreign research analyst avails himself of the exemption in paragraph (f) shall not be probative of whether that individual is an associated person of the member for other purposes, including whether the foreign research analyst is subject to the Rule 2240[2711] restrictions on communications with a subject company, public appearances and trading securities held by a research analyst account.

(G) A member that distributes non-member foreign affiliate research reports that are clearly and prominently labeled as such must comply with the third-party research report requirements in Rule [2711]2240(h)[(13)].

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

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

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

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

FINRA Rule 2240. Research Analysts and Research Reports²

(a) Definitions

For purposes of this Rule, the following terms shall be defined as provided.

(1) “Equity security” has the same meaning as defined in Section 3(a)(11) of the Exchange Act.

(2) “Independent third-party research report” means a third-party research report, in respect of which the person producing the report:

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

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

(3) “Investment banking department” means any department or division, whether or not identified as such, that performs any investment banking service on behalf of a member.

(4) “Investment banking services” include, without limitation, acting as an underwriter, participating in a selling group in an offering for the issuer or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

(5) “Member of a research analyst’s household” means any individual whose principal residence is the same as the research analyst’s principal residence. This term does not include an unrelated person who shares the same residence as a research analyst, provided that the research analyst and unrelated person are financially independent of one another.

² The proposal would delete NASD Rule 2711 and the corresponding provisions of Incorporated NYSE Rules 351, 472 and Rule Interpretation 472.

(6) “Public appearance” means any participation in a conference call, seminar, forum (including an interactive electronic forum) or other public speaking activity before 15 or more persons or before one or more representatives of the media, a radio, television or print media interview, or the writing of a print media article, in which a research analyst makes a recommendation or offers an opinion concerning an equity security. This term does not include a password protected Webcast, conference call or similar event with 15 or more existing customers, provided that all of the event participants previously received the most current research report or other documentation that contains the required applicable disclosures, and that the research analyst appearing at the event corrects and updates during the public appearance any disclosures in the research report that are inaccurate, misleading or no longer applicable.

(7) “Research analyst” means an associated person who is primarily responsible for, and any associated person who reports directly or indirectly to a research analyst in connection with, preparation of the substance of a research report, whether or not any such person has the job title of “research analyst.”

(8) “Research analyst account” means any account in which a research analyst or member of the research analyst’s household has a financial interest, or over which such analyst has discretion or control. This term shall not include an investment company registered under the Investment Company Act of 1940 over which the research analyst or a member of the research analyst’s household has discretion or control, provided that the research analyst or member of a research analyst’s household has no financial interest in such investment company, other than a performance or management fee. The term also shall not include a “blind trust” account that is controlled by a person other than the research analyst or member of the research analyst’s household where neither the research analyst nor a member of the research analyst’s household knows of the account’s investments or investment transactions.

(9) “Research department” means any department or division, whether or not identified as such, that is principally responsible for preparing the substance of a research report on behalf of a member.

(10) “Research report” means any written (including electronic) communication that includes an analysis of equity securities of individual companies or industries (other than an open-end registered investment company that is not listed or traded on an exchange or a public direct participation program) and that provides information reasonably sufficient upon which to base an investment decision. This term does not include:

(A) communications that are limited to the following:

(i) discussions of broad-based indices;

(ii) commentaries on economic, political or market conditions;

(iii) technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;

(iv) statistical summaries of multiple companies’ financial data, including listings of current ratings;

(v) recommendations regarding increasing or decreasing holdings in particular industries or sectors; or

(vi) notices of ratings or price target changes, provided that the member simultaneously directs the readers of the notice to the most recent research report on the subject company that includes all current applicable disclosures required by this Rule and that such research report does not contain materially misleading disclosures, including disclosures that are outdated or no longer applicable;

(B) the following communications, even if they include an analysis of an individual equity security and information reasonably sufficient upon which to base an investment decision:

(i) any communication distributed to fewer than 15 persons;

(ii) periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients that discuss individual securities in the context of a fund’s or account’s past performance or the basis for previously made discretionary investment decisions; or

(iii) internal communications that are not given to current or prospective customers; and

(C) communications that constitute statutory prospectuses that are filed as part of a registration statement.

(11) “Subject company” means the company whose equity securities are the subject of a research report or a public appearance.

(12) “Third-party research report” means a research report that is produced by a person or entity other than the member.

(b) Identifying and Managing Conflicts of Interest

(1) A member must establish, maintain and enforce policies and procedures reasonably designed to identify and effectively manage conflicts of interest related to:

- (A) the preparation, content and distribution of research reports; and
- (B) public appearances by research analysts.

(2) A member’s policies and procedures must be reasonably designed to promote objective and reliable research that reflects the truly held opinions of research analysts and to prevent the use of research reports or research analysts to manipulate or condition the market or favor the interests of the member or certain current or prospective clients. Such policies and procedures must at a minimum:

(A) prohibit prepublication review, clearance or approval of research reports by persons engaged in investment banking services activities and restrict or prohibit such review, clearance or approval by other persons not directly responsible for the preparation, content and distribution of research reports, other than legal and compliance personnel;

(B) limit supervision and determination of compensation of research analysts to persons not engaged in investment banking services activities;

(C) prohibit compensation based upon specific investment banking services transactions or contributions to a member’s investment banking services activities;

(D) require that the compensation of a research analyst who is primarily responsible for the substance of a research report be reviewed and approved at least annually by a committee that reports to a member's board of directors, or if the member has no board of directors, a senior executive officer of the member. This committee may not have representation from the member's investment banking department and must consider the following factors when reviewing a research analyst's compensation:

- (i) the research analyst's individual performance, including the analyst's productivity and the quality of the analyst's research;
- (ii) the correlation between the research analyst's recommendations and the stock price performance; and
- (iii) the overall ratings received from clients, sales force and peers independent of the member's investment banking department, and other independent ratings services.

The committee must document the basis upon which each such research analyst's compensation was established.

(E) establish information barriers and other institutional safeguards to ensure that research analysts are insulated from the review, pressure or oversight by persons engaged in investment banking services activities or other persons who might be biased in their judgment or supervision;

(F) prevent direct or indirect retaliation or threat of retaliation against research analysts by persons engaged in investment banking services activities or other employees as the result of content of a research report;

(G) define periods of a minimum of 10 days after the completion of an initial public offering during which the member must not publish or otherwise distribute research reports, and research analysts must not make public appearances, relating to the issuer if the member has participated as an underwriter or dealer in the offering;

(H) restrict or limit research analyst account trading in securities, any derivatives of such securities and funds whose performance is materially dependent upon the performance of securities covered by the research analyst, including:

(i) ensuring that research analyst accounts, supervisors of research analysts and associated persons with the ability to influence the content of research reports do not benefit in their trading from knowledge of the content or timing of a research report before the intended recipients of such research have had a reasonable opportunity to act on the information in the research report; and

(ii) defining financial hardship circumstances, if any, in which the member will permit research analyst accounts to trade against their recommendations;

(I) prohibit explicit or implicit promises of favorable research, a particular research rating or recommendation or specific research content as inducement for the receipt of business or compensation;

(J) restrict or limit activities by research analysts that can reasonably be expected to compromise their objectivity, including prohibiting:

(i) participation in the solicitation of investment banking services; and

(ii) participation in road shows and other marketing on behalf of issuers; and

(K) prohibit prepublication review of a research report by a subject company for purposes other than verification of facts.

(c) Content and Disclosure in Research Reports

(1) A member must ensure that purported facts in its research reports are based on reliable information.

(2) A member must ensure that any recommendation, rating or price target has a reasonable basis in fact and is accompanied by a clear explanation of the valuation method utilized and a fair presentation of the risks that may impede achievement of the recommendation, rating or price target.

(3) A member that employs a rating system must clearly define in each research report the meaning of each rating in the system, including the time horizon and any benchmarks on which a rating is based.

(A) Irrespective of the rating system a member employs, a member must include in each research report that includes a rating the percentage of all securities rated by the member to which the member would assign a “buy”, “hold” or “sell” rating.

(B) A member must disclose in each research report the percentage of subject companies within each of the “buy”, “hold” and “sell” categories for which the member has provided investment banking services within the previous 12 months.

(C) The information required in paragraphs (c)(3)(A) and (B) must be current as of the end of the most recent calendar quarter or the second most recent calendar quarter if the publication date of the research report is less than 15 calendar days after the most recent calendar quarter.

(4) If a research report contains either a rating or price target for a subject company’s security, and the member has assigned a rating or price target to the security for at least one year, the research report must include a line graph of the security’s daily closing prices for the period that the member has assigned any rating or price target or for a three-year period, whichever is shorter. The graph must:

(A) indicate the dates on which the member assigned or changed each rating or price target;

(B) depict each rating or price target assigned or changed on those dates; and

(C) be current as of the end of the most recent calendar quarter (or the second most recent calendar quarter if the publication date of the research report is less than 15 calendar days after the most recent calendar quarter).

(5) A member must disclose in any research report all conflicts that reasonably could be expected to influence the objectivity of the research report and that are known or should have been known by the member or research analyst on the date of publication or distribution of the report, including:

- (A) if the research analyst or a member of the research analyst's household has a financial interest in the debt or equity securities of the subject company, and the nature of such interest;
- (B) if the research analyst has received compensation based upon (among other factors) the member's investment banking revenues;
- (C) if the member or any of its affiliates:
 - (i) managed or co-managed a public offering of securities for the subject company in the past 12 months;
 - (ii) received compensation for investment banking services from the subject company in the past 12 months; or
 - (iii) expects to receive or intends to seek compensation for investment banking services from the subject company in the next three months;
- (D) if, as of the end of the month immediately preceding the date of publication or distribution of a research report (or the end of the second most recent month if the publication date is less than 30 calendar days after the end of the most recent month) the member or its affiliates has received from the subject company any compensation for products or services other than investment banking services in the previous 12 months;
- (E) if the subject company is, or over the 12 month period preceding the date of publication or distribution of the research report has been, a client of the member, and if so, the types of services provided to the issuer. Such services, if applicable, shall be identified as either investment banking services, non-investment banking securities-related services or non-securities services.
- (F) if the member or its affiliates maintain a significant financial interest in the debt or equity of the subject company, including, at a minimum, if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company;
- (G) if the member was making a market in the securities of the subject company at the time of publication or distribution of the research report; and
- (H) any other material conflict of interest of the research analyst or member that the research analyst or an associated person of the member with the ability to influence the content of a research report knows or has reason to know at the time of the publication or distribution of a research report.

(6) A member or research analyst will not be required to make a disclosure required by paragraph (c)(5) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.

(7) Except as provided in subparagraph (8), the disclosures required by this paragraph (c) must be presented on the front page of research reports or the front page must refer to the page on which the disclosures are found. Electronic research reports may provide a hyperlink directly to the required disclosures. All disclosures and references to disclosures required by this Rule must be clear, comprehensive and prominent.

(8) A member that distributes a research report covering six or more subject companies (a “compendium report”) may direct the reader in a clear manner as to where the reader may obtain applicable current disclosures required by this paragraph (c). Electronic compendium reports may include a hyperlink to the required disclosures. Paper-based compendium reports must provide either a toll-free number to call or a postal address to write for the required disclosures and may also include a web address of the member where the disclosures can be found.

(d) Disclosure in Public Appearances

A research analyst must disclose in public appearances:

(1) if the research analyst or a member of the research analyst’s household has a financial interest in the debt or equity securities of the subject company, and the nature of such interest;

(2) if the member or its affiliates maintain a significant financial interest in the debt or equity of the subject company, including, at a minimum, if the member or its affiliates beneficially own 1% or more of any class of common equity securities of the subject company;

(3) if, to the extent the research analyst knows or has reason to know, the member or any affiliate received any compensation from the subject company in the previous 12 months;

(4) if the research analyst received any compensation from the subject company in the previous 12 months;

(5) if, to the extent the research analyst knows or has reason to know, the subject company currently is, or during the 12-month period preceding the date of publication or distribution of the research report, was, a client of the member. In such cases, the research analyst also must disclose the types of services provided to the subject company, if known by the research analyst; or

(6) any other material conflict of interest of the research analyst or member that the research analyst knows or has reason to know at the time of the public appearance.

(7) A member or research analyst will not be required to make a disclosure required by this paragraph (d) to the extent such disclosure would reveal material non-public information regarding specific potential future investment banking transactions of the subject company.

(8) Members must maintain records of public appearances by research analysts sufficient to demonstrate compliance by those research analysts with the applicable disclosure requirements in this paragraph (d). Such records must be maintained for at least three years from the date of the public appearance.

(e) Disclosure Required by Other Provisions

In addition to the disclosures required by paragraphs (c) and (d), members and research analysts must comply with all applicable disclosure provisions of NASD Rule 2210 and the federal securities laws.

(f) Termination of Coverage

A member must promptly notify its customers if it intends to terminate coverage of a subject company. Such notice must be made using the member's ordinary means of dissemination to its various customers. The notice must be accompanied by a final research report, comparable in scope and detail to prior research reports, and include a final recommendation or rating. If impracticable to provide a final research report, recommendation or rating, a member must disclose to its customers its reason for terminating coverage.

(g) Distribution of Member Research Reports

A member must establish, maintain and enforce policies and procedures reasonably designed to ensure that a research report is not distributed selectively to internal trading personnel or a particular customer or class of customers in advance of other customers that are entitled to receive the research report.

(h) Distribution of Third-Party Research Reports

(1) A member must establish, maintain and enforce policies and procedures reasonably designed to ensure that any third-party research it distributes:

(A) is reliable and objective;

(B) contains complete and accurate disclosures, as applicable to the distributing member pursuant to paragraph (h)(2); and

(C) contains no untrue statement of material fact and is otherwise not false or misleading. For the purposes of this paragraph (h)(1)(C) only, a member's obligation to review a third-party research report extends to any untrue statement of material fact or any false or misleading information that:

(i) should be known from reading the report; or

(ii) is known based on information otherwise possessed by the member.

(2) A member must accompany any third-party research report it distributes with, or provide a web address that directs a recipient to, disclosure of any material conflict of interest that can reasonably be expected to have influenced the choice of a third party research provider or the subject company of a third-party research report.

(3) A member shall not be required to review a third-party research report to determine compliance with paragraph (h)(1)(C) if such research report is an independent third-party research report.

(4) For the purposes of paragraph (h)(2), a member shall not be considered to have distributed independent third-party research where such research is made available by a member

(a) upon request;

(b) through a member-maintained web site; or

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

(5) A member must ensure that a third-party research report is clearly labeled as such and that there is no confusion on the part of the recipient as to the person or entity that prepared the research report.

(i) Exemption for Members with Limited Investment Banking Activity

The provisions of paragraphs (b)(2)(A), (B), (D) and (E) shall not apply to members that over the previous three years, on average per year, have participated in 10 or fewer investment banking services transactions as manager or co-manager and generated \$5 million or less in gross investment banking revenues from those transactions; provided, however, that with respect to paragraph (b)(2)(E), such members must establish information barriers and other institutional safeguards to ensure research analysts are insulated from pressure by persons engaged in investment banking services activities or other persons who might be biased in their judgment or supervision. For the purposes of this paragraph (i), the term “investment banking services transactions” includes the underwriting of both corporate debt and equity securities but not municipal securities. Members that qualify for this exemption must maintain records sufficient to establish eligibility for the exemption and also maintain for at least three years any communication that, but for this exemption, would be subject to paragraphs (b)(2)(A), (B), (D) and (E).

••••• **Supplementary Material:** —————

.01 Pitch Book Materials. FINRA interprets paragraph (b)(2)(J)(i) to prohibit in pitch materials any information about a member's research capacity in a manner that suggests, directly or indirectly, that the member might provide favorable research coverage. For example, FINRA would consider the publication in a pitch book or related materials of an analyst's industry ranking to imply the potential outcome of future research because of the manner in which such rankings are compiled. On the other hand, a member would be permitted to include in the pitch materials the fact of coverage and the name of the research analyst because such information alone does not imply favorable coverage.

Members must consider whether the facts and circumstances of any solicitation or engagement would warrant disclosure under Section 17(b) of the Securities Act of 1933.

.02 Disclosure of Non-Investment Banking Services Compensation. A member may satisfy the disclosure requirement in paragraph (c)(5)(D) with respect to receipt of non-investment banking services compensation by an affiliate by implementing policies and procedures reasonably designed to prevent the research analyst and associated persons of the member with the ability to influence the content of research reports from directly or indirectly receiving information from the affiliate as to whether the affiliate received such compensation. However, a member must disclose receipt of non-investment banking services compensation received by its affiliates from the subject company in the past 12 months when the research analyst or an associated person with the ability to influence the content of a research report has actual knowledge that an affiliate received such compensation during that time period.

.03 Beneficial Ownership of Equity Securities. With respect to paragraphs (c)(5)(F) and (d)(2), beneficial ownership of any class of common equity securities shall be computed in accordance with the same standards used to compute ownership for purposes of the reporting requirements under Section 13(d) of the Exchange Act.

.04 Distribution of Member Research Products. With respect to paragraph (g), a member may provide different research products and services to certain classes of customers. For example, a member may offer one research product for those with a long-term investment horizon (“investor research”) and a different research product for those customers with a short-term investment horizon (“trading research”). These products may lead to different recommendations or ratings, provided that each is consistent with the meaning of the member’s ratings system for each respective product. However, a member may not differentiate a research product based on the timing of receipt of a recommendation, rating or other potentially market moving information, nor may a member denote a research product as one product as a means to allow certain customers to trade in advance of other customers that are entitled to the same research product. In addition, a member that provides different research products and services for certain customers must inform its other customers that its alternative research products and services may reach different conclusions or recommendations that could impact the price of the equity security. Thus, for example, a member that offers trading research must inform its investment research customers that its trading research product may contain different recommendations or ratings that could result in short-term price movements contrary to the recommendation in its investment research.

.05 Ability to Influence the Content of a Research Report. For the purposes of this Rule, an associated person with the ability to influence the content of a research report is an associated person who, in the ordinary course of that person’s duties, has the authority to review the research report and change that research report prior to publication or distribution.

Interpretations of SEC Rules

FINRA Announces the Publication of Consolidated Interpretations of SEC Rules Governing Financial Responsibility, Customer Protection and Books and Records

Executive Summary

The purpose of this *Notice* is to advise FINRA member firms that FINRA has published a consolidated set of interpretations issued by SEC staff with respect to the following rules: SEA Rules 15c3-1, 15c3-2, 15c3-3, 15c3-4, 17a-3, 17a-4, 17a-5, 17a-11 and 17a-13. Historically, written and verbal SEC staff interpretations of these rules were published by the NYSE and/or NASD. Firms subject to these SEC rules were required to refer to both sets of interpretations and determine their applicability. Upon the consolidation of NASD and NYSE Regulation, FINRA staff reconciled the interpretations to create a single resource, now available on FINRA's Web site at www.finra.org/finops. Information about the interpretations is contained within this *Notice*.

Questions concerning this *Notice* should be directed to:

- ▶ Yui Chan, Managing Director, Risk Oversight and Operational Regulation, at (646) 315-8426; or
- ▶ Susan DeMando, Associate Vice President, Shared Services, at (202) 728-8411.

October 2008

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Finance
- ▶ Legal
- ▶ Operations
- ▶ Regulatory Reporting
- ▶ Senior Management

Key Topics

- ▶ Books and Records
- ▶ Customer Protection
- ▶ Financial Reporting
- ▶ Net Capital

Referenced Rules & Notices

- ▶ SEA Rule 15c3-1
- ▶ SEA Rule 15c3-2
- ▶ SEA Rule 15c3-3
- ▶ SEA Rule 15c3-4
- ▶ SEA Rule 17a-3
- ▶ SEA Rule 17a-4
- ▶ SEA Rule 17a-5
- ▶ SEA Rule 17a-11
- ▶ SEA Rule 17a-13

Background & Discussion

SEC staff has issued—and continues to issue—written and verbal interpretations of various SEC rules. Both written and verbal SEC staff interpretations of these rules were historically published by the NYSE and/or NASD. Firms referred to their respective SRO's published interpretations and determined their applicability. Upon the consolidation of NASD and NYSE Regulation, FINRA staff reconciled the interpretations to create a single resource for firms.

The consolidated set of interpretations—published in the format historically used by the NYSE—is now available on the FINRA Web site at www.finra.org/finops. Interpretations are imbedded in the text of relevant rules and immediately follow the section of the rule that they interpret. The interpretations use a numbering convention of /## (e.g., /01 of SEA Rule 15c3-1(c)(2)(vii)) or in some cases /### (e.g., /021 of SEA Rule 15c3-1(c)(2)(iv)). The interpretations also retain the original date of publication or issuance and, if applicable, any subsequent publication or issuance date(s).

Firms may purchase a hard-copy, three-ring binder publication of the interpretations for a one-time fee of \$150. See www.finra.org/finops for ordering information. Please note that the \$150 per binder cost does not include a subscription to future updates via mail. Future interpretation updates will only be available online. Firms that wish to maintain a hard copy of the interpretations must manually download and print updates from www.finra.org/finops.

FINRA will notify firms of interpretation updates via *Regulatory Notices* and the Weekly Update email, distributed every Wednesday to Executive Representatives and individuals who have subscribed to FINRA's Regulatory Information and Updates opt-in email list.

SEC Approves New Consolidated FINRA Rules

FINRA Announces SEC Approval and Effective Date for New Consolidated FINRA Rules

Effective Date: December 15, 2008

Executive Summary

Following the consolidation of NASD and NYSE Regulation into FINRA, FINRA established a process to develop a new consolidated rulebook (Consolidated FINRA Rulebook), which FINRA has discussed in previous *Information Notices*.¹ In recent months, FINRA began proposing new consolidated rules in phases for approval by the SEC as part of the Consolidated FINRA Rulebook.² The first phase of new consolidated FINRA Rules, approved by the SEC in August and September 2008, will take effect on December 15, 2008.

Questions regarding this *Notice* should be directed to Adam H. Arkel, Assistant General Counsel, Office of General Counsel (OGC), at (202) 728-6961; or Matthew E. Vitek, Counsel, OGC, at (202) 728-8156.

October 2008

Notice Type

- Rule Approvals
- Consolidated Rulebook

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- FINRA Manual
- Rulebook Consolidation
- Effective Dates of Consolidated Rules

Referenced Rules & Notices

- Information Notice 03/12/08
- Information Notice 10/06/08
- FINRA Rule 0100 Series
- FINRA Rule 2010
- FINRA Rule 2020
- FINRA Rule 2070
- FINRA Rule 3130
- FINRA Rule 3220
- FINRA Rule 4560
- FINRA Rule 5110
- FINRA Rule 5130
- FINRA Rule 5150
- FINRA Rule 5190
- FINRA Rule 6000 through 7000 Series
- FINRA Rule 6121
- FINRA Rule 6470
- FINRA Rule 8000 Series
- FINRA Rule 9000 Series
- FINRA Rule 10000, 12000, 13000 and 14000 Series
- NASD IM-1013-1



Discussion

In August and September 2008, the SEC approved the following FINRA Rules and/or Rules Series for adoption as part of the Consolidated FINRA Rulebook:³

- Rule 0100 Series (General Standards);
- Rule 2010 (Standards of Commercial Honor and Principles of Trade);
- Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices);
- Rule 2070 (Transactions Involving FINRA Employees);
- Rule 3130 (Annual Certification of Compliance and Supervisory Processes);
- Rule 3220 (Influencing or Rewarding Employees of Others);
- Rule 4560 (Short-Interest Reporting);
- Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements);
- Rule 5130 (Restrictions on the Purchase and Sale of Initial Public Equity Offerings);
- Rule 5150 (Fairness Opinions);
- Rule 5190 (Notification Requirements for Offering Participants);
- Rule 6121 (Trading Halts Due to Extraordinary Market Volatility);⁴
- Rule 6470 (Withdrawal of Quotations in an OTC Equity Security in Compliance with SEC Regulation M);
- Rule 6000 through 7000 Series (generally involving regulatory requirements and fees for quoting, trading, reporting, clearing and comparing over-the-counter transactions);
- Rule 8000 Series (Investigations and Sanctions);
- Rule 9000 Series (Code of Procedure); and
- Rule 10000, 12000, 13000 and 14000 Series (involving Dispute Resolution procedures).

The Attachment to this *Notice* sets forth a detailed list of the new consolidated rules recently approved by the SEC. In the Attachment, the new rules are grouped by the rule filing that FINRA submitted to the SEC in connection with the rule change. The hyperlink to each rule filing is included. The filings provide, among other things, FINRA's statement of the purpose of the rule changes and, where applicable, exhibits showing the changes between the new rule text and the text of the NASD and/or Incorporated NYSE Rules as they exist in the Transitional Rulebook. Also, the text of the new FINRA Rules is available in the online *FINRA Manual* at www.finra.org/finramanual.⁵

The Attachment to this *Notice* further summarizes two additional rule filings relating to the Consolidated FINRA Rulebook approved by the SEC in September 2008. The first addresses the applicability of the new consolidated FINRA Rules to member firms of the NYSE that become members of FINRA pursuant to the membership waive-in process set forth in NASD IM-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations) (such firms are referred to as Waive-In Firms).⁶ The second addresses FINRA's repeal of NASD Rule 1130 (Reliance on Current Membership List) and Incorporated NYSE Rules 405A (Non-Managed Fee-Based Account Programs – Disclosure and Monitoring), 440F (Public Short Sale Transactions Effected on the Exchange), 440G (Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations) and 477 (Retention of Jurisdiction – Failure to Cooperate) as part of the process of developing the Consolidated FINRA Rulebook.⁷ The effective date of the rule changes set forth in these two filings is December 15, 2008.

Rule Conversion Chart

As an additional resource for member firms and the public, FINRA has created a Rule Conversion Chart on FINRA's Web site designed to help enhance familiarity with the new rules and show how the new rules relate to the NASD and/or Incorporated NYSE Rules in the Transitional Rulebook that they will replace.

The chart shows how rules from the Transitional Rulebook were either incorporated into the Consolidated FINRA Rulebook (by providing the corresponding new FINRA rule number and related rule filing number), or shows that the substance of the relevant rules from the Transitional Rulebook was not incorporated into the Consolidated FINRA Rulebook. *Member firms should be aware that the chart is intended as a reference aid only.* Throughout the rulebook consolidation process, member firms should further note that as rules are incorporated into the Consolidated FINRA Rulebook, there frequently will be revisions to existing rule language and changes to the rules' subject matter coverage. Accordingly, the language of the new consolidated rules often will not exactly match the language and coverage of the rules as they exist in the Transitional Rulebook. In some instances, the rules as they exist in the Transitional Rulebook will have been completely rewritten for purposes of the consolidation. Accordingly, FINRA reminds member firms that the chart does not in any way serve as a substitute for diligent review of the relevant new rule language. The Rule Conversion Chart is located at www.finra.org/ruleconversionchart.

Endnotes

- 1 See *Information Notice 10/06/08 (Rulebook Consolidation Process: Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart)*; see also *Information Notice 03/12/08 (Rulebook Consolidation Process)*.
- 2 The current FINRA rulebook includes (1) NASD Rules and (2) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The new FINRA Rules will apply to all member firms, unless such rules have a more limited application by their terms. As the Consolidated FINRA Rulebook expands with the SEC's approval and with the new FINRA Rules taking effect, the rules in the Transitional Rulebook that address the same subject matter of regulation will be eliminated. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.
- 3 See Exchange Act Release No. 58421 (August 25, 2008), 73 FR 51032 (August 29, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-025); Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-033); Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (Order Approving Proposed Rule Change; SR-FINRA-2008-039); Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File Nos. SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029); Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-027); Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-030).
- 4 See Attachment endnote 1.
- 5 FINRA updates the rule text in its online *Manual* within two business days of SEC approval of changes to the rule text.
- 6 See Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-022).
- 7 See Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-029).

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Attachment: List of Approved FINRA Rules (and Related Rule Filings)

The SEC approved the following new FINRA Rules in August and September 2008. The effective date of these rules is December 15, 2008. The new rules are grouped by the rule filing that FINRA submitted to the SEC in connection with the rule change. The hyperlink to each of the rule filings is included.

FINRA Rule Filing SR-FINRA-2008-021

www.finra.org/Industry/Regulation/RuleFilings/2008/P038544

The rule change transfers from the Transitional Rulebook to the Consolidated FINRA Rulebook the NASD Rule 4000 through 14000 Series, with the exception of the Rule 11000 Series (Uniform Practice Code). The NASD Rule 4000 through 7000 Series generally involve regulatory requirements and fees for quoting, trading, reporting, clearing and comparing over-the-counter transactions. The NASD Rule 8000 Series involves investigations and sanctions. The NASD Rule 9000 Series involves disciplinary procedures. The NASD Rule 10000, 12000, 13000 and 14000 Series involve Dispute Resolution (arbitration and mediation) procedures. The rule change adopts these rule series in their entirety as FINRA Rules as part of the Consolidated FINRA Rulebook, with certain non-material changes. The new rules occupy the Rule 6000 through 10000 Series and the Rule 12000 through 14000 Series in the Consolidated FINRA Rulebook as set forth in the tables below.

I. Rule 6000 Series – Quotation and Transaction Reporting Facilities

A. Rule 6100 Series – Quoting and Trading in NMS Stocks

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 6110	Trading Otherwise than on an Exchange
Rule 6120	Trading Halts
Rule 6121	Trading Halts Due to Extraordinary Market Volatility ¹
Rule 6130	Transactions Related to Initial Public Offerings
Rule 6140	Other Trading Practices
Rule 6150	Obligation to Provide Information
Rule 6160	Multiple MPIDs for Trade Reporting Facility Participants
Rule 6170	Primary and Additional MPIDs for Alternative Display Facility Participants
Rule 6180 Series	Transaction Reporting
Rule 6181	Timely Transaction Reporting
Rule 6182	Trade Reporting of Short Sales
Rule 6183	Exemption from SEC Regulation NMS-Related Trade Reporting Requirements

B. Rule 6200 Series – Alternative Display Facility

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 6210	General
Rule 6220	Definitions
Rule 6230	Use of Alternative Display Facility Data Systems
Rule 6240	Prohibition from Locking or Crossing Quotations in NMS Stocks
Rule 6250	Quote and Order Access Requirements
Rule 6260	Review of Direct or Indirect Access Complaints
Rule 6270 Series	Quoting and Trading in ADF-Eligible Securities
Rule 6271	Registration as an ADF Market Maker or ADF ECN
Rule 6272	Character of Quotations
Rule 6273	Normal Business Hours
Rule 6274	Clearance and Settlement
Rule 6275	Withdrawal of Quotations
Rule 6276	Voluntary Termination of Registration
Rule 6277	Suspension and Termination of Quotations by FINRA Action
Rule 6278	Termination of Alternative Display Facility Data System Service
Rule 6279	Alternative Trading Systems
Rule 6280 Series	Transaction Reporting
Rule 6281	Reporting Transactions in ADF-Eligible Securities
Rule 6282	Transactions Reported by Members to TRACS

C. Rule 6300 Series – Trade Reporting Facilities

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 6300A Series	FINRA/NASDAQ Trade Reporting Facility
Rule 6310A	General
Rule 6320A	Definitions
Rule 6330A	Use of FINRA/Nasdaq Trade Reporting Facility on a Test Basis
Rule 6340A	Reports
Rule 6350A	Clearance and Settlement
Rule 6360A	Suspension and Termination by FINRA Action
Rule 6370A	Termination of FINRA/Nasdaq Trade Reporting Facility Service
Rule 6380A	Transaction Reporting

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 6300B Series FINRA/NSX Trade Reporting Facility	
Rule 6310B	General
Rule 6320B	Definitions
Rule 6330B	Use of FINRA/NSX Trade Reporting Facility on a Test Basis
Rule 6340B	Reports
Rule 6350B	Clearance and Settlement
Rule 6360B	Suspension and Termination by FINRA Action
Rule 6370B	Termination of FINRA/NSX Trade Reporting Facility Service
Rule 6380B	Transaction Reporting
Rule 6300C Series FINRA/NYSE Trade Reporting Facility	
Rule 6310C	General
Rule 6320C	Definitions
Rule 6330C	Use of FINRA/NYSE Trade Reporting Facility on a Test Basis
Rule 6340C	Reports
Rule 6350C	Clearance and Settlement
Rule 6360C	Suspension and Termination by FINRA Action
Rule 6370C	Termination of FINRA/NYSE Trade Reporting Facility Service
Rule 6380C	Transaction Reporting

D. Rule 6400 Series – Quoting and Trading in OTC Equity Securities

<i>Rule No.</i>	<i>Rule Title</i>
Rule 6410	General
Rule 6420	Definitions
Rule 6430	Recording of Quotation Information
Rule 6440	Submission of SEA Rule 15c2-11 Information on Non-Exchange-Listed Securities
Rule 6450	Minimum Quotation Size Requirements For OTC Equity Securities
Rule 6460	Trading and Quotation Halt in OTC Equity Securities

E. Rule 6500 Series – OTC Bulletin Board® Service

<i>Rule No.</i>	<i>Rule Title</i>
Rule 6510	Applicability
Rule 6520	Operation of the Service
Rule 6530	OTCBB-Eligible Securities
Rule 6540	Requirements Applicable to Market Makers
Rule 6550	Transaction Reporting
Rule 6560	Limit Order Protection ²

F. Rule 6600 Series – OTC Reporting Facility

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 6610	General
Rule 6620 Series	Reporting Transactions in OTC Equity Securities
Rule 6621	Definitions
Rule 6622	Transaction Reporting
Rule 6623	Timely Transaction Reporting
Rule 6624	Trade Reporting of Short Sales
Rule 6630 Series	Reporting Transactions in PORTAL® Securities
Rule 6631	Definitions
Rule 6632	Limitations on Transactions in PORTAL Securities
Rule 6633	Reporting Debt and Equity Transactions in PORTAL Securities
Rule 6634	Arbitration
Rule 6635	FINRA Rules
Rule 6640 Series	Reporting Transactions in Direct Participation Program Securities
Rule 6641	General
Rule 6642	Definitions
Rule 6643	Transaction Reporting

G. Rule 6700 Series – Trade Reporting and Compliance Engine (TRACE)

<i>Rule No.</i>	<i>Rule Title</i>
Rule 6710	Definitions
Rule 6720	Participation in TRACE
Rule 6730	Transaction Reporting
Rule 6740	Termination of TRACE Service
Rule 6750	Dissemination of Transaction Information
Rule 6760	Managing Underwriter or Group of Underwriters Obligation To Obtain CUSIP and Provide Notice

II. Rule 7000 Series – Clearing, Transaction and Order Data Requirements, and Facility Charges**A. Rule 7100 Series – Alternative Display Facility/TRACS**

<i>Rule No.</i>	<i>Rule Title</i>
Rule 7110	Definitions
Rule 7120	Participation in TRACS Trade Comparison Feature by Participants in the Alternative Display Facility
Rule 7130	Trade Report Input
Rule 7140	TRACS Processing
Rule 7150	Obligation to Honor Trades
Rule 7160	Audit Trail Requirements
Rule 7170	Termination of TRACS Service

B. Rule 7200 Series – Trade Reporting Facilities

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 7200A Series FINRA/NASDAQ Trade Reporting Facility	
Rule 7210A	Definitions
Rule 7220A	Trade Reporting Participation Requirements
Rule 7230A	Trade Report Input
Rule 7240A	Trade Report Processing
Rule 7250A	Obligation to Honor Trades
Rule 7260A	Audit Trail Requirements
Rule 7270A	Violation of Reporting Rules
Rule 7280A	Termination of Access

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 7200B Series	FINRA/NSX Trade Reporting Facility
Rule 7210B	Definitions
Rule 7220B	Trade Reporting Participation Requirements
Rule 7230B	Trade Report Input
Rule 7240B	Trade Report Processing
Rule 7250B	Obligation to Honor Trades
Rule 7260B	Audit Trail Requirements
Rule 7270B	Violation of Reporting Rules
Rule 7280B	Termination of Access
Rule 7200C Series	FINRA/NYSE Trade Reporting Facility
Rule 7210C	Definitions
Rule 7220C	Trade Reporting Participation Requirements
Rule 7230C	Trade Report Input
Rule 7240C	Trade Report Processing
Rule 7250C	Obligation to Honor Trades
Rule 7260C	Audit Trail Requirements
Rule 7270C	Violation of Reporting Rules
Rule 7280C	Termination of Access

C. Rule 7300 Series – OTC Reporting Facility

<i>Rule No.</i>	<i>Rule Title</i>
Rule 7310	Definitions
Rule 7320	Trade Reporting Participation Requirements
Rule 7330	Trade Report Input
Rule 7340	Trade Report Processing
Rule 7350	Obligation to Honor Trades
Rule 7360	Audit Trail Requirements
Rule 7370	Violation of Reporting Rules
Rule 7380	Termination of Access

D. Rule 7400 Series – Order Audit Trail System

<i>Rule No.</i>	<i>Rule Title</i>
Rule 7410	Definitions
Rule 7420	Applicability
Rule 7430	Synchronization of Member Business Clocks
Rule 7440	Recording of Order Information
Rule 7450	Order Data Transmission Requirements
Rule 7460	Violation of Order Audit Trail System Rules
Rule 7470	Exemption to the Order Recording and Data Transmission Requirements

E. Rule 7500 Series – Charges for Alternative Display Facility Services and Equipment

<i>Rule No.</i>	<i>Rule Title</i>
Rule 7510	System Services
Rule 7520	Equipment Related Charges
Rule 7530	Installation, Removal, Relocation or Maintenance
Rule 7540	Other Services
Rule 7550	Partial Month Charges
Rule 7560	Late Fees
Rule 7570	Minor Modifications in Charges

F. Rule 7600 Series – Charges for Trade Reporting Facility Services

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 7600A Series Charges for FINRA/NASDAQ Trade Reporting Facility Services	
Rule 7610A	Securities Transaction Credit
Rule 7620A	FINRA/Nasdaq Trade Reporting Facility Reporting Fees
Rule 7630A	Aggregation of Activity of Affiliated Members
Rule 7640A	Late Fees
Rule 7600B Series Charges for FINRA/NSX Trade Reporting Facility Services	
Rule 7610B	Securities Transaction Credits ³
Rule 7620B	FINRA/NSX Trade Reporting Facility Reporting Fees
Rule 7630B	Fee for Submission of Non-Media Reports

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
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Rule 7600C Series	Charges for FINRA/NYSE Trade Reporting Facility Services
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Rule 7610C	Securities Transaction Credit
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Rule 7620C	FINRA/NYSE Trade Reporting Facility Reporting Fees
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G. Rule 7700 Series – Charges for OTC Reporting Facility, OTC Bulletin Board and Trade Reporting and Compliance Engine Services

<i>Rule No.</i>	<i>Rule Title</i>
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Rule 7710	OTC Reporting Facility
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Rule 7720	OTC Bulletin Board Service
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Rule 7730	Trade Reporting and Compliance Engine (TRACE)
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Rule 7740	Historical Research and Administrative Reports
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III. Rule 8000 Series – Investigations and Sanctions

A. Rule 8100 Series – General Provisions

<i>Rule No.</i>	<i>Rule Title</i>
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Rule 8110	Availability of Manual to Customers
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Rule 8120	Definitions
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B. Rule 8200 Series – Investigations

<i>Rule No.</i>	<i>Rule Title</i>
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Rule 8210	Provision of Information and Testimony and Inspection and Copying of Books
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Rule 8211	Automated Submission of Trading Data Requested by FINRA
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Rule 8213	Automated Submission of Trading Data for Non-Exchange-Listed Securities Requested by FINRA
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C. Rule 8300 Series – Sanctions

<i>Rule No.</i>	<i>Rule Title</i>
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Rule 8310	Sanctions for Violation of the Rules
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Rule 8311	Effect of a Suspension, Revocation, Cancellation, or Bar
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Rule 8312	FINRA BrokerCheck Disclosure
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Rule 8313	Release of Disciplinary Complaints, Decisions and Other Information
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Rule 8320	Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay
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Rule 8330	Costs of Proceedings
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IV. Rule 9000 Series – Code of Procedure

A. Rule 9100 Series – Application and Purpose

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 9110	Application
Rule 9120	Definitions
Rule 9130 Series	Service; Filing of Papers
Rule 9131	Service of Complaint and Document Initiating a Proceeding
Rule 9132	Service of Orders, Notices, and Decisions by Adjudicator
Rule 9133	Service of Papers Other Than Complaints, Orders, Notices, or Decisions
Rule 9134	Methods of, Procedures for Service
Rule 9135	Filing of Papers with Adjudicator: Procedure
Rule 9136	Filing of Papers: Form
Rule 9137	Filing of Papers: Signature Requirement and Effect
Rule 9138	Computation of Time
Rule 9140 Series	Proceedings
Rule 9141	Appearance and Practice; Notice of Appearance
Rule 9142	Withdrawal by Attorney or Representative
Rule 9143	Ex Parte Communications
Rule 9144	Separation of Functions
Rule 9145	Rules of Evidence; Official Notice
Rule 9146	Motions
Rule 9147	Rulings on Procedural Matters
Rule 9148	Interlocutory Review
Rule 9150	Exclusion From Rule 9000 Series Proceeding
Rule 9160	Recusal or Disqualification

B. Rule 9200 Series – Disciplinary Proceedings

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 9210 Series	Complaint and Answer
Rule 9211	Authorization of Complaint
Rule 9212	Complaint Issuance – Requirements, Service, Amendment, Withdrawal, and Docketing
Rule 9213	Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel
Rule 9214	Consolidation or Severance of Disciplinary Proceedings
Rule 9215	Answer to Complaint
Rule 9216	Acceptance, Waiver, and Consent; Plan Pursuant to SEA Rule 19d-1(c)(2)
Rule 9217	Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d-1(c)(2)
Rule 9220 Series	Request for Hearing; Extensions of Time, Postponements, Adjournments
Rule 9221	Request for Hearing
Rule 9222	Extensions of Time, Postponements, and Adjournments
Rule 9230 Series	Appointment of Hearing Panel, Extended Hearing Panel
Rule 9231	Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer
Rule 9232	Criteria for Selection of Panelists and Replacement Panelists
Rule 9233	Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers
Rule 9234	Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists
Rule 9235	Hearing Officer Authority
Rule 9240 Series	Pre-hearing Conference and Submission
Rule 9241	Pre-hearing Conference
Rule 9242	Pre-hearing Submission
Rule 9250 Series	Discovery
Rule 9251	Inspection and Copying of Documents in Possession of Staff
Rule 9252	Requests for Information
Rule 9253	Production of Witness Statements

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 9260 Series	Hearing and Decision
Rule 9261	Evidence and Procedure in Hearing
Rule 9262	Testimony
Rule 9263	Evidence: Admissibility
Rule 9264	Motion for Summary Disposition
Rule 9265	Record of Hearing
Rule 9266	Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs
Rule 9267	Record; Supplemental Documents Attached to Record; Retention
Rule 9268	Decision of Hearing Panel or Extended Hearing Panel
Rule 9269	Default Decisions
Rule 9270	Settlement Procedure
Rule 9280	Contemptuous Conduct
Rule 9290	Expedited Disciplinary Proceedings

C. Rule 9300 Series – Review of Disciplinary Proceeding by National Adjudicatory Council and FINRA Board; Application for SEC Review

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 9310 Series	Appeal to or Review by National Adjudicatory Council
Rule 9311	Appeal by Any Party; Cross-Appeal
Rule 9312	Review Proceeding Initiated By Adjudicatory Council
Rule 9313	Counsel to National Adjudicatory Council
Rule 9320 Series	Transmission of Record; Extensions of Time, Postponements, Adjournments
Rule 9321	Transmission of Record
Rule 9322	Extensions of Time, Postponements, Adjournments
Rule 9330 Series	Appointment of Subcommittee or Extended Proceeding Committee; Disqualification and Recusal
Rule 9331	Appointment of Subcommittee or Extended Proceeding Committee
Rule 9332	Disqualification and Recusal

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 9340 Series	Proceedings
Rule 9341	Oral Argument
Rule 9342	Failure to Appear at Oral Argument
Rule 9343	Disposition Without Oral Argument
Rule 9344	Failure to Participate Below; Abandonment of Appeal
Rule 9345	Subcommittee or Extended Proceeding Committee Recommended Decision to National Adjudicatory Council
Rule 9346	Evidence in National Adjudicatory Council Proceedings
Rule 9347	Filing of Papers in National Adjudicatory Council Proceedings
Rule 9348	Powers of the National Adjudicatory Council on Review
Rule 9349	National Adjudicatory Council Formal Consideration; Decision
Rule 9350 Series	Discretionary Review by FINRA Board
Rule 9351	Discretionary Review by FINRA Board
Rule 9360	Effectiveness of Sanctions
Rule 9370	Application to SEC for Review

D. Rule 9500 Series – Other Proceedings

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 9520 Series	Eligibility Proceedings
Rule 9521	Purpose and Definitions
Rule 9522	Initiation of Eligibility Proceeding; Member Regulation Consideration
Rule 9523	Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEA Rule 19h-1
Rule 9524	National Adjudicatory Council Consideration
Rule 9525	Discretionary Review by the FINRA Board
Rule 9526	Expedited Review
Rule 9527	Application to SEC for Review

<i>Rule/Series No.</i>	<i>Rule/Series Title</i>
Rule 9550 Series	Expedited Proceedings
Rule 9551	Failure to Comply with Public Communication Standards
Rule 9552	Failure to Provide Information or Keep Information Current
Rule 9553	Failure to Pay FINRA Dues, Fees and Other Charges
Rule 9554	Failure to Comply with an Arbitration Award or Related Settlement
Rule 9555	Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services
Rule 9556	Failure to Comply with Temporary and Permanent Cease and Desist Orders
Rule 9557	Procedures for Regulating Activities Under NASD Rules 3130 and 3131 Regarding a Member Experiencing Financial or Operational Difficulties
Rule 9558	Summary Proceedings for Actions Authorized by Section 15A(h)(3) of the Exchange Act
Rule 9559	Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

E. Rule 9600 Series – Procedures for Exemptions

<i>Rule No.</i>	<i>Rule Title</i>
Rule 9610	Application
Rule 9620	Decision
Rule 9630	Appeal

F. Rule 9700 Series – Procedures on Grievances Concerning the Automated Systems

<i>Rule No.</i>	<i>Rule Title</i>
Rule 9710	Purpose
Rule 9720	Form of Application
Rule 9730	Request for Hearing
Rule 9740	Consideration of Applications
Rule 9750	Decision
Rule 9760	Call for Review by the National Adjudicatory Council
Rule 9770	Application to SEC for Review

G. Rule 9800 Series – Temporary Cease and Desist Orders

<i>Rule No.</i>	<i>Rule Title</i>
Rule 9810	Initiation of Proceeding
Rule 9820	Appointment of Hearing Officer and Hearing Panel
Rule 9830	Hearing
Rule 9840	Issuance of Temporary Cease and Desist Order by Hearing Panel
Rule 9850	Review by Hearing Panel
Rule 9860	Violation of Temporary Cease and Desist Orders
Rule 9870	Application to SEC for Review

V. Rule 10000 Series – Code of Arbitration Procedure**A. Rule 10100 Series – Administrative Provisions**

<i>Rule No.</i>	<i>Rule Title</i>
IM-10100	Failure to Act Under Provisions of Code of Arbitration Procedure
Rule 10101	Matters Eligible for Submission
Rule 10102	National Arbitration and Mediation Committee
Rule 10103	Director of Arbitration
Rule 10104	Composition and Appointment of Panels
IM-10104	Arbitrators' Honorarium
Rule 10105	Non-Waiver of FINRA Objects and Purposes
Rule 10106	Legal Proceedings

B. Rule 10200 Series – Industry and Clearing Controversies

<i>Rule No.</i>	<i>Rule Title</i>
Rule 10201	Required Submission
Rule 10202	Composition of Panels
Rule 10203	Simplified Industry Arbitration
Rule 10204	Applicability of Uniform Code
Rule 10205	Schedule of Fees for Industry and Clearing Controversies
Rule 10210	Statutory Employment Discrimination Claims
Rule 10211	Special Arbitrator Qualifications for Employment Discrimination Disputes

<i>Rule No.</i>	<i>Rule Title</i>
Rule 10212	Composition of Panels
Rule 10213	Discovery
Rule 10214	Awards
Rule 10215	Attorneys' Fees
Rule 10216	Coordination of Claims Filed in Court and in Arbitration
Rule 10217	Fees

C. Rule 10300 Series – Uniform Code of Arbitration

<i>Rule No.</i>	<i>Rule Title</i>
Rule 10301	Required Submission
Rule 10302	Simplified Arbitration
IM-10302	Related Counterclaim
Rule 10303	Hearing Requirements – Waiver of Hearing
Rule 10304	Time Limitation Upon Submission
Rule 10305	Dismissal of Proceedings
Rule 10306	Settlements
Rule 10307	Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration
Rule 10308	Selection of Arbitrators
IM-10308	Arbitrators Who Also Serve as Mediators
Rule 10309	Composition of Panels
Rule 10310	Notice of Selection of Arbitrators
Rule 10311	Peremptory Challenge
Rule 10312	Disclosures Required of Arbitrators and Director's Authority to Disqualify
Rule 10313	Disqualification or Other Disability of Arbitrators
Rule 10314	Initiation of Proceedings
Rule 10315	Determination of Hearing Location
Rule 10316	Representation by Counsel
Rule 10317	Attendance at Hearings
IM-10317	Closing Arguments
Rule 10318	Failure to Appear

<i>Rule No.</i>	<i>Rule Title</i>
Rule 10319	Adjournments
Rule 10320	Acknowledgement of Pleadings
Rule 10321	General Provisions Governing Pre-Hearing Proceedings
Rule 10322	Subpoenas and Power to Direct Appearances
Rule 10323	Evidence
Rule 10324	Interpretation of Provisions of Code and Enforcement of Arbitrator Rulings
Rule 10325	Determination of Arbitrators
Rule 10326	Record of Proceedings
Rule 10327	Oaths of the Arbitrators and Witnesses
Rule 10328	Amendments
Rule 10329	Reopening of Hearings
Rule 10330	Awards
Rule 10331	Incorporation by Reference
Rule 10332	Schedule of Fees for Customer Disputes
Rule 10333	Member Surcharge and Process Fees
Rule 10334	Direct Communication Between Parties and Arbitrators
Rule 10335	Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

VI. Rule 12000 Series – Code of Arbitration Procedure for Customer Disputes

A. Part I – Interpretive Material, Definitions, Organization and Authority

<i>Rule No.</i>	<i>Rule Title</i>
IM-12000	Failure to Act Under Provisions of Code of Arbitration Procedure for Customer Disputes
Rule 12100	Definitions
Rule 12101	Applicability of Code and Incorporation by Reference
Rule 12102	National Arbitration and Mediation Committee
Rule 12103	Director of Dispute Resolution
Rule 12104	Effect of Arbitration on FINRA Regulatory Activities
Rule 12105	Agreement of the Parties

B. Part II – General Arbitration Rules

<i>Rule No.</i>	<i>Rule Title</i>
Rule 12200	Arbitration Under an Arbitration Agreement or the Rules of FINRA
Rule 12201	Elective Arbitration
Rule 12202	Claims Against Inactive Members
Rule 12203	Denial of FINRA Forum
Rule 12204	Class Action Claims
Rule 12205	Shareholder Derivative Actions
Rule 12206	Time Limits
Rule 12207	Extension of Deadlines
Rule 12208	Representation of Parties
Rule 12209	Legal Proceedings
Rule 12210	Ex Parte Communications
Rule 12211	Direct Communications Between Parties and Arbitrators
Rule 12212	Sanctions
Rule 12213	Hearing Locations
Rule 12214	Payment of Arbitrators

C. Part III – Initiating and Responding to Claims

<i>Rule No.</i>	<i>Rule Title</i>
Rule 12300	Filing and Serving Documents
Rule 12301	Service on Associated Persons
Rule 12302	Filing an Initial Statement of Claim
Rule 12303	Answering the Statement of Claim
Rule 12304	Answering Counterclaims
Rule 12305	Answering Cross Claims
Rule 12306	Answering Third Party Claims
Rule 12307	Deficient Claims
Rule 12308	Loss of Defenses Due to Untimely or Incomplete Answer
Rule 12309	Amending Pleadings
Rule 12310	Answering Amended Claims
Rule 12311	Amendments to Amount in Dispute
Rule 12312	Multiple Claimants
Rule 12313	Multiple Respondents
Rule 12314	Combining Claims

D. Part IV – Appointment, Disqualification, and Authority of Arbitrators

<i>Rule No.</i>	<i>Rule Title</i>
Rule 12400	Neutral List Selection System and Arbitrator Rosters
Rule 12401	Number of Arbitrators
Rule 12402	Composition of Arbitration Panels
Rule 12403	Generating and Sending Lists to the Parties
Rule 12404	Striking and Ranking Arbitrators
Rule 12405	Combining Lists
Rule 12406	Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List
Rule 12407	Additional Parties
Rule 12408	Disclosures Required of Arbitrators
Rule 12409	Arbitrator Recusal
Rule 12410	Removal of Arbitrator by Director
Rule 12411	Replacement of Arbitrators
Rule 12412	Director's Discretionary Authority
Rule 12413	Jurisdiction of Panel and Authority to Interpret the Code
Rule 12414	Determinations of Arbitration Panel

E. Part V – Prehearing Procedures and Discovery

<i>Rule No.</i>	<i>Rule Title</i>
Rule 12500	Initial Prehearing Conference
Rule 12501	Other Prehearing Conferences
Rule 12502	Recording Prehearing Conferences
Rule 12503	Motions
Rule 12505	Cooperation of Parties in Discovery
Rule 12506	Document Production Lists
Rule 12507	Other Discovery Requests
Rule 12508	Objecting to Discovery; Waiver of Objection
Rule 12509	Motions to Compel Discovery
Rule 12510	Depositions
Rule 12511	Discovery Sanctions
Rule 12512	Subpoenas
Rule 12513	Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas
Rule 12514	Exchange of Documents and Witness Lists Before Hearing

F. Part VI – Hearings; Evidence; Closing the Record

<i>Rule No.</i>	<i>Rule Title</i>
Rule 12600	Required Hearings
Rule 12601	Postponement of Hearings
Rule 12602	Attendance at Hearings
Rule 12603	Failure to Appear
Rule 12604	Evidence
Rule 12605	Witness Oath
Rule 12606	Record of Proceedings
Rule 12607	Order of Presentation of Evidence and Arguments
Rule 12608	Closing the Record
Rule 12609	Reopening the Record

G. Part VII – Termination of an Arbitration Before Award

<i>Rule No.</i>	<i>Rule Title</i>
Rule 12700	Dismissal of Proceedings Prior to Award
Rule 12701	Settlement
Rule 12702	Withdrawal of Claims

H. Part VIII – Simplified Arbitration and Default Proceedings

<i>Rule No.</i>	<i>Rule Title</i>
Rule 12800	Simplified Arbitration
Rule 12801	Default Proceedings

I. Part IX – Fees and Awards

<i>Rule No.</i>	<i>Rule Title</i>
Rule 12900	Fees Due When a Claim Is Filed
Rule 12901	Member Surcharge
Rule 12902	Hearing Session Fees, and Other Costs and Expenses
Rule 12903	Process Fees Paid by Members
Rule 12904	Awards

VII. Rule 13000 Series – Code of Arbitration Procedure for Industry Disputes

A. Part I – Interpretive Material, Definitions, Organization and Authority

<i>Rule No.</i>	<i>Rule Title</i>
IM-13000	Failure to Act Under Provisions of Code of Arbitration Procedure for Industry Disputes
Rule 13100	Definitions
Rule 13101	Applicability of Code and Incorporation by Reference
Rule 13102	National Arbitration and Mediation Committee
Rule 13103	Director of Dispute Resolution
Rule 13104	Effect of Arbitration on FINRA Regulatory Activities
Rule 13105	Agreement of the Parties

B. Part II – General Arbitration Rules

<i>Rule No.</i>	<i>Rule Title</i>
Rule 13200	Required Arbitration
Rule 13201	Statutory Employment Discrimination Claims
Rule 13202	Claims Involving Registered Clearing Agencies
Rule 13203	Denial of FINRA Forum
Rule 13204	Class Action Claims
Rule 13205	Shareholder Derivative Actions
Rule 13206	Time Limits
Rule 13207	Extension of Deadlines
Rule 13208	Representation of Parties
Rule 13209	Legal Proceedings
Rule 13210	Ex Parte Communications
Rule 13211	Direct Communication Between Parties and Arbitrators
Rule 13212	Sanctions
Rule 13213	Hearing Locations
Rule 13214	Payment of Arbitrators

C. Part III – Initiating and Responding to Claims

<i>Rule No.</i>	<i>Rule Title</i>
Rule 13300	Filing and Serving Documents
Rule 13301	Service on Associated Persons
Rule 13302	Filing an Initial Statement of Claim
Rule 13303	Answering the Statement of Claim
Rule 13304	Answering Counterclaims
Rule 13305	Answering Cross Claims
Rule 13306	Answering Third Party Claims
Rule 13307	Deficient Claims
Rule 13308	Loss of Defenses Due to Untimely or Incomplete Answer
Rule 13309	Amending Pleadings
Rule 13310	Answering Amended Claims
Rule 13311	Amendments to Amount in Dispute
Rule 13312	Multiple Claimants
Rule 13313	Multiple Respondents
Rule 13314	Combining Claims

D. Part IV – Appointment, Disqualification, and Authority of Arbitrators

<i>Rule No.</i>	<i>Rule Title</i>
Rule 13400	Neutral List Selection System and Arbitrator Rosters
Rule 13401	Number of Arbitrators
Rule 13402	Composition of Arbitration Panels Not Involving a Statutory Discrimination Claim
Rule 13403	Generating and Sending Lists to the Parties
Rule 13404	Striking and Ranking Arbitrators
Rule 13405	Combining Lists
Rule 13406	Appointment of Arbitrators; Discretion to Appoint Arbitrators Not on List
Rule 13407	Additional Parties
Rule 13408	Disclosures Required of Arbitrators
Rule 13409	Arbitrator Recusal
Rule 13410	Removal of Arbitrator by Director
Rule 13411	Replacement of Arbitrators
Rule 13412	Director's Discretionary Authority
Rule 13413	Jurisdiction of Panel and Authority to Interpret the Code
Rule 13414	Determinations of Arbitration Panel

E. Part V – Prehearing Procedures and Discovery

<i>Rule No.</i>	<i>Rule Title</i>
Rule 13500	Initial Prehearing Conference
Rule 13501	Other Prehearing Conferences
Rule 13502	Recording Prehearing Conferences
Rule 13503	Motions
Rule 13505	Cooperation of Parties in Discovery
Rule 13506	Discovery Requests
Rule 13507	Responding to Discovery Requests
Rule 13508	Objecting to Discovery Requests; Waiver of Objection
Rule 13509	Motions to Compel Discovery
Rule 13510	Depositions
Rule 13511	Discovery Sanctions
Rule 13512	Subpoenas
Rule 13513	Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas
Rule 13514	Exchange of Documents and Witness Lists Before Hearing

F. Part VI – Hearings; Evidence; Closing the Record

<i>Rule No.</i>	<i>Rule Title</i>
Rule 13600	Required Hearings
Rule 13601	Postponement of Hearings
Rule 13602	Attendance at Hearings
Rule 13603	Failure to Appear
Rule 13604	Evidence
Rule 13605	Witness Oath
Rule 13606	Record of Proceedings
Rule 13607	Order of Presentation of Evidence and Arguments
Rule 13608	Closing the Record
Rule 13609	Reopening the Record

G. Part VII – Termination of an Arbitration Before Award

<i>Rule No.</i>	<i>Rule Title</i>
Rule 13700	Dismissal of Proceedings Prior to Award
Rule 13701	Settlement
Rule 13702	Withdrawal of Claims

H. Part VIII – Simplified Arbitration; Default Proceedings; Statutory Employment Discrimination Claims; and Injunctive Relief

<i>Rule No.</i>	<i>Rule Title</i>
Rule 13800	Simplified Arbitration
Rule 13801	Default Proceedings
Rule 13802	Statutory Employment Discrimination Claims
Rule 13803	Coordination of Statutory Employment Discrimination Claims Filed in Court and in Arbitration
Rule 13804	Temporary Injunctive Orders; Requests for Permanent Injunctive Relief

I. Part IX – Fees and Awards

<i>Rule No.</i>	<i>Rule Title</i>
Rule 13900	Fees Due When a Claim Is Filed
Rule 13901	Member Surcharge
Rule 13902	Hearing Session Fees, and Other Costs and Expenses
Rule 13903	Process Fees Paid by Members
Rule 13904	Awards

VIII. Rule 14000 Series – Code of Mediation Procedure

<i>Rule No.</i>	<i>Rule Title</i>
Rule 14100	Definitions
Rule 14101	Applicability of Code
Rule 14102	National Arbitration and Mediation Committee
Rule 14103	Director of Mediation
Rule 14104	Mediation under the Code
Rule 14105	Effect of Mediation on Arbitration Proceedings
Rule 14106	Representation of Parties
Rule 14107	Mediator Selection
Rule 14108	Limitation on Liability
Rule 14109	Mediation Ground Rules
Rule 14110	Mediation Fees

FINRA Rule Filing SR-FINRA-2008-025

www.finra.org/Industry/Regulation/RuleFilings/2008/P038707

The rule change transfers NASD Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings) in substantially the same form to the Consolidated FINRA Rulebook as FINRA Rule 5130. The rule change makes minor, technical changes to the rule to reflect, for example, the registration of the NASDAQ Stock Market, LLC as a national securities exchange.

FINRA Rule 5130 protects the integrity of the initial public offering (IPO) process by ensuring that: (1) firms make bona fide public offerings of securities at the offering price; (2) firms do not withhold securities in a public offering for their own benefit or use such securities to reward persons who are in a position to direct future business to firms; and (3) industry insiders, including firms and their associated persons, do not take advantage of their insider position to purchase new issues for their own benefit at the expense of public customers. FINRA Rule 5130 plays an important part in maintaining investor confidence in the capital raising and IPO process.

<i>Rule No.</i>	<i>Rule Title</i>
Rule 5130	Restrictions on the Purchase and Sale of Initial Equity Public Offerings

FINRA Rule Filing SR-FINRA-2008-026

www.finra.org/Industry/Regulation/RuleFilings/2008/P038730

The rule change adopts the NASD Rule 0100 Series (General Provisions) as FINRA Rules in the Consolidated FINRA Rulebook, with the exception of NASD Rule 0120, which will be addressed at a later date in a separate filing. The NASD Rule 0100 Series governs the adoption, application and interpretation of NASD rules and sets forth certain definitions not contained in the FINRA By-Laws. Additionally, these rules address FINRA's delegation of certain responsibilities to its subsidiaries, and its authority and access with respect to its subsidiaries. FINRA is transferring this rule series as the FINRA Rule 0100 Series, renamed as "General Standards," to the Consolidated FINRA Rulebook, with only minor changes. FINRA notes that, notwithstanding their transfer to the Consolidated FINRA Rulebook, these rules of general applicability apply equally to both the Transitional Rulebook and the Consolidated FINRA Rulebook.

<i>Rule/Series No.</i>	<i>Rule /Series Title</i>
Rule 0100 Series	General Standards
Rule 0110	Adoption of Rules
Rule 0120	Effective Date
Rule 0130	Interpretation
Rule 0140	Applicability
Rule 0150	Application of Rules to Exempted Securities Except Municipal Securities
Rule 0160	Definitions in FINRA By-Laws
Rule 0170	Delegation, Authority and Access

FINRA Rule Filing SR-FINRA-2008-027

www.finra.org/Industry/Regulation/RuleFilings/2008/P038723

The rule change adopts without material change NASD Rules 3060 (Influencing or Rewarding Employees of Others) and 3090 (Transactions Involving Association and American Stock Exchange Employees) as FINRA Rules in the Consolidated FINRA Rulebook and deletes the corresponding provisions in Incorporated NYSE Rules 350, 350.10, 407(a), 407.10 and NYSE Rule Interpretations 350/01 through 350/03. The rule change renumbers NASD Rule 3060 as FINRA Rule 3220 and NASD Rule 3090 as FINRA Rule 2070 in the Consolidated FINRA Rulebook.

FINRA Rule 3220 (Influencing or Rewarding Employees of Others) states that no member or associated person shall give gifts or gratuities to an agent or employee of another person in excess of \$100 per year where the gift or gratuity is in relation to the business of the employer of the recipient. The rule protects against improprieties that may arise when members or their associated persons give gifts or gratuities. FINRA Rule 2070 (Transactions Involving FINRA Employees) addresses conflicts of interest involving FINRA employees.

<i>Rule No.</i>	<i>Rule Title</i>
Rule 2070	Transactions Involving FINRA Employees
Rule 3220	Influencing or Rewarding Employees of Others

FINRA Rule Filing SR-FINRA-2008-028

www.finra.org/Industry/Regulation/RuleFilings/2008/P038732

The rule change adopts NASD Rules 2110 (Standards of Commercial Honor and Principles of Trade), 2120 (Use of Manipulative, Deceptive or Other Fraudulent Devices), and 2290 (Fairness Opinions) as FINRA Rules in the Consolidated FINRA Rulebook without material change and deletes Incorporated NYSE Rule 401(a) (Business Conduct), Incorporated NYSE Rule 435 (Miscellaneous Prohibitions), with the exception of paragraph (5), and NYSE Rule Interpretations 401/01 and 401/02. The rule change renumbers NASD Rule 2110 as FINRA Rule 2010, NASD Rule 2120 as FINRA Rule 2020, and NASD Rule 2290 as FINRA Rule 5150 in the Consolidated FINRA Rulebook.

FINRA Rule 2010 requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. Rule 2010 protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those

practices may not be illegal or violate a specific rule or regulation. FINRA Rule 2020 is FINRA's general antifraud provision. FINRA has used this broad rule to address a wide variety of manipulative, deceptive, and fraudulent misconduct, including market manipulation, excessive trading, insider trading, and fraudulent misrepresentation. FINRA Rule 5150 requires specific disclosures and procedures addressing the conflicts of interest that arise when a broker-dealer provides a fairness opinion in a change of control transaction, such as a merger or sale or purchase of assets.

<i>Rule No.</i>	<i>Rule Title</i>
Rule 2010	Standards of Commercial Honor and Principles of Trade
Rule 2020	Use of Manipulative, Deceptive or Other Fraudulent Devices
Rule 5150	Fairness Opinions

FINRA Rule Filing SR-FINRA-2008-030

www.finra.org/Industry/Regulation/RuleFilings/2008/P038786

The rule change adopts NASD Rule 3013 (Annual Certification of Compliance and Supervisory Processes) and IM-3013 (Annual Compliance and Supervision Certification) as a FINRA Rule in the Consolidated FINRA Rulebook without material change and deletes the corresponding provisions in Incorporated NYSE Rule 342.30 and NYSE Rule Interpretations 311(b)(5)/04 through /05 and 342.30(d)/01 through (e)/01. The rule change renumbers NASD Rule 3013 and IM-3013 as FINRA Rule 3130 in the Consolidated FINRA Rulebook.

FINRA Rule 3130 requires each member firm to designate one or more principals to serve as a chief compliance officer (CCO). The rule further requires that the chief executive officer(s) (CEO) certify annually that the member has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable FINRA rules, MSRB rules and federal securities laws and regulations.

<i>Rule No.</i>	<i>Rule Title</i>
Rule 3130	Annual Certification of Compliance and Supervisory Processes

FINRA Rule Filing SR-FINRA-2008-033

www.finra.org/Industry/Regulation/RuleFilings/2008/P038813

The rule change adopts the short interest reporting requirements (NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10) as FINRA Rule 4560 (Short-Interest Reporting) in the Consolidated FINRA Rulebook. FINRA Rule 4560 requires members to report short positions in OTC Equity Securities and exchange-listed securities. Members must report total short positions in all customer and proprietary accounts as of the settlement dates designated, and in the manner prescribed, by FINRA. (Currently, such information must be reported twice a month and is, in turn, made publicly available on an aggregate basis twice a month.)

<i>Rule No.</i>	<i>Rule Title</i>
Rule 4560	Short-Interest Reporting

FINRA Rule Filing SR-FINRA-2008-039

www.finra.org/Industry/Regulation/RuleFilings/2008/P038926

The rule change (1) adopts NASD Rule 2710 (Corporate Financing Rule – Underwriting Terms and Arrangements), without material change except for paragraphs (b)(10) and (11), as a FINRA Rule in the Consolidated FINRA Rulebook and (2) clarifies and streamlines the notice and other requirements in FINRA Rules relating to Regulation M under the Securities Exchange Act (including paragraphs (b)(10) and (11) of NASD Rule 2710 and paragraph (a) of Incorporated NYSE Rule 392). The rule change renumbers NASD Rule 2710 as FINRA Rule 5110 and adopts new FINRA Rules 5190 and 6470 in the Consolidated FINRA Rulebook. (New FINRA Rule 5190 houses the Regulation M-related notice requirements applicable to members participating in securities offerings, including paragraphs (b)(10) and (11) of NASD Rule 2710 and paragraph (a) of Incorporated NYSE Rule 392. New FINRA Rule 6470 houses certain Regulation M-related requirements that are currently in the OTC Bulletin Board rules and applies to all OTC Equity Securities.)

<i>Rule No.</i>	<i>Rule Title</i>
Rule 5110	Corporate Financing Rule – Underwriting Terms and Arrangements
Rule 5190	Notification Requirements for Offering Participants
Rule 6470	Withdrawal of Quotations in an OTC Equity Security in Compliance with SEC Regulation M

FINRA Rule Filing SR-FINRA-2008-022

www.finra.org/Industry/Regulation/RuleFilings/2008/P038543

The rule change addresses the applicability of the consolidated FINRA Rules to member firms of the NYSE that became members of FINRA pursuant to the membership waive-in process set in forth in NASD IM-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations) (such firms are referred to as Waive-In Firms). Specifically, the rule change amends IM-1013-1 to specify that the Waive-In Firms will be subject to FINRA's By-Laws and Schedules to By-Laws, including Schedule A, the consolidated FINRA Rules and the Incorporated NYSE Rules, provided that their securities business is limited to the permitted floor activities. If a Waive-In Firm seeks to expand its business operations to include any activities other than the permitted floor activities, the firm must continue to apply for and receive approval pursuant to NASD Rule 1017. Upon approval of such expansion, the firm would be subject to all NASD Rules, in addition to the consolidated FINRA Rules and the Incorporated NYSE Rules.

FINRA Rule Filing SR-FINRA-2008-029

www.finra.org/Industry/Regulation/RuleFilings/2008/P038766

The rule change repeals NASD Rule 1130 (Reliance on Current Membership List) and Incorporated NYSE Rules 405A (Non-Managed Fee-Based Account Programs – Disclosure and Monitoring), 440F (Public Short Sale Transactions Effected on the Exchange), 440G (Transactions in Stocks and Warrants for the Accounts of Members, Allied Members and Member Organizations) and 477 (Retention of Jurisdiction – Failure to Cooperate) to eliminate duplicative provisions and remove requirements that are specific to the NYSE marketplace.

Endnotes

- 1 FINRA Rule 6121 took effect on October 7, 2008, pursuant to a separate filing. *See* Exchange Act Release No. 58753 (October 8, 2008), 73 FR 61177 (October 15, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2008-048). Rule 6121 permits FINRA to halt over-the-counter trading in NMS stocks, as defined in Rule 600(b)(47) of SEC Regulation NMS, if other major U.S. securities markets initiate market-wide trading halts in response to extraordinary market conditions or if otherwise directed by the SEC.
- 2 FINRA Rule 6560 corresponds to NASD Rule 6541 in the Transitional Rulebook. FINRA has deleted NASD Rule 6541, effective November 11, 2008, pursuant to separate filings. Accordingly, FINRA does not intend to implement Rule 6560 when the other FINRA Rules included in this *Notice* become effective. *See Regulatory Notice 08-49* (September 2008) (Trading Ahead of Customer Limit Orders); *see also* Exchange Act Release No. 58532 (September 12, 2008), 73 FR 54649 (September 22, 2008) (Order Approving Proposed Rule Change; File No. SR-NASD-2007-041); Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (Order Granting Accelerated Approval of Proposed Rule Change; File No. SR-NASD-2005-146).
- 3 FINRA has deleted FINRA Rule 7610B pursuant to a separate filing, effective October 20, 2008. (FINRA Rule 7610B corresponds to NASD Rule 7001C in the Transitional Rulebook.) *See* File No. SR-FINRA-2008-050. Accordingly, FINRA does not intend to implement Rule 7610B when the other FINRA Rules included in this *Notice* become effective.

Temporary Guarantee Program for Money Market Mutual Funds

Guidance on Disclosure Concerning the U.S. Treasury Department's Temporary Guarantee Program for Money Market Mutual Funds

Executive Summary

FINRA is issuing this *Notice* to provide guidance to firms regarding disclosure concerning the U.S. Treasury Department's (Treasury) temporary guarantee program for the U.S. money market mutual fund industry (Program). The Program, which was announced by the Treasury on September 19, 2008, covers the shares of a participating money market mutual fund that were owned by a beneficial shareholder as of the close of business on September 19, 2008. The Program will expire on December 18, 2008, unless extended by the Treasury.

FINRA expects a firm that refers to the Program in its communications to do so in a manner consistent with our rules. FINRA also expects a firm that receives transferred customer accounts during the time the Program is in effect to inform customers that they could lose coverage under the Program if the customers liquidate or transfer their shares in a participating money market mutual fund. Firms should review the Treasury's Web page concerning the Program for more details.¹

Questions concerning this *Notice* should be directed to Thomas M. Selman, Executive Vice President, Regulatory Policy, at (202) 728-6977, or Joseph P. Savage, Vice President and Counsel, Investment Companies Regulation, at (240) 386-4534.

October 2008

Notice Type

- Guidance

Suggested Routing

- Advertising
- Compliance
- Legal
- Mutual Funds
- Registered Representatives
- Senior Management

Key Topics

- Money Market Mutual Funds
- Temporary Guarantee Program for Money Market Mutual Funds

Referenced Rules & Notices

- NASD Rule 2210

Background & Discussion

On September 19, 2008, the Treasury announced the establishment of a temporary guarantee program for the U.S. money market mutual fund industry.² Under the Program, the Treasury will guarantee the stable net asset value of any publicly offered eligible money market mutual fund that applies for and pays a fee to participate in the Program. All money market mutual funds that are regulated under Rule 2a-7 of the Investment Company Act of 1940, maintain a stable net asset value, and are publicly offered and registered with the Securities and Exchange Commission (SEC) are eligible to participate in the Program, provided that they elected to do so in accordance with the Treasury's requirements.

The Program provides coverage to beneficial shareholders for amounts that they held in participating money market mutual funds as of the close of business on September 19, 2008. The guarantee will be triggered if, after the close of business on September 19, 2008, a participating fund's per share net asset value falls below 99.5 percent of the stable share price. Funds whose per share net asset value dropped below 99.5 percent of the stable share price as of or before the close of business on September 19, 2008, may not participate in the Program. The Program will terminate on December 18, 2008, unless extended by the Secretary of the Treasury. In no event will the Program extend beyond September 18, 2009.³

The scope of coverage under the Program is limited. For example, any increase in the number of shares held in a participating fund after the close of business on September 19, 2008, or an investment in another participating fund after that date, will not be guaranteed. If an investor holds less than the level of shares originally held in the participating fund on September 19, 2008, on the date the guarantee is triggered, only the amount of shares held on that later date will be covered. In addition, if an investor closes an account where the shares were held on September 19, 2008, or transfers shares from such an account to a new account after that date, the shares will not be covered.⁴

Member Firm Communications Concerning the Temporary Guarantee Program

Since the Program was first announced, FINRA has reviewed member firm communications that refer to the Program and its features. While FINRA does not require communications concerning money market mutual funds to discuss the Program, pursuant to NASD Rule 2210 (Communications with the Public) any reference to the Program in communications must be fair and balanced. Communications that mention the Program must describe its scope and limitations accurately, as well as its temporary nature.

Under Rule 2210 and based upon our discussions with the SEC and Treasury staffs, FINRA expects member firm communications that discuss the Program to provide in substance the following information:

- The U.S. Treasury Temporary Guarantee Program provides a guarantee to participating money market mutual fund shareholders based on the number of shares invested in the fund at the close of business on September 19, 2008.
- Any increase in the number of shares an investor holds after the close of business on September 19, 2008, will not be guaranteed.
- If a customer closes his/her account with a fund or broker-dealer, any future investment in the fund will not be guaranteed.
- If the number of shares an investor holds fluctuates over the period, the investor will be covered for either the number of shares held as of the close of business on September 19, 2008, or the current amount, whichever is less.⁵
- The Program expires on December 18, 2008, unless extended by the United States Treasury.⁶

Transfer of Customer Brokerage Accounts

FINRA has also received inquiries from firms concerning any disclosure that should be made to brokerage customers concerning coverage by the Program when a customer transfers an account from one brokerage firm (the carrying firm) to another (the receiving firm), and the customer owns shares of a money market mutual fund that is participating in the Program. If the customer held shares on September 19, 2008, in money market mutual fund(s) that are participating in the Program, and intends to move the account to the receiving firm during the time the Program is in effect, FINRA expects the receiving firm to inform the customer that he or she could lose the benefit of the guarantee upon closure of the account with the carrying firm. The receiving firm should take reasonable steps to provide this information to the customer before he or she closes the account with the carrying firm.

FINRA recognizes that the receiving firm will not necessarily know what assets a customer holds at the carrying firm, and will not be able to provide disclosure regarding particular money market mutual funds that a customer may own. However, the receiving firm can provide general disclosure to customers regarding this issue at the time an account is transferred, perhaps on its Transfer Initiation Form (TIF) that is submitted to initiate the transfer process.

At a minimum, the disclosure should refer to the guarantee and inform customers who own shares in a money market mutual fund that is covered by the guarantee that they could lose the benefit of the guarantee in the account transfer upon closure of the account with the carrying firm or upon transfer of the shares to the receiving firm. The disclosure should recommend that any customer who has questions about a potential loss of coverage should contact the carrying firm before closing an account.

Endnotes

- 1 See <http://www.treas.gov/offices/domestic-finance/key-initiatives/money-market-fund.shtml>.
- 2 Press Release, U.S. Department of the Treasury, "Treasury Announces Guaranty Program for Money Market Funds" (Sept. 19, 2008).
- 3 Press Release, U.S. Department of the Treasury, "Treasury Announces Temporary Guarantee Program for Money Market Funds" (Sept. 29, 2008).
- 4 Press Release, U.S. Department of the Treasury, "Frequently Asked Questions About Treasury's Temporary Guarantee Program for Money Market Funds" (Sept. 29, 2008; Media Advisory Oct. 16, 2008).
- 5 *Id.*
- 6 This disclosure may be modified to reflect a later date if the Treasury extends the Program past December 18, 2008.

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BD and IA Renewals for 2009

Broker-Dealer, Investment Adviser Firm, Agent and Investment Adviser Representative, and Branch Renewals for 2009

Payment Deadline: December 12, 2008

Executive Summary

The 2009 renewal process begins on November 10, 2008, when online Preliminary Renewal Statements are made available to all firms on Web CRD/IARD.

Firms should note the following key dates in the 2009 renewal process:

- | | |
|--------------------------|---|
| October 27, 2008 | Firms may start submitting post-dated Forms U5 and BR Closing/Withdrawal filings via Web CRD. |
| November 3, 2008 | Firms may start submitting post-dated Form BDW via Web CRD, as well as Form ADV-W via IARD.

<i>Please Note:</i> Post-dated filings submitted by 11:00 p.m. Eastern Time (ET) November 7, 2008, will not appear on the firm's Preliminary Renewal Statement. The only date that can be used for a post-dated termination filing is December 31, 2008. |
| November 10, 2008 | Preliminary Renewal Statements are available on Web CRD/IARD. |
| December 12, 2008 | Full payment of Preliminary Renewal Statements is due. |
| January 2, 2009 | Final Renewal Statements are available on Web CRD/IARD. |

October 2008

Notice Type

- Renewals

Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Registration
- Senior Management

Key Topic(s)

- CRD®
- Renewals
- Registration
- IARD

Referenced Rules & Notices

- NTM 02-48

Member firms are advised that failure of a firm to remit full payment of its Preliminary Renewal Statement to FINRA by December 12, 2008, could cause the firm to become ineligible to do business in the jurisdictions where it is registered, effective January 1, 2009.

In addition to this Notice, firms should review the instructions posted at www.finra.org/renewals, especially the 2009 Renewal Program Bulletin, the 2009 IARD Renewal Bulletin (if applicable) on the Investment Adviser Web site at www.iard.com/renewals.asp, and any information mailed to ensure continued eligibility to do business as of January 1, 2009.

Questions concerning this Notice should be directed to the FINRA Gateway Call Center at (301) 869-6699.

Background & Discussion

Preliminary Renewal Statements

Beginning November 10, 2008, Preliminary Renewal Statements are available for viewing and printing on Web CRD/IARD. The statements will include the following fees:

- ▶ Web CRD system processing fees;
- ▶ FINRA branch office fees;
- ▶ FINRA branch renewal processing fees;
- ▶ American Stock Exchange (AMEX), BATS Exchange, Inc. (BATS), Boston Stock Exchange (BSE), Chicago Board Options Exchange (CBOE), Chicago Stock Exchange (CHX), International Securities Exchange (ISE), NASDAQ Stock Exchange (NQX), New York Stock Exchange (NYSE), NYSE Arca, Inc. (ARCA) and Philadelphia Stock Exchange (PHLX) maintenance fees;
- ▶ state agent renewal fees;
- ▶ state BD renewal fees;
- ▶ state BD branch fees;
- ▶ investment adviser firm and representative renewal fees, if applicable; and
- ▶ broker-dealer and/or investment adviser branch renewal fees.

FINRA must receive full payment of the Preliminary Renewal Statement fees no later than December 12, 2008.

If payment is not received by the December 12, 2008, payment due date, member firms will be assessed a Renewal Payment Late Fee. This late fee will be included as part of the Final Renewal Statement and will be calculated as follows: 10 percent of a member firm's cumulative final renewal assessment or \$100, whichever is greater, with a cap of \$5,000. Please see *NTM 02-48* for details. In addition, if payment is not received by the deadline, firms also risk becoming ineligible to do business in the jurisdictions where their registrations are not renewed.

Fees

A fee of \$30 will be assessed for each person who renews his/her registration with any regulator through Web CRD. Firms can access a listing of agents for whom their firm will be assessed by requesting the Renewals – Firm Renewal Roster.

For 2009, any investment adviser fees assessed by the North American Securities Administrators Association (NASAA) for state-registered investment adviser firms and investment adviser representatives (RA) who renew through IARD will also be included on the Preliminary Renewal Statement.

The FINRA branch office assessment fee of \$75 per branch, based on the number of active FINRA branches as of December 31, 2008, will be assessed. One branch office assessment fee will be waived per firm.

The FINRA branch renewal processing fee of \$20 per branch, based on the number of active FINRA branches as of December 31, 2008, will be assessed. One branch renewal processing fee will be waived per firm.

Please note that FINRA personnel assessment fees are not assessed through the annual Renewal Program. FINRA will mail all member firms a separate invoice for these fees. Firms can obtain a listing of agents for whom the firm will be assessed the personnel assessment fee by requesting the Renewals – Firm Renewal Roster.

Renewal fees for AMEX, ARCA, BATS, BSE, CBOE, CHX, ISE, NOX, NYSE, PHLX and state registrations are also assessed on the Preliminary Renewal Statement. These fees are based on the number of individuals registered in each SRO/jurisdiction.

Branch office renewal fees will also be collected for those regulators who choose to renew branches registered with them in Web CRD/IARD.

Some participating jurisdictions may require steps beyond the payment of renewal fees to FINRA to complete the broker-dealer or investment adviser renewal process. Firms should contact each jurisdiction directly for further information on state renewal requirements. A Regulator Directory can be found at www.nasaa.org/QuickLinks/ContactYourRegulator.cfm.

For detailed information regarding 2009 investment adviser renewals, you may also visit the investment adviser Web site, www.iard.com. A matrix of investment adviser renewal fees for states that participate in the 2009 IARD Investment Adviser Renewal Program is posted at www.iard.com/pdf/rep_fee_sch.pdf.

Renewal Payment

Firms have four payment methods available to pay 2009 renewal fees:

1. Automatic Daily-to-Renewal Account Transfer
2. Web CRD/IARD E-Pay
3. Check
4. Wire Transfer

Automatic Daily-to-Renewal Account Transfer

To facilitate renewal payment processing for all firms, FINRA will automatically transfer funds from a firm's Daily Account to its Renewal Account on December 12, 2008, the Preliminary Renewal Statement payment deadline. FINRA will transfer funds only if a firm has sufficient funds available in its Daily Account on December 12 to cover the amount. **Please Note:** If a firm does not want funds automatically transferred from its Daily Account to its Renewal Account, the firm should ensure that its payment is received in its Renewal Account by the December 12 deadline. Separately, if a firm wishes to transfer funds between affiliated firms, the firm should contact the FINRA Gateway Call Center at (301) 869-6699 for further instructions prior to the renewal deadline.

Web CRD/IARD E-Pay

The Web CRD/IARD E-Pay application is accessible from both the Preliminary and Final Renewal Statements and the FINRA (www.finra.org/crd) or IARD (www.iard.com) Web sites and allows a firm to make an ACH payment from a designated bank account to its Web CRD/IARD Renewal Account. Please note that in order for funds to be posted to your firm's Renewal Account by December 12, 2008, payment must be submitted electronically, no later than 8:00 p.m. ET on December 10, 2008.

Check

The check must be drawn on the member firm's account, with the firm's CRD number included on the front of the check, along with "Renewal" in the memo line. Firms should mail their renewal payment, along with a print-out of the first page of their Preliminary Renewal Statement, directly to:

US mail

FINRA
P.O. Box 7777-8705
Philadelphia, PA 19175-8705

(Note: This box will not accept courier or overnight deliveries.)

Overnight or Express Delivery

FINRA
8705
Mellon Bank Room 3490
701 Market Street
Philadelphia, PA 19106
Telephone: (301) 869-6699

Firms paying by check should account for US Mail processing time when sending payment via US Mail.

Member firms should use **the blue, pre-addressed renewal payment envelope** that they will receive in early November, or should use the **full address** provided in this *Notice* to ensure prompt processing.

Please Note: The addresses for renewal payments are different than the addresses for funding firms' Web CRD/IARD Daily Accounts.

To ensure prompt processing of your renewal payment check:

- Include a printout of the first page of your Preliminary Renewal Statement with payment.
- **Do not** include any other forms or fee submissions.
- Write your firm's CRD number and "Renewal" on the check memo line.
- Send your payment either in the blue pre-addressed renewal payment envelope that will be mailed to you or write the address on an envelope exactly as noted in this *Notice*.

Wire Payment

Firms may wire full payment of the Preliminary Renewal Statement by requesting their bank to initiate the wire transfer to: "Mellon Financial, Philadelphia, PA." Firms should provide their bank the following information:

Transfer funds to:	Mellon Financial, Philadelphia, PA
ABA Number:	031 000 037
Beneficiary:	FINRA
FINRA Account Number:	8-234-353
Reference Number:	Firm CRD number and "Renewal"

To ensure prompt processing of a renewal payment by wire transfer, remember to:

- Inform the bank that the funds are to be credited to the **FINRA bank account**.
- Provide the firm's CRD number and "Renewal" as reference only.
- Record the confirmation number of the wire transfer provided by the bank.

Renewal Reports

Beginning November 10, 2008, the renewal reports will be available to request, print and/or download via Web CRD. Three reports/downloads are available for reconciliation with the Preliminary Renewal Statement:

- ▶ **Firm Renewal Report** – applicable to broker-dealer and investment adviser firms. This report lists individuals included in the 2009 Renewal Program and includes billing codes (if they have been supplied by the firm).
- ▶ **Branches Renewal Report** – applicable to broker-dealer and investment adviser firms. This report lists each branch registered with FINRA and/or with any other regulator that renews branches registered with the regulator through Web CRD/IARD and for which the firm is being assessed a fee. Firms should use this report to reconcile their records for renewal purposes.
- ▶ **Approved AG Reg without FINRA Approval Report** – applicable to FINRA member firms. This report contains all individuals who are not registered with FINRA but are registered with one or more jurisdictions. The report should be used throughout the year, including during the annual Renewal Program, as an aid for firms to reconcile individual registrations. Firms should request this report as soon as possible to determine if any FINRA registrations need to be requested or jurisdictions terminated prior to renewal processing for the Preliminary Renewal Statement available on November 10.

Post-Dated Form Filings

This functionality allows firms to file a termination form with a termination date of December 31, 2008. If a Form U5, BDW, BR Closing/Withdrawal or ADV-W indicates a termination date of December 31, 2008, an agent (AG), investment adviser representative (RA), broker-dealer and/or investment adviser (firm) and the branch may continue doing business in that jurisdiction until the end of the calendar year without being assessed 2009 renewal fees. **December 31, 2008, is the only date that can be used for a post-dated form filing.**

Firms can begin electronically filing post-dated Forms U5 and BR Closing/Withdrawal via Web CRD on October 27, 2008. Firms can begin electronically filing post-dated Forms BDW and ADV-W via Web CRD/IARD on November 3, 2008. Firms that submit post-dated termination filings by 11:00 p.m. ET November 7, 2008, **will not** be assessed renewal fees for the terminated registrations on their Preliminary Renewal Statement. Firms that submit post-dated termination filings on or after November 10, 2008, will not be assessed renewal fees for the terminated jurisdictions on the Final Renewal Statement in January 2009. Those firms should see a credit balance on their Final Renewal Statement if the firm has not requested additional registrations during that time period to offset the credit balance.

Firms should query individual, branch and/or firm registrations after a termination filing has been submitted to ensure that electronic Forms U5, BDW, BR Closing/Withdrawal and ADV-W are filed by the renewal filing deadline date of 6:00 p.m. ET December 26, 2008.

Firms should exercise care when submitting post-dated Forms U5, BDW, BR Closing/Withdrawal and ADV-W. FINRA will systematically process these forms as they are submitted and cannot withdraw a post-dated termination once submitted. A firm that files a post-dated termination in error will have to file a new Form U4, BD Amendment, Form BR or Form ADV when Web CRD/IARD resumes normal processing on January 2, 2009. New registration fees will be assessed as a result.

Filing Form BDW

The CRD Phase II Program allows firms requesting broker-dealer termination (either full or partial) to electronically file their Form BDW via Web CRD. Firms that file either a full or partial Form BDW by 11:00 p.m. ET November 7, 2008, will avoid the assessment of the applicable renewal fees on their Preliminary Renewal Statement, provided that the regulator is a CRD Phase II participant. Currently, there are only five regulators that participate in Web CRD renewals for agent fees, but **do not** participate in CRD Phase II:

- American Stock Exchange
- Chicago Stock Exchange
- National Stock Exchange
- NYSE Arca, Inc.
- Philadelphia Stock Exchange

Firms requesting termination with any of the above-listed regulators must submit a paper Form BDW directly to the regulator, as well as submit one electronically to Web CRD.

The deadline for electronic filing of a Form BDW for any firm that wants to terminate a registration before year-end 2008 is 6:00 p.m. ET December 26, 2008. This same date applies to the filing of any Form BDW with regulators that are not Phase II participants.

Filing Forms ADV to Cancel Notice Filings or Forms ADV-W to Terminate Registrations

Firms that file either a Form ADV Amendment, unmarking a state (generating the status of “Removal Requested at End of Year”) or a full or partial Form ADV-W by 11:00 p.m. ET November 7, 2008, will avoid the assessment of the applicable renewal fees on their Preliminary Renewal Statement.

The deadline for electronic filing of Form ADV Amendments or Form ADV-W for firms that want to cancel a notice filing or terminate a state registration before year-end 2008 is 6:00 p.m. ET December 26, 2008.

Removing Open Registrations

Throughout the year, firms have access to the “Approved AG Reg Without FINRA Approval” Report via Web CRD. This report identifies agents whose FINRA registrations are either terminated or have been changed to a “purged” status due to the existence of a deficient condition (*i.e.*, exams or fingerprints), but still maintain an approved registration with a jurisdiction. Member firms should use this report to terminate obsolete jurisdiction registrations through the submission of a Form U5 or reinstate the FINRA positions through the filing of a Form U4 Amendment. This report should aid firms in the reconciliation of individual registrations prior to year’s end. Firms should request this report as soon as possible so they can identify individuals who can be terminated by November 7, 2008, to avoid being charged for those individuals on their Preliminary Renewal Statement. The Approved AG Reg Without FINRA Approval Report will also advise a firm if there are no agents at the firm within this category.

Final Renewal Statements

Beginning January 2, 2009, FINRA will make available Final Renewal Statements via Web CRD/IARD. These statements will reflect the final status of broker-dealer, registered representative (AG), investment adviser firm and investment adviser representative (RA) registrations and/or notice filings as of December 31, 2008. Any adjustments in fees owed as a result of registration terminations, approvals, notice filings or transitions subsequent to the Preliminary Renewal Statement will display on the Final Renewal Statement in Web CRD/IARD.

- If a firm has more individuals, branch offices or jurisdictions registered and/or notice filed on Web CRD/IARD at year-end than it did when the Preliminary Renewal Statement was generated, additional renewal fees will be assessed.

- If a firm has fewer individuals, branch offices or jurisdictions registered and/or notice filed at year-end than it did when the Preliminary Renewal Statement was generated, a credit/refund will be issued. Please note that overpayments will be systemically transferred to firms' Daily Accounts as of January 2, 2009. Firms that have a credit (sufficient) balance in their Daily Accounts may submit a written refund request signed by an appropriate signatory by mail to the Finance Department, 9509 Key West Avenue, Rockville, MD 20850 or by fax to: (240) 386-5344. The request should include a printout of the firm's credit balance as reflected on Web CRD/IARD.

On or after January 2, 2009, FINRA member firms and joint BD/IA firms should access the Web CRD reports functionality for the **Firm Renewal Report**, which will list all individuals renewed with FINRA, AMEX, ARCA, BATS, BSE, CBOE, CHX, ISE, NOX, NYSE, PHLX, and each jurisdiction. Agents and RAs whose registrations are "approved" in any of these jurisdictions during November and December will be included in this roster. Registrations that are "pending approval" or are "deficient" at year's end will not be included in the 2009 Renewal Program. Firms will also be able to request the **Branches Renewal Report** that lists all branches for which they have been assessed renewal fees. Versions of these reports will also be available for download.

Firms have until **February 4, 2009**, to report any discrepancies on the renewal reports. This is also the **deadline for receipt of final payment**. Specific information and instructions concerning the Final Renewal Statement and renewal reports will be available in a January 2009 *Regulatory Notice*.

Money Market Mutual Funds

FINRA Announces Temporary Margin Maintenance, Net Capital and Reserve Formula Requirements Related to Money Market Mutual Funds

Effective Date: October 21, 2008

Executive Summary

The purpose of this *Notice* is to advise FINRA firms that pursuant to NASD Rule 2520(f)(8)(A), NYSE Rule 431(f)(8)(A) and SEA Rules 15c3-1 and 15c3-3, FINRA is announcing temporary margin maintenance, net capital and reserve formula requirements related to certain money market mutual funds that have frozen customer redemptions or whose net asset value has declined below \$1.00 per share, effective October 21, 2008.

Questions concerning margin as described in 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; or
- Steve Yannolo, Principal Credit Specialist, Credit Regulation, at (646) 315-8621.

Questions concerning net capital and reserve formula as described in this *Notice* should be directed to:

- Yui Chan, Managing Director, Risk Oversight and Operational Regulation, at (646) 315-8426;
- Bernadette Chichetti, Director, Risk Oversight and Operational Regulation, at (646) 315-8428; or
- Anthony Lucarelli, Director, Risk Oversight and Operational Regulation, at (646) 315-8520.

October 2008

Notice Type

- Special Alert

Suggested Routing

- Compliance
- Finance
- Legal
- Margin Department
- Operations
- Regulatory Reporting
- Senior Management

Key Topic(s)

- Customer Protection
- Initial Margin Requirements
- Maintenance Margin Requirements
- Money Market Mutual Funds
- Net Capital

Referenced Rules & Notices

- NASD Rule 2520
- NYSE Rule 431
- Regulation T §§ 220.2
- SEA Rule 15c3-1
- SEA Rule 15c3-3

Background & Discussion

Money market mutual funds (MMMF) usually maintain a net asset value (NAV) of \$1.00 per share but due to current problems in the credit markets, the NAV of certain funds has declined below \$1.00 per share. Several funds have received a significant number of requests for withdrawals, which have caused fund managers to liquidate assets held within the fund at distressed market prices. In an attempt to prevent further price deterioration, and potential losses, certain MMMF's have temporarily suspended redemptions of fund shares. Consequently, holders of such MMMFs may not have access to their funds in order to purchase securities or meet other obligations.

As a result of the foregoing, several firms have elected to provide their customers with liquidity on their MMMF holdings, despite the funds' suspension of redemptions. Typically, this liquidity has taken two forms:

- ▶ Firms have permitted customers to purchase securities based on the value of the MMMF held in their account.
- ▶ Firms have agreed to advance the customers the value of the MMMF that the customer attempted to redeem but couldn't due to the suspension of redemptions by the fund. In these instances, firms have advanced the cash to their customers without having received payment from the MMMFs; this practice has a similar effect on the firm as that of an outright purchase of the MMMF from the customer.

Although most customers maintain their MMMF in a cash account, the shares may also be held in a margin account and may be used as collateral for a margin loan. A MMMF is margin eligible provided it meets the definition of a margin security under Regulation T 220.2. The current initial and maintenance margin requirement promulgated under NASD Rule 2520 and NYSE Rule 431 is 1 percent of the market value or NAV.

FINRA has received questions from firms regarding the net capital and customer reserve formula treatment of certain customer account balances resulting from the actions taken by such firms to provide their customers with liquidity on MMMFs that have suspended redemptions. In consultation with the staff of the SEC, FINRA is providing the following guidance:

1. In instances where the MMMF cannot presently be liquidated, firms may have elected to record entries which reflect the firm purchasing the MMMF from the customers, which would result in a proprietary long position for the firm and a credit to the customer account for the proceeds of the MMMF shares sold to the firm. In computing its net capital pursuant to SEA Rule 15c3-1, the firm must mark to the market the MMMF position and apply a 15 percent haircut on the total market value held in its proprietary account. The foregoing net capital treatment of the MMMF is not limited to positions that firms purchase from their customers but also applies to all proprietary positions held in such funds. In computing its customer reserve formula pursuant to SEA Rule 15c3-3, the firm must include in its computation any remaining balance in the customer's account following the sale of the MMMFs to the firm.
2. In instances where the MMMF cannot presently be liquidated, firms may have elected to record entries that reflect the redemption of the customers' MMMF, which would result in a receivable from the MMMF and a payable to the customers. For net capital purposes, the firm may treat the receivable from the MMMF as an allowable asset only up to the aggregate of related customer credits that remain in the customers' accounts. However, if the amounts credited to the customers' accounts are withdrawn by the customers or if the credited amounts are used to reduce a debit balance in the customers' accounts, the aggregate amount of such items, relative to the firm's receivable from the MMMF, is to be treated by the firm as if it were a proprietary long position in the MMMF. In computing its net capital, the firm must mark to the market the MMMF and apply a 15 percent haircut. Any credits remaining in the customer accounts must be included in the reserve formula computation. Only the amount of the receivable from the MMMF that equates to the corresponding credits remaining in the customer accounts must be included as a debit in the reserve formula computation.

3. In instances where the MMMF cannot be liquidated, the position remains in the customer's account, and the customer requests to utilize the MMMF position in his or her account as payment for the purchase of securities, the firm may consider up to 50 percent of the NAV of the MMMF as payment for a new security purchase. This treatment will apply whether the purchase is executed in a cash account or a strategy-based margin account. If the amount due from the purchase exceeds 50 percent of the NAV of the MMMF, the firm must treat the overage amount as an outstanding cash debit or Regulation T call. Therefore, the customer will be required to deposit cash or margin eligible securities to satisfy the outstanding amount due within five business days after the trade date of the purchase. The remaining debit balance can be included in the reserve formula computation. If the customer does not satisfy the amount due within five business days after trade date, the firm will be required to take appropriate action, which may include filing for an extension of time, where applicable. Furthermore, the regulatory maintenance margin requirement on a MMMF that has frozen customer redemptions or whose NAV has declined below \$1.00 per share, that are held in a strategy-based margin account, shall be 50 percent of the current NAV of such MMMF.
4. Several firms have elected to mitigate client losses on their MMMF positions. Those firms must accrue the total amount of their liability to the customer and reflect the expense in their current profit and loss statement. If the firm has not limited the amount of loss it will cover, then it must treat the customer's entire position as a proprietary contractual commitment, mark it to market and apply a 15 percent haircut in computing its net capital.

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Examination Fees

Proposed Amendments to Qualification Examination Fees in Section 4(c) of Schedule A to the FINRA By-Laws

Proposed Implementation Date: January 2, 2009¹

Executive Summary

FINRA has filed with the SEC a rule change proposing to increase certain qualification examination fees to reflect the rising costs of developing, administering and delivering such examinations.² Pending SEC approval of the amendments to Section 4(c) of Schedule A to the FINRA By-Laws, the new fees will become effective on January 2, 2009. FINRA is issuing this *Notice* to alert member firms about this proposed fee change to assist in firms' budget planning processes. The text of Section 4(c) of Schedule A to the FINRA By-Laws,³ as amended, is set forth in Attachment A of this *Notice*.

Questions concerning this *Notice* should be directed to John C. Kalohn, Associate Vice President, Testing and Continuing Education Department, at (240) 386-5800.

October 2008

Notice Type

- Guidance

Suggested Routing

- Legal & Compliance
- Registration
- Senior Management

Key Topic(s)

- Qualification Examinations
- Qualification Examination Fees
- Registration

Referenced Rules & Notices

- Schedule A of FINRA By-Laws

Background & Discussion

Any person associated with a member firm who is engaged in the securities business of the firm must register with FINRA. As part of the registration process, securities professionals must pass a qualification examination to demonstrate competence in each area in which they intend to work. These mandatory qualification examinations cover a broad range of subjects on the markets, products, a person's responsibilities in a given position, securities industry rules and the regulatory structure. Some qualification examinations are sponsored (*i.e.*, developed) solely by FINRA while others are sponsored by the Municipal Securities Rulemaking Board (MSRB), the North American Securities Administrators Association (NASAA), the National Futures Association (NFA), the Federal Deposit Insurance Corporation (FDIC), other self-regulatory organizations (SROs) or jointly among these entities.⁴

FINRA administers qualification examinations via computer through the PROCTOR® system⁵ at test centers operated by vendors under contract with FINRA. FINRA charges an examination fee to candidates for FINRA-sponsored and co-sponsored examinations. For qualification examinations sponsored by a FINRA client and administered/delivered by FINRA, FINRA charges a delivery fee that represents either a portion of or the entire examination fee for a particular examination.⁶

Each year, FINRA conducts a comprehensive review of the examination fee structure, including an analysis of the costs of developing, administering and delivering qualification examinations. FINRA's 2008 review revealed that certain operational costs have increased and will continue to increase over the next few years. In particular, these costs consist of: (1) the cost of providing the extensive network of test delivery centers; and (2) technology costs required to maintain the PROCTOR® system. As a result of these rising costs, FINRA has proposed to increase certain qualification examination fees, effective January 2, 2009 (pending SEC approval), with no single examination increasing more than \$20.

Specifically, examination fees would be increased as follows:

Series	Examination Title	Current Fee	Proposed Fee
Series 4	Registered Options Principal (Sponsored jointly by NYSE Alternext, CBOE, FINRA, NYSE Arca and Phlx)	\$80	\$90
Series 6	Investment Company Products/Variable Contracts Representative	\$75	\$85
Series 7	General Securities Representative	\$250	\$265
Series 9	General Securities Sales Supervisor – Options Module (Sponsored jointly by NYSE Alternext, CBOE, FINRA, MSRB, NYSE Arca and Phlx)	\$60	\$70
Series 10	General Securities Sales Supervisor – General Module (Sponsored jointly by NYSE Alternext, CBOE, FINRA, MSRB, NYSE Arca and Phlx)	\$100	\$110
Series 11	Assistant Representative – Order Processing	\$60	\$70
Series 14	Compliance Official	\$300	\$320
Series 16	Supervisory Analyst	\$200	\$210
Series 17	Limited Registered Representative	\$65	\$70
Series 22	Direct Participation Programs Representative	\$75	\$85
Series 23	General Securities Principal Sales Supervisor Module	\$75	\$85
Series 24	General Securities Principal	\$95	\$105
Series 26	Investment Company Products/Variable Contracts Principal	\$75	\$85
Series 27	Financial and Operations Principal	\$95	\$105
Series 28	Introducing Broker-Dealer Financial and Operations Principal	\$75	\$85
Series 37	Canada Module of S7 (Options Required)	\$150	\$160

Series	Examination Title	Current Fee	Proposed Fee
Series 38	Canada Module of S7 (No Options Required)	\$150	\$160
Series 39	Direct Participation Programs Principal	\$75	\$80
Series 42	Registered Options Representative	\$60	\$65
Series 55	Limited Representative-Equity Trader	\$85	\$95
Series 62	Corporate Securities Limited Representative	\$75	\$80
Series 72	Government Securities Representative	\$85	\$95
Series 82	Limited Representative – Private Securities Offering	\$75	\$80
Series 86	Research Analyst - Analysis	\$150	\$160
Series 87	Research Analyst - Regulatory	\$105	\$115

The new fees would apply to persons who register for one of these examinations beginning on January 2, 2009. Specifically, the fees would apply for “120-day examination windows” opened in the CRD® on or after January 2, 2009.

Endnotes

- 1 Pending approval by the Securities and Exchange Commission (SEC).
- 2 See SR-FINRA-2008-053.
- 3 Schedule A sets forth examination fees for those examinations that are sponsored or co-sponsored by FINRA and/or that may be required by FINRA for its members.
- 4 For example, FINRA administers and delivers the Series 6, 24 and 27 examinations, which are sponsored by FINRA. FINRA also administers and delivers client-sponsored examinations, such as the Series 9 and 10, which are sponsored jointly by several SROs (NYSE Alternext US LLC (NYSE Alternext) (formerly American Stock Exchange), Chicago Board Options Exchange (CBOE), MSRB, FINRA, NYSE Arca, Inc. (NYSE Arca) (formerly Pacific Stock Exchange, Inc.) and NASDAQ OMX PHLX, Inc. (Phlx) (formerly Philadelphia Stock Exchange)).
- 5 PROCTOR® is a technology system that supports computer-based testing and training.
- 6 FINRA administers and delivers examinations sponsored by NASAA, MSRB, NYSE Alternext, NFA and NYSE Arca that, while not required by FINRA rules, are taken by persons associated with FINRA members to obtain certain licenses. Fees for the following examinations developed by these sponsors will also be adjusted effective January 2, 2009, as follows:
 - MSRB – Series 51 (Municipal Fund Securities Limited Principal), from \$75 to \$85; Series 52 (Municipal Securities Representative), from \$80 to \$95; Series 53 (Municipal Securities Principal), from \$80 to \$95.
 - NASAA – Series 63 (Uniform Securities Agent State Law Exam), from \$82 to \$96; Series 65 (Uniform Combined State Law Exam), from \$120 to \$135; Series 66 (Investment Advisors Law Exam), from \$113 to \$128.
 - NFA – Series 3 (National Commodities Futures), from \$95 to \$105; Series 30 (Branch Managers Examination – Futures), from \$60 to \$70; Series 31 (Futures Managed Funds Exam), from \$60 to \$70; Series 32 (Limited Futures Exam – Regulations), from \$60 to \$70.
 - NYSE Alternext – Series 5 (Interest Rate Options), from \$60 to \$65.
 - NYSE Arca – Series 44 (Market Maker Authorized Traders Examination), from \$88 to \$100; Series 45 (Pacific Exchange Floor Broker/Market Maker), from \$105 to \$115.

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Attachment A

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

* * * * *

Schedule A to the By-Laws of the Corporation

* * * * *

Section 4—Fees

(a) and (b) No change

(c) The following fees shall be assessed to each individual who registers to take an examination as described below. These fees are in addition to the registration fee described in paragraph (b).

Series 4	Registered Options Principal	[\$80] <u>\$90</u>
Series 6	Investment Company Products/Variable Contracts Representative	[\$75] <u>\$85</u>
Series 7	General Securities Representative	[\$250] <u>\$265</u>
Series 9	General Securities Sales Supervisor — Options Module	[\$60] <u>\$70</u>
Series 10	General Securities Sales Supervisor — General Module	[\$100] <u>\$110</u>
Series 11	Assistant Representative — Order Processing	[\$60] <u>\$70</u>
Series 14	Compliance Official	[\$300] <u>\$320</u>
Series 16	Supervisory Analyst	[\$200] <u>\$210</u>
Series 17	Limited Registered Representative	[\$65] <u>\$70</u>
Series 22	Direct Participation Programs Representative	[\$75] <u>\$85</u>
Series 23	General Securities Principal Sales Supervisor Module	[\$75] <u>\$85</u>
Series 24	General Securities Principal	[\$95] <u>\$105</u>
Series 26	Investment Company Products/Variable Contracts Principal	[\$75] <u>\$85</u>
Series 27	Financial and Operations Principal	[\$95] <u>\$105</u>

Series 28	Introducing Broker[/]-Dealer Financial and Operations Principal	[\$75] <u>\$85</u>
Series 37	Canada Module of S7 (Options Required)	[\$150] <u>\$160</u>
Series 38	Canada Module of S7 (No Options Required)	[\$150] <u>\$160</u>
Series 39	Direct Participation Programs Principal	[\$75] <u>\$80</u>
Series 42	Registered Options Representative	[\$60] <u>\$65</u>
Series 55	Limited Representative — Equity Trader	[\$85] <u>\$95</u>
Series 62	Corporate Securities Limited Representative	[\$75] <u>\$80</u>
Series 72	Government Securities Representative	[\$85] <u>\$95</u>
Series 82	Limited Representative — Private Securities Offering	[\$75] <u>\$80</u>
Series 86	Research Analyst — Analysis	[\$150] <u>\$160</u>
Series 87	Research Analyst — Regulatory	[\$105] <u>\$115</u>

(1) through (3) No change

(d) through (h) No change

Limit on Closed Case Submissions

SEC Approves Rules Limiting Submissions to Arbitrators in Closed Cases

Effective Date: November 24, 2008

Executive Summary

Effective November 24, 2008, FINRA will limit the circumstances under which parties may make submissions to arbitrators in closed cases. The SEC approved new Rule 12905 of the Code of Arbitration Procedure for Customer Disputes and new Rule 13905 of the Code of Arbitration Procedure for Industry Disputes (the Codes). As a result, parties may not submit documents to arbitrators in cases that have been closed *except* under the following limited circumstances: 1) as ordered by a court; 2) at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or 3) if all parties agree and submit documents within 10 days of service of an award or notice that a matter has been closed.¹

The text of Rules 12905 and 13905 is set forth in Attachment A. The rules will apply to requests made by parties on or after November 24, 2008.

Questions concerning this *Notice* should be directed to: Richard Berry, Vice President and Director of Case Administration, FINRA Dispute Resolution, at (212) 858-4307 or richard.berry@finra.org; or Margo Hassan, Counsel, FINRA Dispute Resolution, at (212) 858-4481 or margo.hassan@finra.org.

October 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal

Key Topic(s)

- Arbitration
- Closed Cases
- Code of Arbitration Procedure
- Dispute Resolution

Referenced Rules & Notices

- NASD Rule 12904
- NASD Rule 12905
- NASD Rule 13904
- NASD Rule 13905

Background & Discussion

FINRA is adopting new Rules 12905 and 13905 to strictly limit the circumstances under which parties may make submissions to arbitrators in closed cases. Currently, the Codes do not address requests to submit documents to arbitrators in closed cases. Therefore, FINRA staff has in the past solicited responses from parties in closed cases and then forwarded all such requests and responses to the arbitrators regardless of the reason for a request or the amount of time that elapsed since a case was closed. FINRA receives an estimated 150 or more requests each year, some of which involve cases that have long been closed. The arbitrators almost never grant such late requests to reopen cases. FINRA believes that the new rules will reduce the parties' costs associated with responding to such requests and will support the finality of FINRA arbitration awards.

Under Rules 12905 and 13905, parties may not submit documents to arbitrators in cases that have been closed *except* under the following limited circumstances:

1. as ordered by a court;
2. at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or
3. if all parties agree and submit documents within 10 days of service of an award or notice that a matter has been closed.

FINRA will forward to the arbitrators all requests made pursuant to a court order and will determine if submissions made pursuant to circumstances 2 and 3 comply with the grounds for submission prior to forwarding the requests to the arbitrators.² All parties will have an opportunity to respond to requests made under circumstance 2 and the responses will be forwarded to the arbitrators along with the requests. The arbitrators may decline requests made pursuant to circumstances 2 and 3 and such requests will be considered denied unless the arbitrators rule within 10 days after FINRA forwards the documents to them. The new rules do not extend the time period for the payment of any award pursuant to Rules 12904 and 13904.³

The amendments will become effective on November 24, 2008, and will apply to requests received from parties on or after the effective date.

Endnotes

- 1 Exchange Act Release No. 58739 (October 6, 2008), 73 Federal Register 60738 (October 14, 2008) (File No. SR-FINRA-2008-005).
- 2 An example of a request relating to a typographical or computational error would be an addition mistake made when computing forum fees. An example of a mistake in the description of a person or property would be an incorrect reference to the title of an account in an award.
- 3 Rules 12904(i) and 13904(i) provide that all monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.

Attachment A

Code of Arbitration Procedure for Customer Disputes and Code of Arbitration Procedure for Industry Disputes

Customer Code

12905. Submissions After a Case Has Closed

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

(1) as ordered by a court;

(2) at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or

(3) if all parties agree and submit documents within 10 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward documents submitted pursuant to paragraph (a)(1), along with any responses from other parties, to the arbitrators. The Director will determine if submissions made pursuant to paragraphs (a)(2) and (a)(3) comply with the grounds enumerated in the rule. If the Director determines that the request complies with paragraphs (a)(2) and (a)(3), the Director will forward the documents, along with any responses from other parties, to the arbitrators. The arbitrators may decline to consider requests that the Director forwards to them under paragraphs (a)(2) and (a)(3).

(c) Unless the arbitrators rule within 10 days after the Director forwards the documents to the arbitrators pursuant to a request made under paragraphs (a)(2) and (a)(3), the request shall be deemed considered and denied.

(d) Requests under this rule do not extend the time period for payment of any award pursuant to Rule 12904.

Industry Code

13905. Submissions After a Case Has Closed

(a) Parties may not submit documents to arbitrator(s) in cases that have been closed except under the following limited circumstances:

(1) as ordered by a court;

(2) at the request of any party within 10 days of service of an award or notice that a matter has been closed, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or

(3) if all parties agree and submit documents within 10 days of (1) service of an award or (2) notice that a matter has been closed.

(b) Parties must make requests under this rule in writing to the Director and must include the basis relied on under this rule for the request. The Director will forward documents submitted pursuant to paragraph (a)(1), along with any responses from other parties, to the arbitrators. The Director will determine if submissions made pursuant to paragraphs (a)(2) and (a)(3) comply with the grounds enumerated in the rule. If the Director determines that the request complies with paragraphs (a)(2) and (a)(3), the Director will forward the documents, along with any responses from other parties, to the arbitrators. The arbitrators may decline to consider requests that the Director forwards to them under paragraphs (a)(2) and (a)(3).

(c) Unless the arbitrators rule within 10 days after the Director forwards the documents to the arbitrators pursuant to a request made under paragraphs (a)(2) and (a)(3), the request shall be deemed considered and denied.

(d) Requests under this rule do not extend the time period for payment of any award pursuant to Rule 13904.

Continuing Education

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

Executive Summary

This *Notice* advises firms of the fourth-quarter 2008 Securities Industry/Regulatory Council on Continuing Education Firm Element Advisory (FEA), which identifies regulatory and sales practice topics that firms should consider in their Firm Element training plans. Topics updated or added since the prior FEA 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 that firms should consider for possible inclusion in Firm Element training plans. The topics are identified through a review of industry regulatory and self-regulatory organization publications and announcements of significant events.

The FEA 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.

October 2008

Notice Type

- Guidance

Suggested Routing

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

Key Topics

- Continuing Education
- Firm Element

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 users to search an extensive database of regulatory resources related to specific investment products or services and is available at www.cecouncil.com/firm_element/organizer.

In late October, the Council will survey Continuing Education contacts that each firm has on record with FINRA to further understand how firms use the FEA and the Council's Web site. The electronic survey inquires about usage of and potential improvements to the FEA and the Council Web site. All responses to the survey are confidential.

Transitional Rulebook

Amendments to Incorporated NYSE Rules to Reduce Regulatory Duplication

Effective Date: November 11, 2008

Executive Summary

Effective November 11, 2008, certain NYSE rules that have been incorporated by FINRA (Incorporated NYSE Rules) have been amended to relieve those firms that are members of both NYSE and FINRA (Dual Members) of conflicting or unnecessary regulatory burdens in the interim period before the consolidated FINRA rulebook is completed.¹ The text of the Incorporated NYSE Rules, as amended, is set forth in Attachment A to this *Notice*.

Questions concerning this *Notice* should be directed to Gary L. Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104; or Erika L. Lazar, Senior Attorney, OGC, at (646) 315-8512.

Background & Discussion

The SEC recently approved amendments to certain Incorporated NYSE Rules to reduce regulatory disparities between NASD and Incorporated NYSE Rules in the Transitional Rulebook and relieve Dual Members of conflicting or unnecessary regulatory burdens in the interim period before the Consolidated FINRA Rulebook is completed.² The rule changes described in this *Notice* affect the Transitional Rulebook in its application to Dual Members only and do not necessarily reflect FINRA's intent or conclusion as to the ultimate rule text for rules that will be part of the Consolidated FINRA Rulebook.³

October 2008

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management
- Trading

Key Topic(s)

- Acceptability of Supervisors
- Allied Member
- Buy-In Rules
- Discretionary Power in Customers' Accounts
- Employee Registration and Approval
- Limitations – Employment and Association with Member Organizations
- Reporting Requirements
- Sharing in Accounts
- Training Periods

Referenced Rules & Notices

- See Attachment A to this Notice.

Allied Member

The amendments delete the term “allied member” from the Incorporated NYSE Rules. The allied member designation is a regulatory category based on a person’s “control” of a member organization.⁴ Allied membership, as currently administered, has no direct analogue under the FINRA membership scheme.

In instances where the term “allied member” appears in a rule to denote an individual’s status as a member organization “control person,” the newly defined category of “principal executive” is substituted for the term “allied member.”⁵ The definition for “principal executive” is identical to the current definition of “principal executive officer” in NYSE Rule 311(b)(5) with additional language to clarify that the functional equivalents of such persons are also included in this category. As such, the rule change replaces “principal executive officer” with “principal executive.”

Unlike the allied member designation, principal executive does not require a registration process, approval by a self-regulatory organization (SRO) or a particular qualification examination. However, each principal executive is required to take and pass the qualification examination(s) necessary to perform his or her assigned functions. As a result of the elimination of this NYSE registration category, FINRA will preclude broker-dealers from requesting this registration status through the Central Registration Depository (CRD[®]) system beginning on November 11, 2008.⁶

Buy-In Rules⁷

The amendments reposition NYSE Rules 283, 285, 286, 287, 288, 289 and 290 into NYSE Rule 282 so that NYSE Rule 282 now serves as a complete, central repository for all requirements and procedures related to transactions subject to the Buy-In Rules. Additionally, the rule change adds the substance of NYSE Rule 140 to NYSE Rule 282.⁸ Lastly, the amendments harmonize the current text of NYSE Rule 282 with the NASD Rule 11000 Series by: (1) adding language to clarify that fails that are subject to the rules of a Qualified Clearing Agency must comply with the procedures or requirements of the Qualified Clearing Agency and (2) adopting certain provisions of NASD Rule 11810.

Acceptability of Supervisors

NYSE Rule 342.13(a) currently requires that persons who are to be assigned certain prescribed supervisory responsibilities⁹ have a creditable three-year record as a registered representative or have three years of equivalent experience before functioning as a supervisor.¹⁰ Amendments to NYSE Rule 342.13(a) and its Interpretation eliminate the prescribed three-year record requirement for supervisory personnel and conform NYSE Rule 342.13(a) to the standard outlined in NASD Rule 1014(a)(10)(D) with respect to firms that are submitting an application to become

FINRA members. In such instances, supervisory candidates are required to have one year of “direct experience” or two years of “related experience” in the subject area to be supervised.

Prescribed Training Periods

NYSE Rule 345 and its Interpretation¹¹ require prescribed training periods before certain exam-qualified registered persons are approved by the NYSE to perform functions requiring registration. To harmonize NYSE Rule 345 with NASD registration requirements, the amendments eliminate the prescribed training periods in NYSE Rule 345 and its Interpretation. The amendments allow member firms to determine, consistent with their overall supervisory obligations, the extent and duration of training for such registered persons before they are permitted to perform functions requiring registration.

Presently, when an individual requests a registration category that has a training period, the CRD system prevents that individual from being so registered until the requisite training period has expired. As of the effective date of this rule change, the training period requirement associated with NYSE Rule 345 registration categories will no longer be imposed by the CRD system. As such, these persons will be approved in the CRD system as of the date they pass the applicable qualification examination(s) (provided there are no other outstanding deficiencies) and member firms must determine the appropriate training for such registered persons before they are permitted to perform functions requiring registration.

Employee Registration and Approval

NYSE Rule 345(a) currently prohibits member organizations from permitting any natural person to perform regularly the duties customarily performed by a registered representative, a securities lending representative, a securities trader or a direct supervisor of such persons, unless such person is registered with, qualified by and acceptable to the NYSE. FINRA has eliminated the specific registration and qualification requirements in NYSE Rule 345(a) as they pertain to registered representatives, securities traders and their direct supervisors.¹² Thus, the provisions in NYSE Rule 345(a) now apply only to securities lending representatives and their direct supervisors.

NYSE Rule 345(b) also prohibits any natural person, other than a member or allied member, to assume the duties of an officer with the power to legally bind such member or member organization unless such member or member organization has filed an application with and received the approval of the NYSE. The amendments delete NYSE Rule 345(b) in its entirety. There is no similar requirement in any of the NASD Rules.

Limitations – Employment and Association with Member Organizations

NYSE Rule 346 sets forth limitations on the outside business activities of member organization employees. The amendments delete NYSE Rule 346(c), which requires that member firms give prompt written notice of control relationships to the NYSE. FINRA believes that this provision is unnecessary as it is a requirement on Form BD that each broker-dealer disclose such control relationships.¹³

NYSE Rule 407 provides, in part, that no employee of a member organization shall establish or maintain a securities or commodities account or enter into a private securities transaction without the prior written consent of his or her member organization. The amendments reposition the requirements pertaining to “private securities transactions” (*e.g.*, interests in oil or gas ventures, real estate syndications, tax shelters, etc.) from NYSE Rule 407¹⁴ to NYSE Rule 346 since NYSE Rule 346 more directly addresses issues related to the outside activities of registered persons. Additionally, the rule change adopts definitions of the terms “private securities transactions,” “selling compensation” and “immediate family members” that are substantially identical to the corresponding definitions in the NASD Rules.¹⁵

NYSE Rule 346(e) currently requires that supervisors devote their entire time during business hours to their member organization, unless otherwise permitted by the NYSE. Amendments to NYSE Rule 346(e) and Supplementary Material section .10 eliminate the SRO approval requirement. Instead, the amended rule requires the prior written approval of the member firm, pursuant to the exercise of appropriate due diligence, for such arrangements. Member firms must obtain the identification of any entity for which the supervisory person will be performing services during business hours and a description of such services. The firm’s written approval is required to set forth the approximate amount of time the supervisory person is expected to devote to each entity, with particular attention paid to the approximate time expected to be required for the person, based upon qualifications and experience, to effectively discharge his or her supervisory responsibilities on behalf of the member. In addition, the amended rule requires documentation that the member firm has made a good faith determination that the arrangement will not compromise the protection of investors or the public interest, compromise the supervisor’s duties at the member firm or give rise to a material conflict of interest.

Reporting Requirements

NYSE Rule 351(d) requires each member organization to report certain statistical information regarding customer complaints. The requirement currently extends to both oral and written complaints. The amendments to Rule 351 limit the definition of the term “customer complaint” to any written statement of a customer, or any person

acting on behalf of a customer, other than a broker or dealer, alleging a grievance involving the activities of those persons under the control of a member firm. This definition is substantially similar to the current definition in NASD Rule 3070(c).

Guarantees, Sharing in Accounts, and Loan Arrangements

NYSE Rule 352 restricts the extent to which member organization personnel may share in customer account profits or losses. NYSE Rule 352(b) generally prohibits member firms, allied members and registered representatives from sharing profits or losses in any customer account. However, NYSE Rule 352(c) permits such sharing in proportion to financial contributions made to a joint account.

The rule change amends NYSE Rule 352(c) to exempt from the proportional contribution requirement joint accounts with immediate family members held by principal executives or registered representatives of a member organization. This amendment acknowledges that certain accounts may reasonably entail profit and loss participation on a disproportionate basis, as with joint accounts between husband and wife, while retaining coverage of the rule for other accounts. NASD Rule 2330(f)(1)(A) similarly addresses the circumstances under which a FINRA member or a person associated with a FINRA member firm may share in profits and losses with a customer. NASD Rule 2330(f)(1)(A) permits sharing that is proportionate to the financial contributions of each account holder. NASD Rule 2330(f)(1)(B) exempts from this proportionality requirement accounts shared between an associated person and a customer who is an immediate family member of such associated person. The amendments harmonize the term “immediate family” in NYSE Rule 352(c) with the standard under NASD Rule 2330(f)(1)(B).

The amendments to NYSE Rule 352(d) streamline the reference in the rule to Rule 205-3 of the Investment Advisers Act of 1940 and better align NYSE Rule 352 with NASD Rule 2330(f).

Discretionary Power in Customers’ Accounts

NYSE Rule 408 provides, in part, that no employee of a member organization shall exercise discretionary power in any customer’s account or accept orders for an account from a person other than the customer without first obtaining written authorization from the customer. The amendments to NYSE Rule 408(a) require member firms to obtain the signature of any person or persons authorized to exercise discretion in such accounts, of any substitute so authorized, and the date such discretionary authority was granted. This rule change conforms NYSE Rule 408(a) to corresponding requirements in NASD Rule 3110(c)(3).

Deleted NYSE Rules

The amendments recognize that certain rules are outdated and no longer necessary. For these reasons, the amendments delete paragraph (h) of NYSE Rule 311, which prescribes the number of partners to be named in a member organization in order for it to conduct business, and NYSE Rule 436 (Interest on Credit Balances) and its Interpretation.

The amendments also delete certain rules because they are sufficiently addressed by NASD rules. Specifically, NYSE Rule 404 (Individual Members Not to Carry Accounts) has been deleted because its requirements duplicate the FINRA Letter of Approval sent to members. NYSE Rule 412 (Customer Account Transfer Contracts) (and its Interpretation) has been deleted because it duplicates NASD Rule 11870 (Customer Account Transfer Contracts). Finally, NYSE Rule 446 (Business Continuity and Contingency Plans) has been deleted as it is nearly identical to NASD Rules 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information).

Endnotes

- 1 FINRA is in the process of developing a new consolidated rulebook (Consolidated FINRA Rulebook), which, upon completion, will consist only of FINRA Rules. The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) Incorporated NYSE Rules (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to Dual Members. For more information about the rulebook consolidation process, see *FINRA Information Notice 3/12/08* (Rulebook Consolidation Process).
- 2 See Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (Order Approving Proposed Rule Change Relating to Incorporated NYSE Rules; File No. SR-FINRA-2008-036). See also Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Conforming Certain NYSE Rules to Changes to NYSE Incorporated Rules Recently Filed by the Financial Industry Regulatory Authority, Inc.; File No. SR-NYSE-2008-80).
- 3 Please note that certain rules discussed in this *Notice* are subject to further amendments based on the following rule filings relating to the establishment of the Consolidated FINRA Rulebook: see Exchange Act Release No. 58421 (August 25, 2008), 73 FR 51032 (August 29, 2008) (Order Approving Proposed Rule Change; SR-FINRA-2008-025); Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-033); Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (Order Approving Proposed Rule Change; SR-FINRA-2008-039); Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File Nos. SR-FINRA-2008-021; SR-FINRA-2008-022; SR-FINRA-2008-026; SR-FINRA-2008-028 and SR-FINRA-2008-029); Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-027); Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (Order Approving Proposed Rule Change; SR-FINRA-2008-030).
- 4 See NYSE Rule 304(b) (Allied Members and Approved Persons). FINRA did not incorporate NYSE Rule 304.
- 5 See NYSE Rule 311.17.

Endnotes

- 6 In addition, on November 11, 2008, FINRA will administratively terminate all approved NYSE allied member registrations. Individuals who currently maintain an allied member registration through the American Stock Exchange (n/k/a NYSE Alternext) or ArcaEX (n/k/a NYSE Arca) will not be affected by this rule change and the allied member registration category will continue to be available through these SROs.
- 7 The SRO Operational, Clearing and Settlement Rules are collectively referred to herein as the "Buy-In Rules."
- 8 See NYSE Rule 282.15.
- 9 In this regard, NYSE Rule 342.13(a) references NYSE Rule 342(d) which requires that "[q]ualified persons acceptable to the Exchange shall be in charge of: (1) any office of a member or member organization, (2) any regional or other group of offices, (3) any sales department or activity."
- 10 NYSE Rule 342.13(a) also requires that persons assigned supervisory responsibility pursuant to NYSE Rule 342(d) must pass a qualification examination acceptable to the NYSE that demonstrates competence relevant to assigned responsibilities.
- 11 See NYSE Rule Interpretation 345.15/01 and /02.
- 12 Accordingly, FINRA will preclude broker-dealers from requesting either the Securities Trader or the Trading Supervisor NYSE registration status through the CRD system beginning November 11, 2008.
- 13 See Question 10 on Form BD.
- 14 See NYSE Rule 407(b) and section .11 in the Supplementary Material.
- 15 See changes to NYSE Rule 346 Supplementary Material.

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ATTACHMENT A

Referenced Rules

NASD Rules

NASD Rule 1014
NASD Rule 1031
NASD Rule 2330
NASD Rule 2370
NASD Rule 3070
NASD Rule 3110
NASD Rule 3510
NASD Rule 3520
NASD Rule 11810
NASD Rule 11870

NYSE Rules

NYSE Rule 2
NYSE Rule 2A
NYSE Rule 134
NYSE Rule 140
NYSE Rule 282
NYSE Rule 283
NYSE Rule 285
NYSE Rule 286
NYSE Rule 287
NYSE Rule 288
NYSE Rule 289
NYSE Rule 290
NYSE Rule 304
NYSE Rule 311 and its Interpretation
NYSE Rule 312
NYSE Rule 313
NYSE Rule 321
NYSE Rule 342 and its Interpretation
NYSE Rule 345 and its Interpretation
NYSE Rule 345A and its Interpretation
NYSE Rule 346 and its Interpretation
NYSE Rule 351
NYSE Rule 352

NYSE Rule 353
NYSE Rule 354
NYSE Rule 401
NYSE Rule 404
NYSE Rule 405 and its Interpretation
NYSE Rule 407
NYSE Rule 408
NYSE Rule 409
NYSE Rule 410
NYSE Rule 412 and its Interpretation
NYSE Rule 414
NYSE Rule 424
NYSE Rule 431
NYSE Rule 435
NYSE Rule 436 and its Interpretation
NYSE Rule 440F
NYSE Rule 440G
NYSE Rule 446
NYSE Rule 477
NYSE Rule 704
NYSE Rule 705
NYSE Rule 723
NYSE Rule 724
NYSE Rule 791

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

* * * * *

Rule 2. “Member,” “Membership,” “Member Firm,” etc.

(a) – (b) No Change.

[(c)] The term “allied member” means a natural person who is a general partner of a member organization or other employee of a member organization who controls, or is a principal executive officer of, such member organization and who has been approved by the Exchange as an allied member.]

[(d)] The term “approved person” means a person, other than a member [or allied member], principal executive or employee of a member organization who controls a member organization or is engaged in a securities or kindred business that is controlled by, or under common control with a member or member organization who has been approved by the Exchange as an approved person.

[(e)] The term “person” shall mean a natural person, corporation, limited liability company, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not.

[(f)] The term “control” means the power to direct or cause the direction of the management or policies of a person whether through ownership of securities, by contract or otherwise. A person shall be presumed to control another person if such person, directly or indirectly,

(i) has the right to vote 25 percent or more of the voting securities,

(ii) is entitled to receive 25 percent or more of the net profits, or

(iii) is a director, general partner or principal executive [officer] (or person occupying a similar status or performing similar functions) of the other person.

Any person who does not so own voting securities, participate in profits or function as a director, general partner or principal executive [officer] of another person shall be presumed not to control such other person. Any presumption may be rebutted by evidence, but shall continue until a determination to the contrary has been made by the Exchange.

[(g)] No Change.

[(h)] No Change.

Rule 2A. Jurisdiction

(a) The Exchange, may, with approval of the Exchange Board of Directors and the NYSE Regulation Board of Directors, adopt, amend or repeal such rules as it may deem necessary or proper, including rules with respect to (i) the making and settling of Exchange Contracts, (ii) the access of members and member organizations and their employees to and the conduct of members, member organizations and their employees upon the floor of the Exchange and their use of Exchange facilities, (iii) insolvency of member organizations, (iv) the formation of member organizations, the continuance thereof and the interests of members, [allied members and] principal executives or other persons therein, (v) the partners, officers, directors, stockholders and employees of member organizations, (vi) the offices of members, [allied members] principal executives and member organizations, (vii) the business conduct of members, [allied members] principal executives and member organizations, (viii) the business connections of members, [allied members] principal executives and member organizations, and their association with or domination by or over corporations or other persons engaged in the securities business, (ix) capital requirements for member organizations, (x) the procedure for arbitration and dispute resolution, (xi) trading licenses and the transfers thereof, (xii) types, terms, conditions and issuance of securities by member organizations and trading in such securities, (xiii) the conduct and procedure for disciplinary hearings and reviews there from, (xiv) the location and use on the floor of the Exchange of such facilities as may be approved by the Exchange to permit members to send orders from the floor to other markets and receive orders on the floor from other markets for the purchase or sale of securities traded on the Exchange, (xv) options and other derivative trading, (xvi) matters related to non-member broker-dealers that choose to be regulated by the Exchange, and (xvii) any other matter relevant to the conduct of the business of a securities exchange and self-regulatory organization.

(b) No Change.

(c) The Exchange shall have general supervision over members, [allied members and] principal executives, member organizations, employees of member organizations and over approved persons in connection with their conduct of the business of member organizations. The Exchange shall have general supervision over other broker-dealers that choose to be regulated by the Exchange. The Exchange may examine into the business conduct and financial condition of members, [allied members,] principal executives, member organizations, employees of member organizations, approved persons and other broker-dealers that choose to be regulated by the Exchange. It shall

have supervision over partnership and corporate arrangements and over all offices of such members and member organizations, whether foreign or domestic, and over all persons employed by such members organizations, and other broker-dealers that choose to be regulated by the Exchange and may adopt such rules with respect to the employment, compensation and duties of such employees as it may deem appropriate. It shall have supervision over all matters relating to the collection, dissemination and use of quotations and of reports of prices on the Exchange. It shall have the power to approve or disapprove any connection or means of communication with the floor and may require the discontinuance of any such connection or means of communication. It may disapprove any member acting as a specialist or odd-lot dealer.

(d) The Exchange shall adopt such rules as it deems necessary or appropriate for the discipline of members, member organizations, [allied members,] principal executives, approved persons, and registered and non-registered employees of member organizations and over other broker-dealers that choose to be regulated by the Exchange for the violation of the Securities Exchange Act of 1934 (the Act), the rules of the Exchange and for such other offenses as may be set forth in the rules of the Exchange. The Exchange shall also adopt such rules as it deems necessary or appropriate governing the conduct of disciplinary proceedings including disciplinary hearings and reviews thereof. The determination and penalty, if any, of the Board after review shall be final and conclusive, subject to the provisions of the Act.

(e) The Exchange shall have jurisdiction after notice and a hearing to discipline members, member organizations, [allied members,] principal executives, approved persons in connection with their conduct of the business of a member organization, and registered or non-registered employees of member organizations and other broker-dealers that choose to be regulated by the Exchange. The Exchange may impose one or more of the following disciplinary sanctions: expulsion, suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks, fine, censure, suspension or bar from being associated with any member or member organization, or any other fitting sanction.

(f) The Exchange shall have jurisdiction over any and all other functions of its members, member organizations, [allied members,] principal executives and approved persons in connection with the conduct of the business of member organizations, and registered or non-registered employees of members or member organizations and other broker-dealers that choose to be regulated by the Exchange in order for the Exchange to comply with its statutory obligation as a Self Regulatory Organization.

* * * * *

Rule 134. Differences and Omissions-Cleared Transactions

("QTs")

(a) - (d) No Change.

• • • Supplementary Material: — — — — —

.10 - .40 No Change.

— — — — —

(e)

No Change.

(f)

(i) No Change.

(ii) Transactions which have been DK'd by a clearing member organization by entering the appropriate response into the System may be closed out by the questioning firm under the provisions of Rule 28[3]2 and the printed record of such response produced by the System shall constitute the notice requirement of Rule 28[3]2.

* * * * *

Rule 282. Buy-in Procedures

A contract in securities, except a contract where its close-out is governed by the rules of a Qualified Clearing Agency, which has not been completed by the seller in accordance with its terms, may be closed-out by the buyer (i.e., the initiating member organization) no sooner than three business days after the due date for delivery, pursuant to the following procedures:

(a) – (c) No Change.

(d) Where the buyer is a customer (i.e., other than another member organization), upon failure of a defaulting member organization to effect delivery in accordance with a "buy-in" notice, the contract may be closed-out by purchasing for "cash" in the best available market, or at the option of the initiating member organization, for guaranteed delivery for all or any part of the securities necessary to complete the contract. "Buy-ins" executed in accordance with this paragraph shall be for the account and risk of the defaulting member organization.

(e) No Change.

(f) Securities delivered by the defaulting party subsequent to the receipt of the “buy-in” notice should be considered as received pursuant to the “buy-in” notice. Delivery of the requisite number of shares, as stated in the “buy-in” notice, or execution of the “buy-in” will also operate to close-out all contracts covered under re-transmitted notices of “buy-ins” issued pursuant to the original notice of “buy-in,” pursuant to [Rule 285] section .25 of this Rule. If a re-transmitted “buy-in” is executed, it will operate to close-out all contracts covered under the re-transmitted notice. A “buy-in” may be executed by the initiating member organization from its long position and/or from customers’ accounts maintained with such member organization.

(g) Prior to the closing of a contract on which a “buy-in” notice has been given, the initiating member organization shall accept any portion of the securities called for by the contract, provided the portion remaining undelivered at the time the initiating member organization proposes to execute the “buy-in” is not an amount [which] that includes an odd-lot which was not part of the original transaction.

(h) – (j) No Change.

(k) Fails that are subject to the rules of a Qualified Clearing Agency must comply with the procedures or requirements of the Qualified Clearing Agency.

• • • **Supplementary Material** — — — — —

.10 Members and member organizations are obligated to comply with the close-out provisions of Regulation SHO, promulgated under the Securities Exchange Act of 1934. Specifically, Exchange “buy-in” rules [(i.e., Rules 282, 283, 285, 286, 287, 288, 289, 290, 291, 292, 293, and 294)] do not abrogate a member’s or a member organization’s responsibilities or obligations to comply with Regulation SHO, and the close-out provisions of Rule 203(b)(3).

.15 Closing Contracts - Conditions

A member organization may close a contract as provided in section .20 of this Rule in the event that:

(1) it has been advised that the other party to the contract does not recognize the contract; or

(2) the other party to the contract neglects or refuses to exchange written contracts pursuant to Rule 137.

.20 Closing Contracts—Procedure

When Rule 282 permits the closing of a contract, an original party to the contract may close it, provided that notice, either written or oral, shall have been given to the other original party at least thirty minutes before such closing. If a member organization given up by an original party to a contract has been advised that the other party to the contract does not recognize it, or if the other party to the contract neglects or refuses to exchange written contracts, it shall promptly notify the original party who acted for him or it, who may then close the contract as herein provided.

.25 Notice of Intention to Successive Parties

Every member organization receiving notice that a contract is to be closed for its account because of non-delivery (including a notice pursuant to the rules of a Qualified Clearing Agency, other than an obligation of the member organization to deliver securities to the Qualified Clearing Agency or under its rules is to be closed-out for its own account) shall immediately re-transmit notice thereof to any other member organization from whom the securities involved are due. Every such re-transmitted notice shall be in writing and shall be delivered at the office of the member organization to whom it is addressed; it shall state the date of the contract upon which the securities are due from such member organization, and the name of the member organization who has given the original notice to close.

.30 Closing Portion of Contract

When notice of intention to close a contract, or re-transmitted notice thereof, is given for less than the full amount due, it shall be for not less than one trading unit.

.35 Liability of Succeeding Parties

The closing of a contract shall be for the account and liability of each succeeding party with an interest in such contract, and, in case notice that such contract will be closed has been re-transmitted, as provided in this Rule, such closing shall also automatically close all contracts with respect to which such re-transmitted notice shall have been delivered prior to the closing.

Re-establishment of Contract

If such re-transmitted notice is sent by a member organization before the contract has been closed, but is not received until after such closing, then the member organization who sent the notice may, unless otherwise agreed, promptly re-establish, by a new sale, the contract with respect to which such notice has been sent.

Payment of Money Difference

Any money difference resulting from the closing of a contract, or from the re-establishment of a contract as herein provided, shall be paid not later than 3:00 p.m. ET on the following business day to the member organization entitled to receive the same.

.40 Notice of Closing to Successive Parties

When a contract other than a contract the close-out of which is governed by the rules of a Qualified Clearing Agency has been closed the member organization who closed the same, or who gave the order to close the same, shall immediately notify the member organization for whose account the contract was closed. The member organization receiving such a notification or receiving notification that a contract has been closed pursuant to the rules of a Qualified Clearing Agency shall immediately notify each succeeding party in interest and other member organizations to whom re-transmitted notice, as provided for in section .30 of this Rule, has been sent. Statements of resulting money differences, if any, shall also be rendered immediately.

.45 Must Receive Delivery

When a member organization has delivered a buy-in notice pursuant to this Rule, or has re-transmitted notice thereof as provided for in section .30 of this Rule, the initiating member organization must receive and pay for those securities subject to the buy-in notice if tendered prior to the buy-in of such contract.

If the organization that, pursuant to this Rule, is notified prior to the buy-in by a defaulting member organization that some or all of the securities (but not less than one trading unit) are in its physical possession and will be promptly delivered, then the order to buy-in shall not be executed with respect to such securities, and the initiating member organization who has given the original order to buy-in shall accept and pay for such securities, if tendered promptly.

Damages for Non-delivery

If such securities are not promptly tendered, the defaulting member organization who has stated that they would be promptly delivered shall be liable for any resulting damages.

.50 Defaulting Party May Deliver After “Buy-In” Notice

A defaulting member organization (seller) who has received a “buy-in” notice, pursuant to this Rule, or re-transmitted notice thereof, may deliver the securities to the initiating member organization (buyer) issuing such notice up to 3:00 p.m. ET. The defaulting member organization may deliver such securities after 3:00 p.m. ET on the “effective date” of the buy-in notice if: (i) agreed to by the initiating member organization, (ii) before the execution of the order and (iii) when the defaulting member organization has physical possession of the securities.

.55 Securities in Transit

If, prior to the closing of a contract on which a “buy-in” notice has been given, the buyer receives from the seller written or comparable electronic notice stating that the securities are: (1) in transfer; (2) in transit; (3) are being shipped that day; or (4) are due from a depository and giving the certificate numbers (except for those securities due from a depository), then the buyer must extend the execution date of the “buy-in” for a period of seven (7) calendar days from the date delivery was due under the “buy-in.” Upon request of the seller, an additional extension of seven (7) calendar days may be granted by the NYSE based upon the circumstances involved.

.60 “Close-Out” Under NYSE or Other National Securities Exchange Rulings

(1) When a national securities exchange makes a ruling that all open contracts with a particular member, which is also a member organization of the NYSE, should be closed-out immediately (or any similar ruling), such member organization may close-out contracts as directed by the national securities exchange.

(2) Whenever the NYSE ascertains that a court has appointed a receiver for any member organization, because of its insolvency or failure to meet its obligations, or whenever the NYSE ascertains, based upon evidence before it, that a member organization cannot meet its obligations as they become due and that such action will be in the public interest, the NYSE may, in its discretion, issue notification that all open contracts with the member organization in question may be closed-out immediately.

(3) Within the meaning of this section, to close-out immediately shall mean that: (A) “buy-ins” may be executed without prior notice of intent to “buy-in” and (B) “sell-outs” may be executed without making prior delivery of the securities called for.

(4) All close-outs executed pursuant to the provisions of this section shall be executed for the account and liability of the member organization in question. Notification of all close-outs shall immediately be sent to such member organization.

.65 Failure to Deliver and Liability Notice Procedures

(1)(A) If a contract is for warrants, rights, convertible securities or other securities which: (i) have been called for redemption; (ii) are due to expire by their terms; (iii) are the subject of a tender or exchange offer; or (iv) are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered (the expiration date) is the settlement date of the contract or later the receiving member organization may deliver a Liability Notice to the delivering member organization as an alternative to the close-out procedures set forth in this Rule. When the parties to a contract are both participants in a Qualified Clearing Agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through the use of said automated notification service. When the parties to a contract are not both participants in a Qualified Clearing Agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, such notice must be issued using written or comparable electronic media having immediate receipt capabilities no later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by this Rule.

(B) If the contract is for a deliverable instrument with an exercise provision and the exercise may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date, the receiving member organization may deliver a Liability Notice to the delivering member organization no later than 11:00 a.m. ET on the day the exercise is to be effected. Notice may be redelivered immediately to another member organization but no later than noon on the same day. When the parties to a contract are both participants in a Qualified Clearing Agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through use of said automated notification service. When the parties to a contract are not both participants in a Qualified Clearing Agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, such notice must be issued using written or comparable electronic media having immediate receipt capabilities. If the contract

remains undelivered at expiration, and has not been canceled by mutual consent, the receiving member organization shall notify the defaulting member organization of the exact amount of the liability on the next business day.

(C) In all cases, member organizations must be prepared to document requests for which a Liability Notice is initiated.

(2) If the delivering member organization fails to deliver the securities on the expiration date, the delivering member organization shall be liable for any damages which may accrue thereby. A Liability Notice delivered in accordance with the provisions of this Rule shall serve as notification by the receiving member organization of the existence of a claim for damages. All claims for such damages shall be made promptly.

(3) For the purposes of this Rule, the term “expiration date” shall be defined as the latest time and date on which securities must be delivered or surrendered, up to and including the last day of the protect period, if any.

(4) If the above procedures are not utilized as provided under this Rule, contracts may be “bought-in” without prior notice after normal delivery hours on the expiration date. Such buy-in execution shall be for the account and risk of the defaulting member organization.

.70 Contracts Made for Cash

Contracts made for “cash,” or made for or amended to include guaranteed delivery on a specified date may be “bought-in” without notice during the normal trading hours on the day following the date delivery is due on the contract; otherwise, the procedures set forth in this Rule shall apply. In all cases, notification of executed “buy-in” must be provided pursuant to this Rule. “Buy-ins” executed in accordance with this paragraph shall be for the account and risk of the defaulting broker/dealer.

.75 “Buy-In” Desk Required

Member organizations shall have a “buy-in” section or desk adequately staffed to process and research all “buy-ins” during normal business hours.

.80 Buy-In of Accrued Securities

Securities in the form of stock, rights or warrants which accrue to a purchaser shall be deemed due and deliverable to the purchaser on the payable date. Any such securities remaining undelivered at that time shall be subject to the “buy-in” procedures as provided under this Rule.

[Rule 283. Members Closing Contracts—Procedure]

Entire text deleted.

[Rule 285. Notice of Intention to Successive Parties]

Entire text deleted.

[Rule 286. Closing Portion of Contract]

Entire text deleted.

[Rule 287. Liability of Succeeding Parties]

Entire text deleted.

[Rule 288. Notice of Closing to Successive Parties]

Entire text deleted.

[Rule 289. Must Receive Delivery]

Entire text deleted.

[Rule 290. Defaulting Party May Deliver After “Buy-In” Notice]

Entire text deleted.

* * * * *

Rule 311. Formation and Approval of Member Organizations

(a) Any person who proposes to form a member organization [or who proposes to become an allied member in an organization for which application is made for approval as a member organization] and any member organization which proposes to admit therein any[:

(1) allied member

(2)] approved person

shall notify the Exchange in writing before any such formation or admission, pay any applicable fee and shall submit such information as may be required by the Rules of the Exchange. No such member organization shall become or remain a member organization unless all persons required to be approved are so approved and execute such agreements with the Exchange as the Rules of the Exchange may prescribe.

(b) The Board of Directors shall not approve a partnership or corporation as a member organization unless:

(1) each director of such corporation is a member, [allied member] principal executive or an approved person; and

(2) every person who controls such corporation is a member, [allied member] principal executive or approved person; and

(3) every natural person who is a general partner in such partnership is a member or [allied member] principal executive and every other person who controls such partnership is a member, [allied member] principal executive or approved person; and

(4) every person who engages in a securities or kindred business and is controlled by or under common control with such partnership or corporation is an approved person; and

(5) The Board of Directors of such corporation designates [its] “principal executives” [officers” who shall be members or allied members and shall exercise senior principal executive responsibility over the various areas of the business of such corporation in such areas as the rules of the Exchange may prescribe, including: operations, compliance with rules and regulations of regulatory bodies, finances and credit, sales, underwriting, research and administration]; and

(6) such partnership or corporation complies with such additional requirements as the rules of the Exchange may prescribe.

(7) every employee who is associated as a member with such member organization is designated with a title, such as vice president, consistent with his responsibilities and the usage of titles within such organization.

(c) In the case of existing corporations making application to become member corporations, there shall be submitted to the Exchange:

(1) A certified list of all holders of record of each class of stock, giving the name and address of the holder and the number of shares of each class of such stock held;

(2) A certified list of all persons who are to become members, [allied members,] principal executives, directors or approved persons,

(3) A certified list of all persons designated as principal executives [officers] of the corporation.

In the case of corporations proposed to be organized, similar information shall be submitted to the Exchange.

(d) – (g) No Change.

[(h) Except as may be otherwise permitted by the Exchange, no member organization or allied member shall conduct business under a firm name unless there exists at least two partners in such firm, nor shall any member firm doing business with the public have less than two general partners who are active in the firm’s business; provided however, that if by death or otherwise a member or allied member becomes the sole general partner in a firm, he may continue business under the firm name for such period as may be allowed by the Exchange.]

• • • **Supplementary Material:** — — — — —

.10 - .12 No Change.

.13 Agreement with the Exchange.—Each member corporation and each member[, allied member] and approved person of the corporation must agree with the Exchange that if any person required to be approved by the Exchange as a member[, allied member] or approved person fails or ceases to be so approved, the corporation may be deprived by the Exchange of all the privileges of a member corporation unless the corporation redeems or converts the stock held by such person as required under Rule 312.

.14 - .16 No Change.

.17 The term “principal executive” shall include: an employee of a member organization designated to exercise senior principal executive responsibility over the various areas of the business of the member organization including: operations, compliance with rules and regulations of regulatory bodies, finances and credit, sales, underwriting, research and administration; and any employee of a member organization who is a functional equivalent of such person.

* * * * *

NYSE Rule Interpretation 311 FORMATION AND APPROVAL OF MEMBER ORGANIZATIONS

(b)(5) OFFICERS

/01 Principal Executives [Officers]

General Qualifications

Principal executives [officers] must satisfy any and all examination requirements necessary to perform their assigned functions. Candidates for such positions must also have work experience and background commensurate with their responsibilities. The Exchange may request information with respect to the experience of anyone appointed or elected to such positions. [Any person having the status or performing the function of “principal executive officer” must qualify as an allied member. (See also Rule 304(b)).]

/02 Examination Requirements for Chief Financial Officers (“CFO”) and Chief Operations Officers (“COO”)

No Change.

/03 Dual Designation of CFO and COO

No Change.

/04 Other Dual or Multi-Designations

Any assignment of principal executive [officer] dual-designation other than an arrangement described in /03 of this Interpretation, or any multi-designation of principal executive [officer] titles, requires the prior written approval of the Exchange.

/05 Co-Designation of Principal Executives [Officers]

The prior written approval of the Exchange is required to assign more than one person to a single “principal executive [officer]” designation pursuant to Rule 311(b)(5). Member organizations seeking approval for such co-designations must submit a written request to the Exchange that sets forth the reason for the co-designation, explains how the arrangement is structured, and makes clear that each co-designee has joint and several responsibility for discharging the duties of that principal executive [officer] designation. However, the Exchange may approve a specific plan identifying the business need and other justification for an arrangement which does not provide for joint and several responsibility for principal executives [officers] other than the chief executive officer and chief financial officer. Such a plan must identify the areas and

functions subject to separate supervisory responsibility and make specific provisions for the supervisory responsibility of functions, activities and areas which can be reasonably be expected to overlap. In addition, in the case of co-CCOs, the written approval request submitted in accordance with this Interpretation shall include a representation to the Exchange, to the effect that the CEO's Annual Report and Certification required by Rule 342.30(e) will further state, in addition to the fact that each such CCO has met the qualification requirements set forth at 342.30(d)/01, that the collective authority, accountability, and responsibility of such co-equal CCOs encompasses, without exception, every aspect of the business of such member organization.

/06 Limitations on Principal Executives [Officers]

Principal Executives [Officers] may be part-time employees, subject to the prior approval of the [Exchange] member organization pursuant to Rule 346(e).

* * * * *

Rule 312. Changes Within Member Organizations

(a) No Change.

(b) In addition, in the case of a member corporation, such member corporation shall give written notice (1) of any material change in the stockholdings of any member, [allied member] principal executive or approved person of such member corporation, (2) of any proposed change in the directors or officers, or (3) of any proposed change in the charter, certificate of incorporation, by-laws or other documents on file with the Exchange, or (4) of the failure to comply with all the conditions of approval specified in Rule 311.

(c) Each member, [allied member] principal executive and approved person of a member corporation shall promptly notify his member corporation of any material acquisition or disposition of shares of stock of such corporation.

(d) Whenever a person who is required to be approved by the Board as a member, [allied member] principal executive or approved person fails or ceases to be so approved, each member corporation shall promptly redeem or convert to a fixed income security such of its outstanding voting stock as may be necessary to reduce such party's ownership of voting stock in the member corporation below that level which enables such party to exercise controlling influence over the management or policies of such member corporation.

(e) Unless permitted by the Exchange in order to protect investors and the public interest or to facilitate the administration of the Exchange, no person shall be a member or [allied member] principal executive in a member organization unless all persons required to be approved by the Exchange are so approved.

* * * * *

Rule 313. Submission of Partnership Articles—Submission of Corporate Documents

(a) No Change.

(b) The charter or certificate of incorporation and all amendments thereto, the by-laws and all amendments thereto, forms of stock certificates and any and all agreements or other documents and amendments thereto relating to the business or affairs of the member corporation between a member corporation and any of its stockholders or between any of the members, [allied members] principal executives or approved persons of a member corporation other than agreements relating to ordinary securities and commodities transactions shall be submitted to and be acceptable to the Exchange prior to becoming effective.

(c) – (d) No Change.

(e) Each member corporation shall, at such times as may be required by the Exchange, submit to the Exchange through its chief executive officer a certified list of its members, [allied members] principal executives and approved persons showing to the best of his knowledge and belief the number of shares of each class of stock of such corporation held of record or beneficially or both by each such party.

(f) No Change.

• • • **Supplementary Material:** — — — — —

Information Regarding Partnership Articles

.10 - .21 No Change.

.22 Provisions concerning redemption or conversion.— Each certificate of incorporation of a member corporation shall contain provisions authorizing the corporation to redeem or convert to a fixed income security all or any part of the outstanding shares of voting stock of such member corporation owned by any person required to be approved by the Board of Directors of the Exchange as a member[, allied member] or approved

person who fails or ceases to be so approved as may be necessary to reduce such party's ownership of voting stock in the member corporation below that level which enables such party to exercise controlling influence over the management or policies of such member corporation.

If the certificate of incorporation of a member corporation subject to Rule 325 provides that a stockholder may compel the redemption of his stock such certificate must provide that without the prior written approval of the Exchange, the redemption may only be effected on a date not less than six months after receipt by the member corporation of a written request for redemption given no sooner than six months after the date of the original issuance of such shares (or any predecessor shares). Each member corporation shall promptly notify the Exchange of the receipt of any request for redemption of any stock or if any redemption is not made because prohibited under the provisions of Securities and Exchange Commission Rule 15c3-1 (See 15c3-1(e)).

Each stock certificate of a member corporation shall carry on its face a statement of the restrictions in SEC Rule 15c3-1(e) relating to the redemption of stock or a full summary thereof.

* * * * *

Rule 321. Formation or Acquisition of Subsidiaries

No Change.

••• Supplementary Material: —————

Information Regarding Subsidiary Companies of Member Organizations

.10 Definition of subsidiary.—For purposes of this rule, the term “subsidiary” means an entity engaged in a securities or kindred business that is controlled by a member organization within the meaning of Rule 2. However, control shall not be presumed, for purposes of this rule, merely because a member is a director or principal executive [officer] of another person.

* * * * *

Rule 342. Offices—Approval, Supervision and Control

(a) No Change.

(b) The general partners or directors of each member organization shall provide for appropriate supervisory control and shall designate a general partner or principal

executive [officer] to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities' laws and regulations. This person shall:

(1) - (2) No Change.

(c) – (d) No Change.

(e) The amounts and types of credit extended by a member organization shall be supervised by members or [allied members] principal executives qualified by experience for such control in the types of business in which the member organization extends credit.

• • • **Supplementary Material:** — — — — —

.10 Definition of Branch Office.—A “branch office” is any location where one or more associated persons of a member or member organization regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:

(A) - (G) No Change.

Notwithstanding the exclusions in subparagraphs 342.10(A) - (G), any location that is responsible for supervising the activities of persons associated with a member or member organization at one or more non-branch locations of such member or member organization is considered to be a branch office.

For purposes of this Rule, the term “business day” shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

For purposes of this Rule, the term “associated person of a member or member organization” is defined as a member[, allied member,] or employee associated with a member or member organization.

For purposes of Rule 342.10(B)(viii), written supervisory procedures shall include criteria for on-site for cause reviews of an associated person's primary residence. Such reviews must utilize risk-based sampling or other techniques designed to assure compliance with applicable securities laws and regulations and with Exchange Rules.

For purposes of Rule 342.10(B)(viii) and (C), written supervisory procedures for such residences and other remote locations must be designed to assure compliance with applicable securities laws and regulations and with NYSE Rules.

Factors which should be considered when developing risk-based sampling techniques to determine the appropriateness of on-site for cause reviews of selected residences and other remote locations shall include, but not be limited to, the following: (i) the firm's size; (ii) the firm's organizational structure; (iii) the scope of business activities; (iv) the number and location of offices; (v) the number of associated persons assigned to a location; (vi) the nature and complexity of products and services offered; (vii) the volume of business done; (viii) whether the location has a Series 9/10-qualified person on-site; (ix) the disciplinary history of the registered persons or associated persons, including a review of such person's customer complaints and Forms U4 and U5; and (x) the nature and extent of a registered person's or associated person's outside business activities, whether or not related to the securities business.

.11 Annual fee.— No Change.

.12 Foreign branch offices.— No Change.

.13 Acceptability of supervisors.

(a) Generally.— Any member[, allied member] or employee who is a candidate for acceptability under (d)(1), (2), or (3) above must have a creditable [three year] record [as a registered representative or equivalent experience,] and must pass the General Securities Sales Supervisor Qualification Examination (Series 9/10) or another examination acceptable to the Exchange which demonstrates competency relevant to assigned responsibilities. The General Securities Principal Examination (Series 24) is an acceptable alternative for persons whose duties do not include the supervision of options or municipal securities sales activity. The examination requirement may be waived at the discretion of the Exchange. In the case of a firm that is applying for registered broker-dealer status, such supervisory candidates, in addition to the requirements outlined above, must also have at least one year of direct experience or two years of related experience in the subject area to be supervised.

(b) Compliance supervisors.— No Change.

.14 - .20 No Change.

.21 Trade review and investigation.— In order to help assure its compliance with the provisions of the Securities Exchange Act of 1934, the rules under that act and the rules of the Exchange prohibiting insider trading and manipulative and deceptive devices, each member not associated with a member organization and each member organization, in addition to carrying out such other supervisory procedures as may be necessary to discharge its supervisory responsibilities as to compliance with Federal Securities laws and rules and Exchange rules generally shall:

(a) Subject trades in NYSE listed securities and in related financial instruments which are effected for the account of the member or member organization or for the accounts of members[, allied members] or employees of the member or member organization and their family members (including trades reported by other members or member organizations pursuant to Rule 407) to review procedures that the member or member organization determines to be reasonably designed to identify trades that may violate the provisions of the Securities Exchange Act of 1934, the rules under that act or the rules of the Exchange prohibiting insider trading and manipulative and deceptive devices, and

(b) No Change.

The Exchange, at its discretion, may exclude from these review and investigation requirements particular classes of persons, trades, securities and related financial instruments.

.22 - .26 No Change.

.30 Annual Report and Certification.— No Change.

(a) - (c) No Change.

(i) - (viii) No Change.

(d) For each member organization, the designation of a general partner or principal executive [officer] as Chief Compliance Officer (which designation shall be updated on Schedule A of Form BD).

* * * * *

NYSE Rule Interpretation 342 OFFICES – APPROVAL, SUPERVISION AND CONTROL

(a)(b)

/01 - /03 No Change.

(b) BRANCH OFFICES

/01 Approval

No Change.

/02 Acquisition, Merger or Consolidation

No Change.

(e) SUPERVISION: EXTENSION OF CREDIT AND CONCENTRATIONS OF RISK

/01 Application

The Exchange expects all member organizations to have in place a system whereby the concentrations of risk in proprietary, customer and other accounts and extension of credit to customers and others are under the formal supervision, evaluation and control of one or more general partners or principal executives [officers]. These responsibilities and authority may be delegated to other qualified principals or employees. The general partner or principal executive [officer] shall establish a separate system of follow-up and review to determine whether the delegated authority and responsibility is being properly exercised. **Such systems shall be in place for each product line or risk activity**, however, one person may be delegated responsibility for more than one product line or risk activity.

Each member organization should maintain a listing at its principal office each registered branch office and each non-registered location of those individuals designated responsibility for each business activity and product line for review by Exchange examiners.

The types of product lines and risk activities that should be specifically included in the delegation and review of responsibilities should include, but not be limited to, the following:

- Trading limits – should be established and reviewed for each trader, department and the organization as a whole;

- Concentrations – parameters should be established to detect, monitor and evaluate risks of accumulations of large positions in introduced accounts as well as customers, non-customers (e.g. partners and principal [officers] executives), trading brokers and employees;
- Credit – Procedures should be established to:
 - (i) monitor limits and types of credit extended in customers' and noncustomers' and other credit accounts
 - (ii) formulate house margin requirements
 - (iii) review the need for additional margin, mark-to-market and collateral deposits for all accounts;
- Compliance – systems should be in place to review compliance with applicable regulatory and in-house requirements;
- Risk – should include procedures to review risk potential individually and collectively in all types of commitments; and
- to review risk in all open or unpaid transactions, general ledger accounts and contractual and contingent commitments.

The above review should include but not be limited to: cleared and uncleared regular way and open contractual commitments including delayed delivery, "DVP", underwriting, when issued/when distributed, repurchase, standbys, commodity spot (cash), futures and forward contracts.

Supervisory and review procedures shall be maintained in writing, copies of which shall be maintained at the organization's principal office and at each branch office in accordance with existing Exchange interpretations of Rule 342. (See Rule 342.16/02)

Reports must be made to the Exchange when concentrations in securities or commodities positions, commitments or other contingencies could reasonably be expected to result in a significant loss, capital or liquidity problem.

See also Rule 401/05 – Early Reporting of Developing Problems.

.10 REGISTERED REPRESENTATIVE OPERATING FROM RESIDENCE

/01 Special Supervision

No Change.

.13 ACCEPTABILITY OF SUPERVISORS**/01 Qualifications**

Every branch office or sales manager must have [at least three years experience as a registered representative or substantial experience in a related sales or managerial position] a creditable record and must pass the General Securities Sales Supervisor Qualification Examination (“Series 9/10”). [Under this interpretation, a related sales or managerial position would include, for example:

- A mutual fund salesman or an investment advisor;
- A position of fiduciary responsibility as in the Trust Department of a bank or an attorney practicing securities law;
- President of an established company in the financial, real estate or insurance industries.

In order to qualify as a supervisory person, an allied member should have at least three years experience as a registered representative unless granted an exception based upon experience over a period of years in a position of trust and responsibility.]

* * * * *

Rule 345. Employees—Registration, Approval, Records

(a) No member or member organization shall permit any natural person to perform regularly the duties customarily performed by [(i) a registered representative, (ii)] a securities lending representative[, (iii) a securities trader] or [(iv)] a direct supervisor of [(i), (ii) or (iii) above] such, unless such person [shall have been] is registered with, qualified by and is acceptable to the Exchange.

[(b) No member or member organization shall permit any natural person, other than a member or allied member, to assume the duties of an officer with the power to legally bind such member or member organization unless such member or member organization has filed an application with and received the approval of the Exchange. *(See also Rules 304 (¶2304) and 311 (¶2311).)*]

[(See Rule 346(f) (¶2346(f)) which prohibits association with any natural person or entity subject to a “statutory disqualification”).]

• • • **Supplementary Material:** — — — — —

Registration of Employees

.10 Employees required to be registered or approved.—See definitions of “branch office manager”, “registered representative” and “registered options representative” contained in Rules 9 (§2009) and 10 (§2010) and Rule 700(b)(49) (§2700) and Rule 342 (§2342) for qualification requirements for supervisors.

A “securities lending representative” is defined as any person who has discretion to commit his member or member organization employer to any contract or agreement (written or oral) involving securities lending or borrowing activities with any other person.

[A “securities trader” is defined as any person engaged in the purchase or sale of securities or other similar instruments for the account of his employer and who does not transact any business with the public.]

.11 Investigation and Records

(a) Members and member organizations shall thoroughly investigate the previous record of persons whom they contemplate employing including, (1) persons required to be registered with the Exchange, (2) persons who regularly handle or process securities or monies or maintain the books and records relating to securities or monies and (3) persons having direct supervisory responsibility over persons engaged in the activities referred to in (1) and (2) above who are not otherwise required to be registered.

Investigatory requirements for persons required to be registered with the Exchange (referred to in (a)(1) above) shall be satisfied when the member or member organization fulfills its obligation to verify the information contained in the Uniform Application for Securities Industry Registration or Transfer (Form U-4) and reviews the most recent Form U-5, as described below, if applicable.

In addition, a member or member organization shall obtain from an applicant, if applicable, a copy of his or her Uniform Termination Notice of Securities Industry Registration (Form U-5) and any amendments filed thereto, by the most recent employer. A member or member organization shall request said Form U-5 from any person who was previously registered with the Exchange or other self-regulatory organization that requires its members to provide a copy of Form U-5 to its terminated registered persons. (See also Rule 345.17.)

The member or member organization shall obtain said Form U-5 no later than sixty (60) days following the filing of the application for registration or demonstrate to the Exchange that it has made reasonable efforts to comply with the requirement. A member or member organization receiving a Form U-5 pursuant to this provision shall review the Form U-5 and any amendment thereto as part of its investigatory process and shall take such action as may be deemed appropriate.

Investigatory requirements pertaining to persons specified in (a)(2) and (3) above shall be satisfied if a member or member organization verifies the information obtained pursuant to paragraph (c) below. Notwithstanding the above, further inquiry shall be made where appropriate in light of background information developed, the position for which the person is being considered or other circumstances. Investigation and verification shall be done by a member[, allied member] or person designated under the provisions of Rule 342(b)(1).

(b) – (c) No Change.

.12 Applications: No Change.

.13 Agreements.—Prior to the Exchange’s consideration of the application, each candidate for registration, other than a member [or allied member] of the Exchange shall sign an agreement(s), on a form(s) prescribed by the Exchange, which includes a pledge that the registered person will abide by the Rules adopted pursuant thereto as these now exist and as from time to time amended.

.14 Payment of fees.— No Change.

.15 Qualifications

(1)

(a) Candidates for registration.—Candidates for registration, shall qualify by [meeting the training requirement and by] passing a qualification examinations, as applicable, which is acceptable to the Exchange.

(b) [Training and] Examination waivers.—Where good cause is shown, the [training and/or] examination requirement for a candidate for registration may be waived at the discretion of the Exchange. Consideration may be given to previous related employment and to training and/or examination requirements of other self-regulatory organizations. In such cases, the Exchange must be satisfied that the candidate is qualified for registration.

(2) Registered representatives.—[The training requirement for registered representative candidates is four months.] Such candidates shall pass a qualifying examination acceptable to the Exchange.

(3) Limited registration.—Applications as limited purpose registered representative candidates will be considered by the Exchange for those duly qualified persons whose activities are limited solely to the solicitation or handling of the sale or purchase of: investment company securities and variable contracts, insurance premium funding program, direct participation programs, and municipal securities, among other limited registration categories. Limited purpose registered representative candidates shall qualify by [satisfying a two-month training requirement and] passing a qualification examination acceptable to the Exchange.

(4) Registered options representative.—Each registered representative who transacts any business with the public in option contracts shall qualify as a “Registered Options Representative” by [satisfying the four month training requirement and] passing a qualification examination acceptable to the Exchange. (*See Rule 700(b)(49).*)

[(5) Securities traders and their direct supervisors.—Securities traders candidates shall pass a qualification examination acceptable to the Exchange.]

[(6) Commodities solicitors.—Individuals who are engaged in the solicitation or handling of business in, or the sale of, commodities futures contracts shall demonstrate their competency by satisfying a solicitor’s examination requirement of a national commodities exchange, which examination is acceptable to the Exchange.

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NYSE Rule Interpretation 345 EMPLOYEES – REGISTRATION, APPROVAL, RECORDS

(a) REGISTRATION

/01 Exceptions

No Change.

/02 “Independent Contractors”

The establishment of “independent contractor” status between a natural person registered with and qualified by the Exchange and a member organization is permitted only if it does not in any way compromise such person’s characterization and treatment

as an “employee” of their associated member organization for purposes of the Rules of the Exchange. Though not an exhaustive list, the following regulatory requirements must be fulfilled by a member organization that enters into an arrangement with any person asserting independent contractor status:

1. No Change.

2. The member organizations must obtain the written concurrence of each individual asserting independent contractor status that he or she will be subject to the direct, detailed supervision, control and discipline of the member organization, and will be bound by the relevant rules, standards and guidelines of the member organization. Further, the prospective independent contractor must attest that he or she will be deemed an employee of the member organization and, as such, will be fully subject to the jurisdiction of the Exchange. The Exchange is a third-party beneficiary of any such attestation. The “Consent to Jurisdiction” form, included below, must be used for this purpose.

“Consent to Jurisdiction” forms executed pursuant to this Interpretation are not required to be submitted to, or approved by, the Exchange. However, all such forms must be maintained together with the corresponding executed independent contractor agreement and must be promptly provided to the Exchange upon request.

This Interpretation does not permit the incorporation of registered representatives nor does it permit the assertion of independent contractor status by any principal executive [officer] of a member organization.

CONSENT TO JURISDICTION

No Change.

/03 Registered Persons Who Volunteer or Are Called to Active Military Duty

No Change.

(a)(i) COMPENSATION

/01 - /03 No Change.

(b) OFFICERS

/01 - /04 No Change.

.11 INVESTIGATION AND RECORDS

/01 - /02 No Change.

.12 APPLICATIONS

/01 Updating Form U4

No Change.

.15 QUALIFICATIONS

/01 Examination [and Training] Waivers

Where good cause is shown, the [training and/or] examination requirement for a candidate for registration may be waived at the discretion of the Exchange. The Exchange will review requests for waivers in light of several factors including length and type of previous employment and the requirements of other self-regulatory organizations.

In addition, registered representative candidates who meet one of the following conditions may request a waiver of the [training and] examination requirements.

- A former NYSE registered representative who terminated his or her association as such within the last two years, from the date of termination.
- A former NYSE registered representative who within the last ten years has been continuously employed full-time in a general securities business.

/02 Categories of Registration

Registered representative candidates may sit for the Series 7 exam at the first available examination session after they have become employed. [Candidates successfully completing the examination will not, however, receive approval prior to completion of the full four-month training period.] Member organizations are reminded that trainees may not perform the functions of a registered representative until approved by the Exchange. (Also see Rule 345(a)/01, page 3450.)

Limited registration candidates are those whose activities are limited solely to the solicitation or handling of the sale or purchase of instruments such as investment company securities and variable contracts, insurance premium funding programs, direct participation programs and municipal securities. Limited purpose registered representative candidates must qualify by [satisfying a two-month training requirement and by] passing a qualification examination acceptable to the Exchange.

Limited registration for floor members and floor clerks would permit floor members and floor clerks who have successfully completed the Series 7A examination module to conduct a public business which is limited to accepting orders directly from professional customers for execution on the trading floor. The Floor Member (“Series 15”) Examination and the Trading Assistant (“Series 25”) Examination are prerequisites for the Series 7A Examination for floor members and floor clerks, respectively.

A professional customer includes a bank, trust company, insurance company, investment trust, state or political subdivision thereof, charitable or nonprofit educational institution regulated under the laws of the United States, or any state, or pension or profit sharing plan subject to ERISA or of an agency of the United States or of a state or political subdivision thereof or any person who has a net worth of at least \$45 million of which \$40 million are financial assets.

For purposes of the definition of professional customer, the term “person” shall mean the same as that term is defined in Rule 2, except that it shall not include natural persons.

Registered options representative: Each registered representative who transacts any business with the public in options contracts shall qualify as a “Registered Options Representative” by [satisfying the four-month training requirement and] passing the Series 7 examination.

[**Securities traders and their direct supervisors** must pass the Series 7 examination. There is no training requirement imposed by the Exchange.]

Securities lending representatives and their direct supervisors are not subject to training or examination requirements. Securities lending representatives and their direct supervisors must, however, file a Form U4 and sign a code of ethics agreement (addendum to Form U4).

See Rule 345.10 for definitions of the term[s “securities trader” and] “securities lending representative.”

* * * * *

Rule 345A. Continuing Education For Registered Persons

(a) – (b) No Change.

••• Supplementary Material: —————

.10 For purposes of this Rule, the term “registered person” means any member, [allied member,] principal executive, registered representative, or other person registered or required to be registered under Exchange rules, but does not include any such person whose activities are limited solely to the transaction of business on the Floor with members or registered broker-dealers.

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NYSE Rule Interpretation 345A CONTINUING EDUCATION FOR REGISTERED PERSONS

(a) REGULATORY ELEMENT

/01 Registration Date

No Change.

/02 Application

The requirements of the Regulatory Element apply to all persons registered or required to be registered under Exchange rules, even if such persons are not required to be qualified by taking and passing an examination *e.g.*, certain [allied members] principal executives and securities lending representatives.

* * * * *

Rule 346. Limitations—Employment and Association with Members and Member Organizations

(a) Every member not associated with a member organization must be a registered broker or dealer unless exempted by the Securities Exchange Act of 1934.

(b) Without making a written request and receiving the prior written consent of his member or member organization employer, no member[, allied member] or employee of a member or member organization shall at any time be engaged in any other business; or be employed or compensated by any other person; or serve as an officer, director, partner or employee of another business organization; or own any stock or have, directly or indirectly, any financial interest in any other organization engaged in any securities, financial or kindred business; provided however, that such written request and consent shall not be required with regard to stock ownership or other financial interest in any securities, financial or kindred business which is publicly owned unless a control relationship exists.

(See also requirements of Rules 311, [and] 350 and 407.)

[(c) Prompt written notice shall be given the Exchange whenever any member or member organization knows, or in the exercise of reasonable care should know, that any person, other than a member, allied member or employee, directly or indirectly, controls, is controlled by or is under common control with such member or member organization. (See also Rule 321.)]

(c) Where a member organization approves an employee's participation in private securities transactions in which regard the employee has or may receive selling compensation, the transaction shall be recorded on the books and records of the member organization, which shall supervise such participation as if the transaction were executed on its behalf.

(d) No member shall qualify more than one member organization for membership.

(e) [Unless otherwise permitted by the Exchange] [e]Every [member, allied member, registered representative and officer] employee of a member organization who is assigned or delegated any responsibility or authority pursuant to Rule 342 shall devote his entire time during business hours to the business of such [member or] member organization unless an alternate arrangement has been approved in writing by the member organization.

The written approval of such arrangements must identify any entity for which the supervisory person will be performing services during business hours and must specifically describe the nature of such services. The approval must also set forth the approximate amount of time the supervisory person is expected to devote to each entity, with particular attention paid to the approximate time expected to be required for the person, based upon such person's qualifications and experience, to effectively discharge his or her supervisory responsibilities on behalf of any associated person of a member organization.

In addition, the approval letter must document that the member organization has made a good faith determination that the arrangement will in no way compromise the protection of investors or the public interest; compromise the supervisor's duties at the member organization; or give rise to a material conflict of interest.

(f) Except as otherwise permitted by the Exchange, no member, member organization, [allied member,] approved person, employee or any person directly or indirectly controlling, controlled by or under common control with a member or member

organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any “statutory disqualification” defined in Section 3(a)(39) of the Securities Exchange Act of 1934. Any member organization seeking permission to have such a person continue to be or become associated with it shall pay a fee in an amount to be determined by the Exchange.

• • • **Supplementary Material:** — — — — —

[.10 In connection with paragraph (e) above, the Exchange will permit a member, allied member, registered representative or officer of a member or member organization who is assigned or delegated any responsibility or authority pursuant to Rule 342 to devote less than his entire time during business hours to the business of the member or member organization in instances where such permission will not impair the protection of investors or the public interest.]

.11 For the purpose of this rule, control is defined in Rule 2.

.12 For the purposes of this rule, the term associated with a member or member organization shall have the same meaning as the term “associated with a member” is defined in Section 3(a)(21) of the Securities Exchange Act of 1934.

.20 Under the appropriate circumstances the Exchange may, in determining control, treat as a single holding stock which is nominally held by different persons or organizations.

.30 For the purposes of this rule, the term “private securities transaction” shall mean any securities transaction outside the regular course or scope of an associated person’s employment with a member organization, including, though not limited to, new offerings of securities which are not registered with the Commission, provided however that transactions subject to the notification requirements of Rule 407, transactions among immediate family members for which no associated person receives any selling compensation, and personal transactions in investment company and variable annuity securities, shall be excluded. The term “immediate family members” means a person’s parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children, and any other individual to whom the person provides material support.

.40 For the purposes of this rule, the term “selling compensation” shall mean any compensation paid directly or indirectly from any source in connection with or as a result of the purchase or sale of a security, including, though not limited to, commissions; finder’s fees; securities or rights to acquire securities; rights of participation in profits, tax benefits, or dissolution proceeds, as a general partner or otherwise; or expense reimbursements.

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NYSE Rule Interpretation 346 LIMITATIONS – EMPLOYMENT AND ASSOCIATION WITH MEMBER ORGANIZATIONS

/01 - /02 No Change.

[/03 Outside Connections – Supervisory Persons]

[In unusual circumstances the Exchange will permit member organization personnel who are delegated supervisory responsibilities under Rule 342 to devote a portion of their time to activities outside the member organization, including serving as officers, directors or employees of a secondary affiliation. The Exchange will consider such approvals on a case-by-case basis and will consider, among other factors: whether less than full time activity in the member organization is consistent with the protection of investors or the public interest; the precise nature of the supervisory position in the member organization and the time required to perform it effectively; the degree of control between the member organization and the other entity.]

/0[4]3 Outside Connections – Legal Limitations

No Change.

* * * * *

Rule 351. Reporting Requirements

(a) Each member not associated with a member organization and each member organization shall promptly report to the Exchange whenever such member or member organization, or any member[, allied member] or registered or non-registered employee associated with such member or member organization:

(1) – (10) No Change.

(b) Each member associated with a member organization and each [allied member or] registered or non-registered employee of a member or member organization shall

promptly report the existence of any of the conditions set forth in paragraph (a) of this rule to the member or member organization with which such person is associated.

(c) Each approved person shall promptly report to the member organization with which such approved person is associated, whenever such approved person becomes subject to a statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934; and upon being so notified, or otherwise learning such fact, the member or member organization shall promptly so advise the Exchange in writing, giving the name of the person subject to the statutory disqualification and details concerning the disqualification.

(d) No Change.

(e) Each member not associated with a member organization and a [senior officer or partner] principal executive of each member organization shall take one or both of the following two actions in relation to the trades that are subject to the review procedures required by Rule 342.21(a):

(i) – (ii) No Change.

(A) – (C) No Change.

The statement that subparagraph (i) requires shall read substantially as follows:

(1) - (3) No Change.

When a statement pertains to one or more trades that have been the subject of an internal investigation pursuant to Rule 342.21(b) but as to which no internal disciplinary action has been taken and no referral of the matter to the Exchange, to another self-regulatory organization or to a Federal agency has been made, the statement that subparagraph (ii) (C) requires shall be as above, except that it shall refer to the particular trade(s) (rather than to the trades of a particular calendar quarter) and shall omit the clause excepting trades reported as the subject of an investigation. [For the purpose of this paragraph (e), a “senior officer or partner” means (i) the chief executive officer or managing partner or

(ii) either (A) any other officer or partner who is a member of the member organization’s executive or management committee or its equivalent committee or group or (B) if the member organization has no such committee or group, any officer or partner having senior executive or management responsibility who reports directly to the Chief Executive Officer or managing partner. If, in the case of a member

organization, its chief executive officer or managing partner does not sign the statement, a copy of the statement shall be provided to the chief executive officer or managing partner.]

(f) Each member and member organization that prepares, issues or distributes research reports or whose research analysts make public appearances is required to submit to the member's or member organization's Designated Examining Authority, annually, a letter of attestation signed by a [senior officer or partner] principal executive that the member or member organization has established and implemented procedures reasonably designed to comply with the provisions of Rule 472. The attestation must also specifically certify that each research analyst's compensation was reviewed and approved in accordance with the requirements of Rule 472(h)(2) and that the basis for such approval has been documented.

• • • **Supplementary Material:** — — — — —

.10 - .12 No Change.

.13 The term "customer complaint" shall mean any written statement of a customer, or any person acting on behalf of a customer, other than a broker or dealer, alleging a grievance involving the activities of those persons under the control of a member organization.

Rule 352. Guarantees, Sharing in Accounts, and Loan Arrangements

Prohibitions Against Guarantees

(a) No member organization shall guarantee or in any way represent that it will guarantee any customer against loss in any account or on any transaction; and no member, [allied member,] principal executive, registered representative or officer shall guarantee or in any way represent that either he or she, or his or her employer, will guarantee any customer against loss in any customer account or on any customer transaction. The prohibitions in this paragraph extend to the payment, in whole or in part, of a debit balance.

Prohibition Against Sharing in Profits and Losses

(b) Except as otherwise provided by this Rule, no member, member organization, [allied member,] principal executive, officer, or any other person acting in the capacity of a registered representative shall, directly or indirectly, (i) take or receive or agree to take

or receive a share in the profits, or (ii) share or agree to share in any losses, in any customer's account or of any transaction effected therein.

Joint Accounts and Order Errors

(c) Subject to compliance with paragraph (a), [P]paragraph (b) of this Rule shall not preclude a member not associated with a member organization, or a member organization or, with the prior written authorization of the member organization[consent], a member associated with such member organization, a[n allied member,] principal executive or other person acting in the capacity of a registered representative, from participating with a customer in a joint account and sharing in the profits or losses therein in direct proportion to financial contributions made to such account. Accounts of immediate family members of such persons are exempt from the direct proportionate share limitation. (See Rule 93 for reporting and approval requirements concerning participation in joint accounts by members[,] and member organizations [and allied members].) Nor shall it preclude a member not associated with a member organization or a member organization from sharing or agreeing to share any losses in a customer account if it has been established that the loss was caused in whole or in part by an error resulting from the action or inaction of such member, [allied member,] member organization, or person associated therewith (See also Rule 134).

For purposes of this section (c), the term "immediate family" shall include parents, mother-in-law or father-in-law, husband or wife, children or any relative to whose support the principal executive or persons acting in the capacity of a registered representative otherwise contributes directly or indirectly.

Certain Investment Advisory Arrangements

(d)

[(1) Section 205 of the Investment Advisers Act of 1940 (the "Advisers Act") and the rules thereunder set forth provisions relating to advisory compensation arrangements applicable to investment advisers registered with the Securities and Exchange Commission ("SEC") unless exempt pursuant to Section 203(b) of the Adviser's Act. Under certain circumstances, such arrangements may provide for the adviser to receive a performance-based fee, e.g., sharing in capital gains or losses of the assets under management. Where a participatory compensation arrangement is entered into by a member organization that itself is registered with the SEC as an investment adviser, and such arrangement complies with Section 205 of the Advisers Act and the rules

thereunder, the arrangement will not violate Rule 352(b) if the arrangement arises in the context of such member organization's investment advisory relationship with the customer. Member organizations may not have such participatory compensation arrangements if they are only acting as a broker for the customer.] Notwithstanding the prohibition of paragraph (b), a person acting as an investment adviser (whether or not registered as such) may receive compensation based on a share of profits or gains in an account if all the of the conditions in Rule 205-3 of the Investment Advisers act of 1940 (as may be amended from time to time) are satisfied. All advisory compensation arrangements should be reviewed by member organizations and their counsel in light of applicable State and Federal law (e.g., ERISA).

[(2) To the extent that any of the above described conditions of paragraph (d)(1) are not fully satisfied, the general Rule 352(b) prohibition will apply. All advisory compensation arrangements should be reviewed by member organizations and their counsel in light of applicable State and Federal law (e.g., ERISA).]

Limitations on Borrowing From or Lending to Customers

(e) – (f) No Change.

(g) For purposes of this Rule, other than in section (c), the term "immediate family" shall include parents, grandparents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in law or daughter-in-law, children, grandchildren, cousin, aunt or uncle, or niece or nephew, and shall also include any other person whom the registered person supports, directly or indirectly, to a material extent.

Rule 353. Rebates and Compensation

(a) No member, [allied member,] principal executive, registered representative or officer shall, directly or indirectly, rebate to any person, firm or corporation any part of the compensation he receives for the solicitation of orders for the purchase or sale of securities or other similar instruments for the accounts of customers of his member organization employer, or pay such compensation, or any part thereof, as a bonus, commission, fee or other consideration for business sought or procured for him or for any member or member organization of the Exchange.

(b) No member, [allied member,] principal executive, registered representative or officer shall be compensated for business done by or through his employer after the termination of his employment except as may be permitted by the Exchange.

Rule 354. Reports to Control Persons

(a) No Change.

(b) For the purpose of paragraph (a), “control person” means a person who controls the member organization within the meaning of Rule 2 otherwise than solely by virtue of being a director, general partner or principal executive [officer] (or person occupying a similar status or performing similar functions) of the member organization.

* * * * *

Rule 401. Business Conduct

(a) Every member, [allied member] principal executive and member organization shall at all times adhere to the principles of good business practice in the conduct of his or its business affairs.

* * * * *

[Rule 404. Individual Members Not to Carry Accounts]

Entire text deleted.

Rule 405. Diligence as to Accounts

Every member organization is required through a [general partner, a] principal executive [officer] or a person or persons designated under the provisions of Rule 342(b)(1) [¶2342] to

(1) No Change.

(2) Supervision of Accounts

No Change.

(3) Approval of Accounts

Specifically approve the opening of an account prior to or promptly after the completion of any transaction for the account of or with a customer, provided, however, that in the case of branch offices, the opening of an account for a customer may be approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a [general partner, a] principal executive [officer] or a person or persons designated under the provisions of Rule 342(b)(1) [¶2342]. The member, [general partner, officer] principal executive or other

designated person approving the opening of the account shall, prior to giving his approval, be personally informed as to the essential facts relative to the customer and to the nature of the proposed account and shall indicate his approval in writing on a document which is a part of the permanent records of his office or organization.

(4) Common Sales Accounts

No Change.

a) - e) No Change.

• • • **Supplementary Material:** — — — — —

.10 Application of Rule 405(1) and (3) [¶2405].— In the case of a margin account carried by a member organization for a non-member corporation, definite knowledge should be had to the effect that the non-member corporation has the right under its charter and by-laws to engage in margin transactions for its own account and that the persons from whom orders and instructions are accepted have been duly authorized by the corporation to act on its behalf. It is advisable in each such case for the carrying organization to have in its possession a copy of the corporate Charter, By-laws and authorizations. Where it is not possible to obtain such documents, a member or [allied member] principal executive in the member organization carrying the account should prepare and sign a memorandum for its files indicating the basis upon which he believes that the corporation may properly engage in margin transactions and that the persons acting for the corporation have been duly authorized to do so.

In the case of a cash account carried for a non-member corporation, the carrying member organization should assure itself through a general partner or an officer who is a holder of voting stock that persons entering orders and issuing instructions with respect to the account do so upon the proper authority.

When an agency account is carried by a member organization its files should contain the name of the principal for whom the agent is acting and written evidence of the agent's authority.

When Estate and Trustee accounts are involved a member organization should obtain counsel's advice as to the documents which should be obtained.

Information as to the country of which a customer is a citizen is deemed to be an essential fact.

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NYSE Rule Interpretation 405 DILIGENCE AS TO ACCOUNTS

/01 Credit Reference – Business Background

No Change.

/02 Approval of New Accounts/Branch Offices

Rule 405(3) provides that a Branch Office Manager may approve the opening of new customer accounts but that such action, within a reasonable period of time, must be approved by a [general partner, a] principal executive [officer] or a person or person(s) designated under the provisions of Rule 342(b)(1). Branch Office Managers may be among the parties designated with authority to make final firm determinations as to the opening of new accounts, at the discretion of the member organization acting on an individual basis.

It is important to note that Rule 342 requires a separate system of follow-up and review to determine that all delegated authority is being properly exercised.

* * * * *

Rule 407. Transactions - Employees of Members, Member Organizations and the Exchange

(a) No member or member organization shall, without the prior written consent of the employer, open a securities or commodities account or execute any transaction in which a member[, allied member] or employee associated with another member or member organization or an employee of the Exchange is directly or indirectly interested.

In connection with accounts or transactions of members[, allied members] and employees associated with another member or member organization, duplicate confirmations and account statements shall be sent promptly to the employer.

(b) No member (associated with a member or member organization)[, allied member] or employee associated with a member or member organization shall establish or maintain any securities or commodities account or enter into any [private] securities transaction with respect to which such person has any financial interest or the power, directly or indirectly, to make investment decisions, at another member or member organization, or a domestic or foreign non-member broker-dealer, investment adviser, bank, other financial institution, or otherwise without the prior written consent of

another person designated by the member or member organization under Rule 342(b)(1) to sign such consents and review such accounts.

Persons having accounts or transactions referred to above shall arrange for duplicate confirmations and statements (or their equivalents) relating to the foregoing to be sent to another person designated by the member or member organization under Rule 342(b)(1) to review such accounts and transactions. All such accounts and transactions periodically shall be reviewed by the member or member organization employer (see also Rule 342.21).

The Exchange may, upon written request, and where good cause is shown, waive any requirements of this Rule.

• • • **Supplementary Material:** — — — — —

.10 No Change.

.11 [The “private securities transactions” referred to in Rule 407(b) shall include all transactions in the securities of issuing entities which are not public, whether or not such transactions are negotiated directly with the issuer. They shall include, but not be limited to: interests in oil or gas ventures, and in real estate syndications, participants in tax shelters and in other investment vehicles, and shares issued prior to a public distribution by such issuing entities.]

The term “securities or commodities accounts” as used in the rule 407(b) shall include, but not be limited to, limited or general partnership interests in investment partnerships.

Members and member organizations must develop and maintain written procedures for reviewing these accounts and transactions and shall assure that their associated persons are not improperly recommending or marketing these securities or products to others through members or member organizations[, or privately,].

.12 No Change.

.13 [f]For the purposes of this Rule, the term “other financial institution” includes, but is not limited to, insurance companies, trust companies, credit unions and investment companies.

* * * * *

Rule 408. Discretionary Power in Customers' Accounts

(a) No member[, allied member] or employee of a member organization shall exercise any discretionary power in any customer's account or accept orders for an account from a person other than the customer without first obtaining written authorization of the customer[.], the signature of the person or persons authorized to exercise discretion in the account (and of any substitute so authorized), and the date such discretionary authority was granted.

(b) No member[, allied member] or employee of a member organization shall exercise any discretionary power in any customer's account, without first notifying and obtaining the approval of another person delegated under Rule 342(b)(1) with authority to approve the handling of such accounts. Every order entered on a discretionary basis by a member[, allied member] or employee of a member organization must be identified as discretionary on the order at the time of entry. Such discretionary accounts shall receive frequent appropriate supervisory review by a person delegated such responsibility under Rule 342(b)(1), who is not exercising the discretionary authority. A written statement of the supervisory procedures governing such accounts must be maintained.

(c) No member or [allied member or] employee of a member organization exercising discretionary power in any customer's account shall (and no member organization shall permit any member[, allied member,] or employee thereof exercising discretionary power in any customer's account to) effect purchases or sales of securities which are excessive in size or frequency in view of the financial resources of such customer.

* * * * *

Rule 409. Statements of Accounts to Customers

(a) - (g) No Change.

• • • Supplementary Material: — — — — —

.10 No Change.

(1) - (6) No Change.

(7) Upon the written instructions of a customer and with the written approval of a member or [allied member,] supervisor of a member organization, a member organization may hold mail for a customer who will not be at his usual address for the period of his absence, but (a) not to exceed two months if the organization is advised that such customer will be on vacation or travelling or (b) not to exceed three months if the customer is going abroad.

Rule 410. Records of Orders

(a) No Change.

(1) – (3) No Change.

Changes In Account Name or Designation

Before any order covered by (1) or (2) above is executed, there must be placed upon the order slip or other similar record of the member or member organization the name or designation of the account for which such order is to be executed. No change in such account name (including related accounts) or designation (including error accounts) shall be made unless the change has been authorized by a member, [allied member,] principal executive or a person or persons designated under the provisions of Rule 342(b)(1). Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member or member organization. The essential facts relied upon by the person approving the change must be documented in writing and maintained with the order or other similar record for at least three years, the first two in an easily accessible place as that term is used in Securities Exchange Act Rule 17a-4.

Exceptions

Under exceptional circumstances, the Exchange may upon written request waive the requirements contained in (1), (2) and (3) above.

[Rule 412. Customer Account Transfer Contracts]

Entire text deleted.

[NYSE Rule Interpretation 412 CUSTOMER ACCOUNT TRANSFER CONTRACTS]

Entire text deleted.

Rule 414. Index and Currency Warrants

(a) – (b) No Change.

Position Limits and Reports

(c) Position Limits Generally

(i) Except with the prior approval of the Exchange in each instance, no member or member organization shall effect, for any account in which such member or member organization has an interest, for the account of any member[, allied member] or employee of such member or member organization, or for the account of any customer, a transaction (whether on the Exchange or on or through the facilities of, or otherwise subject to the rules of, another national securities exchange or national securities association) in a stock index warrant if the member or member organization has reason to believe that, as a result of such transaction, the member or member organization, the member[, allied member] or employee of such member or member organization, or the customer would, acting alone or in concert with others, directly or indirectly, control any aggregate position in a stock index warrant issue, or in all warrants issued on the same stock index, on the same side of the market, in excess of the position limits specified in subparagraphs (ii) through (iv) of this paragraph (c).

(ii) - (vi) No Change.

(A) – (C) No Change.

(d) Exercise Limits

Except with the prior approval of the Exchange in each instance, no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any member[, allied member] or employee of such member or member organization or for the account of any customer, a long position in any stock index warrant dealt in on the Exchange if as a result thereof such member or member organization, or member[, allied member] or employee of such member or member organization or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five consecutive business days aggregate long positions in excess of the number of stock index warrants specified in or pursuant to paragraph (c) of this Rule 414 as the position limit for the stock index warrant. The Exchange may from time to time institute other limitations concerning the exercise of stock index warrants. All such exercise limitations are

separate and distinct from any other exercise limitations the issuers of stock index warrants may impose.

(e) – (h) No Change.

(i) Discretionary Accounts

Rule 724 (Discretionary Accounts) (and not Rule 408 (Discretionary Power in Customers' Account)) shall apply insofar as a member[, allied member] or employee of a member organization exercises discretion to trade in currency warrants, currency index warrants and/or stock index warrants for customer accounts.

* * * * *

Rule 424. Reports of Options

Each member and member organization shall report to the Exchange such information as may be required with respect to any substantial option relating to listed securities in which such member, member organization or [allied member] principal executive therein is directly or indirectly interested or of which such member, member organization or [allied member] principal executive has knowledge by reason of transactions executed by or through such member or organization.

The Exchange may disapprove of the connection of any member, member organization or [allied member] principal executive therein with any such option which it shall determine to be contrary to the best interest or welfare of the Exchange or to be likely to create prices which will not fairly reflect market values.

* * * * *

Rule 431. Margin Requirements

(a) – (d) No Change.

(e) Exceptions to Rule

No Change.

(1) – (2) No Change.

(3) Joint Accounts in Which the Carrying Organization or a Partner or Stockholder Therein Has an Interest.—In the case of a joint account carried by a member organization, in which such organization, or any partner, member, [allied member] principal executive or any stockholder (other than a holder of freely transferable stock

only) of such member organization participates with others, each participant other than the carrying member organization shall maintain an equity with respect to such interest pursuant to the margin provisions of the Rule as if such interest were in a separate account.

(4) - (8) No Change.

(f) Other Provisions

(1) – (3) No Change.

(4) Guaranteed Accounts.—Any account guaranteed by another account may be consolidated with such other account and the margin to be maintained may be determined on the net position of both accounts, provided the guarantee is in writing and permits the member organization carrying the account, without restriction, to use the money and securities in the guaranteeing account to carry the guaranteed account or to pay any deficit therein; and provided further that such guaranteeing account is not owned directly or indirectly by (a) a partner, member[, allied member] or any stockholder (other than a holder of freely transferable stock only) in the organization carrying such account or (b) a member, member organization, a partner[, allied member] or any stockholder (other than a holder of freely transferable stock only) therein having a definite arrangement for participating in the commissions earned on the guaranteed account. However, the guarantee of a limited partner or of a holder of non-voting stock, if based upon his resources other than his capital contribution to or other than his interest in a member organization, is not affected by the foregoing prohibition, and such a guarantee may be taken into consideration in computing margin to be maintained in the guaranteed account.

When one or more accounts are guaranteed by another account and the total margin deficiencies guaranteed by any guarantor exceeds 10% of the member organization's excess Net Capital, the amount of the margin deficiency being guaranteed in excess of 10% of excess Net Capital shall be deducted in computing the Net Capital of the member organization under the Exchange's Capital Requirements.

* * * * *

Rule 435. Miscellaneous Prohibitions

No member[,] or member organization[,] or allied member therein] shall:

(1) - (7) No Change.

[Rule 436. Interest on Credit Balances]

Entire text deleted.

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[NYSE Rule Interpretation 436 INTEREST ON CREDIT BALANCE]

Entire text deleted.

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Rule 440F. Public Short Sale Transactions Effected on the Exchange

• • • Supplementary Material: — — — — —

Reports on Form SS20

.10 Requirements for filing.—Every ROUND-LOT short sale transaction in stocks (or certificates therefor) or warrants effected on the floor of the Exchange for the accounts of PUBLIC customers is required to be reported on Form SS20. Reports are to be filed by the member organization through which the transaction is cleared/settled.

Public customers are all customers OTHER THAN NYSE members[, allied members] or member organizations. Included as public are limited/special partners and non-voting stockholders who are not also NYSE members [or allied members]. Also included are employees of member organizations.

* * * * *

Rule 440G. Transactions in Stocks and Warrants for the Accounts of Members, [Allied Members] Principal Executives and Member Organizations

• • • Supplementary Material: — — — — —

Reports on Form 121

.10 Requirements for filing.—Any ROUND-LOT purchase or sale of stock (or certificates therefor) or warrant effected on the floor of the New York Stock Exchange for the accounts of:

- a) NYSE members;
- b) [NYSE Allied members] principal executives; or

c) NYSE member organizations,

must be reported on Form 121 regardless of where the order originated or by whom it was executed.

Instructions.—

(1) An account is defined as any account in which the member, [allied member or] member organization or principal executive thereof has a direct or indirect beneficial interest. It is not confined only to an account actually in the respondent's name. Generally, a person should include transactions in securities held in the name of a spouse, minor children or other relatives who share the same home as the reporting person, as being beneficially owned by such person. In addition, a person may be regarded as the beneficial owner of securities held in the name of another person, if by reason of any contract, understanding, relationship, agreement or other arrangement he obtains benefits substantially equivalent to those of ownership. This does not, however, include trusts or estates if the person has no power to make investment decisions. In other cases, if special circumstances exist indicating that a member or principal executive does not have a beneficial interest in transactions in an account in the name of members of his family, or if he wishes guidance as to whether he should report transactions in securities held by family members as being beneficially owned by him, he should contact the Member Firm Regulation Division for clarification.

(2) No Change.

(a) No Change.

(b) If the "joint account" consists solely of NYSE members, [allied members or] member organizations or principal executives thereof, it is permissible for one respondent to include in their/his report the full amount of any transactions for the "joint account". In this event, the report should include a notation to that effect, and the other participants should not include such transactions in their/his report.

(3) – (5) No Change.

(6) Transactions made in error or to rectify an error:

(a) are reportable if the original order on which the error was made is reportable (*i.e.* it was for an NYSE member, [allied member or] member organization or principal executive thereof);

(b) No Change.

(7) No Change.

(a) - (c) No Change.

(d) for customers other than NYSE members or [allied members] principal executives of the reporting organization;

[Rule 446. Business Continuity and Contingency Plans]

Entire text deleted.

Rule 477. Retention of Jurisdiction—Failure to Cooperate

(a) If, prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination, of a person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, the Exchange serves (as provided in paragraph (d) of Rule 476) written notice on such person that it is making inquiry into, or serves a Charge Memorandum on such person with respect to any matter or matters occurring prior to the termination of such person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, the Exchange may thereafter require such person to comply with any requests of the Exchange to appear, testify, submit books, records, papers, or tangible objects, respond to written requests and attend hearings in every respect in conformance with the Rules of the Exchange in the same manner and to the same extent as if such person had remained a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization.

(b) Prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination of a person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, the Exchange may, through the exercise of its jurisdiction, as described in (a) above, require such person to comply with any requests of an organization or association included in Rule 476(a)(11) to appear, testify, submit books, records, papers, or tangible objects,

respond to written requests and attend hearings in every respect in conformance with the Rules of the Exchange in the same manner and to the same extent as if such person had remained a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization with respect to any matter or matters occurring prior to the termination of such person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization.

(c) If such former member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, provided such notice or Charge Memorandum is or has been served, is adjudged guilty in a proceeding under Rule 476 of having refused or failed to comply with any such requirement, such person may be barred from being a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization permanently, or for such period of time as may be determined, or until such time as the Exchange has completed its investigation into the matter or matters specified in such notice or Charge Memorandum, has determined a penalty, if any, to be imposed, and until the penalty, if any, has been carried out.

(d) Following the termination of such person's status as a member, member organization, [allied member,] principal executive, approved person, or registered or non-registered employee of a member or member organization, provided such notice or Charge Memorandum is or has been served, such person may also be charged with having committed, prior to termination, any other offense with which such person might have been charged had such status not been terminated. Any such charges shall be brought and determined in accordance with the provisions set forth in Rule 476.

* * * * *

Rule 704. Position Limits

(a) Generally

Except with the prior written approval of the Exchange in each instance, no member or member organization shall effect, for any account in which such member or member organization has an interest or for the account of any member[, allied member] or employee of such member or member organization or for the account of any customer,

an opening transaction (whether on the Exchange or on or through the facilities of, or otherwise subject to the rules of, another Participating Exchange or Association) in an option of any class if the member or member organization has reason to believe that as a result of such transaction the member or member organization or member[, allied member] or employee of such member or member organization or customer would, acting alone or in concert with others, directly or indirectly, control any aggregate position in options (whether long or short) of puts and calls on the same side of the market covering the same underlying stock or underlying stock group that is in excess of;

Rule 705. Exercise Limits

Except with the prior approval of the Exchange in each instance, no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any member[, allied member] or employee of such member or member organization or for the account of any customer, a long position in any option of a class if as a result thereof such member or member organization, or member[, allied member] or employee of such member or member organization or customer, acting alone or in concert with others, directly or indirectly,

Rule 723. Suitability

No member organization or member[, allied member] or employee of such member organization shall recommend to a customer an opening transaction in any option contract unless the person making the recommendation has a reasonable basis for believing, at the time of making the recommendation, that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction, and is financially able to bear the risks of the recommended position in the option contract.

Rule 724. Discretionary Accounts

(a) Authorization and Approval Required

No member[, or allied member] or employee of a member organization shall exercise any discretionary power with respect to trading in option contracts in a customer's account unless such customer has given prior written authorization and the account

has been accepted in writing by a Registered Options Principal. The Senior Registered Options Principal shall review the acceptance of each discretionary account to determine that the Registered Options Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed, and he shall maintain a record of the basis for his determination. Each discretionary order shall be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, his approval shall be confirmed within a reasonable time by a Registered Options Principal. Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by the Compliance Registered Options Principal. The provisions of this paragraph shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite number of option contracts in a specified security shall be executed.

(b) Options Programs

No Change.

(c) Prohibited Transactions

No member [or allied member] or employee of a member organization having discretionary power over a customer's account shall, in the exercise of such discretion, execute or cause to be executed therein any purchases or sales of option contracts which are excessive in size or frequency in view of the financial resources in such account.

(d) Record of Transactions

A record shall be made of every transaction in option contracts in respect to which a member [or allied member] or employee of a member organization has exercised discretionary authority, clearly reflecting such fact and indicating the name of the customer, the designation and number of the option contracts, the premium and the date and time when such transaction was effected.

* * * * *

Rule 791. Communications to Customers**(a) General Rule**

No member organization or member[, allied member] or employee of such member organization shall utilize any advertisement, educational material, sales literature or other communication to any customer or member of the public concerning options which:

* * * * *

Election Notice

FINRA Small Firm Advisory Board Election

Executive Summary

The purpose of this *Notice* is to inform FINRA small firm members¹ of the upcoming Small Firm Advisory Board (SFAB) election. Two seats on the SFAB are up for election, the Midwest Region seat and the South Region seat.

The SFAB provides guidance to FINRA staff, particularly regarding the potential impact of proposed regulatory initiatives on FINRA's small firm members, and meets in Washington, DC, prior to each FINRA Board of Governors meeting. SFAB members are expected to attend SFAB meetings in person, and may be requested to attend certain Regional and District Committee meetings and other FINRA meetings and functions. Potential candidates should ensure that their other commitments will allow for their in-person attendance at all SFAB meetings.

Any eligible candidate wishing to have his/her name added to the ballot must submit the relevant information via the candidate profile form attached to this *Notice* to the Corporate Secretary of FINRA no later than Friday, November 7, 2008.

On or about Friday, November 21, 2008, FINRA will mail the official *Election Notice* and ballots to the Executive Representatives of small firm members in the Midwest and South Regions to elect the two regional members of the SFAB. Voting will conclude in December 2008 and new members will take office in January 2009.

Questions regarding this *Election Notice* may be directed to:

- Marcia E. Asquith, Senior Vice President and Corporate Secretary FINRA, at (202) 728-8949; or
- T. Grant Callery, Executive Vice President and General Counsel FINRA, at (202) 728-8285.

October 10, 2008

Suggested Routing

- Executive Representatives
- Senior Management

Composition of the FINRA Small Firm Advisory Board

The composition of the SFAB was revised in 2008 to comprise ten members consisting of:

- ▶ five regional members elected by small firms in the five FINRA regions (one from each region); and
- ▶ five at-large members appointed by FINRA.

Additionally, the FINRA Board's Small Firm Governors² serve as ex-officio members of the SFAB.

The five regional members represent the following geographic regions:

- ▶ **Midwest Region:** Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Districts 4 and 8)
- ▶ **New York Region:** New York (the counties of Nassau and Suffolk, and the five boroughs of New York City) (District 10)
- ▶ **North Region:** Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia (Districts 9 and 11)
- ▶ **South Region:** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, the Canal Zone, Puerto Rico and the Virgin Islands (Districts 5, 6 and 7)
- ▶ **West Region:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and the former U.S. Trust Territories (Districts 1, 2 and 3)

As mentioned above, two seats on the SFAB are up for election, the Midwest Region seat and the South Region seat.

Candidate Eligibility

Any senior member of a small firm whose primary place of business and whose firm has its main office (as indicated in FINRA records) in the Midwest or South regions is eligible to have his or her name placed on the SFAB ballot for that region. Senior members of firms include owners, FINOPs, chief executive officers, presidents, chief compliance officers, chief operating officers or individuals of comparable status. Eligible individuals must complete the attached SFAB candidate profile form³ and submit it, through their firm's Executive Representative, to FINRA's Corporate Secretary. There may be only one candidate per firm on each ballot.

SFAB candidate profiles for the upcoming election must be received by the Corporate Secretary of FINRA no later than Friday, November 7, 2008.

FINRA's Corporate Secretary will confirm the firm's status as a small firm and the candidate's eligibility, and include certified candidates on the relevant region's ballot. Individuals have a continuing obligation to satisfy the firm-size requirement on the date the candidacy is certified by the Corporate Secretary and the date the ballots are mailed. Individuals who fail to meet this requirement will be disqualified from election.

SFAB members must also continue to meet their qualifications for election at all times during their terms of office.

Voting Eligibility

FINRA small firms are eligible to vote for candidates running for the SFAB seat representing the region corresponding to the district to which they are assigned in the Central Registration Depository. Only those firms eligible to vote for the Midwest Region seat and the South Region seats will receive ballots.

The size of each firm and the location of each firm's main office will be verified on the day the ballots are mailed. Each firm will receive a ballot for the region in which it is eligible to vote. Firms may vote for only one candidate listed on the ballot.

Terms of SFAB Members

The successful candidate will be the individual who receives the most votes in his/her region. The successful candidates will be elected to serve a three-year term.

In order to maintain continuity on the SFAB, three-year terms are being phased in. The terms of the individuals elected during the previous election were staggered — and not all of the SFAB members were elected to serve full three-year terms.⁴ The SFAB members elected in this election will be elected to serve a full three-year term.

The term of an SFAB member shall terminate immediately upon a determination by the SFAB, by a majority vote of the remaining members, that the member no longer satisfies the eligibility criteria. Additionally, the FINRA Board may remove from the SFAB a member who is unable or fails to discharge the member's duties or violates SFAB policies.

Once an individual has completed a full three-year elected term on the SFAB, he or she is ineligible to run for reelection to the SFAB for another three years.⁵

Endnotes

- 1 A small firm is defined as a member that employs at least one and no more than 150 registered persons. See Article I (ww) of the FINRA By-Laws.
- 2 A small firm governor is defined as a member of the FINRA Board elected by small firm members. In order to be eligible to serve, a small firm governor must be registered with a member that is a small firm and must be an industry governor. See Article I (xx) of the FINRA By-Laws.
- 3 The SFAB candidate profile form is also available at www.finra.org/notices/election/101008.
- 4 In the previous election, the New York Region Representative was elected to a three-year term; the West and North Region Representatives were elected to two-year terms; and the Midwest and South Region Representatives were elected to one-year terms.
- 5 As previously indicated the individuals currently seated as the Midwest Region and South Region SFAB Representatives were elected to one-year terms in 2008 and, therefore, are eligible for re-election.

ATTACHMENT - Candidate Profile Form

Name: _____ CRD#: _____
(as you would like it to appear on official correspondence)

Current Registration

Firm Name _____ Firm #: _____

FINRA District No.: _____ Number of Registered Representatives at Firm: _____

Title/Primary Responsibility: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Prior Registration *(List the most recent first. Feel free to include extra pages if necessary.)*

Firm: _____

Title/Primary Responsibility: _____

Firm: _____

Title/Primary Responsibility: _____

General Areas of Expertise

(please check all that apply)

- Compliance/Legal
- Corporate Finance
- Financial/Operational
- Institutional Sales
- Investment Advisory
- Retail Sales
- Trading/Market Making
- Other

Product Expertise

(please check all that apply)

- Corporate Bonds
- Direct Participation Programs
- Equity Securities
- Investment Company
- Municipal/Government Securities
- Options
- Variable Contracts Securities
- Other

Memberships/Positions Held in Trade or Business Organizations

Election Notice

FINRA Notice of Special Meeting of Small Firms and Proxy

Executive Summary

The Financial Industry Regulatory Authority, Inc. (FINRA) will conduct a special meeting of small firms on Friday, November 21, 2008, at 9 a.m. in the FINRA Visitors Center, 1735 K Street, NW, in Washington, DC. The purpose of the meeting is to elect an individual to fill the vacant Small Firm Governor seat on FINRA's Board of Governors.

It is important that all small firms be represented by proxy or in person at the special meeting. Small firms are urged to vote in the election using one of the methods described below. In order for a proxy to be considered valid, it must be signed by the executive representative of a small firm eligible to vote in the election.

Small firms that are members of FINRA as of the close of business on October 23, 2008, (the special meeting record date) will be eligible to vote in this election.

Note: This *Notice* was distributed in writing to all small firms and in addition it was sent electronically to the executive representative of each FINRA member firm and it is posted on FINRA's Web site at www.finra.org/notices/election/102408.

Questions regarding this *Election Notice* may be directed to:

- Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, at (202) 728-8949; or
- T. Grant Callery, Executive Vice President and General Counsel, FINRA, at (202) 728-8285.

October 24, 2008

Suggested Routing

- Executive Representatives
- Senior Management

Election of a Small Firm Candidate to the Board of Governors

There is one Small Firm Governor vacancy to be filled at this meeting.¹ To be eligible to serve, an individual must be registered with a small firm. A small firm is defined as a broker or dealer admitted to membership in FINRA that employs at least one and no more than 150 registered persons.²

The By-Laws expressly provide that the term of office of a governor shall terminate immediately upon a determination by the Board, by a majority vote of the remaining governors, that the governor no longer satisfies the classification for which the governor was elected and the governor's continued service would violate the compositional requirements of the Board set forth in the FINRA By-Laws.

Term of Office

The elected individual will complete the term vacated by Governor Richard L. Goble and will serve until the first annual meeting of members following the Transitional Period, or until his or her successor is duly elected or qualified, or until death, resignation, disqualification or removal.³

The Transitional Period will conclude on July 30, 2010.

Attachment A lists the FINRA nominee⁴ and those persons who, as stated in Article VII, Section 10 of the FINRA By-Laws (i) presented the requisite number of petitions in support of their nomination, and (ii) have been certified by the Corporate Secretary of FINRA as satisfying the classification of the governorship to be filled.

Attachment B includes the profiles of the nominees.

There are three small firm seats on the Board. In addition to the vacant seat being filled through this special election, the two other Small Firm Governors are G. Donald Steel of Planned Investment Company, Inc., Indianapolis, Indiana, and Duncan F. Williams of Duncan - Williams, Inc., Memphis, Tennessee.

Voting Eligibility

Firms are eligible to vote for the industry nominees who are running for seats that are in the same size category as their own firm, therefore only small firms are eligible to vote in this election. A proxy containing the nominees for the Small Firm Governor vacancy was mailed with a copy of this *Notice* to all eligible small firms.

Voting Methods

Small firms will be able to submit a proxy by any lawful means, including using any of the following methods:

- Telephone;
- U.S. mail; or
- Internet.

Alternatively, small firms may attend the special meeting and vote in person. The enclosed proxy contains detailed instructions on the proxy submission procedures. As mentioned above, it is important that all small firms be represented at the special meeting. Following receipt of this *Notice* and proxy, executive representatives of small firms may receive telephone reminders during the election period. This will ensure that sufficient proxies are received by FINRA to satisfy the special meeting quorum requirements of Section 215(c) of Title 8 of the General Corporation Law of the State of Delaware, as well as to ensure broad participation in the election by small firms that are eligible to vote.

Revocation of Proxies

If you have given a revocable proxy pursuant to a proxy card distributed by FINRA or otherwise in the manner described herein, you may nonetheless revoke your proxy by attending the special meeting and voting in person. In addition, you may revoke any such proxy you give at any time before the special meeting by delivering to FINRA's Corporate Secretary a written statement revoking it or by duly delivering another proxy at a later time. Your attendance at the special meeting will not in and of itself constitute a revocation of your proxy.

Endnotes

- 1 As stated in to Article XXII, Section 2 of the FINRA By-Laws, during the Transitional Period, the FINRA Board shall consist of 23 members.
- 2 See Article I (ww) of the FINRA By-Laws.
- 3 See Article XXII, Section 3 of the FINRA By-Laws.
- 4 The FINRA nominee was nominated by the NASD Group Committee of FINRA's Board of Governors pursuant to Article XXII, Section 4 of the FINRA By-Laws. The NASD Group Committee comprises the five Public Governors appointed by the legacy NASD Board of Governors (NASD Board), the Small Firm Governors nominated by the NASD Board and the Independent Dealer/Insurance Affiliate Governor appointed by the NASD Board.

ATTACHMENT A: List of Nominees for Small Firm Governor Seat on FINRA's Board of Governors

FINRA Board of Governors Nominee

- Mari J. Buechner Chief Executive Officer Coordinated Capital Securities, Inc.

Petition Candidates

- Mark M. Mercier Chief Compliance Officer Brookstone Securities, Inc.
- Daniel W. Roberts President & Chief Compliance Officer Roberts & Ryan Investments Inc.
- Howard Spindel Executive A.J. Pace & Co., Inc.

ATTACHMENT B: Profiles of Nominees

Mari J. Buechner

Mari Buechner is the president and chief executive officer of coordinated capital Securities, Inc. (CCS), a full-service broker-dealer and investment advisory firm located in Madison, Wisconsin, with over 20 years of industry experience. CCS has 90 independent contractor registered representatives and seven home office personnel. Ms. Buechner has developed and implemented a supervisory system designed to accommodate a small independent contractor firm.

In 2008, Ms. Buechner was appointed as an at-large member of FINRA's Small Firm Advisory Board. She is a member of FINRA's Independent Dealer/Insurance Affiliate Committee, a past FINRA District 8 Committee member, a member of the FINRA District 8 Nominating Committee, a past member of FINRA Licensing and Registration Committee and volunteers her time to work on various FINRA member education programs. She is also a Board member of the Financial Services Institute.

Ms. Buechner graduated from the University of Wisconsin-Madison in 1987 with a Bachelor of Science Degree in Finance and Marketing.

Mark M. Mercier

Mark M. Mercier is chief compliance officer for Brookstone Securities, Inc., a small nationwide broker-dealer based in Lakeland, Florida and founded in 1983. Brookstone Securities operates on the independent model, providing compliance oversight, product alternatives and back-office services to independent registered representatives. Prior to joining Brookstone, Mr. Mercier was a senior compliance analyst at Invest Financial, assistant chief of compliance for GunnAllen Financial, relationship manager for Southwest Securities, technical design analyst for Raymond James and Associates, and he served as chief compliance officer and FinOp for Calton and Associates. At most of his firms, including his current employment, Mr. Mercier has either been a trader or has supervised the trading desk. Mr. Mercier worked for several years as a producing representative, being responsible for building and servicing his own book of business. Mr. Mercier is an experienced FINRA Arbitrator, serving on panels since 1994. Mr. Mercier also served as president of Broker-Dealer Compliance, Inc., a compliance outsourcing firm for small- to medium-sized broker-dealers having an emphasis on compliance technology. Mr. Mercier holds the Series 4, 7, 24, 27, and 73 licenses and serves on the Student Advisory Council at McKitrick Elementary in Lutz, Florida.

Daniel W. Roberts

Daniel W. Roberts is the president and chief compliance officer for Roberts & Ryan Investments Inc., a broker-dealer which he founded in 1987. The firm is a traditional full service and underwriting broker/dealer offering a broad range of investment services including insurance and municipal bond underwriting. During the 15 years prior to founding this firm, Mr. Roberts was a registered representative and assistant branch manager for Dean Witter & Company of San Francisco. Mr. Roberts has 36 years of

continuous professional experience in the investments industry. In addition, he has served as an arbitrator for the New York Stock Exchange and a hearing panelist for FINRA. He served in the U.S. Marine Corp. from 1965 to 1968, including as Artillery Battery Commander in Vietnam from 1966 to 1967, and achieved the rank of captain. He served on the Board of Directors for the San Francisco Bond Club from 1995 to 2000, and 1998 to 2000 as President of the California Disabled Veteran Business Enterprise Alliance, advocates for the state's disabled veteran business owners. In 2004 he was elected by nomination petition to FINRA District One Committee and in 2007 was elected Western Regional Representative to the Small Firm Advisory Board, on which he continues to serve.

Howard Spindel

Howard Spindel is a senior managing director of Integrated Management Solutions, a consulting firm to the financial services community since 1985. During 2005, Mr. Spindel co-founded Integrated Investment Solutions LLC, an affiliated hedge fund administrator. He currently serves as the Financial and Operations principal, Registered Options principal or General Securities principal of 28 FINRA members, all of which are defined as small firms. After graduating from Hunter College of the City University of New York, where he earned a Bachelor of Science degree in Accounting in 1968, Mr. Spindel began his career in the Technical Research and Review Department and on the audit staff of Oppenheim, Appel, Dixon & Co. In 1971, he became a Certified Public Accountant. In 1974, Mr. Spindel became associated with Coopers & Lybrand as an audit supervisor, and then in 1975 with the New York Stock Exchange (NYSE) as manager of the Capital and Operational Standards Section of its Regulation and Surveillance Group. In 1977, Mr. Spindel served as comptroller of Wm. D. Mayer & Co., a NYSE member firm specializing in options trading. In 1980, he became a financial and operations partner at S.B. Lewis & Company, a NYSE member firm specializing in arbitrage and mergers and acquisitions. In 1982, Mr. Spindel was an operations partner of Greenfield Partners, another NYSE member firm.

Mr. Spindel currently serves on the Board of Directors of the Financial Management Division of the Securities Industry and Financial Markets Association (SIFMA), on SIFMA's Capital Committee, and on the Boards of Directors of two publicly-held companies. From 2005 through 2007, he served on the District Committee of FINRA District 10 in New York City. In January 2008, Mr. Spindel was elected to FINRA's Small Firm Advisory Board, representing the New York Region. He has testified as an expert witness in securities industry matters at disciplinary proceedings, civil and criminal court cases, arbitrations, and the United States Congress. He has served as a featured speaker at various NASD/FINRA and American Institute of Certified Public Accountants sponsored conferences, in each case dealing with issues involving the business of, and applicability of rules, procedures and controls to, broker-dealers, especially small ones.

Information Notice

Rulebook Consolidation Process

Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart

Executive Summary

This *Notice* describes the protocol by which FINRA will announce the effective dates of the new FINRA rules that are being adopted as part of the consolidated rulebook (Consolidated FINRA Rulebook).¹ FINRA has designed this protocol both to assist member firms in their efforts to comply with the new FINRA rules and to enhance the efficiency of FINRA's consolidation process. FINRA urges member firms to review this *Notice* carefully because the protocol for announcing the effective dates of the new FINRA rules will vary from FINRA's existing practice, as will the content of the *Regulatory Notices* announcing approval of those rules.

FINRA also will issue a Rule Conversion Chart to assist member firms in understanding how the new FINRA rules relate to the NASD and/or Incorporated NYSE Rules that they will replace.

Questions regarding this *Notice* should be directed to Patrice Gliniecki, Deputy General Counsel, Office of General Counsel (OGC), at (202) 728-8071; or Adam H. Arkel, Assistant General Counsel, OGC, at (202) 728-6961.

October 6, 2008

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topics

- FINRA Manual
- Rulebook Consolidation
- Effective Dates of Consolidated Rules

Referenced Rules & Notices

- Information Notice 03/12/08 (Rulebook Consolidation Process)

Discussion

Protocol for Effective Dates

In recent months, FINRA began proposing new consolidated FINRA rules in phases for approval by the SEC as part of the rulebook consolidation process.² The new FINRA rules will apply to all member firms, unless such rules have a more limited application by their terms.

As the SEC approves the new FINRA rules, FINRA will announce their effective dates in *Regulatory Notices* to be published every other month beginning shortly after the publication of this *Notice*. Each *Regulatory Notice* will announce the effective dates of the new FINRA rules approved by the SEC during the preceding two months. For example, FINRA anticipates issuing the first such *Regulatory Notice* on or about October 15, 2008, announcing the effective dates of the new FINRA rules approved by the SEC in August and September 2008. FINRA will then issue the next such *Regulatory Notice* on or about December 15, 2008, announcing effective dates of any new FINRA rules approved by the SEC in October and November 2008.

As the Consolidated FINRA Rulebook expands with SEC approval and with the new FINRA rules taking effect, the rules in the Transitional Rulebook that address the same subject matter of regulation will be eliminated. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

FINRA is aware that member firms will need sufficient time to comply with the new FINRA rules, some of which will involve changes to business processes and/or related systems. FINRA anticipates that the new FINRA rules' effective dates generally will be 60 days following publication of the relevant *Regulatory Notice*.³ However, FINRA may specify periods longer or, in extraordinary circumstances, shorter than 60 days if FINRA believes the circumstances so warrant.

Content of the Regulatory Notices

Generally, FINRA's practice with respect to the announcement of new rules has been to devote a single *Regulatory Notice* to the announcement of a single rule or set of rules that are related by subject matter.⁴ Member firms should note that, both for their convenience and in the interest of regulatory efficiency, FINRA's protocol with respect to announcing the new consolidated rules will differ from this practice. In most cases, a *Regulatory Notice* will announce a group of new consolidated rules – not necessarily related by subject matter – that will become effective on the same date 60 days after the *Regulatory Notice* is issued. As noted above, a *Regulatory Notice* may specify periods other than 60 days as circumstances warrant.

Each *Regulatory Notice* will provide URLs linking readers to the locations of the new rule text in the online *FINRA Manual*, on FINRA's Web site at www.finra.org/finramanual.⁵ Further, each *Regulatory Notice* will provide URLs linking to the filings that FINRA submitted to the SEC in connection with the rule change. The filings provide, among other things, FINRA's statement of the purpose of the rule changes and, where applicable, exhibits showing the changes between the new rule text and the text of the NASD and/or Incorporated NYSE Rules as they exist in the Transitional Rulebook. FINRA will not replicate this information in the body of each *Regulatory Notice*, as it typically does today.

Rule Conversion Chart

As an additional resource for member firms and the public, each *Regulatory Notice* will provide, where relevant, a link to a Rule Conversion Chart on FINRA's Web site that will help enhance familiarity with the new rules and show how the new rules relate to the NASD and/or Incorporated NYSE Rules in the Transitional Rulebook that they will replace.

The chart will show how rules from the Transitional Rulebook were either incorporated into the Consolidated FINRA Rulebook (by providing the corresponding new FINRA rule number and related rule filing number), or will show that the substance of the relevant rules from the Transitional Rulebook was not incorporated into the Consolidated FINRA Rulebook. *Member firms should be aware that the chart is intended as a reference aid only.* As rules are incorporated into the Consolidated FINRA Rulebook, there frequently will be revisions to existing rule language and changes to the rules' subject matter coverage. Accordingly, the new consolidated rules often will not exactly match the language and coverage of the rules as they exist in the Transitional Rulebook. In some instances, the rules as they exist in the Transitional Rulebook will have been completely rewritten for purposes of the consolidation. Accordingly, FINRA reminds member firms that the chart will not in any way serve as a substitute for diligent review of the relevant new rule language.

Endnotes

- 1 The current FINRA rulebook includes (1) NASD Rules and (2) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). For more information about the rulebook consolidation process, see *Information Notice 03/12/08 (Rulebook Consolidation Process)*.
- 2 FINRA rule filings with the SEC are available on FINRA's Web site at www.finra.org/Industry/Regulation/RuleFilings/index.htm.
- 3 The new rules' effective dates generally will be 60 days following publication of the relevant *Regulatory Notice*, even in those instances where the comparable rules in the Transitional Rulebook are being transferred with no or minimal substantive change. Of course, member firms must continue to comply with the comparable rules in the Transitional Rulebook until such time as the new FINRA rule becomes effective.
- 4 FINRA expects generally to continue the existing practice with respect to future *Regulatory Notices* that do not pertain to the rulebook consolidation.
- 5 FINRA updates the rule text on its online *Manual* within two business days of SEC approval of changes to the rule text.

Information Notice

New Account Application Template

Executive Summary

FINRA has developed a new account application template—a voluntary model brokerage account form—as a resource that firms may use when they design or update their new account forms for single or joint accounts. It is intended to serve as an example of the type of application that brokerage firms may provide to their customers.

Firms may use the template in its entirety or select portions or language, but there is no regulatory requirement to use it, or to use any portion of it. The purpose of this template is to help firms create easy-to-use, easy-to-read, plain-English new account forms.

The template and other related documents are available at www.finra.org/newaccount.

Questions regarding this *Notice* should be directed to Julie Hoffman, Director, Office of Emerging Regulatory Issues, at (202) 728-8448, or by email at julie.hoffman@finra.org.

Discussion

Working with input from the industry, FINRA has developed a model brokerage account application that firms can use—at their own discretion—as a resource when developing or updating their own individual or joint account applications. The new template was developed in order to provide firms with a structure that is customizable and written in plain-English language that has been tested with investors.

October 21, 2008

Suggested Routing

- Operations
- Senior Management

Key Topics

- Brokerage Account Applications

FINRA worked with a firm that specializes in presenting investor information in a clear, intuitive format. Upon development of the application template, the firm conducted multiple tests with potential brokerage customers to evaluate the effectiveness of the form and customers' ability to navigate it. The result is a 10-page, five-section account application that includes instructions that are easy to understand, highlights of key disclosures and related investor education information.

Firms may use the application in its entirety or choose to use only portions of it, but firms are under no regulatory obligation to use any of it.

Template Options and Documentation

FINRA has posted two separate versions of the voluntary template in two formats: a template that incorporates all of the sections FINRA developed in both Word and PDF formats, and a shorter version that demonstrates how a firm that gathers additional background information from customers after account opening would customize the template (this version is only available in PDF format). Firms are free to customize either version to accommodate their own needs.

FINRA has also produced and posted a demonstration that illustrates how a firm that offers online account opening, or is thinking of offering online account opening, can use layered disclosures, click-throughs, rollovers and hyperlinks to educate investors and customize the questions for each customer based on their responses to previous questions.

The templates and additional documentation are available at www.finra.org/newaccount.

Customization

The template is fully customizable so that firms can make the form their own. Firms can include their own logo or branding elements, and can include additional sections or exclude portions that they find do not apply to them.

Additional information and suggestions around customization are available at www.finra.org/newaccount.

Voluntary Use

Firms are under no regulatory obligation to use the template, either in whole or in part. FINRA recognizes that firms may continue to use their proprietary application forms, methods and processes, as long as they meet all applicable regulatory requirements.

Compliance with Appropriate Rules and Regulations

Use of the voluntary template in whole or in part does not guarantee compliance with or create any safe harbor with respect to FINRA Rules, the federal securities laws or state laws. Firms are responsible for ensuring that their forms meet regulatory requirements. Firms are responsible for attaching all relevant disclosures, agreements and other required information as part of their new account opening process, such as margin or options agreements, disclosure of identity to issuers, privacy policies, business continuity plans, etc.

Information Notice

FINRA Survey to Update the Series 7 Exam

Executive Summary

In November, FINRA will conduct a random survey of 10,000 registered representatives to seek input from the industry to ensure that the Series 7 Examination accurately reflects the current roles, responsibilities and job functions of brokers. Since the input of registered representatives helps ensure that the content of the Series 7 accurately reflects their job, we request that firms encourage recipients of the request to participate.

Questions about this *Notice* should be directed to Tina Freilicher, FINRA's Director of Psychometrics and Qualifications, at (646) 315-8752.

Background

The Series 7 Examination is the *Qualification Examination for General Securities Registered Representatives*. As a qualification examination, it is intended to safeguard the investing public by helping ensure that registered representatives are competent to perform their jobs. Given this purpose, the Series 7 Examination seeks to measure accurately and reliably the degree to which each candidate possesses the knowledge, skills and abilities needed to perform the critical functions of a registered representative.

The Series 7 Examination is developed from the Series 7 Content Outline, which describes the critical functions of registered representatives and contains a list of the topics on the examination as well as the relative emphasis on the topic areas. FINRA is updating the Content Outline to ensure that it accurately reflects registered representatives' roles, responsibilities and job functions. A job analysis study is part of this process.

October 22, 2008

Suggested Routing

- Compliance
- Registered Representatives
- Registration
- Senior Management

Key Topics

- Series 7 Examination

The initial phase of the job analysis study—which has already been completed—involved collecting current data about the job functions, tasks and knowledge of registered representatives from several focus panels comprised of Series 7 registrants from a variety of firms and work settings. An industry task force then developed a draft content outline, which was subsequently reviewed by a group of registered representatives.

The current phase of the study involves an electronic survey that will be emailed to 10,000 randomly selected registered representatives. Survey responses will contribute to the further refinement of the Content Outline and updating of the test specifications for the Series 7 Examination.

FINRA requests that firms encourage recipients of the invitation to participate in the survey so that the Content Outline and the Series 7 Examination can be updated to accurately reflect the role of a registered representative.

Information Notice

Continuing Education Planning

Executive Summary

On October 30, 2008, the Securities Industry/Regulatory Council on Continuing Education (the Council) released the semi-annual Firm Element Advisory (FEA) (see *Regulatory Notice 08-63*). The Council suggests that firms consult the FEA 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 FEA. 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:

- **E-Learning Courses:** Online scenario-based training courses featuring assessment tests, real-time completion tracking and certificates of completion (see www.finra.org/elearning).
- **Webcasts:** Short online streaming video presentations; monthly completion tracking reports are available (see www.finra.org/webcasts).
- **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).
- **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).

October 31, 2008

Suggested Routing

- Compliance
- Continuing Education
- Legal
- Training

Key Topics

- Continuing Education
- Firm Element

Referenced Rules & Notices

- Notice 08-63

Discussion

FIRM ELEMENT ADVISORY TOPICS **FINRA OFFERING**

Anti-Money Laundering

For staff working with retail customers:

[AML—Retail: Exploring New Risks \(E-Learning\)](#)

[AML—Retail: Recognizing and Escalating Suspicious Activity \(E-Learning\)](#)

[AML—Retail: The Responsibility to Know Your Customer \(E-Learning\)](#)

[AML—Retail: Recognizing Red Flags \(E-Learning\)](#)

[AML: Do You Know Your Customer \(Webcast\)](#)

[AML: Examples of Red Flags \(Webcast\)](#)

For staff working with institutional customers:

[AML—Institutional: Exploring New Risks \(E-Learning\)](#)

[AML—Institutional: Identification and Reporting Issues \(E-Learning\)](#)

[AML—Institutional: Identifying and Managing Higher Risk Clients \(E-Learning\)](#)

[AML—Institutional: Recognizing Red Flags \(E-Learning\)](#)

[AML—Institutional: Know Your Customer \(Webcast\)](#)

[Anti-Money Laundering – Institutional: Know Your Customer \(Podcast\)](#)

For staff working in operations:

[Anti-Money Laundering for Operations Staff \(Webcast and Podcast\)](#)

[AML—Operations: Recognizing Red Flags \(E-Learning\)](#)

For compliance staff:

[Anti-Money Laundering Compliance \(Online Workshop\)](#)

[AML – Customer Identification Program \(Part 1\) \(Podcast\)](#)

[AML – Customer Identification Program \(Part 2\) \(Podcast\)](#)

[Anti-Money Laundering: Examples of Red Flags \(Podcast\)](#)

[Anti-Money Laundering: Independent Testing \(Podcast\)](#)

[Anti-Money Laundering: Suspicious Activity Reporting \(Online Workshop\)](#)

FIRM ELEMENT ADVISORY TOPICS FINRA OFFERING

Business Continuity	Business Continuity Planning (Phone-in Workshop) Business Continuity Planning: Recent Survey Findings (Podcast)
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Communications	Communications with the Public: What a Registered Representative Should Know (Webcast) Communications with the Public: An Introduction to Compliance Issues (E-Learning)
Approval of Filed Sales Material	Principal Approval of Sales Material (Podcast)
Designations, “Free Lunch” Seminars and Misleading Communications	Considerations for Working with Seniors: Free Lunch (Podcast) Considerations for Working with Seniors: Communications (Podcast) Compliance Practices to Protect Senior Investors (Online Workshop)
Electronic Communications	Electronic Communications: Introduction to Supervision (Podcast) Electronic Communications: Reviewing Correspondence (Podcast) Electronic Communications: What and Who (Podcast)

Corporate Finance and Institutional Business	
Fairness Opinions	Fairness Opinions (Podcast)

New Issue Municipal Securities	NIIDS (New Issue Information Dissemination System) (Phone-in Workshop)
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Finance and Operations	
Recordkeeping Requirements	Books and Records (Podcast) Record Retention Relief (Podcast)
Transaction Reporting	Municipal and TRACE Transaction Reporting Teleconference (Podcast) Transaction Reporting (Phone-in Workshop)

FIRM ELEMENT ADVISORY TOPICS FINRA OFFERING

Gifts and Business Entertainment	Business Gifts (E-Learning, Podcast and Webcast)
Insurance/Annuities	
Life Settlements	Life Settlements (Podcast and Webcast)
Margin and Margin Accounts	Margin Accounts (Webcast)
Markups/Markdowns	Debt Mark-Ups (E-Learning) Debt Mark-Ups (Podcast) Debt Mark-Ups (Webcast) 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)
New Products	Compliance Considerations for New Products (Online Workshop) Equity Indexed Annuities (Webcast) Hedge Funds: Understanding Sales Practice Responsibilities (E-Learning) New Product Suitability Considerations (Webcast) Private Placements (E-Learning and Webcast) Structured Products (E-Learning and Webcast) Structured Products: Definition and Guidance (Podcast)
Proprietary Trading	Unauthorized Proprietary Trading (Podcast)

(continued)

FIRM ELEMENT ADVISORY TOPICS FINRA OFFERING

Supervising Recommendations of Newly Associated Registered Representatives	Supervision of Recommendations After a New Registered Representative Changes Firms (Podcast)
Variable Annuities	<ul style="list-style-type: none"> Rule 2821: Deferred Variable Annuities (Phone-In Workshop) Variable Annuities (Podcast) Variable Annuities: Requirements for Representatives (E-Learning, Podcast and Webcast) Variable Annuities: Requirements for Supervisors (E-Learning, Podcast and Webcast) Variable Annuities: Sales Practice Issues for 1035 Exchanges (E-Learning) Variable Annuities: Suitability and Disclosure for New Purchases (E-Learning)
Senior Investors	<ul style="list-style-type: none"> Compliance Practices to Protect Senior Investors (Online Workshop) Considerations for Working with Seniors (Webcast and Podcast) Protecting Seniors (Podcast) Retail Supervision: Sales to Senior Investors Retail (E-Learning) Senior Investor Suitability Considerations (E-Learning) Supervisory Considerations for Working with Seniors (Podcast) Considerations for Working with Seniors: Suitability (Podcast) Supervisory Considerations for Working with Seniors (E-Learning and Webcast)

Disciplinary and Other FINRA Actions

Firm Fined, Individual Sanctioned

Johnson Rice & Company, L.L.C. (CRD #19524, New Orleans, Louisiana) and Edward Douglas Johnson Jr. (CRD #259293, Registered Principal, New Orleans, Louisiana) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$65,000, \$5,000 of which was jointly and severally with Johnson. Johnson was suspended from association with any FINRA member in a general securities principal (Series 24) capacity for 10 business days. Without admitting or denying the findings, the firm and Johnson consented to the described sanctions and to the entry of findings that the firm issued equity research reports where the front page did not identify the specific page(s) on which required disclosures appeared and the required-disclosures section was not prominently titled. The findings stated that the firm failed to adopt and implement written supervisory procedures reasonably designed to ensure that the firm and its employees comply with the provisions of NASD Rule 2711(g)(6), which mandates the pre-approval of all transactions of persons who oversee research analysts to the extent such transactions involve equity securities of companies covered by the research analysts they oversee. The findings also stated that the firm failed to preserve all communications in compliance with Section 17(a) of the Securities Exchange Act and SEC Rule 17a-4; the firm had a system in place for preserving electronic communications, but the system was not effective at preserving all electronic communications. The findings also included that the firm had no procedures requiring periodic retrospective reviews or “spot-checks” of the system to determine whether it was preserving communications in compliance with SEC Rule 17a-4. FINRA found that the firm, acting through Johnson, failed to adequately supervise two of its associated persons’ participation in hedge fund-related private securities transactions that the firm had authorized. FINRA also found that the firm, acting through Johnson, authorized the associated persons to each operate and manage his own hedge fund, but failed to adequately supervise their hedge-fund-related activities. In addition, FINRA determined that the firm, acting through Johnson, failed to establish and implement written supervisory procedures relating to supervision of private securities transactions that the firm approved.

The suspension in any general securities principal capacity was in effect from September 2, 2008, through September 15, 2008. (FINRA Case #2007007422001)

Reported for October 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).

Firm and Individual Fined

WFG Investments, Inc. (CRD #22704, Dallas, Texas) and Wilson Henry Williams (CRD #834161, Registered Principal, Dallas, Texas) submitted a Letter of Acceptance, Waiver and consent in which the firm was censured and fined \$30,000, \$25,000 of which was jointly and severally with Williams. Without admitting or denying the findings, the firm and Williams consented to the described sanctions and to the entry of findings that the firm, acting through Williams, approved the publication of research reports that did not contain any disclosure regarding the risks associated with investing in the subject company. The findings stated that the firm, acting through Williams, failed to establish written supervisory procedures reasonably designed to achieve and monitor compliance with the requirements of NASD Rule 2711. The findings also stated that the firm failed to develop and implement an anti-money laundering (AML) program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and implementing regulations. The findings also included that the firm's AML program was deficient, in that senior management had not approved the AML program in writing; its AML written procedures did not provide for on-going training of appropriate personnel; its written procedures did not provide for independent testing; its written procedures did not identify a specific individual as an AML compliance officer; its AML written procedures did not address recordkeeping requirements; and the firm had inadequate internal controls to detect an attempt to open or maintain correspondent accounts for foreign banks, or regarding freezing accounts and prohibiting transactions with persons suspected of terrorist activities and for filing relevant reports. **(FINRA Case #E062003014607)**

Firms Fined

Bernard L. Madoff Investment Securities LLC (CRD #2625, 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 failed to report accurate trading information through the submission of electronic blue sheets in response to FINRA requests for such information. The findings stated that the firm failed to include the short sale indicator for electronic blue sheets records. **(FINRA Case #2005002508102)**

BGC Financial, L.P. fka Maxcor Financial, Inc. (CRD #19801, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$23,000 and required to revise its written supervisory procedures regarding Trade Reporting and Compliance Engine (TRACE) reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to TRACE transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 15 minutes of the execution time, and failed to report the correct trade execution time for the transactions to TRACE. 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/or NASD rules concerning TRACE reporting. **(FINRA Case #2006004664901)**

Bishop, Rosen & Co., Inc. (CRD #1248, 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 executed short sale transactions and failed to report them to the over-the-counter (OTC) Reporting Facility with a short sale modifier, and failed to report to the OTC Reporting Facility the correct symbol indicating whether it executed transactions in reportable securities in a principal, “riskless” principal or agency capacity. The findings stated that the firm failed to report the correct symbol indicating whether it executed transactions in reportable securities in a principal or agency capacity to the NASD/NASDAQ Trade Reporting Facility (TRF). The findings also stated that the firm transmitted reports to the Order Audit Trail System (OATS) that contained inaccurate, incomplete or improperly formatted data. **(FINRA Case # 2006007535401)**

Crucible Capital Group, Inc. (CRD #133542, 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 failed to adequately ensure that its ledgers and other records accurately reflected all assets, liabilities and expenses. The findings stated that because of this conduct, its records, net capital computations and Financial Operational & Combined Uniform Single (FOCUS) reports were inaccurate. **(FINRA Case #2006006657801)**

Lehman Brothers, Inc. (CRD #7506, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$250,000 and required to revise its written supervisory procedures regarding compliance with SEC Rule 200(f) and NASD Rule 3370(b)(2). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its written plan of organization maintained to identify each aggregation unit, specify its trading objective(s) and support its independent identity failed to accurately describe a separate aggregation unit established for its risk management purposes. The findings stated that the firm failed to ensure that all traders in each aggregation unit pursued only the particular trading objective(s) or strategy (or strategies) of that aggregation unit and did not coordinate strategy (or strategies) with any other aggregation unit. The findings also stated that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations, including SEC Rule 200(f), according to which the firm should have maintained a written plan of organization that identified each aggregation unit, specified its trading objective(s), supported its independent identity and ensured that all traders in an aggregation unit pursued only the particular trading objective(s) of that aggregation unit. The findings also included that the firm’s failure to comply with these requirements affected the accuracy of the aggregation methodology used to support its trade-by-trade calculations of net position. FINRA found that the firm’s ability to ensure the accuracy of its trade reports as to whether a particular trade was long or short, and whether a particular short sale was prohibited, was impaired and that, in some instances, this impairment resulted in flawed calculations of net positions, which resulted in violations of NASD Rules 3350 (the short sale rule) and 6130, and SEC Rule 10a-1. FINRA also found that the firm accepted short sales in securities for its

proprietary account and customer short sale orders and, for each order, failed to annotate an affirmative determination that the firm would receive delivery of the security or that the firm could borrow the security or otherwise provide for delivery of the securities by settlement date. In addition, FINRA determined that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with NASD Rule 3370(b)(2). (FINRA Case #2004100012901)

Morgan Peabody, Inc. (CRD #38306, Sherman Oaks, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it held numerous seminars for senior citizens at which one registered representative used a script and slides, and the remaining were conducted by registered representatives using a script, that had not been committed to writing at the time the seminars were held. The findings stated that both the written and unwritten scripts contained statements that were unbalanced, exaggerated, misleading and otherwise failed to provide a sound basis for evaluating the facts in regard to the securities or types of securities, industries and services discussed. The findings also stated that the firm failed to file the written script with FINRA within 10 business days of first use, and failed to maintain, in a separate file, the written script, the name of the registered principal who approved it and the date that approval was given. (FINRA Case #2007008415701)

SMH Capital Inc. fka Smith Sanders Harris Inc. (CRD #20580, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it submitted erroneous reports to the NASDAQ Market Center (NMC), in that it failed to report to the NMC the correct symbol indicating whether it executed transactions in reportable securities as principal, "riskless" principal or agent; canceled trades previously reported to the NMC; and reported an incorrect execution time to the NMC. The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, in that it submitted information in the wrong OATS reports, failed to submit reports when required and submitted incorrect information in reports. (FINRA Case #2006005259601)

Southwest Securities, Inc. (CRD #6220, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report corporate bond transactions to TRACE; transactions were reported to TRACE without the correct pricing information and transactions were reported as bunched transactions, which TRACE does not permit. The findings stated that the firm reflected its capacity as agent when, in fact, it had acted as principal on all customer confirmations for the transactions. The findings also stated that the firm failed to establish and maintain a system to supervise the reporting of TRACE-eligible securities and the disclosure of capacity on customer transactions. (FINRA Case #2007007167701)

SWS Financial Services (CRD #17587, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish and implement a schedule to inspect its unregistered branch offices to ensure that all of its registered representatives were properly supervised. The findings stated that the firm failed to supervise the activities of a registered representative who made unsuitable investment recommendations, which resulted in losses of over \$54,000 in a customer's account, and failed to follow up on "red flags" indicating improper activity in the customer's account. The findings also stated that the firm failed to enforce its written supervisory procedures regarding following up on activity identified on its exception reports; failed to supervise certain of the firm's discretionary accounts; and failed to enforce its supervisory procedures regarding supervisory review and approval of "application-way" mutual fund transactions. The findings also included that the firm permitted individuals who did not hold the requisite securities licenses to act as the firm's principals, and the firm had inadequate procedures to ensure all of its principals were properly registered. FINRA found that the firm failed to retain required books and records. **(FINRA Case #E062005006701)**

Tradestation Securities, Inc. (CRD #39473, Plantation, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$70,000 and required to revise its written supervisory procedures regarding short sales and compliance with NASD Rules 3110(b)(1), 3350, 3360, 3370 and 6130(d)(6). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in securities and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings stated that the firm failed to report short interest positions to FINRA. 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 short sales and compliance with NASD Rules 3110(b)(1), 3350, 3360, 3370 and 6130(d)(6). **(FINRA Case #2005000725101)**

U.S. Financial Investments, Inc. (CRD #120804, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it did not have an adequate email retention system to preserve emails that registered representatives sent or received. The findings stated that the firm's procedures did not provide for adequate follow up and review to ensure compliance. The findings also stated that the firm's procedures did not require retention of all emails relating to its business, emails were not properly maintained, and personal email accounts used for firm business were not preserved. **(FINRA Case #2007007288701)**

vFinance Investments, Inc. (CRD #44962, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$22,000 and required to pay \$1,814.68, plus interest, in restitution to customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with a customer, it failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings stated that the firm failed to provide written notification disclosing to its customers the correct commission and/or the reported price of the transactions. The findings also included that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data because it submitted the incorrect report type. **(FINRA Case #2006004547201)**

Individuals Barred or Suspended

Cameron Dante Beale (CRD #2575357, Registered Supervisor, Plano, Texas) submitted an Offer of Settlement in which he was suspended from association with any FINRA member in any capacity for one year. In light of Beale's bankruptcy discharge, no monetary sanction was imposed. Without admitting or denying the allegations, Beale consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information in a timely manner.

The suspension in any capacity is in effect from August 18, 2008, through August 17, 2009. **(FINRA Case #2007008203401)**

Delbert Foster Blount III (CRD #2991522, Registered Representative, Dandridge, Tennessee) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Blount deposited customer funds intended for investment into his personal account and converted and misused the funds for his own benefit. The findings stated that Blount created fictitious investments in the customers' accounts to mislead them into believing that their funds had been invested as directed, and created falsified online account statements purportedly showing their investments' status. The findings also stated that Blount failed to respond to FINRA requests for documents and information. **(FINRA Case #2006007525401)**

Seth Delos Botone (CRD #4703683, Registered Representative, N. Richland Hills, Texas) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Botone sold unregistered shares of stock on public customers' behalf. The findings also stated that Botone failed to take appropriate action to determine if the stock was registered pursuant to Section 5 of the Securities Act of 1933 or was exempt from registration. **(FINRA Case #2005000075704)**

Daniel Christopher Browne (CRD #2527695, Registered Principal, Carpinteria, 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, Browne consented to the described sanction and to the entry of findings that he converted a bank customer's funds to his own use and benefit, in that he directed a teller at the bank where he worked to close out a deceased customer's

accounts and issue cashier checks totaling \$78,194.43 to institutions to which he owed money, using the customer's funds to pay for and reduce his own debts. The findings stated that Browne admitted his conversion when confronted by bank authorities and returned the funds to the customer's accounts. **(FINRA Case #2008013377701)**

Michael P. Butcher (CRD #4744572, Registered Representative, Forty Fort, Pennsylvania) 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 Butcher'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, Butcher consented to the described sanctions and to the entry of findings that he signed public customer names on documents without their authorization or consent. The findings stated that Butcher signed client names to otherwise accurate client profile forms and documents relating to authorized transactions.

The suspension in any capacity is in effect from August 18, 2008, through February 17, 2009. **(FINRA Case #2007010497401)**

Earl Robb Eastman (CRD #841188, Registered Representative, Rancho Santa Fe, California) and Robert Aaron Fink (CRD #2541029, Registered Representative, La Jolla, California) submitted Letters of Acceptance, Waiver and Consent in which each was fined \$10,000 and suspended from association with any FINRA member in any capacity for three months. The fines must be paid either immediately upon reassociation with a FINRA member firm following their respective suspensions, 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, Eastman and Fink consented to the described sanctions and to the entry of findings that they engaged in outside business activities, for compensation, and failed to provide their member firm with prompt written notice.

The suspensions in any capacity are in effect from September 15, 2008, through December 14, 2008. **(FINRA Cases #2006006441701/2006006441702)**

Michelle Renee Foster (CRD #4892514, Associated Person, Upper Marlboro, Maryland) 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, Foster consented to the described sanction and to the entry of findings that she forged an insurance client's signature as the purported co-signer on a personal loan application and listed that person's social security number and other identifying information on the application. The findings stated that Foster submitted a copy of one of the client's pay statements with the application and took these actions without the client's authorization or consent. **(FINRA Case #2007011290801)**

Richard Lewis Goins (CRD #2148920, Registered Representative, Azle, 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, Goins consented to the described sanction and to the entry of findings that he assisted a public customer in transferring funds from an existing individual retirement account

(IRA) to a new IRA. The findings stated that after the account was established, a \$3,284.65 residual was forwarded to the customer who gave it to Goins. The findings stated that Goins instructed a bank employee to deposit \$1,684.65 of the proceeds into another bank customer's account and received the remaining balance of \$1,600 in cash, thereby misappropriating the funds. Goins received the remaining balance of \$1,600 in cash and misappropriated the funds. **(FINRA Case #2007010890201)**

Christopher Ronald Guenther (CRD #3047778, Registered Representative, Macedonia, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Guenther consented to the described sanction 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 findings stated that without a public customer's permission, Guenther transferred the customer from an existing fee-based account to a commission-based IRA and began making unauthorized trades in the account. The findings also stated that Guenther sold securities from the customer's other retirement accounts without authorization and transferred the funds into the commission-based account. The findings also included that Guenther made unauthorized trades in the accounts, causing the accounts to sustain trading losses of \$25,300 and to generate commission fees of \$34,220. FINRA found that Guenther, without regard to the customer's fee structure preferences, placed the customer into the commission-based account with a fee structure that could reasonably have been expected to result in a greater cost than the previous fee-based account. FINRA also found that Guenther sent the customer an email that his member firm did not review or approve from his own personal email address. In addition, FINRA determined that Guenther solicited and recommended a highly risky and speculative investment to a public customer that was inconsistent with the customer's investment objectives and financial situation. FINRA also found that Guenther made untrue statements during a FINRA on-the-record interview. **(FINRA Case #2007009414201)**

James R. Hart (CRD #4021177, Registered Representative, Hermitage, 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, Hart consented to the described sanction and to the entry of findings that he recommended to public customers, and effected in their accounts, purchases of speculative securities without having reasonable grounds for believing that the recommendations were suitable for the customers. The findings stated that Hart failed to respond to FINRA requests for information. **(FINRA Case #2007009917601)**

Braden Scott Hill (CRD #2796421, Registered Principal, Rogers, Arkansas) 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, Hill consented to the described sanctions and to the entry of findings that he deposited \$3,200 into a public customer's bank account to compensate the customer for a loss incurred in the purchase of securities. The findings stated that Hill made the payment without informing his member firm and without the firm's approval.

The suspension in any capacity was in effect from September 2, 2008, through September 15, 2008. **(FINRA Case #2007010706601)**

John Foster Hoschouer (CRD #4690685, Registered Principal, Elk Ridge, Utah) and Andrew James Moleff (CRD #3042378, Registered Principal, Spanish Fork, Utah) submitted Letters of Acceptance, Waiver and Consent in which Hoschouer was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days, and Moleff was fined \$15,000 and suspended from association with any FINRA member in any capacity for four months. Hoschouer's and Moleff's fines must be paid either immediately upon reassociation with a FINRA member firm following their respective suspensions, 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, Hoschouer and Moleff consented to the described sanctions and to the entry of findings that they made false, exaggerated and misleading statements about Moleff's background at seminars for senior citizens concerning securities investments. The findings stated that Moleff made false, exaggerated, misleading and unwarranted statements in his presentation. The findings also stated that Moleff's discussion of certificates of deposit (CDs) and annuities omitted material information pertaining to the investment characteristics, risks and features of different options, thereby creating an incomplete comparison. The findings also included that during the seminars, Moleff included non-standardized return numbers for a mutual fund, yet omitted the standardized returns, contrary to SEC Rule 482(d)(3) requirements. FINRA found that Moleff distributed a booklet and gave a slide show presentation that a registered principal had not approved, and had not been filed with FINRA within 10 business days of first use or publication. FINRA also found that the slide presentation and booklet omitted material facts that caused them to be misleading and also contained exaggerated and unwarranted statements with respect to annuities.

Hoschouer's suspension in any capacity was in effect from September 15, 2008, through September 26, 2008. Moleff's suspension in any capacity is in effect from September 15, 2008, through January 14, 2009. **(FINRA Cases #2007008242801/2007008242802)**

Wilfred Junior Ignace (CRD #2807440, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Ignace'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, Ignace consented to the described sanctions and to the entry of findings that he failed to timely respond to FINRA requests for information.

The suspension in any capacity is in effect from September 15, 2008, through October 24, 2008. **(FINRA Case # 2006007017402)**

Matthew Samuel Kaplan (CRD #2714169, Registered Representative, New York, New York) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Kaplan converted and misappropriated funds from his member firm to his own use and benefit by using his firm-issued corporate credit card to charge personal expenses and falsifying his expense report to induce his member firm to pay for personal charges. The findings also stated that Kaplan intentionally submitted false expense reports to his member firm, disguising his personal expenses as legitimate business expenses, which caused his firm to have false books and records. **(FINRA Case #2007007758701)**

Sean Paul Kimble (CRD #4598087, Registered Representative, Indianapolis, Indiana) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Kimble engaged in a check-kiting scheme in which he had an effective debit balance of at least \$1,752.90 in the account from which he wrote checks. The findings stated that Kimble failed to respond to FINRA requests for information. **(FINRA Case #2007007670001)**

Craig Gary Langweiler (CRD #841897, Registered Representative, Newtown, Pennsylvania) 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, Langweiler consented to the described sanctions and to the entry of findings that he borrowed \$40,000 from a public customer without his member firm's approval and contrary to his firm's written supervisory procedures prohibiting such loans.

The suspension in any capacity was in effect from September 15, 2008, through September 26, 2008. **(FINRA Case #2007010515001)**

David Willingham Lentz (CRD #4335856, Registered Representative, Charlotte, North Carolina) 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 one month. Without admitting or denying the findings, Lentz consented to the described sanctions and to the entry of findings that he falsified public customers' signatures by cutting and pasting their signatures onto Explanation of Transaction forms without their authorization or knowledge, and placed the forms in the customer files until he received the signed forms. The findings stated that Lentz' firm discovered the falsified forms the following day.

The suspension in any capacity was in effect from September 2, 2008, through October 1, 2008. **(FINRA Case #2007010505801)**

Tara Moree Lewis (CRD #4446461, Registered Principal, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and barred from association with any FINRA member in any principal or supervisory capacity. The fine must be paid either immediately upon Lewis' reassociation with a FINRA member firm 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, Lewis consented to the described sanctions and to the entry of findings that she failed to

reasonably supervise administrative personnel in a branch office who had failed to obtain customer signatures on non-solicitation letters and altered previously executed non-solicitation letters (which the customers signed) by photocopying the letters and inserting a new date and/or new security. The findings stated that Lewis failed to recognize that this practice was improper and failed to prevent it. **(FINRA Case #2006004969701)**

Regina Kay Locke (CRD #2324166, Registered Representative, Houston, Texas) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Locke converted approximately \$40,000 from a public customer's IRA account by altering, falsifying and submitting to her member firm IRA distribution request forms to authorize distributions to be made on a one-time basis from the customer's account, without the customer's approval or authorization, that resulted in the distribution of funds to Locke or to a third party for Locke's benefit. The findings stated that, by altering, falsifying and submitting the forms to her firm, Locke caused her firm's books and records to be inaccurate. **(FINRA Case #2007009424701)**

Max Morehouse (CRD #5289368, Registered Representative, Huntington Station, New York) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Morehouse made withdrawals totaling \$240 from a public customer's bank account using a temporary automatic teller machine (ATM) card he had linked to the account, and without the customer's knowledge or consent, converted the funds for his personal use. **(FINRA Case #2007010607601)**

Samuel Garth Nelson (CRD #4332702, Associated Person, Eagle, Idaho) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Nelson'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, Nelson consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer (Form U4).

The suspension in any capacity is in effect from September 15, 2008, through December 14, 2008. **(FINRA Case #2007010813601)**

Steven William Olin (CRD #4529915, Registered Representative, Olmsted Falls, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Olin'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, Olin 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 September 15, 2008, through December 14, 2008. **(FINRA Case #2007007841301)**

Delfin Joaquin Paris III (CRD #4475097, Registered Representative, Chicago, Illinois) 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, Paris consented to the described sanction and to the entry of findings that he drafted a letter to a company that issued a variable annuity stating that a public customer had a checking account in good standing, as required by the company, in order to transfer \$70,000 from the annuity to the customer's checking account, and signed a non-registered bank officer's name to the letter without the officer's knowledge or consent. The findings stated that Paris submitted the letter to his member firm for processing without disclosing that he had signed the officer's name to the letter, and the firm processed the transaction, resulting in a \$70,000 transfer from the customer's variable annuity to his checking account. The findings also stated that Paris failed to timely respond to FINRA requests for information. **(FINRA Case #2006006997701)**

Ara Proudian (CRD #2488729, Registered Principal, New Rochelle, 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, Proudian consented to the described sanction and to the entry of findings that he failed to ensure that his member firm complied with FINRA's Taping Rule by allowing registered representatives to use cellular telephones outside the office and office telephone lines that were known to be unrecorded to communicate with firm customers. The findings stated that Proudian provided false and misleading testimony in FINRA on-the-record interviews. **(FINRA Case #2006003684701)**

Norman Harley Russick II (CRD #1572116, Registered Representative, Holiday, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Russick'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, Russick consented to the described sanctions and to the entry of findings that he borrowed \$1,000 from a public customer contrary to his member firm's procedures that prohibited the borrowing and lending of money between registered representatives and firm customers. The findings stated that Russick's firm did not know or otherwise approve the loan.

The suspension in any capacity was in effect from September 2, 2008, through September 15, 2008. **(FINRA Case #2006007108501)**

Jerrold Robin Sexton (CRD #2764371, Registered Representative, Escondido, 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 20 business days. Without admitting or denying the findings, Sexton consented to the described sanctions and to the entry of findings that he borrowed \$30,000 from a public customer contrary to his member firm's written procedures that permitted loans if the loan fell within an enumerated category. The findings stated that Sexton's loan from the customer did not fall within one of the enumerated categories of permissible loans.

The suspension in any capacity was in effect from September 15, 2008, through October 10, 2008. (FINRA Case #2007008542602)

Robert Daniel Simenz (CRD #1394397, Registered Representative, Delaware, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Simenz consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information. (FINRA Case #2006006317401)

William Alan Sirls (CRD #2064752, Registered Supervisor, Grosse Isle, 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, Sirls consented to the described sanction and to the entry of findings that he persuaded member firm employees and public customers to invest in Ponzi-type investments purportedly involving real estate and the firm's "busted trade" account, neither of which existed. The findings stated that Sirls failed to respond to FINRA requests for information. (FINRA Case #2006006808701)

Samuel Pedraza Solomon (CRD #705686, Registered Principal, Grapevine, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Solomon'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, Solomon consented to the described sanctions and to the entry of findings that he acted in an unregistered capacity and permitted his member firm to operate without a registered Financial and Operations Principal (FINOP). The findings stated that Solomon permitted his firm to fail to maintain the required minimum net capital while conducting a securities business, to accurately calculate the firm's net capital and to maintain an accurate general ledger. The findings also stated that Solomon permitted his firm to file an inaccurate FOCUS report and, due to the material inaccuracy, falsely represent the firm's financial condition.

The suspension in any capacity is in effect from September 2, 2008, through December 1, 2008. (FINRA Case #2007009202601)

Michael Douglas Stebbins (CRD #4902881, Registered Principal, Scottsdale, Arizona) 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 15 business days. The fine must be paid either immediately upon Stebbins' 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, Stebbins consented to the described sanctions and to the entry of findings that, while associated with member firms, he held a financial interest in a brokerage account at another firm without giving prompt written notification to his member firms that he had such an account, and without notifying the other brokerage firm of his association with member firms.

The suspension in any capacity is in effect from October 6, 2008, through, October 24, 2008. (FINRA Case #2006004969702)

John Suk (CRD #4323210, Registered Representative, La Mirada, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Suk'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, Suk consented to the described sanctions and to the entry of findings that he failed to timely respond to FINRA requests for information.

The suspension in any capacity is in effect from October 6, 2008, through April 5, 2009. **(FINRA Case #2007009118003)**

Jack Richard Wehmiller (CRD #501286, Registered Representative, Murrayville, Georgia) 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, Wehmiller consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests to provide on-the-record testimony. **(FINRA Case #2007007321101)**

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.

Ivan Armas (CRD #4993347, Registered Representative, Houston, Texas) was named as a respondent in a FINRA complaint alleging that he received \$19,721.34 from insurance policyholders for payment of insurance premiums, and converted the funds to his own use and benefit. The complaint alleges that Armas failed to appear for FINRA on-the-record testimony. **(FINRA Case #2007010747201)**

Kenneth Stuart Nierenberg (CRD #1596132, Registered Principal, Central Valley, New York) was named as a respondent in a FINRA complaint alleging that, without the customers' authorization or consent, he converted elderly public customers' funds totaling \$92,469.22 for his own benefit. The complaint alleges that Nierenberg willfully failed to disclose material information on his Form U4. **(FINRA Case #2006006630101)**

Michael Slusher (CRD #5175006, Registered Representative, Rhinebeck, New York) was named as a respondent in a FINRA complaint alleging that, without the customer's authorization or consent, he transferred \$4,000 from a bank customer's account to the account he had opened in a fictitious customer's name, withdrew \$300 from that account and converted the proceeds to his own use and benefit. The complaint alleges that Slusher failed to respond to FINRA requests for information. **(FINRA Case #2007009836601)**

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

Legacy Trading Co., LLC
Edmond, Oklahoma
(August 12, 2008)

Nevwest Securities Corporation
Las Vegas, Nevada
(August 12, 2008)

Firm 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.)

Upstream Capital Partners, LP
Irving, Texas
(April 10, 2008 – August 26, 2008)

Firm Suspended Pursuant to Rule 9555 for Failure to Meet Eligibility Requirements

New Vernon Securities, LLC
Parsippany, New Jersey
(August 18, 2008)

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

Gregory Steven Azulphart
Portland, Oregon
(August 28, 2008)

David Ferst
Palatine, Illinois
(August 12, 2008)

Daniel Elmer Koffman
Charlevoix, Michigan
(August 28, 2008)

Linus Nkem Nwaigwe
Valley Stream, New York
(August 28, 2008)

Mark Gerard Ross Jr.
Scarsdale, New York
(August 12, 2008)

Dale Eugene Shields II
Middletown, Ohio
(August 28, 2008)

**Individuals Barred Pursuant to
NASD Rule 9552(h)**

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

Anthony E. DeVito
Wellington, Ohio
(August 29, 2008)

Robert Rush Reynolds
Fairhope, Alabama
(August 11, 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.)

Stanley Virgil Brookins
Reynoldsburg, Ohio
(August 18, 2008)

Frederick Cahoon Bryant
Bay Village, Ohio
(August 18, 2008)

Bobby John Daugherty
Swannanoa, North Carolina
(August 14, 2008)

Stayka G. Doljeva
Glenview, Illinois
(August, 11, 2008)

John Vincent Gordy
Santa Monica, California
(August 11, 2008)

Craig M. Kamijima
Boca Raton, Florida
(August 18, 2008)

Louis Molinet
Braunfels, Texas
(August 11, 2008)

John Suk
La Mirada, California
(June 30, 2008 – August 5, 2008)

John William Yaeger
New Lenox, Illinois
(August 1, 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.)

Nicholas P. Bentivegna
Bethpage, New York
(June 27, 2008 – August 14, 2008)

Gary Randolph Compton
Urbanna, Virginia
(August 20, 2008)

Lynda Ann Findlay
Memphis, Tennessee
(March 10, 2008 – August 25, 2008)

Lewis Joseph Franklin III
Smithtown, New York
(August 7, 2008)

James William Garofalo Jr.
New York, New York
(November 9, 1998 – August 19, 2008)

William Joseph Hamilton
Miamisburg, Ohio
(August 20, 2008)

Michael Andre Jones
Topanga, California
(August 15, 2008)

Angela Marie Jordison
Terrebonne, Oregon
(August 20, 2008)

Derek Roy Kent
Franktown, Colorado
(August 20, 2008)

Brent Steven Lemons
Tyler, Texas
(August 7, 2008)

Frank Edward Mandrell
West Palm Beach, Florida
(August 7, 2008)

Laura Michelle Rowley
Houston, Texas
(August 7, 2008)

Chris Victor Suarez
Hollywood, Florida
(August 15, 2008)

FINRA Bars Two Registered Representatives for Insider Trading

The Financial Industry Regulatory Authority (FINRA) announced that two former registered representatives, Peter D. Kelly and Daniel K. Ivandjiiski, have been barred from the securities industry for insider trading.

"Insider trading is a top priority at FINRA because it seriously undermines the public's confidence in the fairness of the markets," said Thomas Gira, Executive Vice President of FINRA's Market Regulation Department. "The actions announced today underscore that FINRA has the resources, technical expertise and capabilities to detect and investigate insider trading across the U.S. markets."

In the first of two separate actions, FINRA barred Peter D. Kelly of Belle Meade, NJ, the former head of sales and trading in the loan syndication department of Calyon Securities (USA) Inc., for tipping three friends about a pending merger between Duratek, Inc. and EnergySolutions LLC. Specifically, on February 1, 2006—the same day that Kelly learned of a pending merger between Duratek and EnergySolutions LLC, and six days before the merger's public announcement—Kelly placed telephone calls to three friends. Following the calls from Kelly, two of these friends bought shares of Duratek before the merger's public announcement on February 7, 2006. The third friend did not purchase shares directly, but eight brokerage accounts held in the names of relatives and acquaintances of the third friend purchased Duratek shares before the merger's announcement. Combined illegal profits earned on the sale of Duratek shares in these accounts after the merger's announcement amounted to \$66,000.

FINRA found that Kelly breached his duty to his employer by failing to maintain the confidentiality of information about the merger. Kelly did not purchase Duratek shares personally and did not receive profits from the sale of Duratek shares by others. He was discharged by Calyon in October 2006.

In the second action, FINRA barred Daniel Ivandjiiski of New York, NY, for buying shares of Hawaiian Holdings, Inc, which owns Hawaiian Airlines, one day before Hawaiian Holdings publicly announced that it had reached an agreement with its creditors to increase Hawaiian Airlines' credit lines by \$91 million. Ivandjiiski previously had been employed at an investment banking firm working on the deal to increase the credit lines.

In May 2005, Ivandjiiski became employed by another firm, Miller Buckfire & Co. Nevertheless, before the financing deal for Hawaiian Holdings was announced, he obtained confidential documents that his former firm had prepared concerning the impending deal. On March 14, 2006, while in possession of that material, non-public information, Ivandjiiski bought 1000 shares of Hawaiian Holdings for \$4.75 a share. On March 15, when the new financing was publicly announced, the share price of Hawaiian Holdings increased 6%, to close at \$5.30. On March 21, 2006, Ivandjiiski sold his 1,000 shares of Hawaiian Holdings stock for \$5.53 per share, for a profit of \$780.

In settling these matters, neither Kelly nor Ivandjiiski admitted nor denied the charges, but consented to the entry of FINRA's findings.