

Notices

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Trading Ahead of Customer Limit Orders

SEC Approves Alternative Means for Calculating the Minimum Price-Improvement Obligations Under Certain Circumstances

Effective Date: February 11, 2009

Executive Summary

Effective February 11, 2009, firms are permitted to use an alternative method for calculating the minimum price improvement obligation under NASD IM-2110-2 (Trading Ahead of Limit Orders) in cases where the firm receives a customer limit order in an OTC equity security that is priced below \$1.00 and where there is no current published inside spread in that security.

The text of the amendments can be found at www.finra.org/Industry/Regulation/RuleFilings/2008/P117569.

Questions regarding this Notice should be directed to Racquel Russell, Assistant General Counsel, Office of General Counsel, at (202) 728-8363.

Background and Discussion

NASD IM-2110-2 provides tiered standards for calculating the minimum level of price improvement that firms must provide to trade ahead of customer limit orders. These tiered standards vary depending on the price of the customer limit order, but as a general matter, they are either a fixed amount or one half of the current inside spread.

March 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Trading and Market Making

Key Topic(s)

- Limit Order Protection
- Minimum Price Improvement

Referenced Rules & Notices

- NASD IM-2110-2

Prior to the amendments, in cases where there was no current inside spread for a security, the minimum price-improvement standard would default to the fixed amount which, in certain circumstances, was equal to the price of the customer limit order. For example, where a firm received a customer limit order to sell priced at \$.01 and there was no current published inside spread, the minimum price-improvement standard would have been equal to \$.01, which required the firm to sell for its own account at 0 (\$.01 minus \$.01) to avoid triggering the customer limit order. Thus, firms were effectively prohibited from selling while the customer limit order was still pending.

To address this unintended consequence, FINRA has amended IM-2110-2 to provide an alternative means of calculating the minimum price improvement obligation in cases where a firm receives a customer limit order in an OTC equity security that is priced below \$1.00 and there is no current published inside spread.¹ In such cases, firms may calculate the current inside spread by contacting and obtaining priced quotations from at least two unaffiliated dealers. Once the firm has obtained bid and ask prices from at least two unaffiliated dealers, the firm must use the highest bid and lowest offer as the basis for calculating the current inside spread for determining its minimum price improvement obligation. Additionally, where there is a one-sided quote, the amendments permit a firm to determine the current inside spread by using the best price obtained from at least two unaffiliated dealers on the other side of the quote.

The amendments require that firms document (1) the name of each dealer contacted and (2) the quotations received that were used as the basis for determining the current inside spread. This alternative means of calculating the current inside spread applies solely to minimum price-improvement calculations under IM-2110-2 and would not implicate other rules or requirements (e.g., Three Quote Rule).

Endnotes

- 1 See Securities Exchange Act Release No. 59382 (February 11, 2009), 74 FR 7718 (February 19, 2009) (Order Approving File No. SR-FINRA-2008-064).

Limit and Market Order Protection

FINRA Requests Comment on Proposed Consolidated FINRA Rules Governing Limit and Market Order Protection

Comment Period Expires: April 24, 2009

Executive Summary

As part of the process of developing a new consolidated rulebook (the Consolidated FINRA Rulebook),¹ FINRA is requesting comment on a proposal to adopt a new FINRA rule based on NASD IM-2110-2 and NASD Rule 2111. The proposed rule simplifies and clarifies these rules, as well as harmonizes the rules with NYSE Rule 92, where appropriate.

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

Questions regarding this *Notice* should be directed to:

- ▶ Stephanie Dumont, Senior Vice President and Director of Capital Markets Policy, Office of General Counsel, at (202) 728-8176; or
- ▶ Racquel Russell, Assistant General Counsel, Office of General Counsel, at (202) 728-8363.

Action Requested

FINRA encourages all interested parties to comment on the proposed rules. Comments must be received by April 24, 2009. Comments received after the close of the comment period will not be considered, although interested parties will have further opportunity to comment when the proposals resulting from this *Notice* process are filed with the SEC for approval.

March 2009

Notice Type

- ▶ Request for Comment
- ▶ Consolidated FINRA Rulebook

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Trading and Market Making

Key Topic(s)

- ▶ Bona Fide Errors
- ▶ Limit Order Protection
- ▶ Market Order Protection
- ▶ "No-Knowledge" Interpretation
- ▶ Odd Lots

Referenced Rules & Notices

- ▶ NASD IM-2110-2
- ▶ NASD Rule 2211
- ▶ NASD Rule 2320
- ▶ NASD Rule 92

Members 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

To help FINRA process and review comments more efficiently, persons should only use 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 & Discussion

A. Background

NASD Interpretive Material (IM) 2110-2 (Trading Ahead of Customer Limit Order) generally prohibits a member firm from trading for its own account in an exchange-listed security or an OTC equity security (*e.g.*, OTCBB and pink sheets securities) at a price that is equal to or better than an unexecuted customer limit order in that security, unless the firm immediately, in the event it trades ahead, executes the customer limit order at the price at which it traded for its own account or better.⁴ The legal basis for this provision is the firm's basic fiduciary obligations under agency law and the requirement that a firm must, in the conduct of its business, "observe high standards of commercial honor and just and equitable principles of trade."⁵ Similarly, NASD Rule 2111 (Trading Ahead of Customer Market Orders) generally prohibits a member firm that accepts and holds a customer market order in an exchange-listed security from trading for its own account at prices that would satisfy the customer market order, unless the firm immediately thereafter executes the customer market order up to the size and at the same price or better at which it traded for its own account.⁶

While there is no Incorporated NYSE Rule counterpart to IM-2110-2 and Rule 2111 (collectively referred to herein as customer order protection requirements), NYSE Rule 92 imposes similar requirements on NYSE member firms in NYSE-listed securities. NYSE Rule 92 generally prohibits NYSE members or member organizations from knowingly entering proprietary orders ahead of, or along with, customer orders that are executable at the same price as the proprietary order.

The proposed rule represents a cooperative effort between FINRA and NYSE Regulation to harmonize approaches, thus achieving greater consistency and simplifying compliance obligations for dual members (see NYSE Regulation *Information Memo 09-13*.)

B. Proposed FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders)

FINRA is soliciting comment on proposed FINRA Rule 5320, which, among other things, combines the requirements in IM-2110-2 and Rule 2111 to simplify and clarify the application of these rules, as well as to harmonize the rules with NYSE Rule 92, where appropriate.

1. Proposed FINRA Rule 5320: Integration of IM-2110-2 and Rule 2111 into a Single Rule

FINRA proposes integrating IM-2110-2 and Rule 2111 into a single rule governing firms' treatment of customer orders and applying the new rule uniformly to all equity securities, other than the no-knowledge exception as detailed below. In addition to streamlining and simplifying the rules, the proposal extends the application of Rule 2111 protections to OTC equity securities. Currently, Rule 2111 applies only to exchange-listed securities, while IM-2110-2 applies to both exchange-listed and OTC equity securities. FINRA believes the same concerns that arise with respect to trading ahead of limit orders in OTC equity securities also exist with respect to market orders and therefore, an expansion of the Rule 2111 protections to those securities is appropriate.

2. Proposed FINRA Rule 5320.01: Large Orders and Institutional Account Exceptions

Consistent with the current requirements in IM-2110-2 and Rule 2111, Supplementary Material .01 to proposed FINRA Rule 5320 provides that a firm may negotiate specific terms and conditions applicable to the acceptance of an order for institutional accounts, as defined in NASD Rule 3110, or for orders of 10,000 shares or more, unless such orders are less than \$100,000 in value (“Institutional/Large-Sized Order”). Such terms and conditions may permit the firm to continue to trade alongside or ahead of an Institutional/Large-Sized Order. Firms imposing such terms and conditions on an Institutional/Large-Sized Order, including but not limited to not-held orders placed with the firm, must ensure that those terms and conditions are clearly disclosed and explained to the customer placing the Institutional/Large-Sized Order. In prior guidance, FINRA indicated that the appropriate method of disclosure will depend on the customer’s level of sophistication and understanding.⁷ For example, generalized, arms-length disclosure and acceptance procedures may be sufficient where the customer placing the Institutional/Large-Sized Order is sophisticated and clearly understands the disclosures being provided. However, in all cases, a firm relying on this exclusion must document such disclosures and be able to demonstrate that it has met the conditions of the exclusion. NYSE Rule 92 requires that NYSE member firms obtain either a one-time affirmative consent or consent on an order-by-order basis for NYSE-listed securities. Is that a more practicable approach and should FINRA extend NYSE’s consent requirements to all securities?

3. Proposed FINRA Rule 5320.02: No-Knowledge Exception

Both the FINRA customer order protection requirements and NYSE Rule 92 have similar, but not identical, “no-knowledge” exceptions. Specifically, NYSE Rule 92, by its terms, is limited to those circumstances where the firm *knowingly* trades ahead of its customer. Accordingly, under NYSE Rule 92, a firm may trade ahead of a customer order as long as the person entering the proprietary order has no knowledge of the unexecuted customer order.⁸

Similarly, FINRA has established a “no-knowledge” interpretation to its customer order protection requirements. Under FINRA’s interpretation, if a firm implements and utilizes an effective system of internal controls, such as appropriate information barriers that operate to prevent a non-market-making proprietary desk from obtaining knowledge of customer orders held at the firm’s market-making desk, those “walled off” proprietary desks are permitted to trade at prices that would satisfy the customer orders held by the market-making desk without such proprietary executions triggering an obligation to fill pending customer orders at the same price or better.⁹

FINRA's no-knowledge interpretation was established at a time when the majority of retail order flow was handled by the firm's market-making desk, and therefore, permitting firms to "wall off" the market-making desk from retail order flow was viewed as detrimental to retail customers. As a result, FINRA's no-knowledge interpretation has always been limited to proprietary trading at non-market-making desks and does not permit firms to "wall off" the market-making desk from retail order flow for purposes of compliance with the customer order protection requirements.

However, as a result of significant changes in market structure and order routing protocols, FINRA recognizes that today, many firms prefer to handle retail-sized customer orders on an automated basis, separate and apart from the firm's proprietary trading desks, including the market-making desk. Such orders may be routed through algorithmic systems that automatically search out the market centers offering liquidity and immediate execution at the probable best available prices. In addition, firms have indicated that these orders are executed in conformance with FINRA's best execution requirements and that, therefore, requiring walled-off trading desks to integrate these orders for compliance with customer order protection requirements does not enhance execution quality and ultimately may be detrimental to the customer by delaying executions.¹⁰

In light of these changes, FINRA is soliciting comment on Supplementary Material .02 to proposed FINRA Rule 5320, which expands and codifies the current no-knowledge interpretation to include the market-making desk, consistent with NYSE Rule 92, with respect to exchange-listed securities. As part of this proposed change, should firms be required to identify separately order and trading activity by walled-off desks for purposes of regulatory reporting (*i.e.*, transaction and OATS reporting requirements)? Could firms assign a separate market participant identifier (MPID) to such desks and report accordingly? Are there any issues with such an approach?

In addition, to the extent a firm structures its order handling practices in exchange-listed securities to "wall off" customer order flow from its market-making desks, FINRA proposes requiring the firm to disclose that fact in writing to its customers. The proposed disclosure must include a description of the manner in which customer orders are handled and the circumstances under which the firm may trade proprietarily at prices that would satisfy an unexecuted customer order. The proposed disclosure would be required at account opening and on an annual basis thereafter.

FINRA does not, however, believe that these same types of changes in market structure and order handling practices have occurred with respect to the trading of OTC equity securities; these securities are generally not traded at automated market centers with the same depth of liquidity as exchange-listed securities and are not as accessible via automated algorithmic routing for best execution. Therefore, FINRA proposes limiting the expansion of the no-knowledge interpretation to only exchange-listed securities. Accordingly, FINRA proposes codifying the current no-knowledge standard, as set forth in prior *Notices*, for continued applicability to OTC equity securities.

4. Proposed FINRA Rule 5320.05: Odd Lots and Bona Fide Errors

FINRA proposes applying the customer order protection requirements to all customer orders (currently there is a blanket exclusion for odd lots), but would provide an exception for a firm's proprietary trade that (1) offsets a customer odd lot order (*i.e.*, an order less than one round lot, which is typically 100 shares); or (2) corrects a bona fide error. With respect to bona fide errors, member firms would be required to demonstrate and document the basis upon which a transaction meets the bona fide error exception. For purposes of this rule, the definition of a "bona fide error" is as defined in Regulation NMS's exemption for error correction transactions.¹¹

5. Proposed FINRA Rule 5320.08: Application of the Rule Outside Normal Market Hours

FINRA proposes expanding the customer order protection requirements to apply at all times that a customer order may be executed, even outside the period of normal market hours (9:30 a.m. to 4:00 p.m.). Currently, the customer order protection requirements only apply during normal market hours and after hours (4:00 p.m. to 6:30 p.m.).

Except as noted above, the existing requirements and exceptions set forth in IM-2110-2 and Rule 2111 generally would be transferred unchanged as part of FINRA Rule 5320 into the Consolidated Rulebook. In addition to any comments on the specific proposed changes above, FINRA also is interested in any other issues that commenters may wish to address relating to the proposal, including any issues relating to the application of the proposal under differing market structures (*e.g.*, exchange vs. over-the-counter trading).

Endnotes

- 1 The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules). 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 FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms.

For more information about the rulebook consolidation process, see FINRA Information Notice, March 12, 2008 (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 (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 For example, if a firm buys 100 shares of a security at \$10 per share while holding customer limit orders in the same security to buy at \$10 per share equaling, in aggregate, 1000 shares, the member is required to fill 100 shares of the customer limit orders at \$10 per share or better.
- 5 *See* FINRA Rule 2010 (formerly NASD Rule 2110). *See also In re E.F. Hutton & Co.* (known as the “Manning decision”), Securities Exchange Act Release No. 25887, 49 S.E.C. 829 (July 6, 1988), appeal filed, *Hutton & Co. Inc. v. SEC*, Dec. No. 88-1649 (D.C. Cir. September 2, 1988) (Stipulation of Dismissal Filed, January 11, 1989).
- 6 There are several exceptions to these provisions: most notably, firms are permitted to negotiate terms and conditions on the acceptance of certain large-sized orders (orders of 10,000 shares or more and greater than \$100,000 in value) and orders from institutional accounts as defined in NASD Rule 3110(c)(4). (FINRA proposes adopting NASD Rule 3110(c)(4) as FINRA Rule 4512(c), without substantive change. *See Regulatory Notice 08-25* (May 2008).)
- 7 *See, e.g., Notice to Members 06-03* (January 2006).
- 8 Under NYSE Rule 92.10, a member firm or employee of a member or member organization is presumed to have knowledge of a particular customer order unless the member organization has implemented a reasonable system of internal policies and procedures to prevent the misuse of information about customer orders by those responsible for entering proprietary orders.
- 9 *See Notices to Members 95-43* (June 1995), *03-74* (November 2003) and *06-03* (January 2006).
- 10 FINRA’s best execution requirements under NASD Rule 2320 generally require that, when executing a customer transaction, members use reasonable diligence to ascertain the best market for the subject security and buy or sell in that market so that the price to the customer is as favorable as possible under prevailing market conditions.
- 11 Securities Exchange Act Release No. 55884 (June 8, 2007) (Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

Attachment A

Below is the proposed text of new FINRA Rule 5320. NASD IM-2110-2 and Rule 2111 would be deleted in their entirety.

5000. SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES

* * * * *

5300. HANDLING OF CUSTOMER ORDERS

* * * * *

5320. Prohibition Against Trading Ahead of Customer Orders

(a) A member that accepts and holds an order in an equity security from its own customer or a customer of another broker-dealer without immediately executing the order is prohibited from trading that security on the same side of the market for its own account at a price that would satisfy the customer order, unless it immediately thereafter executes the customer order up to the size and at the same or better price at which it traded for its own account.

(b) A member must have a written methodology in place governing the execution and priority of all pending orders that is consistent with the requirements of this Rule and Rule 5310 (currently NASD Rule 2320). A member also must ensure that this methodology is consistently applied.

• • • Supplementary Material: — — — — —

.01 Large Orders and Institutional Account Exceptions. A member may negotiate specific terms and conditions applicable to the acceptance of an order for customer accounts that meet the definition of an “institutional account” as that term is defined in Rule 4512 (currently NASD Rule 3110), or for orders of 10,000 shares or more, unless such orders are less than \$100,000 in value.

.02 No-Knowledge Exception.

(A) With respect to NMS stocks, as defined in Rule 600 of SEC Regulation NMS, if a member implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent one trading unit from obtaining knowledge of customer orders held at a separate trading unit, those other trading units trading in a proprietary capacity may continue to trade at prices that would satisfy the customer orders held by the separate trading unit. A member that structures its order handling practices in NMS stocks to permit its market-making desk

to trade at prices that would satisfy customer orders held at a separate trading unit must disclose in writing to its customers, at account opening and annually thereafter, a description of the manner in which customer orders are handled by the member and the circumstances under which the member may trade proprietarily at its market-making desk at prices that would satisfy the customer order.

(B) With respect to OTC equity securities, as defined in Rule 6420, if a member implements and utilizes an effective system of internal controls, such as appropriate information barriers, that operate to prevent a non-market making trading unit from obtaining knowledge of customer orders held at a separate trading unit, the non-market making trading unit may trade at prices that would satisfy customer orders held at the separate trading unit.

.03 Riskless Principal Exception. The obligations under this Rule shall not apply to a member's proprietary trade if such proprietary trade is for the purposes of facilitating the execution, on a riskless principal basis, of another order from a customer (whether its own customer or the customer of another broker-dealer) (the "facilitated order"), provided that the member:

(A) submits a report, contemporaneously with the execution of the facilitated order, identifying the trade as riskless principal to FINRA (or another self-regulatory organization if not required under FINRA rules); and

(B) the member has written policies and procedures to ensure that riskless principal transactions relied upon for this exception comply with applicable FINRA rules. At a minimum these policies and procedures must require that the customer order was received prior to the offsetting principal transaction, and that the offsetting principal transaction is at the same price as the customer order and is allocated to a riskless principal or customer account in a consistent manner and within 60 seconds of execution.

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

.05 Odd Lot and Bona Fide Error Transaction Exceptions. The obligations under this Rule shall not apply to a member's proprietary trade that is (1) to offset a customer order that is in an amount less than a normal unit of trading; or (2) to correct a bona fide error. Members are required to demonstrate and document the basis upon which a transaction meets the bona fide error exception.

.06 Minimum Price Improvement Standards. The minimum amount of price improvement necessary for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order in that same security, and not be required to execute the held limit order is as follows:

(A) For customer limit orders priced greater than or equal to \$1.00, the minimum amount of price improvement required is \$0.01 for NMS stocks and the lesser of \$0.01 or one-half (1/2) of the current inside spread for OTC equity securities;

(B) For customer limit orders priced greater than or equal to \$.01 and less than \$1.00, the minimum amount of price improvement required is the lesser of \$0.01 or one-half (1/2) of the current inside spread;

(C) For customer limit orders priced less than \$.01 but greater than or equal to \$0.001, the minimum amount of price improvement required is the lesser of \$0.001 or one-half (1/2) of the current inside spread;

(D) For customer limit orders priced less than \$.001 but greater than or equal to \$0.0001, the minimum amount of price improvement required is the lesser of \$0.0001 or one-half (1/2) of the current inside spread;

(E) For customer limit orders priced less than \$.0001 but greater than or equal to \$0.00001, the minimum amount of price improvement required is the lesser of \$0.00001 or one-half (1/2) of the current inside spread;

(F) For customer limit orders priced less than \$.00001, the minimum amount of price improvement required is the lesser of \$0.000001 or one-half (1/2) of the current inside spread; and

(G) For customer limit orders priced outside the best inside market, the minimum amount of price improvement required must either meet the requirements set forth above or the member must trade at a price at or inside the best inside market for the security.

For purposes of determining the minimum price improvement standards for customer limit orders in OTC equity securities priced below \$1.00 where there is no published current inside spread, members may calculate a current inside spread by contacting and obtaining priced quotations from at least two unaffiliated dealers and using the highest bid and lowest offer obtained in calculating the current inside spread. Where there is only a one-sided quote in an OTC equity security priced below \$1.00, members may calculate the current inside spread by contacting and obtaining priced quotations from at least two unaffiliated dealers and using the best price obtained on the other side of the quote. Members must document the name of each dealer contacted and the quotations received for purposes of determining the current inside spread.

In addition, if the minimum price improvement standards above would trigger the protection of a pending customer limit order, any better-priced customer limit order(s) must also be protected under this Rule, even if those better-priced limit orders would not be directly triggered under the minimum price-improvement standards above.

.07 Order Handling Procedures. A member must make every effort to execute a marketable customer order that it receives fully and promptly. A member that is holding a customer order that is marketable and has not been immediately executed must make every effort to cross such order with any other order received by the member on the other side of the market up to the size of such order at a price that is no less than the best bid and no greater than the best offer at the time that the subsequent order is received by the member and that is consistent with the terms of the orders. In the event that a member is holding multiple orders on both sides of the market that have not been executed, the member must make every effort to cross or otherwise execute such orders in a manner that is reasonable and is consistent with the objectives of this Rule and with the terms of the orders. A member can satisfy the crossing requirement by contemporaneously buying from the seller and selling to the buyer at the same price.

.08 Trading Outside Normal Market Hours. Members generally may limit the life of a customer order to the period of normal market hours of 9:30 a.m. to 4 p.m. Eastern Time. However, if the customer and member agree to the processing of the customer's order outside normal market hours, the protections of this Rule shall apply to that customer's order(s) at all times the customer order is executable by the member.

Explained Arbitration Decisions

SEC Approves Amendments to Require Arbitrators to Provide an Explained Decision at Parties' Joint Request

Effective Date: April 13, 2009

Executive Summary

Effective April 13, 2009, FINRA will require arbitrators to provide an explained decision at the parties' joint request. An explained decision is a fact-based award stating the general reasons for the arbitrators' decision. Parties will be required to submit any joint request for an explained decision at least 20 days before the first scheduled hearing date. The chairperson of the arbitration panel will write the explained decision and will receive an additional honorarium of \$400 for doing so.

The SEC approved amendments to FINRA Rules 12214, 12514 and 12904 of the Customer Code of Arbitration Procedure and FINRA Rules 13214, 13514 and 13904 of the Industry Code of Arbitration Procedure relating to explained decisions.¹ The text of the rules is set forth in Attachment A, and will apply to all arbitration cases in which an initial prehearing conference has not been held, or waived by the parties, by the effective date.

Questions concerning this *Notice* should be directed to:

- Richard W. Berry, Vice President and Director of Case Administration, FINRA Dispute Resolution (DR), at (212) 858-4307 or richard.berry@finra.org; or
- Margo A. Hassan, Counsel, DR, at (212) 858-4481 or margo.hassan@finra.org.

March 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal

Key Topic(s)

- Arbitration
- Award
- Code of Arbitration Procedure
- Dispute Resolution
- Explained Decision

Referenced Rules & Notices

- FINRA Rule 12214
- FINRA Rule 12514
- FINRA Rule 12904
- FINRA Rule 13214
- FINRA Rule 13514
- FINRA Rule 13904

Background & Discussion

FINRA is amending its Customer Code and Industry Code to require arbitrators to provide an explained decision at the parties' joint request. The absence of explanations in awards has been a common complaint of non-prevailing parties in FINRA's arbitration forum, especially customers and associated persons. The amendments are intended to address this complaint and increase investor confidence in the fairness of the arbitration process.

An explained decision is a fact-based award stating the general reasons for the arbitrators' decision.² It does not need to include legal authorities and/or damage calculations. Normally, the arbitrators will be resolving the entire matter; thus, the explained decision will address all the claims asserted by the parties. However, the parties may request that an explained decision address only certain claims.

Parties will be required to submit any joint request for an explained decision no later than 20 days prior to the first scheduled hearing date.

The chairperson of the arbitration panel will write the explained decision and will receive an additional honorarium of \$400. Once the decision is drafted, the other arbitrators will participate in completing the decision as provided in Rules 12904(a) and 13904(a).³ As with all other awards, the arbitrators will continue to be permitted to concur, concur in part, dissent or dissent in part. The panel may allocate the cost of the honorarium to one party, or may allocate it between or among all parties. Arbitrators will continue to be permitted to decide, on their own, to write an explained decision.⁴ If the panel or a member of the panel decides to write an explained decision in the absence of a joint request, FINRA will not pay an additional honorarium to any panel member.

Parties will not be able to require explained decisions in simplified arbitrations that are resolved without a hearing or in default proceedings.⁵ Explained decisions are not appropriate in either of these situations because of the abbreviated nature of the proceedings.

The amendments become effective on April 13, 2009, and will apply to all arbitration cases in which an initial prehearing conference has not been held, or waived by the parties, by the effective date.

Endnotes

- 1 Exchange Act Release No. 59358 (February 4, 2009), 74 Federal Register 6928 (February 11, 2009) (File No. SR-FINRA-2008-051).
- 2 As with current FINRA awards, explained decisions will have no precedential value in other cases. Arbitrators will not be required to follow any findings or determinations set forth in prior explained decisions.
- 3 Rules 12904(a) and 13904(a) require all awards to be in writing and signed by a majority of the arbitrators or as required by applicable law.
- 4 FINRA did not amend Rules 12904(f) and 13904(f), which provide that an award may contain an underlying rationale.
- 5 See Rules 12800 and 13800 concerning simplified arbitration proceedings, and Rules 12801 and 13801 concerning default proceedings.

Attachment A

New language is underlined; deletions are in brackets.

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

* * *

Customer Code

12214. Payment of Arbitrators

(a) – (d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 12904(g) will receive an additional honorarium of \$400. The panel will allocate the cost of the honorarium under Rule 12904(g) to the parties.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of \$400.

* * * * *

12514. Pre-hearing Exchange of Documents and Witness Lists [Before Hearing], and Explained Decision Requests

(a) – (c) No change.

(d) Explained Decision Request

At least 20 days before the first scheduled hearing date, all parties must submit to the panel any joint request for an explained decision under Rule 12904(g).

* * * * *

12904. Awards

(a) – (f) No change.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the pre-hearing exchange of documents and witness lists under Rule 12514(d).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of \$400 for writing the explained decision, as required by this paragraph (g). The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under Rule 12800 or to default cases conducted under Rule 12801.

(g) – (i) Renumbered as (h) – (j).

* * * * *

Industry Code

13214. Payment of Arbitrators

(a) – (d) No change.

(e) Payment for Explained Decisions

(1) The chairperson who is responsible for writing an explained decision pursuant to Rule 13904(g) will receive an additional honorarium of \$400. The panel will allocate the cost of the honorarium under Rule 13904(g) to the parties.

(2) If the panel decides on its own to write an explained decision, then no panel member will receive the additional honorarium of \$400.

* * * * *

13514. Pre-hearing Exchange of Documents and Witness Lists [Before Hearing], and Explained Decision Requests

(a) – (c) No change.

(d) Explained Decision Request

At least 20 days before the first scheduled hearing date, all parties must submit to the panel any joint request for an explained decision under Rule 13904(g).

* * * * *

13904. Awards

(a) – (f) No change.

(g) Explained Decisions

(1) This paragraph (g) applies only when all parties jointly request an explained decision.

(2) An explained decision is a fact-based award stating the general reason(s) for the arbitrators' decision. Inclusion of legal authorities and damage calculations is not required.

(3) Parties must make any request for an explained decision no later than the time for the pre-hearing exchange of documents and witness lists under Rule 13514(d).

(4) The chairperson of the panel will be responsible for writing the explained decision.

(5) The chairperson will receive an additional honorarium of \$400 for writing the explained decision, as required by this paragraph (g). The panel will allocate the cost of the chairperson's honorarium to the parties as part of the final award.

(6) This paragraph (g) will not apply to simplified cases decided without a hearing under Rule 13800 or to default cases conducted under Rule 13801.

(g) – (i) Renumbered as (h) – (j).

* * *

Investigations and Formal Disciplinary Actions

FINRA Provides Guidance on Its Enforcement Process

Executive Summary

FINRA is providing this guidance to provide transparency into its enforcement process, and to assist firms and their associated persons with their understanding of how the investigative process works and to highlight procedural safeguards in this process, including:

- Enforcement Procedures and Managerial Oversight
- Conducting Investigations
- Sufficiency of Evidence Reviews
- Wells Process
- Disciplinary Advisory Committee Review
- Litigation Group Consultation Process
- Independent Office of Disciplinary Affairs
- Independent Office of Hearing Officers

Questions regarding this *Notice* should be directed to Susan Merrill, Executive Vice President, Enforcement, at (646) 315-7300.

March 2009

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Enforcement Process
- Investigations
- Formal Disciplinary Actions
- Wells Process

Referenced Rules & Notices

- FINRA Rule 8210

Background & Discussion

One of FINRA's most important functions is the fair and effective enforcement of rules contained within the FINRA Rulebook, the rules of the Municipal Securities Rulemaking Board and the federal securities laws and rules. FINRA's Enforcement and Market Regulation Departments are responsible for investigating and bringing all FINRA formal disciplinary actions against firms and their associated persons. The Enforcement Department handles a broad range of investigations and cases, while the legal section of the Market Regulation Department focuses on trading and quality of market cases. The staff of these departments (also collectively referred to as Enforcement) work closely with other FINRA offices such as Advertising Regulation and Corporate Financing. Similarly, the Enforcement Department works closely with FINRA's Member Regulation Department, which requests information and takes testimony in the course of its examinations of firms and reviews of customer complaints. If another department believes, in consultation with Enforcement staff, that a formal disciplinary action is warranted, the matter will be referred for formal action.

FINRA investigations may be opened from various sources, including but not limited to, automated surveillance reports, examination findings, filings made with FINRA, customer complaints, anonymous tips, referrals from other regulators or other FINRA departments, and press reports.

Enforcement Procedures and Managerial Oversight

The staff investigates and litigates cases pursuant to comprehensive internal procedures that set forth uniform policies and procedures that govern the investigative and enforcement process.¹ In addition, all cases are also subject to a multilayered managerial review that focuses on, among other things, the substantive evidence developed during the investigation and an analysis of applicable rules and case precedent. Investigations are assessed at various points to ensure that Enforcement resources are being deployed appropriately.

Conducting Investigations

All FINRA investigations are non-public and confidential, and firms and individuals are entitled to be represented by counsel. The staff engages in an objective fact-finding process when conducting an investigation, without bias for or against the parties involved. To conduct its investigations, the staff requests documents and takes sworn testimony from firms and associated persons pursuant to FINRA Rule 8210, which requires firms and associated persons to respond to requests for information; failure to respond may result in a fine, suspension or bar from the industry. The staff may also contact customers and other individuals who are not within FINRA's jurisdiction and who provide information voluntarily.

Rule 8210 requests inform the recipient that FINRA investigations are non-public and confidential. Information acquired during an investigation may be disclosed in connection with an investigation or disciplinary proceeding, in response to requests from the Securities and Exchange Commission or other governmental agencies and pursuant to a lawfully issued subpoena and/or information-sharing agreements entered into between FINRA and other regulators. Rule 8210 requests for testimony also inform the witness that he or she has the right to have an attorney present, the right to review a copy of his or her transcript, and may request, in writing, a copy of the transcript, which shall be released unless the staff has good cause to withhold it.

Sufficiency of Evidence Review

At the conclusion of the investigation, the staff analyzes the evidence and applicable law and makes a preliminary determination of whether or not a violation appears to have occurred. This process is called a Sufficiency of Evidence review and is conducted under the supervision of the senior manager responsible for the investigation. If it appears that rules have been violated, the senior manager will determine whether the conduct merits a recommendation of formal disciplinary action. If the violation is of a minor nature and there is an absence of customer harm or detrimental market impact, the matter may be resolved with an informal disciplinary action, such as the issuance of a Cautionary Action. While Cautionary Actions are considered by the staff in any future disciplinary matter, these actions do not constitute formal discipline and are not reportable on FINRA's Central Registration Depository (CRD) system or Form BD.

Wells Process

If a preliminary determination to proceed with a recommendation of formal discipline is made, the staff will call the potential respondent or counsel and inform the individual or firm that FINRA intends to recommend formal disciplinary action. This is generally referred to as a Wells Call.² During the Wells Call the staff informs the potential respondent of the proposed charges and the primary evidence supporting the charges. The purpose of a Wells Call is to give the potential respondent an opportunity to submit a writing, called a Wells Submission, which discusses the facts and applicable law and explains why formal charges are not appropriate. The Wells Call is followed with a letter confirming that the Wells Call has been made (Wells Notice). An associated person who receives a written Wells Notice is required to report that event on his or her Form U4. Firms also may have disclosure obligations depending upon, for example, whether the firm is a publicly traded company. While the Wells process is used in virtually every case, the process is discretionary and there may be instances where senior Enforcement staff determines that it must move forward without providing this opportunity, such as when customer funds are at risk.

The Enforcement staff, including senior managers, carefully review the Wells Submission in assessing the case and may ask for additional information or obtain additional evidence in the matter. In many cases, after reviewing the charges that the staff is considering, the potential respondent initiates settlement discussions instead of making a Wells Submission. FINRA's independent Office of Disciplinary Affairs, discussed below, also reviews each Wells Submission before approving a settlement or authorizing the staff to issue a formal complaint. All cases where Wells Notices have been issued, particularly those involving individual prospective respondents, are reviewed regularly to ensure timely disposition of those matters. Finally, a closing letter is sent to each individual who has received a Wells Notice if the matter is closed without formal disciplinary action.

Disciplinary Advisory Committee

The Disciplinary Advisory Committee (DAC) reviews all significant cases and those matters where novel legal or factual issues exist. The DAC consists of senior managers from the Enforcement and Market Regulation Departments. The DAC considers the evidence supporting each recommended charge and vets charging decisions and sanction recommendations to ensure consistency and proportionality. The DAC recommends the charges and sanction ranges for each case for purposes of settlement discussions. In addition, the DAC considers the issue of whether credit for extraordinary cooperation is appropriate. As discussed below, however, no settlement may be finalized nor may any complaint be filed prior to review and approval by the independent Office of Disciplinary Affairs.

Litigation Group Consultation Process

While most cases settle prior to litigation through the issuance of a settlement document called a Letter of Acceptance Waiver and Consent, a Litigation Group consultation takes place for any case in which a complaint will be filed. During this process, experienced FINRA trial lawyers and a litigation manager review the matter to ensure, among other things, that there exists sufficient evidence to support the proposed charges.

Independent Office of Disciplinary Affairs

FINRA's Office of Disciplinary Affairs (ODA) is independent of Enforcement and is not involved in the investigation or litigation of cases. ODA is charged with reviewing each proposed settlement or complaint, including any Wells Submissions, to provide an independent review of the legal and evidentiary sufficiency of the charges proposed by the staff. ODA also reviews settlements for consistency with the Sanction Guidelines as well as applicable precedent. ODA approval is required before the issuance of a settlement or complaint.

Independent Office of Hearing Officers

FINRA's Code of Procedure governs the hearing process. FINRA hearings are administered by a Hearing Officer who is employed by FINRA in the Office of Hearing Officers (OHO). OHO is independent of Enforcement and, like ODA, is not involved in the investigative process. Employment protections exist for Hearing Officers to further ensure their independence; they may not be terminated except by the FINRA Chief Executive Officer, with a right to appeal to the Audit Committee of FINRA's Board of Governors.

Hearings are held before a Hearing Officer and two industry panelists. Panelists are drawn from a pool of current and former securities industry members of FINRA's District Committees, as well as its Market Regulation Committee, former members of FINRA's National Adjudicatory Council (NAC) and former FINRA Governors. Appeals from hearing decisions are made to the NAC, and respondents may further appeal an adverse decision of the NAC to the Securities and Exchange Commission, and further to a United States Court of Appeals.

Endnotes

- 1 All employees are also subject to FINRA's Code of Conduct and FINRA policies which ensure appropriate handling of potential and actual conflicts of interest, among other things.
- 2 The term Wells Notice originated in 1972 from a committee (chaired by former Senator John Wells and commonly referred to as the Wells Committee) appointed to review and evaluate the SEC's enforcement policies and practices. The Committee recommended providing notice to prospective respondents of charges that the SEC staff was considering. This notice has subsequently been referred to by securities regulators as a Wells Notice, and is used by FINRA in its disciplinary process.

Electronic Blue Sheet (EBS) Submissions

EBS Submissions Following Implementation of the Option Symbology Initiative

Executive Summary

The Options Clearing Corporation and its participant exchanges have begun the implementation of the Option Symbology Initiative, which will affect FINRA member firms' Electronic Blue Sheet submissions.

Firms are expected to describe all exchange-traded options using explicit data elements (*i.e.*, the Option Symbology Initiative) instead of the current Options Price Reporting Authority codes beginning February 12, 2010.

This *Regulatory Notice* outlines changes to the blue sheet record layout as a result of the implementation of the Option Symbology Initiative. Attachment A to this *Notice* sets forth the changes to the blue sheet record layout and Attachment B outlines the existing account type identifiers. The modified format may be used on a voluntary basis starting on April 30, 2009, but is not required to be used until February 12, 2010. This *Notice* also provides answers to frequently asked questions.

- Questions concerning the implementation of the Option Symbology Initiative and its effect on EBS submissions should be directed to Ron Veith, International Securities Exchange, at (212) 897-8130 or rveith@ise.com.
- Questions concerning EBS submissions to FINRA generally should be directed to Rosario J. Braisted, FINRA, at (240) 386-4987 or at rose.braisted@finra.org.

March 2009

Notice Type

- Guidance

Suggested Routing

- Legal
- Compliance
- Operations
- Senior Management

Key Topic(s)

- Blue Sheets

Referenced Rules & Notices

- FINRA Rule 8211
- FINRA Rule 8213

Discussion

In June 2008, the Options Clearing Corporation (OCC) and its participant exchanges began implementing the Option Symbology Initiative (OSI).¹ By February 12, 2010, all exchange-traded options are expected to be described using explicit data elements, instead of the current Options Price Reporting Authority (OPRA) codes.

Following the implementation of OSI, firms must be able to support explicit options identifiers that will require a change to existing blue sheet record layouts. In order to support OSI, the Securities Industry Automation Corporation (SIAC) has modified the blue sheet record layout. Changes to the blue sheet record layout are included as Attachment A. In addition, existing account type identifiers are outlined in Attachment B. The modified format may be used on a voluntary basis starting on April 30, 2009, but is not required to be used until February 12, 2010.

Firms should pay special attention to the following areas of Attachment A:

Record Sequence Number One, Field Positions 22 to 29 (page 2 of 4)

Anyone submitting option activity using the OSI symbology (whether voluntarily after April 30, 2009, or as required after February 12, 2010) must write the characters OPTIONXX in this field and complete Record Sequence Number Six (page 4 of 4).

Record Sequence Number Six (page 4 of 4)

This record should be used to submit the OSI symbology. It should only be filled out if the characters OPTIONXX are in Record Sequence Number One, Field Positions 22 to 29.

Record Sequence Number One, Field Position 68 (page 2 of 4)

The Buy/Sell Code field must be filled out properly. All non-market makers reporting options activity should be using Buy/Sell Codes 3 through 6 and D through G. See Attachment A for the codes. Non-market makers should not mark trades as 0 or 1.

Blue Sheet Submissions to FINRA

Firms should note that FINRA will reject an entire blue sheet submission that meets either one of the following conditions:

- (1) If the Ticker Symbol field of Record Sequence Number One contains the characters OPTIONXX and no corresponding Record Sequence Number Six is included; or
- (2) If the Record Sequence Number Six is included and the Ticker Symbol field of Record Sequence Number One does not contain the characters OPTIONXX.

Firms are reminded that failure to properly fill out the blue sheet fields is a violation of FINRA Rule 8211 and/or FINRA Rule 8213.

FINRA Customer Testing

Starting on April 30, 2009, FINRA will open its Customer Test Web site. Firms that want to test the modifications made to their blue sheet record layout can submit their test data to <https://regfilingtest.finra.org/>. A firm should use the same user ID and password to access the customer test Web site as they use to access the production Web site.

Frequently Asked Questions

1. Is there a phase-in period for the use of Record Sequence Number Six (Record Six)?

Yes, FINRA and all exchanges will be ready to accept Record Six by April 30, 2009. From that point on, FINRA, SIAC and all exchanges will be able to accept both current OPRA codes and OSI symbology data.

2. As the intent of Record Six is to accommodate the new symbology, will it be acceptable for firms to begin sending Record Six at some optional date, but leave the Record Six values defaulted blank until it is required?

Firms may leave Record Six blank as long as all currently required fields in Records One through Five are properly filled out and the correct OPRA code is provided. Only when a firm inputs the characters OPTIONXX in the ticker symbol field (positions 22 to 29 of Record One) will Record Six be required to be accurately completed.

3. Will all the Intermarket Surveillance Group (ISG) members be able to accommodate EBS reports with and without Record Six present for particular transactions within the same report?

Yes.

4. How should firms report options EBS requests that span over the mandatory implementation date (that is, options traded under the old and new symbology)?

The ISG will be able to accept either OPRA codes or the OSI symbology for blue sheet data that spans over the mandatory implementation date.

For example, if a firm voluntarily begins complying with OSI on January 1, 2010, and then receives a blue sheet request for options activity in IBM from November 1, 2009, through February 28, 2011, the firm can either:

- ▶ submit one blue sheet for the entire period using the new symbology/Record Six (if the firm “back converted” all IBM options to the new symbology); or
- ▶ submit one set of records for the period November 1, 2009, through December 31, 2009 (using OPRA codes) and then a separate set of records for January 1, 2010, through February 28, 2011 (using OSI symbology and Record Six).

5. What does the ISG expect to be the value of the CUSIP number field in Record One? Is it the underlying CUSIP, an internal CUSIP or blank?

If you are submitting OSI symbology data, all details required to identify the option should be included in Record Six. Any information in the CUSIP field will be disregarded if OPTIONXX is present in the symbol field of Record One.

Endnotes

- 1 The OSI is a plan to overhaul the existing method of identifying exchange-traded options contracts to decrease the current limitations in today's marketplace. This will be accomplished with the elimination of OPRA codes and fractional strike price values. The new Symbology Key will contain explicit expiration dates (including day) and decimal strike price values. All current information regarding the Option Symbology Initiative is located at www.theocc.com/initiatives/symbology/default.jsp. This includes links to all specific Exchange OSI Web sites containing updated technical specifications.

Attachment A Record Layout for Submission of Trading Information

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|--|--|--|----------------|--------------------------|
| From | To | | | | | | |
| | | | ***This Record Must Be the First Record of the File*** | | | | |
| 1 | 3 | 3 | FILLER | A | LJ | X (3) | HDR |
| 4 | 5 | 2 | FILLER | A | LJ | X (2) | .S |
| 6 | 10 | 5 | DTRK-SYSID | N | LJ | 9 (5) | 12343 |
| 11 | 12 | 2 | FILLER | A | LJ | X (2) | .E |
| 13 | 14 | 2 | FILLER | N | LJ | 9 (2) | 00 |
| 15 | 16 | 2 | FILLER | A | LJ | X (2) | .C |
| 17 | 20 | 4 | DTRK-ORIGINATOR Please call SIAC for assignment (212) 383-2210 | A | LJ | X (4) | -- |
| 21 | 22 | 2 | FILLER | A | LJ | X (2) | .S |
| 23 | 26 | 4 | DTRK-SUB-ORIGINATOR Please call SIAC for assignment (212) 383-2210 | A | LJ | X (4) | -- |
| 27 | 27 | 1 | FILLER | A | LJ | X (1) | B |
| 28 | 33 | 6 | DTRK-DATE Contains submission date. | N | LJ | 9 (6) | MMDDYY |
| 34 | 34 | 1 | FILLER | A | LJ | X (1) | B |
| 35 | 59 | 25 | DTRK-DESCRIPTION Required to identify this file. | A | LJ | X (25) | FIRM TRADING INFORMATION |
| 60 | 80 | 21 | FILLER | A | LJ | X (21) | B |
| 1 | 1 | 1 | HEADER RECORD CODE Value: Low Values OR ZERO | A | -- | X | -- |
| 2 | 5 | 4 | SUBMITTING BROKER NUMBER If NSCC member use NSCC clearing number. If not a NSCC member, use clearing number assigned to you by your clearing agency. | A-R | LJ | X (4) | B |
| 6 | 40 | 35 | FIRM'S REQUEST NUMBER Tracking number used by the firm to record requests from an organization. | A | -- | X (35) | B |
| 41 | 46 | 6 | FILE CREATION DATE Format is YYYYMMDD | A | -- | X (6) | -- |
| 47 | 54 | 8 | FILE CREATION TIME Format is HH:MM:SS | A | -- | X (8) | -- |
| 55 | 55 | 1 | REQUESTOR CODE Requesting Organization Identification Values: | A | -- | X | -- |
| | | | A = New York Stock Exchange | | | | |
| | | | B = NYSE AMEX | | | | |
| | | | C = Chicago Stock Exchange | | | | |
| | | | D = NASDAQ OMX PHLX | | | | |
| | | | E = NYSE Arca | | | | |
| | | | F = Boston Stock Exchange | | | | |
| | | | G = National Stock Exchange | | | | |
| | | | H = BATS Trading | | | | |
| | | | I = International Securities Exchange | | | | |
| | | | K = Chicago Board Options Exchange | | | | |
| | | | R = FINRA | | | | |
| | | | X = Securities Exchange Commission | | | | |
| | | | Z = Other | | | | |
| | | | Field Format A = Alphanumeric (all caps) N = Numeric P = Packed B = Binary R = Validation Required | Default Values— Code B = Blanks Z = Zero | Justify RJ = Right Justification of Data LJ = Left Justification of Data | | |

Attachment A Record Layout for Submission of Trading Information

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|--|---|---------|--|---------------|
| From | To | | | | | | |
| 56 | 70 | 15 | REQUESTING ORGANIZATION NUMBER Number assigned by requesting organization | A | LJ | X (15) | B |
| 71 | 80 | 10 | FILLER | A | -- | X (10) | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER ONE The first record of the transaction. Value: 1 | A | -- | X | -- |
| 2 | 5 | 4 | SUBMITTING BROKER NUMBER Identical to Submitting Broker Number in Header Record | A-R | LJ | X (4) | -- |
| 6 | 9 | 4 | OPPOSING BROKER NUMBER The NSCC clearing house number of the broker on the other side of the trade. | A-R | LJ | X (4) | B |
| 10 | 21 | 12 | CUSIP NUMBER The cusip number assigned to the security. Left justified since the number is nine characters at present (8+ check digit) but will expand in the future. | A | LJ | X (12) | B |
| 22 | 29 | 8 | TICKER SYMBOL The symbol assigned to this security. For options (pre-OSI), the OPRA option symbol (<i>space</i>), OPRA expiration month symbol and OPRA strike price symbol should be used. (Ex. Maytag May 20 call option series would be reported as MYG ED. This example uses six spaces in the field with a space between the OPRA symbol and the OPRA expiration month.) Post OSI this field must contain OPTIONXX and a Record Sequence Number Six must be completed | A-R | LJ | X (8) | B |
| 30 | 35 | 6 | TRADE DATE The date this trade executed. Format is YYYYMMDD. | A-R | -- | X (6) | B |
| 36 | 41 | 6 | SETTLEMENT DATE The date this trade will settle. Format is YYYYMMDD | A | -- | X (6) | B |
| 42 | 53 | 12 | QUANTITY The number of shares or quantity of bonds or option contracts. | N-R | RJ | 9 (12) | Z |
| 54 | 67 | 14 | NET AMOUNT The proceeds of sales or cost of purchases after commissions and other charges. | N | RJ | S9(12) V99 | Z |
| 68 | 68 | 1 | BUY/SELL CODE Values: 0 = Buy, 1 = Sale, 2 = Short Sale, 3 = Buy Open, 4 = Sell Open, 5 = Sell Close, 6 = Buy Close. A = Buy Cancel, B = Sell Cancel, C = Short Sale Cancel, D = Buy Open Cancel, E = Sell Open Cancel, F = Sell Close Cancel, G = Buy Close Cancel. Values 3 to 6 and D to G are for options only | A-R | -- | X | B |
| 69 | 78 | 10 | PRICE The transaction price. Format: \$\$\$\$ CCCCCC. | N-R | RJ | 9(4)V(6) | Z |
| 79 | 79 | 1 | EXCHANGE CODE Exchange where trade was executed. Values: | A-R | -- | X | B |
| | | | A = New York Stock Exchange | | | | |
| | | | B = NYSE AMEX | | | | |
| | | | C = Chicago Stock Exchange | | | | |
| | | | D = NASDAQ OMX PHLX | | | | |
| | | | E = NYSE Arca | | | | |
| | | | F = Boston Stock Exchange | | | | |
| | | | Field Format A = Alphanumeric (all caps) N = Numeric P = Packed B = Binary R = Validation Required | Default Values—Code B = Blanks Z = Zero | | Justify RJ = Right Justification of Data LJ = Left Justification of Data | |

Attachment A Record Layout for Submission of Trading Information

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|---|--|--|----------------|---------------|
| From | To | | | | | | |
| | | | G = National Stock Exchange | | | | |
| | | | H = BATS Trading | | | | |
| | | | I = International Securities Exchange | | | | |
| | | | K = Chicago Board Options Exchange | | | | |
| | | | L = London Stock Exchange | | | | |
| | | | M = Toronto Stock Exchange | | | | |
| | | | N = Montreal Stock Exchange | | | | |
| | | | O = TSX Venture Exchange | | | | |
| | | | Q = FINRA ADF | | | | |
| | | | R = NASDAQ/NASDAQ Options Market | | | | |
| | | | S = Over-the-Counter | | | | |
| | | | T = Tokyo Stock Exchange | | | | |
| | | | W = CBSX (CBOE Stock Exchange) | | | | |
| | | | Z = Other | | | | |
| 80 | 80 | 1 | BROKER/DEALER CODE Indicate if trade was done for another Broker/Dealer. Values: 0 = No; 1 = Yes | A-R | -- | X | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER TWO Value: 2 | A | -- | X | -- |
| 2 | 2 | 1 | SOLICITED CODE Values: 0 = No; 1 = Yes | A-R | -- | X | B |
| 3 | 4 | 2 | STATE CODE Standard Postal two character identification. | A-R | -- | X (2) | B |
| 5 | 14 | 10 | ZIP CODE/COUNTRY CODE Zip Code -- five or nine character (zip plus four) Country code -- for future use. | A-R | LJ | X (10) | B |
| 15 | 22 | 8 | BRANCH OFFICE/REGISTERED REPRESENTATIVE NUMBER Each treated as a four-character field. Both are left justified. | A-R | LJ | X (8) | B |
| 23 | 28 | 6 | DATE ACCOUNT OPENED Format is YYMMDD | A-R | -- | X (6) | B |
| 29 | 48 | 20 | SHORT NAME FIELD Contains last name followed by comma (or space) then as much of first name as will fit. | A | LJ | X (20) | B |
| 49 | 78 | 30 | EMPLOYER NAME | A | LJ | X (30) | B |
| 79 | 79 | 1 | TIN 1 INDICATOR Values: 1 = SS#; 2 = TIN | A-R | -- | X | B |
| 80 | 80 | 1 | TIN 2 INDICATOR Values: 1 = SS#; 2 = TIN -- for future use. | A | -- | X | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER THREE Value: 3 | A | -- | X | -- |
| 2 | 10 | 9 | TIN ONE Taxpayer Identification Number Social Security or Tax ID Number. | A-R | LJ | X (9) | B |
| 11 | 19 | 9 | TIN TWO Taxpayer Identification Number #2 Reserved for future use. | A | LJ | X (9) | B |
| 20 | 20 | 1 | NUMBER OF N&A LINES | A | -- | X | B |
| | | | Field Format A = Alphanumeric (all caps) N = Numeric P = Packed B = Binary R = Validation Required | Default Values— Code B = Blanks Z = Zero | Justify RJ = Right Justification of Data LJ = Left Justification of Data | | |

Attachment A Record Layout for Submission of Trading Information

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|---|---|--|----------------|---------------|
| From | To | | | | | | |
| 21 | 50 | 30 | NAME AND ADDRESS LINE ONE | A-R | LJ | X (30) | B |
| 51 | 80 | 30 | NAME AND ADDRESS LINE TWO | A-R | LJ | X (30) | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER FOUR Value: 4 | A | -- | X | -- |
| 2 | 31 | 30 | NAME AND ADDRESS LINE THREE | A-R | LJ | X (30) | B |
| 32 | 61 | 30 | NAME AND ADDRESS LINE FOUR | A-R | LJ | X (30) | B |
| 62 | 62 | 1 | ACCOUNT TYPE IDENTIFIERS See Attachment B for current codes. | A-R | -- | X | B |
| 63 | 80 | 18 | ACCOUNT NUMBER Account number | A-R | LJ | X (18) | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER FIVE Value: 5 | A | -- | X (1) | -- |
| 2 | 31 | 30 | NAME AND ADDRESS LINE FIVE | A-R | LJ | X (30) | B |
| 32 | 61 | 30 | NAME AND ADDRESS LINE SIX | A-R | LJ | X (30) | B |
| 62 | 65 | 4 | PRIME BROKER Clearing number of the account's prime broker. | A-R | LJ | X (4) | B |
| 66 | 66 | 1 | AVERAGE PRICE ACCOUNT 1 = recipient of average price transaction. 2 = average price account itself. | N-R | -- | 9 (1) | Z |
| 67 | 71 | 5 | DEPOSITORY INSTITUTION IDENTIFIER Identifying number assigned to the account by the depository institution. | A-R | LJ | X (5) | B |
| 72 | 80 | 9 | FILLER | A | -- | X (9) | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER SIX Value: 6 | A | -- | -- | |
| 2 | 9 | 8 | DERIVATIVE SYMBOL The symbol assigned to the derivative | A | LJ | -- | B |
| 10 | 15 | 6 | EXPIRATION DATE The date the option expires. Format is YYMMDD | A | -- | -- | B |
| 16 | 16 | 1 | CALL/PUT INDICATOR C = Call, P = Put | A | -- | -- | B |
| 17 | 24 | 8 | STRIKE DOLLAR The dollar amount of the strike price | N | RJ | -- | Z |
| 25 | 30 | 6 | STRIKE DECIMAL The decimal amount of the strike price | N | RJ | -- | Z |
| 31 | 80 | 50 | FILLER | A | LJ | -- | B |
| 1 | 1 | 1 | TRAILER RECORD DATE One record per submission. Must be the last record on the file. Value: High Values or "9" | A | -- | X | -- |
| 2 | 17 | 16 | TOTAL TRANSACTIONS The total number of transactions. This total excludes Header and Trailer Records. | N | RJ | 9 (16) | B |
| 18 | 33 | 16 | TOTAL RECORDS ON FILE The total number of 80 byte records. This total includes Header and Trailer Records, but not the Datatrak Header Record (i.e., does not include the first record on the file). | N | RJ | 9 (16) | Z |
| 34 | 80 | 47 | FILLER | A | -- | X (47) | B |
| | | | Field Format A = Alphanumeric (all caps) N = Numeric P = Packed B = Binary R = Validation Required | Default Values—Code B = Blanks Z = Zero | Justify RJ = Right Justification of Data LJ = Left Justification of Data | | |

Attachment B Record Layout for Submission of Trading Information

| Transaction Type | Security Type | |
|---|---------------|---------|
| | Equity* | Options |
| Non-Program Trading, Agency | A | C |
| Non-Index Arbitrage, Program Trading, Proprietary | C | |
| Index Arbitrage, Program Trading, Proprietary | D | |
| Index Arbitrage, Program Trading, Individual Investor | J | |
| Non-Index Arbitrage, Program Trading, Individual Investor | K | |
| Non-Program Trading, Proprietary | P | F |
| Non-Program Trading, Individual Investor | I | |
| Non-Index Arbitrage, Program Trading, Agency | Y | |
| Index Arbitrage, Program Trading, Agency | U | |
| Index Arbitrage, Program Trading, as Agent for Other Member | M | |
| Non-Index Arbitrage, Program Trading, as Agent for Other Member | N | |
| Non-Program Trading, as Agent for Other Member | W | |
| Specialist | S | S |
| Market-Maker | | M |
| Non-Member Market-Maker/Specialist Account | | N |
| Stock Specialist – Assignment | | Y |
| Short Exempt, Agency | B | |
| Customer Range Account of a Broker/Dealer | | B |
| Registered Trader | G | |
| Error Trade | Q | |
| Competing Market Maker Proprietary Transaction: Affiliated w/ Clearing Member | O | |
| Competing Market Maker: Unaffiliated Member's Competing Market Maker | T | |
| Competing Market Maker: Non-Member | R | |
| Short Exempt Transaction: Proprietary Account of Clearing Member Organization or Affiliated Member/Member Organization | E | |
| Short Exempt Transaction: Proprietary Account of Unaffiliated Member/Member Organization | F | |
| Short Exempt Transaction: Individual Customer Account | H | |
| Short Exempt Transaction: Competing Market Maker this is a Member/Member Organization Trading for own account | L | |
| Short Exempt Transaction: One Member Acting as Agent for Another Member's Competing Market Maker Account | X | |
| Short Exempt Transaction: Account of Non Member Competing Market Maker | Z | |
| Amex Option Specialist/Market Maker Trading Paired Security | V | |
| Registered Trader Market Maker Transaction Regardless of the Clearing Number | | P |
| Transactions cleared for a NASDAQ market maker that is affiliated w/ the clearing member that resulted from telephone access to the specialist. Amex Only. | 3 | |
| Transactions cleared for a member's NASDAQ market maker that is not affiliated with the clearing member that resulted from telephone access to the specialist. Amex Only. | 4 | |
| Transactions cleared for a non-member NASDAQ market maker that is not affiliated with the clearing member that resulted from telephone access to the specialist. Amex Only. | 5 | |

* Equity securities include those securities that trade like equities (e.g., ETFs and Structured Products).

Election Notice

District and NAC Elections

FINRA Announces Election Results for District Committees, District Nominating Committees and the National Adjudicatory Council

Executive Summary

The purpose of this *Election Notice* is to announce the names of the newly elected District Committee, District Nominating Committee and National Adjudicatory Council (NAC) members.

For the district committees, each of the candidates nominated by the Regional Nominating Committees has been duly elected to terms beginning on June 1, 2009.¹ The newly elected District Committee members will serve three-year terms,² and the newly elected District Nominating Committee members will serve one-year terms. The names of the new district committee members and the specific terms to which they were elected are listed in Attachment A.

In the NAC election, two seats were filled: a Small Firm NAC Member seat and a Large Firm NAC Member seat. In December 2008, the Nominating and Governance Committee of FINRA's Board of Governors nominated candidates for both open positions. Notice of these nominations was provided to FINRA member firms and one candidate successfully petitioned to have his name added as a candidate for the Small Firm NAC Member seat.³

March 24, 2009

Suggested Routing

- Compliance
- Legal
- Operations
- Registration
- Senior Management

A contested election for the Small Firm NAC Member seat was held with ballots sent to all eligible firms listing the FINRA and petition candidates. Alan L. Davidson received the largest number of votes and his nomination will now be forwarded to the FINRA Board for appointment as the Small Firm NAC Member.

The Committee's nomination of Pamela K. Cavness as the FINRA nominee for the Large Firm NAC Member seat was not contested and the FINRA Board recently appointed Ms. Cavness to the NAC.

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

Endnotes

- 1 No additional candidates came forward to contest the election of the Regional Nominating Committee nominees. Pursuant to Section 8.19 of FINRA Regulation's By-Laws, in an uncontested election the candidates nominated by the Regional Nominating Committees shall be considered elected.
- 2 Some District Committee members were elected to fill existing vacancies and therefore may serve less than a three-year term, as indicated on Attachment A.
- 3 See Section 6.2 of the FINRA Regulation By-Laws.

Attachment A: Newly Elected District Committee and District Nominating Committee Members

District 1

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

Christian A. Zrull, District Director

One Montgomery Street, Suite 2100, San Francisco, CA 94104 (415) 217-1100
(415) 956-1931 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|---------------------|---------------------------------|-------------------|
| Nancy A. Mullally | Alamo Capital | Walnut Creek, CA |
| Robert J. Zamecki | Lighthouse Capital Corporation | Monterey, CA |
| Vincent M. Faughnan | Banc of America Securities, LLC | San Francisco, CA |

Alternate Candidate

| | | |
|------------------|-------------------------------------|-------------------|
| Douglas C. Heske | Nollenberger Capital Partners, Inc. | San Francisco, CA |
|------------------|-------------------------------------|-------------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|------------------------|-------------------------------------|-------------------|
| Christopher D. Charles | Wulff, Hansen & Co. | San Francisco, CA |
| Kevin T. Kitchin | Wachovia Securities, LLC | San Francisco, CA |
| Bruce W. Nollenberger | Nollenberger Capital Partners, Inc. | San Francisco, CA |
| Daniel W. Roberts | Roberts & Ryan Investments, Inc. | San Francisco, CA |
| Edward M. Stephens | FSC Securities Corporation | San Francisco, CA |

Alternate Candidate

| | | |
|---------------------|------------------------------|-------------------|
| Howard A. Bernstein | Pacific Growth Equities, LLC | San Francisco, CA |
|---------------------|------------------------------|-------------------|

District 2

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

David A. Greene, District Director

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071-3126 (213) 613-2634
(213) 613-1401 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|-----------------------|-----------------------------------|-------------------|
| S. Kendrick Dunn, Jr. | Pacific Select Distributors, Inc. | Newport Beach, CA |
| Peter K. Vonk | CUSO Financial Services, L.P. | San Diego, CA |
| Steven L. Thornton | Valtus Capital Group, LLC | Tarzana, CA |

District Committee Nominee for Term Expiring May 31, 2010

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

Alternate Candidate

| | | |
|-------------------|----------------------------------|------------------|
| Bardea C. Huppert | Farmers Financial Solutions, LLC | Agoura Hills, CA |
|-------------------|----------------------------------|------------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|--------------------|----------------------------------|-------------------|
| Valorie A. Seyfert | CUSO Financial Services, L.P. | San Diego, CA |
| Kenneth R. Hyman | Partnervest Securities, Inc. | Santa Barbara, CA |
| Steven K. Klein | Farmers Financial Solutions, LLC | Agoura Hills, CA |
| Gary A. Martino | brokersXpress, LLC | Thousand Oaks, CA |
| M. LaRae Bakerink | WBB Securities, LLC | San Diego, CA |

District 3

Arizona, Colorado, New Mexico, Utah and Wyoming

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

4600 S. Syracuse, Suite 1400, Denver, CO 80202 (303) 446-3100
(303) 620-9450 fax

Alaska, Idaho, Montana, Oregon and Washington

Michael E. Lewis, District Director

601 Union Street, Suite 1616, Seattle, WA 98101 (206) 624-0790
(206) 623-2518 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|------------------|---|---------------|
| Paul T. Amsbury | Morgan Stanley & Co. | Portland, OR |
| Kay A. Johnson | National Securities Corporation | Seattle, WA |
| Bruce J. Maranda | Canaccord Capital Corporation USA, Inc. | Vancouver, BC |

District Committee Nominee for Term Expiring May 31, 2010

| | | |
|-------------------|----------------------------|-----------------|
| Steven S. Iversen | NEXT Financial Group, Inc. | Albuquerque, NM |
|-------------------|----------------------------|-----------------|

Alternate Candidate

| | | |
|-------------------|--|------------|
| Patrick H. McEvoy | Multi-Financial Securities Corporation | Denver, CO |
|-------------------|--|------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|------------------------|---|----------------|
| Louis H. (Hoyt) DeMers | Wells Fargo Investments, LLC | Seattle, WA |
| Russell R. Diachok | Geneos Wealth Management, Inc. | Centennial, CO |
| David J. Director | McAdams Wright Ragen, Inc. | Seattle, WA |
| Craig A. Jackson | Financial Network Investment Corp. | Roseburg, OR |
| Harry L. Striplin | Strand, Atkinson, Williams & York, Inc. | Portland, OR |

District 4

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

Thomas D. Clough, Associate Vice President and District Director

120 W. 12th Street, Suite 800, Kansas City, MO 64105

(816) 421-5700

(816) 421-5029 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|-----------------|-------------------------------------|-----------------|
| Jennifer Relien | Thrivent Investment Management | Minneapolis, MN |
| Dana Bjornson | George K. Baum & Company | Kansas City, MO |
| Amy Webber | Cambridge Investment Research, Inc. | Fairfield, IA |

Alternate Candidate

| | | |
|---------------|--------------------------|---------------|
| Craig Markham | Walnut Street Securities | St. Louis, MO |
|---------------|--------------------------|---------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|----------------------|---------------------------------------|-----------------|
| Andrew Small | Scottrade, Inc. | St. Louis, MO |
| Patricia Bartholomew | Craig-Hallum Capital Group, LLC | Minneapolis, MN |
| Pamela Ziermann | Dougherty & Company, LLC | Minneapolis, MN |
| Allen Moore | Smith Hayes Financial Services, Corp. | Lincoln, NE |
| Minoo Spellerberg | Princor Financial Services | Des Moines, IA |

District 5

Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Tennessee

Keith E. Hinrichs, District Director

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

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

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|-----------------------|-----------------------------|-----------------|
| LeRoy "Lee" Paris, II | InvestLinc Securities, LLC | Jackson, MS |
| Mark Sheridan | Johnson Rice & Company, LLC | New Orleans, LA |
| James F. Dixon, III | Sterne, Agee & Leach, Inc. | Birmingham, AL |

Alternate Candidate

| | | |
|------------------------|-----------------------------|-------------|
| William E. Hopkins, II | Silver Oak Securities, Inc. | Jackson, TN |
|------------------------|-----------------------------|-------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|---------------------|-------------------------------|-------------------|
| J. French Hill | Delta Trust Investments, Inc. | Little Rock, AR |
| Michaela Myers | NAFA Capital Markets | Oklahoma City, OK |
| Jefferson G. Parker | Howard Weil, Inc. | New Orleans, LA |
| Jennifer C. Scola | Carty & Company, Inc. | Memphis, TN |
| F. Eugene Woodham | Sterne, Agee & Leach, Inc. | Birmingham, AL |

Alternate Candidate

| | | |
|----------------|--------------------------|-----------------|
| James S. Jones | Crews & Associates, Inc. | Little Rock, AR |
|----------------|--------------------------|-----------------|

District 6

Texas

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

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

(972) 701-8554

(972) 716-7646 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|--------------------------|--|-----------------|
| Adan D. Araujo | First Command Financial Planning, Inc. | Fort Worth, TX |
| William W. Cathriner, II | BBVA Investments, Inc. | Houston, TX |
| Kelly R. Welker | LPL Financial Corporation | San Antonio, TX |

Alternate Candidate

| | | |
|------------------------|--------------------------------|-------------|
| Rebecca Starling-Platt | Invesco AIM Distributors, Inc. | Houston, TX |
|------------------------|--------------------------------|-------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|-------------------------|-----------------------------|-------------|
| Bryan T. Emerson | Starlight Investments, LLC | Houston, TX |
| Sennett Kirk, III | Kirk Securities Corporation | Denton, TX |
| John Christopher Melton | Coastal Securities, Inc. | Houston, TX |
| William H. Lowell | Lowell & Company, Inc. | Lubbock, TX |
| Alan K. Goldfarb | Weaver Tidwell Capital LLC | Dallas, TX |

Alternate Candidate

| | | |
|-------------------|--------------------------|------------|
| Michael A. Pagano | 1st Global Capital Corp. | Dallas, TX |
|-------------------|--------------------------|------------|

District 7

Georgia, North Carolina and South Carolina

Daniel J. Stefek, Associate Vice President and District Director

One Securities Centre, Suite 500, 3490 Piedmont Road, NE (404) 239-6100
 Atlanta, GA 30305 (404) 237-9290 fax

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

Mitchell C. Atkins, Vice President and District Director

Crystal Corporate Center, 2500 N. Military Trail, Suite 302 (561) 443-8000
 Boca Raton, FL 33434 (561) 443-7995 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|------------------------------|--|--------------------|
| Ruth A. Burgess | INVEST Financial Corporation | Tampa, FL |
| Donald K. Runkle | Raymond James Financial Services, Inc. | St. Petersburg, FL |
| Caroline (Carrie) Wisniewski | Bridge Capital Associates, Inc. | Norcross, GA |

District Committee Nominee for Term Expiring May 31, 2010

| | | |
|--------------------|------------------------------------|-------------|
| John T. Rhett, III | SunTrust Investment Services, Inc. | Atlanta, GA |
|--------------------|------------------------------------|-------------|

Alternate Candidate

| | | |
|-----------------|------------------------------|-------------|
| Kenneth S. Bell | ING Financial Partners, Inc. | Atlanta, GA |
|-----------------|------------------------------|-------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|------------------------|--|---------------|
| Susan J. Hechtlinger | SunTrust Investment Services, Inc. | Atlanta, GA |
| William G. McMaster | Scott & Stringfellow, Inc. | Columbia, SC |
| Charles F. O'Kelley | Atlantic Coast Securities Corporation | Tampa, FL |
| Roark (Rocky) A. Young | Young, Stovall and Company | Miami, FL |
| Landrum H. Henderson | Banc of America Investments Services, Inc. | Charlotte, NC |

District 8

Illinois, Indiana, Kentucky, Michigan, Ohio and Wisconsin

Carla A. Romano, Senior Vice President and Regional Director Midwest Region

55 West Monroe Street, Suite 2700, Chicago, IL 60603-5052

(312) 899-4400

(312) 899-4399 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|--------------------|-----------------------------------|------------------|
| Timothy P. Byrnes | Morgan Stanley & Co. Incorporated | Barrington, IL |
| Anthony C. LaRosa | JJB Hilliard, WL Lyons, LLC | Indianapolis, IN |
| Joseph R.V. Romano | Romano Brothers & Co. | Evanston, IL |

Alternate Candidate

| | | |
|-----------------|---------------------|-----------|
| Jeffrey V. Gery | NRP Financial, Inc. | Bryan, OH |
|-----------------|---------------------|-----------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|---------------------|----------------------------------|----------------|
| Richard M. Arceci | ValMark Securities, Inc. | Akron, OH |
| Stephen F. Anderson | Waterstone Financial Group, Inc. | Itasca, IL |
| Eric A. Bederman | Bernardi Securities, Inc. | Chicago, IL |
| Thomas M. McDonald | Thomas McDonald Partners, LLC | Cleveland, OH |
| Barbara A. Turner | The O.N. Equity Sales Co. | Cincinnati, OH |

District 9

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

Gary K. Liebowitz, Senior Vice President and Regional Director North Region

581 Main Street, 7th Floor, Woodbridge, NJ 07095 (732) 596-2025
(732) 596-2001 fax

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

Robert B. Kaplan, Vice President and District Director

1835 Market Street, Suite 1900, Philadelphia, PA 19103 (215) 963-1992
(215) 963-7442 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|-------------------------|--------------------------------|----------------|
| Irene A. Feeley | Capital Analysts, Incorporated | Horsham, PA |
| Mark Gomez | NYLife Distributors, LLC | Parsippany, NJ |
| Michael K. Kauffelt, II | Bill Few Associates, Inc. | Pittsburgh, PA |

District Committee Nominee for Term Expiring May 31, 2011

| | | |
|----------------------|--|------------|
| Kenneth I. Schindler | Prudential Investment Management Services, LLC | Newark, NJ |
|----------------------|--|------------|

Alternate Candidate

| | | |
|--------------------|----------------------------|------------------|
| David S. Berkowitz | Lincoln Financial Advisors | Philadelphia, PA |
|--------------------|----------------------------|------------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|-------------------|------------------------------------|------------------|
| Michael T. Corrao | Knight Equity Markets, LP | Jersey City, NJ |
| John M. Ivan | Janney Montgomery Scott, LLC | Philadelphia, PA |
| W. Dean Karrash | Burke, Lawton, Brewer & Burke, LLC | Ambler, PA |
| John P. Meegan | Hefren-Tillotson, Inc. | Pittsburgh, PA |
| Thomas T. Wallace | Johnston, Lemon & Co., Inc. | Washington, DC |

District 10

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

Hans L. Reich, Senior Vice President and Regional Director New York Region

One Liberty Plaza, 49th Floor, 165 Broadway, New York, NY 10006 (212) 858-4180
(212) 858-4078 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|------------------|----------------------------|--------------|
| Craig B. Jampol | Sterne, Agee & Leach, Inc. | New York, NY |
| David V. Shields | Shields & Company | New York, NY |
| VACANT* | | |
| VACANT* | | |

District Committee Nominee for Term Expiring May 31, 2011

| | | |
|-----------------|--|--------------|
| Robin A. Oliver | Raymond James Financial Services, Inc. | New York, NY |
|-----------------|--|--------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|-------------------------|--|--------------|
| Clifford H. Goldman | Marco Polo Securities, Inc. | New York, NY |
| Raymond C. Holland, Sr. | Triad Securities Corp. | New York, NY |
| Allen Meyer | Credit Suisse First Boston LLC | New York, NY |
| Howard Spindel | Integrated Management Solutions | New York, NY |
| Tom M. Wirtshafter | American Portfolios Financial Services, Inc. | Holbrook, NY |

Alternate Candidate

| | | |
|---------------------|------------------------|--------------|
| Jennifer A. Connors | E*Trade Securities LLC | New York, NY |
|---------------------|------------------------|--------------|

* The two vacancies noted above resulted from one nominee withdrawing his name from consideration and another nominee being ineligible for the seat.

District 11

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

Elizabeth F. Page, District Director

99 High Street, Suite 900, Boston, MA 02110

(617) 532-3401

(617) 451-3524 fax

District Committee Members Elected to Terms Expiring May 31, 2012

| | | |
|----------------------|-------------------------------------|-----------------|
| Michael J. Mahoney | John Hancock Funds, LLC | Boston, MA |
| John A. Vaccaro | MML Investors Services, Inc. | Springfield, MA |
| Edward J. Wiles, Jr. | Genworth Financial Securities Corp. | Stamford, CT |

Alternate Candidate

| | | |
|-------------------|---------------------------|---------------|
| James D. McCarron | U.S. Wealth Advisors, LLC | Braintree, MA |
|-------------------|---------------------------|---------------|

District Nominating Committee Members Elected to Terms Expiring May 31, 2010

| | | |
|------------------------|---------------------------------------|---------------------|
| Martin W. Courage | J.P. Morgan Securities, Inc. | Boston, MA |
| John I. Fitzgerald | Leerink Swann, LLC | Boston, MA |
| Joseph J. Gritzer, Jr. | USI Securities, Inc. | Glastonbury, CT |
| Moira C. Lowe | Sun Life Financial Distributors, Inc. | Wellesley Hills, MA |
| Robert J. Reilly | Barclays Capital, Inc. | Boston, MA |

Election Notice

Nominees for Vacant FINRA Board of Governors Large Firm Seats

March 27, 2009

Suggested Routing

- Executive Representatives
- Senior Management

Executive Summary

The purpose of this *Notice* is to announce the individuals nominated by the NYSE Group Committee¹ of the FINRA Board of Governors (FINRA Board) for election to the vacant Large Firm Governor seats on the FINRA Board. The nominees are Seth H. Waugh and James D. Weddle. Eligible individuals who were not nominated may petition to have their name included on the ballot by following the procedures below.

Pursuant to Article VII, Section 10 of FINRA's By-Laws, a person who has not been nominated for election to the FINRA Board may be included on the ballot for the election of governors if:

- within 45 days after the date of this *Election Notice*, such person presents to the Secretary of FINRA petitions in support of such nomination, duly executed by at least three percent of FINRA member firms entitled to vote for such nominee's election. If, however, a candidate's name appears on a petition in support of a slate of more than one nominee, the slate must be endorsed by 10 percent of FINRA's voting members entitled to vote for such nominees' election; and
- the Secretary certifies that such petitions have been duly executed by the executive representatives of the requisite number of FINRA member firms entitled to vote for such person's election, and the person being nominated satisfies the classification of the governorship to be filled based on the information provided by the person as is reasonably necessary for the Secretary to make the certification.

Only Large Firm member firms may endorse nominees for the vacant Large Firm Governor seats. No firm may endorse more than one such nominee. Persons submitting petitions must provide information sufficient for the Corporate Secretary to determine that the petitions are duly executed by the executive representatives of the requisite number of large firms by Monday, May 11, 2009.

The number of FINRA Large Firms as of close of business on Thursday, March 26, 2009, was 178. For petitions in support of the nomination of a single person, the requisite number of Large Firms required to meet the above referenced threshold is 6. For petitions in support of a slate of more than one individual, the applicable threshold is 18.

In the event of a contested election, the Secretary shall deliver notice of a special meeting of members to all eligible Large Firms.

Note: This Notice was distributed 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/032709. Executive representatives should circulate this Notice to their firms' branch managers.

Questions regarding this *Election Notice* may be directed to:

- Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949; or
- T. Grant Callery, Executive Vice President and General Counsel, at (202) 728-8285.

Composition of the Board

Pursuant to Article XXII, Section 2 of the FINRA By-Laws, during the Transitional Period,² the FINRA Board shall consist of 23 members, including:

- the Chief Executive Officer of FINRA;
- the Chief Executive Officer of NYSE Regulation, Inc.;
- eleven Public Governors;
- one Floor Member Governor;
- one Independent Dealer/Insurance Affiliate Governor;
- one Investment Company Affiliate Governor;
- three Small Firm Governors;
- one Mid-Size Firm Governor; and
- three Large Firm Governors.

Of the 23 Board members, the three Small Firm Governors, one Mid-Size Firm Governor and three Large Firm Governors were elected as Governors at the first annual meeting of members following the Closing on October 26, 2007, and, subject to certain qualifications,³ will hold office until the first annual meeting of members following the Transitional Period, or until a successor is duly appointed and qualified, or until death, resignation, disqualification, or removal. Two Large Firm Governor seats are vacant as a result of the resignation of two of the three Large Firm Governors elected in October 2007.

Large Firm Governor Vacancies on the FINRA Board

Pursuant to Article XXII, Sec. 3, in the event of any vacancy among the Large Firm Governors during the Transitional Period, where a position is vacant for more than 12 months, nominations to fill the vacancy are made by the NYSE Group Committee of the Board and voted upon by the FINRA member firms entitled to vote for that category of Governor.

As noted above, the NYSE Group Committee's nominees are Seth H. Waugh and James D. Weddle. A person who has not been so nominated to fill these Large Firm Governor vacancies on the FINRA Board may be included on the ballot for the election if he or she obtains the requisite number of petitions in support of his or her nomination.

To be eligible to serve, Large Firm Governors must be registered with a Large Firm. A Large Firm is defined as a firm that employs more than 500 registered persons.⁴ In order for the Board to maintain compliance with the compositional requirements of the FINRA By-Laws, elected Board members have a continuing obligation to satisfy the firm-size classification throughout the entire term for which the Governor is elected.

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. Individuals seeking nomination for the Large Firm seat also have an obligation to satisfy the firm-size classification on the date the petition is circulated, the date the petition is certified by the Corporate Secretary and date of the annual meeting. Individuals who fail to meet this requirement will be disqualified from election.

Term of Office

The elected individuals will be elected to complete the terms vacated by Governors Thomas Russo and Robert McCann, and 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.⁵

The Transitional Period will conclude on July 30, 2010.

Voting Eligibility

Member 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 Large Firm members are eligible to vote in this election.

Endnotes

- 1 The NYSE Group Committee comprises the five Public Governors appointed by the NYSE Group, Inc. Board of Directors (NYSE Board), the Large Firm Governors nominated by the NYSE Board and the Floor Broker representative appointed by the NYSE Board.
- 2 Pursuant to Article I (zz) of the FINRA By-Laws, the Transitional Period means the period commencing on the date of the Closing and ending on the third anniversary of the date of the Closing; however, the initial member-elected governors shall hold office, subject to certain qualifications, until the first annual meeting of members following the Transitional Period. *See* Article XXII, Section 3 of the FINRA By-Laws.
- 3 *See* Article XXII, Section 3 of the FINRA By-Laws.
- 4 *See* Article I (y) of the FINRA By-Laws.
- 5 *See* Article XXII, Section 3 of the FINRA By-Laws.

Attachment A

Profile of FINRA Large Firm Governor Nominees

The NYSE Group Committee of the FINRA Board of Governors has nominated the following individuals to fill the Large Firm Governor vacancies on the FINRA Board.

Seth H. Waugh

Seth H. Waugh joined Deutsche Bank in April 2000 as Regional Head of Global Markets and Equities and Vice Chairman of the Americas Executive Committee. Mr. Waugh was appointed CEO of Corporate and Investment Banking in the Americas in 2001 and the following year was named CEO of Deutsche Bank Americas and Chairman of the Americas Executive Committee, a position he has held since May 2002. He was appointed Member of the Group Executive Committee effective April 1, 2009.

Mr. Waugh is Chairman of the Deutsche Bank Securities Inc. (DBSI) Board of Directors and serves as Chairman of the Board, CEO and President of several Deutsche Bank companies, including Deutsche Bank Trust Company and Deutsche Bank Trust Corporation Americas.

Before joining Deutsche Bank, Mr. Waugh was CEO of Quantitative Financial Strategies (QFS) in Greenwich, CT. Prior to his role at QFS, he spent 11 years at Merrill Lynch in a variety of capacities in the Fixed Income Division, most recently as Senior Vice President and Co-Head of Global Debt Markets. Earlier in his career, he managed the Corporate Bond and International Trading desks at Salomon Brothers.

Mr. Waugh's industry positions have included board seats with the Securities Industry and Financial Markets Association and The Clearing House. In addition, he is the Deutsche Bank Americas representative to the Financial Services Forum, an organization composed of 20 CEOs from the largest U.S. financial institutions. He is also a member of the Executive Committee of the Partnership for New York City.

Mr. Waugh is the Chairman of the Board of Directors for Deutsche Bank Americas Foundation, which administers the philanthropic activities of Deutsche Bank within the United States, Canada and Latin America. His philanthropic endeavors also include positions on the boards of the YMCA of Greater New York, the Multiple Sclerosis Society of Greater New York, the Partnership for New York City, St. Vincent's Services of Brooklyn, the Local Initiatives Support Corporation, the Lawrenceville School in Lawrenceville, New Jersey and he is a member of the Winthrop University Hospital Board of Regents in Syosset, New York.

A graduate of Amherst College, Mr. Waugh earned dual Bachelor of Arts degrees in Economics and English.

James D. Weddle

James D. Weddle, managing partner of Edward Jones, was earning his MBA at Washington University when he was hired in 1976 as a part-time intern in the firm's Research department. After completing his MBA, Mr. Weddle left Research to become a financial advisor in Connersville, Indiana. He opened the firm's 200th branch.

In 1984, Mr. Weddle was named a principal in the firm and was invited back to the St. Louis headquarters where he assumed a series of responsibilities, initially in new Financial Advisor Training, then for one of the firm's largest areas, Mutual Fund Sales and Marketing. Mr. Weddle then led the implementation of a new sales management structure for the firm, taking responsibility for developing the firm's growth across the entire East Coast and for coordinating the efforts for all of the U.S. While he led the East Coast, the firm expanded from 250 offices to over 1,000.

Mr. Weddle assumed responsibility for managing all of the firm's branch offices in late 1997. His responsibilities included not only the facilities themselves, but also financial advisors' compensation and financial advisor leadership development.

Mr. Weddle has been a member of the firm's Management Committee since 1987 and in January 2006, he succeeded Douglas E. Hill as Edward Jones' fifth managing partner.

A native of Illinois and a graduate of DePauw University in Greencastle, Indiana, Mr. Weddle also graduated from the University of Pennsylvania Wharton School's Securities Industry Institute in 1988. He served as a trustee of the institute from 1989 until 1993, and served on the Continuing Education Committee of the Securities Industry Association from 1994 through 1996.

Mr. Weddle is on the Executive Committee for Webster University Board of Trustees; on the Executive Committee of The United Way of Greater St. Louis; a board member of the Securities Industry & Financial Markets Association (SIFMA); a board member of the St. Louis Regional Chamber & Growth Association (RCGA); a member of the Board of Commissioners for the St. Louis Science Center; a member of Washington University's Olin School of Business National Council; and a member of the University of Missouri–St. Louis Chancellor's Council.

Information Notice

New Rate for Fees Paid Under Section 31 of the Exchange Act

Effective Date: April 10, 2009

Executive Summary

The SEC is making a mid-year adjustment to the fee rates applicable under Section 31 (b) and (c) of the Securities Exchange Act of 1934. Effective April 10, 2009, the Section 31 rate applicable to the sales of specified securities transactions on the exchanges and in the over-the-counter markets will be at the new rate of \$25.70 per million of the aggregate dollar amount of sales of securities. This fee rate will remain in place until further notice.

Questions concerning this *Notice* should be directed to:

- ▶ Rob Renner, FINRA Vice President and Assistant Controller, at (240) 386-5303; or
- ▶ Kathleen O'Mara, Associate General Counsel, Finance, at (240) 386-5309.

Discussion

The Securities and Exchange Commission (SEC) announced on March 11, 2009 (*see* Fee Rate Advisory #5 for Fiscal Year 2009 on the SEC's Web site at www.sec.gov/news/press/2009/2009-56.htm) that the Section 31 rate applicable to the sales of specified securities transactions on the exchanges and in the over-the-counter markets will change. Specifically, the current Section 31 fee rate will increase from \$5.60 per million to the new rate of \$25.70 per million of the aggregate dollar amount of sales of specified securities. This new rate will be implemented on April 10, 2009. Until that date, the current rate of \$5.60 per million will remain in effect. The new fee rate of \$25.70 per million will remain in place until the fee rate for fiscal 2010 takes effect. The SEC stated that they will announce the new fee rates for fiscal year 2010 no later than April 30, 2009.

March 16, 2009

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Trading

Key Topics

- ▶ Section 31 Fee

Referenced Rules & Notices

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

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

Disciplinary and Other FINRA Actions

Firm Expelled

North American Clearing, Inc. (CRD #39118, Longwood, Florida) submitted an Offer of Settlement in which the firm was expelled from FINRA membership. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it prepared and maintained inaccurate customer reserve formula computations and failed to make required deposits to its Special Reserve Account as required by the Securities Exchange Act, and failed to notify FINRA of its failure to make the deposits. The findings stated that the firm prepared and maintained an inaccurate net capital computation, trial balance and general ledger, and filed a materially inaccurate Financial and Operations Combined Uniform Single (FOCUS) report in which it overstated its net capital. The findings also stated that the firm failed to conduct an accurate box count, in that there were certificates in the box for positions that were not on the firm's stock record, and the amount of shares in the box did not match the firm's stock record. The findings also included that the firm failed to maintain an accurate securities position record, and did not take steps to obtain physical possession or control of securities failed-to-receive by initiating a buy-in procedure or otherwise in automated customer account transfers (ACATs) failures and customer-related fails. FINRA found that the firm failed to liquidate, or timely liquidate, unpaid-for customer securities positions in cash accounts as required by Regulation T, and permitted customers to purchase securities in accounts that were frozen pursuant to Regulation T without having cash on deposit for the purchases, and failed to liquidate customer positions in a timely manner in customer margin accounts that fell below FINRA's maintenance margin requirements. In addition, FINRA determined that the firm permitted an individual to act as its operations manager and to perform functions requiring registration as a Financial and Operations Principal (FINOP) when she was not so registered, and also employed a chief compliance officer who was not registered with the firm as a general securities principal or registered in any capacity with the firm.

Reported for March 2009

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

Moreover, FINRA determined that the firm had not recently conducted an independent test of its anti-money laundering (AML) compliance program, failed to provide prompt notification to FINRA of the change of its AML compliance officer, failed to conduct ongoing AML training for appropriate personnel, and its AML compliance program was inadequate in that it failed to establish policies and procedures that could reasonably be expected to detect and cause the reporting of suspicious transactions. Furthermore, FINRA found that the firm failed to maintain all internal electronic correspondence on non-erasable, non-rewriteable media, and its supervisory system was deficient in that registered persons could delete emails at will, and its written procedures were deficient because they lacked details or explanation.

In addition, the firm failed to maintain a continuing and current firm element continuing education program, and failed to establish and maintain a reasonable supervisory system for financial and credit risk management relating to its correspondent business. The findings stated that the firm failed to reasonably supervise its operations system conversion and its operations activities to detect and/or prevent violations including, but not limited to, inaccurate box counts, position records, buy-in procedures, Regulation T and NASD Rule 2520, maintenance of electronic correspondence and customer account transfers. The findings also stated that the firm engaged in the practice of improperly liquidating customer money market fund positions and failing to sweep customer free credit balances into customer-designated money market funds or a bank deposit account to create cash flows to meet its daily settlement obligations. The findings also included that the firm failed to maintain and provide account documentation to FINRA for accounts liquidated to meet its daily settlement requirements, and failed to comply with FINRA's Uniform Practice Code in that it validated account transactions and transfers late. FINRA found that the firm failed to report to FINRA, for itself or for any of its correspondent firms, daily INSITE information regarding the number and type of transactions conducted each day, the dollar value of the transactions, the net liquidating equity in proprietary trading accounts, the dollar amount of unsecured customer debits, information about margin debits, and calls in customer accounts and short interest information. (FINRA Case #E072005017201)

Firm Fined, Individual Sanctioned

Hedge Fund Capital Partners, LLC (CRD #113326, New York, New York) and **Howard Gordon Jahre (CRD #2238671, Registered Principal, New York, New York)** submitted Offers of Settlement in which the firm was censured and fined \$10,000, and Jahre was fined \$10,000 and suspended from association with any FINRA member in any principal capacity for 10 business days. Without admitting or denying the allegations, the firm and Jahre consented to the described sanctions and to the entry of findings that the firm, acting through Jahre, filed a misleading and inaccurate Uniform Termination Notice for Securities Industry Registration (Form U5) in connection with a registered representative's termination.

Jahre's suspension was in effect from March 2, 2009, through March 13, 2009. (FINRA Case #2007008358101)

Firms Fined

BNY Mellon Capital Markets, LLC (CRD #17454, New York, New York) fka BNY Capital Markets, Inc. (CRD #18303, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$90,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that its Equity Arbitrage Group (EAG) participated in partial tender offers, tendering shares in excess of its net long position, as defined in Securities and Exchange Commission (SEC) Rule 14e-4, at the time of its tender and/or at the time when it was obligated to deliver the shares for any of the partial tender offer transactions. The findings stated that the firm failed to establish, maintain and enforce a reasonable supervisory system designed to achieve compliance with SEC Rule 14e-4, and did not provide timely guidance to the EAG concerning the potential applicability of the rule to the proprietary corporate action arbitrage strategies. **(FINRA Case #2005000662001)**

CIBC World Markets Corp. (CRD #630, 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 fully and promptly execute customer market orders. The findings stated that the firm 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. **(FINRA Case #2007010808501)**

Citadel Derivatives Group LLC (CRD #116797, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to contemporaneously or partially execute customer limit orders in NASDAQ securities after it traded each security for its own market-making account at a price that would have satisfied each customer's limit order. The findings stated that the firm transmitted inaccurate data to the Order Audit Trail System (OATS), in that it submitted limit orders with a limit order display indicator of "Y" (Yes), indicating that it had received instructions from the customers that a non-block limit order should not be displayed, even though no such instructions had been received. **(FINRA Case #2006004936201)**

Citigroup Global Markets Inc. (CRD #7059, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$101,000, required to pay \$19,192.04, plus interest, in restitution to investors, and to revise its written supervisory procedures regarding trade reporting by third parties on the firm's behalf. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in transactions for or with customers, the firm 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 report to the Trade Reporting Facility (TRF) the correct symbol indicating whether it executed transactions in reportable securities in a principal or agency capacity. 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 FINRA rules concerning trade reporting by third parties on the firm's behalf. The findings also included that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data, and the firm failed to submit required information to OATS with respect to orders. **(FINRA Case #2005003240801)**

C.L. King & Associates, Inc. (CRD #6183, Albany, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$22,000 and required to revise its written supervisory procedures regarding order handling, OATS, best execution, anti-intimidation/coordination, trade reporting, sale transactions, trading and other rules. 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 the information. The findings stated that the firm transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. The findings also stated that when the firm acted as principal for its own account or as "riskless" principal, it incorrectly provided written notification disclosing to its customers that the firm had received a "commission" for executing the transactions, instead of disclosing its remuneration to be a "commission equivalent" or other suitable description. The findings also included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing order handling, OATS, best execution, anti-intimidation/coordination, trade reporting, sale transactions, trading and other rules. FINRA found that the firm failed to provide sufficient documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning supervisory systems, procedures and qualifications, order handling, best execution, anti-intimidation/coordination, trading reporting, sale transactions, soft dollar accounts and trading and OATS. **(FINRA Case #2005003078302)**

Comerica Securities, Inc. (CRD #17079, Detroit, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$750,000 and, pursuant to an agreement with FINRA, the firm or an affiliate will purchase at par auction rate securities (ARS) subject to auctions that have not been successful as of September 16, 2008, and are not subject to current calls or redemptions (Eligible ARS) from all investors who purchased eligible ARS between May 31, 2006, and February 28, 2008 (Relevant Class). The firm or an affiliate shall commence the buyback of all Eligible ARS no later than 30 days following the date this AWC is accepted and be completed no later than 60 days thereafter. Six months from the date on which this AWC is accepted, the firm shall make its best efforts to provide liquidity to all other investors not in the Relevant Class but who purchased Eligible ARS from the firm. No later than the completion of the buyback, any individual investor in the Relevant Class that the firm can reasonably identify who sold Eligible ARS below par between February 28, 2008, and September 16, 2008, will be paid the difference between par and the price at which

the investor sold the Eligible ARS. The firm agrees to arbitrate claims for consequential damages filed by investors in the Relevant Class relating to Eligible ARS through a Special Arbitration Program (SAP), and shall provide FINRA with a report no later than 30 days following completion of the buyback concerning compliance with the settlement.

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it used advertising and marketing materials with customers and prospective customers that were not fair and balanced, and did not provide a sound basis for evaluating the facts in regard to ARS purchases. The findings stated that the materials the firm used failed to adequately disclose the risks of investing in ARS, including the risk that ARS auctions could fail, investments in ARS could become illiquid, and customers might be unable to obtain access to funds invested in ARS for substantial time periods. The findings also stated that the firm's materials made inappropriate comparisons between ARS and other materially different investments. The findings also included that the firm failed to establish and maintain procedures reasonably designed to ensure that it marketed and sold ARS in compliance with federal securities laws and applicable FINRA and MSRB rules. FINRA found that the firm failed to provide adequate training to its registered representatives regarding ARS and the differences between ARS and other investments. FINRA also found that the firm failed to establish and maintain procedures reasonably designed to ensure that marketing and sales materials regarding ARS complied with the appropriate disclosure standards described in NASD Rules 2210 and 2211, and MSRB Rule G-21. **(FINRA Case #2008013055501)**

Harris Investor Services, Inc. (CRD #137115, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$150,000 and required to submit to a buyback offer to purchase at par ARS subject to auctions that have not been successful as of October 2, 2008, and are not subject to current calls or redemptions (Eligible ARS) from all investors who purchased eligible ARS between May 31, 2006, and February 28, 2008 (Relevant Class). No later than 30 days following the date that FINRA accepts this AWC, the firm shall commence the buyback of all Eligible ARS by written offer to the Relevant Class and be completed no later than 60 days after the date of the written offer letter. No later than six months from the date that FINRA accepts this AWC, the firm shall make its best efforts to provide liquidity to all other investors not in the Relevant Class but who purchased Eligible ARS from the firm. The firm shall reasonably identify investors who sold Eligible ARS below par between February 28, 2008, and October 2, 2008, and pay them the difference between par and the price at which they sold the ARS. The firm shall arbitrate claims for consequential damages filed by investors in the Relevant Class relating to Eligible ARS through SAPs, and provide FINRA with a report no later than 30 days following the completion of the buyback concerning compliance with the settlement.

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it used a presentation with customers and prospective customers that was not fair and balanced, and did not provide a sound basis for evaluating the facts in regards to purchase of ARS. The findings stated that the firm orally described ARS as an alternative to traditional money market instruments,

referring to ARS as liquid investments, compared them advantageously to money market securities but did not adequately disclose to its customers the risks of ARS, including the risk that the ARS auctions could fail, instruments in ARS could become illiquid, and customers might be unable to obtain access to funds invested in ARS for substantial time periods. The findings also stated that the firm failed to establish and maintain procedures reasonably designed to ensure that it marketed and sold ARS in compliance with federal securities laws and applicable FINRA and MSRB rules. FINRA found that the firm failed to provide adequate training to its registered representatives regarding the features and characteristics of ARS and the differences between ARS and other investments. FINRA also found that the firm failed to establish and maintain procedures reasonably designed to ensure that the written materials it used in connection with the marketing and sale of ARS complied with the appropriate disclosure standards in NASD Rule 2210 and MSRB Rule G-21. **(FINRA Case #2008014620701)**

Howe Barnes Hoefler & Arnett, Inc. (CRD #2240, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures regarding the Trade Reporting and Compliance Engine (TRACE) reporting requirements; supervisory system, procedures and qualifications; order handling; best execution; trade reporting; trading and other rules; and OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of the execution time, failed to report the correct time of trade execution for the same transactions, and failed to include its markup/markdown in the final price of principal transactions reported 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 FINRA rules concerning TRACE reporting requirements. The findings also stated that the firm incorrectly marked sales orders as short and failed to mark other sales orders as short. The findings also included that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules addressing supervisory system, procedures and qualifications; order handling; best execution; trade reporting; sales transactions; trading and other rules; and OATS. FINRA also found that the firm failed to provide documentary evidence that it performed supervisory reviews set forth in its written supervisory procedures concerning supervisory system, procedures and qualifications; order handling; best execution; trade reporting; other trading rules; and OATS. **(FINRA Case #2005003398101)**

Hudson Securities, Inc. (CRD #10467, Jersey City, New Jersey) 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 report last sale reports of transactions in Over-the-Counter (OTC) equity securities to the OTC Reporting Facility. 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. **(FINRA Case #2006006160401)**

Hudson Securities, Inc. (CRD #10467, Jersey City, New Jersey) 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 its AML procedures were not tailored to reflect its business model, but instead used procedures designed for retail firms although it was not a retail brokerage firm. The findings stated that the section identifying “red flags” of suspicious activity copied examples in NASD *Notice to Members 02-21* and were not modified to reflect issues that might arise in its wholesale trading business. The findings also stated that the firm’s supervisory procedures and compliance manual were not cross-referenced to the AML procedures, and failed to give employees guidance on what action to take in an AML context if suspicious activity was detected. The findings also included that the firm’s failure to customize its AML procedures to its business left employees to devise their own red flags to address the firm’s market-making activities and to determine how to apply AML procedures. **(FINRA Case #2007008732901)**

The Jeffrey Matthews Financial Group, L.L.C. (CRD #41282, Millburn, New Jersey) 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 provide written notification disclosing to its customers the correct lowest effected yield-to-call in municipal securities transactions. **(FINRA Case #2007010007601)**

Legent Clearing LLC (CRD #117176, Omaha, Nebraska) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$350,000, and required to adopt and implement policies and procedures reasonably designed to ensure compliance with Parts 220.8(a) and 220.8(b) of Regulation T, and to have an officer of the firm certify to FINRA, in writing within 60 days, that the firm has adopted and implemented such policies and procedures. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to develop and implement a written AML program reasonably designed to achieve and monitor its compliance with Bank Secrecy Act requirements. The findings stated that the firm’s written AML program did not adequately consider the money laundering risks its introducing firms posed; some of which were conducting high risk AML activities. The findings also stated that the firm’s AML training program was deficient, and that the firm failed to provide an adequate AML training program for new and existing employees. The findings also included that the firm failed to file, and to timely file, Suspicious Activity Reports (SARs), and failed to document any internal discussions it might have had, or the reason for any decision that it might have made, not to file an SAR. FINRA found that the firm effected improper trades by permitting customers to sell securities in cash accounts before making full cash payment, which was in violation of Regulation T, and failed to properly restrict accounts from trading subsequent to this activity. FINRA also found that the firm failed to ensure that, for each transaction in a cash account, full cash payment was made within two days of the settlement of each purchase, regardless of whether or when the security was sold, and the firm’s written supervisory systems and procedures did not adequately address the Regulation T provisions. FINRA also determined that the firm failed to make accurate reserve computations. **(FINRA Case #2007007133001)**

optionsXpress, Inc. (CRD #103849, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$40,000 and required to revise its written supervisory procedures regarding supervisory systems, procedures and qualifications; recordkeeping; SEC Rule 606; best execution; trade reporting; OATS clock synchronization; use of multiple market participant identifiers; and SEC Rule 203(b)(3)(iii). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted Route Reports to OATS where the firm was named the “Sent to Firm” that the OATS system was unable to link to the corresponding new order report the firm transmitted, due to inaccurate, incomplete or improperly formatted data. The findings stated that the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning OATS, Regulation SHO, and SEC Rules 200 and 203(b)(1). The findings also stated that the firm failed to transmit required information to OATS, and submitted inaccurate information to OATS relating to orders. The findings also included that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing supervisory systems, procedures and qualifications; recordkeeping; SEC Rule 606; best execution; trade reporting; OATS clock synchronization; use of multiple market participant identifiers; and SEC Rule 203(b)(3)(iii). **(FINRA Case #2006005525301)**

RBS Greenwich Capital (CRD #11707, Greenwich, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$16,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of the execution time, showing a pattern or practice of late reporting without exceptional circumstances. The findings stated that the firm failed to report the correct trade execution time for transactions in TRACE-eligible securities to TRACE, and failed to show the correct execution time on brokerage order memoranda. **(FINRA Case #2007008764401)**

Shinko Securities (U.S.A.) Inc. (CRD #121142, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$13,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit Reportable Order Events (ROEs) to OATS for more than a year. **(FINRA Case #2007009931301)**

Sloan Securities Corp. (CRD #17930, Fort Lee, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures regarding the requirements of SEC Rule 203(b)(1) and NASD Rule 6130. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it executed customer sell orders and failed to properly mark the orders as short; failed to report to the NASDAQ Market Center (NMC) the correct symbol indicating whether transactions were a buy, sell, sell short, sell short exempt or cross for transactions in reportable securities; and failed to report to the NMC the correct symbol indicating whether it

executed transactions in reportable securities in a principal or agency capacity. The findings stated that the firm failed to show the time of entry and/or the time of execution on brokerage order memoranda. 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 FINRA rules concerning order marking requirements in SEC Rule 200(g) and for compliance with NASD Rule 6130. The findings also included that the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning the requirements of SEC Rule 203(b)(1) and NASD Rule 6130. **(FINRA Case #2006005702801)**

Zecco Trading, Inc. (CRD #135398, Pasadena, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$18,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit numerous ROEs because it mistakenly believed that it was exempt from reporting orders to OATS. **(FINRA Case #2007008926801)**

Individuals Barred or Suspended

Ivan Armas (CRD #4993347, Registered Representative, Houston, Texas) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Armas converted \$19,721.34, which he had received from insurance policyholders for payment of their insurance premiums, for his own use and benefit. The findings stated that Armas failed to appear for a FINRA on-the-record interview. **(FINRA Case #2007010747201)**

Timothy Tilton Ayre (CRD #2091556, Registered Principal, Agawam, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any principal capacity for one month. Without admitting or denying the findings, Ayre consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise a firm registered representative reasonably designed to prevent him from permitting an unregistered individual from conducting a securities business with firm customers. The findings stated that Ayre ignored "red flags" indicating possible misconduct, failed to conduct any meaningful review of the registered representative's activities, and never conducted an internal inspection of his office. The findings also stated that Ayre, acting through his member firm, failed to establish, maintain and enforce a supervisory system and written procedures to supervise the activities of each registered person that were reasonably designed to achieve compliance with the applicable rules and regulations in the following areas: discretionary accounts, branch operation supervision, heightened supervision, form filings, business continuity planning, net capital requirements, Regulation S-P, transaction reporting and variable product suitability.

The suspension was in effect from February 2, 2009, through March 1, 2009. **(FINRA Case #2007007205501)**

Robert Anthony Bellia Jr. (CRD #2387955, Registered Principal, Wantagh, New York) submitted an Offer of Settlement in which he was fined \$10,000, suspended from association with any FINRA member in any capacity for 10 business days, and suspended from association with any FINRA member in any principal or supervisory capacity for 90 days. Without admitting or denying the allegations, Bellia consented to the described sanctions and to the entry of findings that he failed to follow-up on “red flags” indicating possible misconduct by a registered representative. The findings stated that Bellia failed to investigate why many of the representative’s accounts had “sell-outs,” and why certain of the representative’s new customer accounts failed to pay for securities purchases that had appreciated in value. The findings also stated that Bellia failed to adequately enforce his member firm’s heightened supervisory measures against the representative.

The suspension in any capacity was in effect from February 2, 2009, through February 13, 2009, and the suspension in any principal or supervisory capacity is in effect from February 2, 2009, through May 2, 2009. **(FINRA Case #2005001502703)**

Paul Joseph Benz (CRD #1548330, Registered Representative, Chester, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member firm in any capacity. Without admitting or denying the findings, Benz consented to the described sanction and to the entry of findings that he manipulated the thinly traded common stock of an oil and gas exploration company by making trades in a customer’s account and making a market in the company’s common stock. The findings stated that Benz opened an account at his member firm for a corporate customer, and that Benz’ close relative, who was the controlling manager of a hedge fund with a significant position in the company, controlled the account. The findings included that Benz effected trades in the company’s stock in the account to create activity and raise the price of the stock for the purpose of inducing others to purchase it. FINRA found that Benz traded at the end of the month, which inflated the month-end value of the hedge fund, and in turn increased its monthly management fees, which benefited Benz’ relative. FINRA also found that Benz earned about \$87,750 in trading commissions. In addition, FINRA determined that Benz failed to respond to FINRA requests for documents and information, and to appear for an on-the-record interview. **(FINRA Case #2006006518901)**

Howard Brett Berger (CRD #2284367, Registered Principal, Roslyn Heights, New York) was barred from association with any FINRA member in any capacity. The SEC sustained the sanction imposed by FINRA in the decision remanded by the U.S. Court of Appeals to the SEC for reconsideration of the sanction. The sanction was based on findings that Berger failed to respond to FINRA requests to appear for an on-the-record interview.

The U.S. Court of Appeals was petitioned for review, and the bar is in effect pending consideration of the petition. **(FINRA Case #C9B20040069)**

David Francis Brochu (CRD #1164857, Registered Principal, East Greenwich, Rhode Island) and Jill Schlesinger (CRD #2587365, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which Brochu was fined \$20,000 and suspended from association with any FINRA member in any capacity for 15 business days. Schlesinger was censured and fined \$10,000. Without admitting or denying the findings, Brochu and Schlesinger consented to the described sanctions and to the entry of findings that they sold Class B units pursuant to a private placement memorandum containing inaccurate financial projections. The findings stated that both Brochu and Schlesinger worked on the private placement memorandum, and that Brochu supervised registered representatives who worked on the memorandum's financial projections. The findings also stated that Brochu discovered inaccuracies in the financial projections contained in the memorandum and reported them to firm managers, but incorrectly determined that the inaccuracies were not material and did not disclose them to customers who had purchased the securities. The findings also included that Schlesinger accepted the determination that the inaccuracies were not material and should not be disclosed. FINRA found that Brochu and Schlesinger continued to use the inaccurate private placement memorandum to sell additional units. FINRA also found that a member firm, acting through Brochu, failed to establish, maintain and enforce a reasonably designed supervisory system and written procedures regarding its registered representatives' private securities transactions.

Brochu's suspension was in effect from February 17, 2009, through March 9, 2009. **(FINRA Case #2006005242501)**

Charles William Brown Jr. (CRD #1411976, Registered Representative, Brighton, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 45 days. Without admitting or denying the findings, Brown consented to the described sanctions and to the entry of findings that, on checks that his customers submitted to purchase mutual funds, he altered the dates without the customers' authorization or consent. He then submitted the checks to his member firm for processing.

The suspension is in effect from February 2, 2009, through March 18, 2009. **(FINRA Case #2007010422001)**

Isaac Brown Jr. (CRD #2837569, Registered Representative, Ormond Beach, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Brown consented to the described sanction and to the entry of findings that, while associated with a member firm, an individual gave him a \$100,000 check to purchase an annuity, which he failed to purchase and instead misused the funds by depositing the check into a bank account that he controlled and purportedly invested the funds in a fraudulent loan investment where the funds were lost. The findings also stated that Brown failed to respond to FINRA requests for documents and information. **(FINRA Case #2007008423801)**

Maria Antonia Burgos (CRD #1046655, Registered Representative, Hillsboro Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for one year. The fine must be paid either immediately upon Burgos' reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Burgos consented to the described sanctions and to the entry of findings that she falsified customers' signatures on documents to effect transactions the customers requested, although they did not expressly give her permission to sign their names. The findings stated that Burgos' member firm detected an instance where she falsified customer signatures and confronted her about it. The findings also stated that Burgos admitted to the falsification of these signatures only, but later admitted to the additional falsifications when the firm discovered them.

The suspension is in effect from February 2, 2009, through February 1, 2010. **(FINRA Case #2007011240501)**

Deborah Ann Cotton (CRD #1614217, Registered Principal, Metairie, Louisiana) 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, Cotton consented to the described sanction and to the entry of findings that she failed to respond to a FINRA request for information and to appear for an on-the-record interview. **(FINRA Case #2008012560601)**

Clifford Dominick Devastey (CRD #4970055, Registered Representative, Cincinnati, Ohio) was fined \$5,000 and suspended from association with any FINRA member in any capacity for two years. The sanctions were based on findings that Devastey completed documents for a customer to purchase a life insurance policy without the customer's knowledge or consent, back-dated the documents and forged the customer's signature on the documents. The findings stated that Devastey wrote a check from a closed checking account to pay the initial premium on the insurance policy, wrote the customer's name on the check and forged the customer's signature on it. The findings also stated that Devastey submitted, or allowed the submission of, the documents for processing, and Devastey admitted to the forgeries only after the check bounced and the customer was asked to make the initial payment.

The suspension is in effect from February 2, 2009, through February 1, 2011. **(FINRA Case #2007008640401)**

Thomas Joseph Downs (CRD #4297709, Registered Representative, Pleasantville, 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, Downs consented to the described sanction and to the entry of findings that he effected an unauthorized transaction in a customer's account without discretionary authorization over the account, and failed to respond to FINRA requests for information. **(FINRA Case #2007011819401)**

Keith Lowell Epstein (CRD #1422407, Registered Representative, Farmington Hills, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Epstein'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, Epstein consented to the described sanctions and to the entry of findings that he received \$280,500 from customers in their nineties to hold for distribution to a relative upon their deaths. The findings stated that Epstein deposited the funds in an account for a business he operated and distributed the funds to individuals other than the customers. The findings also stated that Epstein knew that his member firm prohibited his acceptance, commingling and misuse of the customers' funds, and after the firm discovered his activities, he repaid the customers. The findings also included that Epstein failed to fully and timely respond to FINRA requests for information and documentation.

The suspension is in effect from January 20, 2009, through January 19, 2011. (FINRA Case #2007008827601)

Eric Erickson (CRD #726668, Registered Representative, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000, suspended from association with any FINRA member in any capacity for 15 business days and required to offer to reimburse a customer for any surrender charges incurred from liquidating a variable annuity. Erickson shall provide proof of the offer and of payment to FINRA. Without admitting or denying the findings, Erickson consented to the described sanctions and to the entry of findings that he made a recommendation that a customer purchase a variable annuity and its rider that was unsuitable in light of the customer's age, financial situation and needs. The findings stated that the customer had immediate need for liquidity to meet expenses and also needed penalty-free access to funds in the event of an emergency.

The suspension was in effect from February 2, 2009, through February 23, 2009. (FINRA Case #2007008819901)

Rodney Scott Garretson (CRD #1995521, Registered Supervisor, Lake Orion, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member firm in any capacity for six months. The fine must be paid either immediately upon Garretson'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, Garretson consented to the described sanctions and to the entry of findings that he falsely represented to New York Stock Exchange (NYSE) Regulation examiners that his member firm did not employ any interns at the firm's branch office. The findings stated that Garretson denied to the regulators that the branch office he supervised employed non-registered cold callers who used telemarketing scripts. The findings also stated that Garretson instructed staff at the

branch office that, if asked, the branch office employees were to tell the regulators that there were no interns employed at the branch office. The findings included that Garretson purposefully failed to correct his misleading statements to the regulators.

The suspension is in effect from February 2, 2009, through August 3, 2009. **(FINRA Case #2008012095301)**

Eric Steven Goldberg (CRD #2431841, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Goldberg consented to the described sanction and to the entry of findings that he falsified information on wire authorization forms for customers who had ordered wire transfers, and submitted the falsified forms to his member firm. The findings stated that Goldberg fabricated a notary's signature and commission stamp impression on a customer's wire authorization form. The findings also stated that Goldberg failed to appear for a FINRA on-the-record interview. **(FINRA Case #2008011736101)**

Ronald Goldfine (CRD #2853925, Registered Representative, Brooklyn, New York) was fined \$29,000, including \$9,000 in disgorgement of commissions, and suspended from association with any FINRA member in any capacity for one year. The sanctions were based on findings that Goldfine recommended and effected unsuitable and excessive securities transactions in a customer's account utilizing margin without having reasonable grounds for believing that the transactions were suitable for the customer on the basis of the customer's financial situation and needs.

The suspension is in effect from February 2, 2009, through February 1, 2010. **(FINRA Case #2006004418901)**

Jorge Gomez Jr. (CRD #5080731, Registered Representative, Los Fresnos, Texas) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Gomez failed to respond to FINRA requests for information. The findings stated that Gomez engaged in outside business activities, for compensation, without providing prompt written notice to his member firm. **(FINRA Case #2007010995401)**

Liam Patrick Heinz (CRD #4470644, Registered Representative, Brentwood, 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 10 business days. The fine must be paid either immediately upon Heinz' 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, Heinz consented to the described sanctions and to the entry of findings that he entered an order to buy shares of a security in a customer's account, without the customer's knowledge and consent.

The suspension was in effect from February 17, 2009, through March 2, 2009. **(FINRA Case #2007010181801)**

Paul J. Hytken (CRD #4502699, Registered Representative, Pewaukee, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 20 business days. The fine must be paid either immediately upon Hytken'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, Hytken consented to the described sanctions and to the entry of findings that he willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) with material information.

The suspension was in effect from February 2, 2009, through March 2, 2009. **(FINRA Case #2007007727801)**

Michael Lee Ihrig (CRD #5379974, Associated Person, De Soto, Iowa) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member firm in any capacity for six months. The fine must be paid either immediately upon Ihrig'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, Ihrig consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Form U4.

The suspension is in effect from January 20, 2009, through July 20, 2009. **(FINRA Case #2007010236301)**

Armando Jaramillo Jr. (CRD #4427980, Registered Representative, Elmhurst, New York) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Jaramillo acted unethically and failed to deal fairly with a customer by inducing him to provide funds for an investment by falsely describing the investment as "risk free" and guaranteed a 35% return within 10 weeks; after 10 weeks, falsely told the customer he had sent payment; sent several checks backed by insufficient funds; and failed to repay the customer's funds until two years later. The findings stated that Jaramillo failed to respond to FINRA requests for information. **(FINRA Case #2007008085801)**

Brian James Kelly (CRD #2270427, Registered Representative, Severna Park, Maryland) was fined \$108,291.41 and suspended from association with any FINRA member in any capacity for two years for churning and suitability; fined \$10,000 and suspended from association with any FINRA member in any capacity for 30 business days for exercising discretion without written authority. The suspensions were to be served concurrently. The National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. The sanctions were based on findings that Kelly exercised effective control over a customer's account, and engaged in excessive trading in the account. The findings stated that Kelly recommended a trading strategy that offered risks incompatible with the customer's investment objectives and financial needs. The findings also stated that Kelly exercised discretion in the customer's account

without his member firm's prior written authorization and misled his firm that he exercised discretion by falsely answering compliance-related questionnaires. The suspension is in effect from February 2, 2009, through February 1, 2011. **(FINRA Case #E9A2004048801)**

Donald Walter Kiley (CRD #2630201, Registered Representative, De Pere, Wisconsin) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. Without admitting or denying the allegations, Kiley consented to the described sanctions and to the entry of findings that he received \$20,382.07 in compensation for participating in the sale of life settlements totaling \$160,601.24, and failed to give prior written notice to, or receive prior written approval from, his member firm. The findings stated that the compliance manual for Kiley's member firm explicitly prohibited the sale of viatical and life settlements.

The suspension is in effect from February 2, 2009, through May 1, 2009. **(FINRA Case #2005003312401)**

Robert Elwood Kreis (CRD #4654104, Associated Person, San Marcos, 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, Kreis consented to the described sanction and to the entry of findings that he failed to respond fully to FINRA requests for information and documents. **(FINRA Case #2007010176601)**

L. Vincent Markovich (CRD #3162494, Registered Representative, Danville, Indiana) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Markovich'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, Markovich consented to the described sanctions and to the entry of findings that he borrowed \$14,480 from a firm customer, contrary to his member firm's compliance manual prohibiting borrowing money or securities from a customer.

The suspension was in effect from February 2, 2009, through February 13, 2009. **(FINRA Case #2007010816401)**

Scott Lee Mathis (CRD #1362203, Registered Principal, New York, New York) was fined \$10,000 and suspended for three months from association with any FINRA member in any capacity for willfully failing to amend his Form U4 to disclose federal tax liens against him and for willfully failing to disclose tax liens on two initial Form U4s. Mathis also was fined \$2,500 and suspended for 10 business days from association with any FINRA member in any capacity for failing to timely amend his Form U4 to disclose a customer complaint and a customer-initiated civil action. The NAC imposed the sanctions following appeal of an OHO decision and ordered the suspensions to run concurrently.

Mathis has appealed this decision to the SEC, and the sanctions are not in effect pending consideration of the appeal. (FINRA Case #C1020040052)

Richard Allen McGarrah (CRD #1892189, Registered Supervisor, Tyrone, Georgia) was barred from association with any FINRA member in any capacity. The sanction was based on findings that McGarrah instructed his assistant to withdraw \$60,000 from the joint account of his customers, who were relatives, and make the check payable to them, forged their signatures on the issued check and deposited it into his personal account, without their knowledge or consent. The findings stated that McGarrah subsequently wrote a letter on firm letterhead, informing the customers that the withdrawal was an error and was being rectified, and forged the signature of a supervisor who was no longer employed at the firm to conceal his conversion of customer funds. The findings also stated that McGarrah failed to appear for a FINRA on-the-record interview. (FINRA Case #2007009387601)

Steven George Meyers (CRD #1544523, Registered Representative, Rockford, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Meyers consented to the described sanctions and to the entry of findings that he exercised discretion in a customer's account without the customer's prior written authorization. The findings stated that Meyers' member firm had not accepted the customer's accounts as discretionary (in writing or otherwise) prior to Meyers exercising discretionary power.

The suspension was in effect from February 17, 2009, through March 2, 2009. (FINRA Case #2007009005301)

Max A. Mora (CRD #5466177, Associated Person, Medford, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for four months. The fine must be paid either immediately upon Mora'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, Mora consented to the described sanctions and to the entry of findings that he willfully misrepresented material facts on his Form U4.

The suspension is in effect from January 20, 2009, through May 19, 2009. (FINRA Case #2008012208901)

Cynthia Nawita Pete (CRD #5416260, Associated Person, Sandston, Virginia) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Pete failed to respond to FINRA requests for information and willfully failed to disclose material information on her Form U4. (FINRA Case #2007011080601)

Liane Shigeko Rawlings (CRD # 2581237, Registered Representative, Honolulu, Hawaii) and Gregory Rawlings (CRD # 1323337, Registered Representative, Honolulu, Hawaii) submitted a Letter of Acceptance, Waiver, and Consent in which they were ordered to pay \$9,350, plus interest, jointly and severally, in restitution to a customer. They were each suspended from association with any FINRA member in any capacity for 30 days.

Liane Rawlings was fined \$5,000 and Gregory Rawlings was fined \$7,155, of which \$2,155 represents the disgorgement of commissions received. G. Rawlings' fine must be paid either immediately upon his 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, the Rawlings consented to the described sanctions and the entry of findings that they recommended that a customer surrender a variable annuity and purchase Class A fund shares when they did not have a reasonable basis for believing that the liquidation of the annuity and the purchase of the fund shares were suitable transactions for the customer. The findings stated that the Rawlings did not advise the customer of other sub-accounts of the annuity to which her funds could have been allocated without reduction in principal, and that the liquidation resulted in the loss of the death benefit feature of the annuity.

The suspensions were in effect from February 2, 2009, through March 3, 2009.
(FINRA Case #2007008349301)

Ronald Harris Sirota (CRD #872341, Registered Principal, Jamesville, 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 10 business days. Without admitting or denying the findings, Sirota consented to the described sanctions and to the entry of findings that he attempted to settle a customer complaint by sending the customer a check and a letter for her to sign retracting the complaint, without providing prior notice to his member firm or obtaining the firm's consent.

The suspension was in effect from February 2, 2009, through February 13, 2009.
(FINRA Case #2007009050501)

Kimberly Ann Stain (CRD #4200604, Registered Representative, Baltimore, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Stain's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Stain consented to the described sanctions and to the entry of findings that, in response to customers' requests to withdraw funds from bank-issued instruments each owned, she accessed the computer system of a bank affiliated with her member firm, and, in violation of the bank's internal policies and without its authorization, caused the customers' instruments to be liquidated in a manner that enabled them to avoid fees and/or charges that they otherwise would have incurred. The findings stated that this unauthorized conduct caused the bank to lose revenue to which it was entitled.

The suspension is in effect from February 17, 2009, through February 16, 2011.
(FINRA Case #2008012206001)

Kenneth Lenell Street (CRD #2009576, Registered Representative, Las Vegas, Nevada) 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 Street'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, Street consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for commissions, without providing prompt written notice to his member firm. The findings stated that when Street was asked on a required firm compliance questionnaire whether he engaged in outside business activities and accepted commissions from sources other than his member firm, he incorrectly answered "no."

The suspension is in effect from February 17, 2009, through August 16, 2009. **(FINRA Case #2007010105201)**

Gerald Lee Thomason (CRD #1715980, Registered Representative, Chewelah, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Thomason consented to the described sanction and to the entry of findings that, while associated with his member firm, he entered false information in the firm's records by providing incorrect answers on firm forms, thereby concealing his violations of its policies. The findings stated that Thomason violated the firm's policies when customers, who were not related to him, purchased fixed annuity policies through him and made him their beneficiary without the firm's prior written permission. The findings also stated that Thomason received a customer's mail at his home or at an address he controlled contrary to his firm's written policies and without written authorization. **(FINRA Case #2007009936601)**

Julia Hamilton Thompson (CRD #4733273, Registered Representative, Atlanta, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which she was censured, 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 Thompson's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Thompson consented to the described sanctions and to the entry of findings that she signed a customer's signature to a Change of Beneficiary form for an Individual Retirement Account (IRA) without the customer's permission and submitted it to her firm.

The suspension is in effect from February 2, 2009, through May 1, 2009. **(FINRA Case #2007010502001)**

Vincent Michael Uberti (CRD #2618595, Registered Principal, Santa Ana, California) was barred from association with any FINRA member firm in any capacity. The SEC imposed the sanction following appeal of the NAC's remand decision. The sanction was based on findings that Uberti issued research reports that fraudulently failed to disclose material information and contained misleading, exaggerated and false statements. The findings also stated that Uberti failed to disclose that his firm had received compensation for preparing and disseminating the research reports. **(FINRA Case # CAF20020048)**

Lawrence Louis Herman Ventresca (CRD #2410686, Registered Representative, Norridge, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Ventresca'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, Ventresca consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed to provide prompt written notice to his member firm on annual outside business activity forms or in any other written form.

The suspension is in effect from January 20, 2009, through April 19, 2009. **(FINRA Case #2007008655401)**

Dasherra Janell Walton (CRD #4677665, Registered Representative, Newark, New Jersey) 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, Walton consented to the described sanction and to the entry of findings that she failed to respond to FINRA requests for an on-the-record interview. **(FINRA Case #2007008699102)**

William Henry Weisbrod (CRD #812664, Registered Representative, Montville, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$33,500, of which \$23,500 represents disgorgement of commissions, and suspended from association with any FINRA member in any capacity for two months. Without admitting or denying the findings, Weisbrod consented to the described sanctions and to the entry of findings that he recommended and effected purchases of Class B mutual fund shares in a customer's accounts without having reasonable grounds for believing that the transactions were suitable, given the total dollar amount of shares purchased and the customer's financial situation and needs. The findings stated that by investing solely in the Class B shares, the customer was exposed to unnecessary fees, paying nearly twice as much in annual expenses, while Weisbrod significantly increased his commissions. The findings also stated that Weisbrod effected these transactions, which required his member firm's pre-approval, in a manner designed to evade firm policy and circumvent its supervisory controls.

The suspension is in effect from February 17, 2009, through April 16, 2009. **(FINRA Case #2005003485101)**

John Carl Wils (CRD #2786354, Registered Representative, East Moline, Illinois) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Wils received \$13,129 from customers that was intended for investments and insurance coverage payments and deposited the funds into his personal bank account, converting the funds for his own use and benefit, without the customers' knowledge and consent. The findings stated that Wils failed to respond to FINRA requests for information and documents. **(FINRA Case #2006005281301)**

Anton Yereshkin (CRD #5452893, Associated Person, Groton, New York) was fined \$5,000 and suspended from association with any FINRA member in any capacity for one year. The fine is due and payable if and when Yereshkin reassociates with a member firm following his suspension. The sanctions were based on findings that Yereshkin willfully failed to disclose material facts on his Form U4.

The suspension is in effect from January 5, 2009, through January 4, 2010. **(FINRA Case #2007011504801)**

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Michael Francis Smith (CRD #1397389, Registered Principal, Aberdeen, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. Without admitting or denying the findings, Smith consented to the described sanctions and to the entry of findings that he failed to enforce his member firm's supervisory procedures concerning the review of outgoing written correspondence of registered representatives to ensure that communications with the public were not false or misleading. The findings stated that Smith failed to ensure that his firm's compliance department pre-approved correspondence sent to more than 10 individuals. **(FINRA Case #2006005977002)**

Decisions Issued

The Office of Hearing Officers (OHO) issued the following decisions, which have been appealed to or called for review by the NAC as of February 28, 2009. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decision. Initial decisions where the time for appeal has not yet expired will be reported in future *FINRA Notices*.

John Brian Busacca III (CRD #2302780, Registered Principal, Orlando, Florida) was fined \$30,000, and suspended from association with any FINRA member in any principal capacity for six months. The sanctions were based on findings that Busacca, acting on behalf of his member firm, failed to reasonably supervise the firm's operations system conversion and its operations activities to detect and/or prevent violations. The findings stated that Busacca allowed his member firm to employ an unregistered and unqualified person as its chief compliance officer.

This decision has been appealed to the National Adjudicatory Council and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #E072005017201)**

Kent Michael Houston (CRD #1514831, Registered Representative, Carlsbad, California) was fined \$100,000, suspended from association with any FINRA member in any capacity for one year for failure to disclose outside business activities, and barred from association with any FINRA member in any capacity for failure to appear for an on-the-record interview. The sanctions were based on findings that Houston failed to provide prompt written notice of outside business activities to his member firm, and misrepresented on a firm compliance form that he had not conducted any outside business activities. The findings stated that Houston failed to respond to FINRA requests to appear for an on-the-record interview.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (FINRA Case #2006005318801)

Mission Securities Corporation (CRD #41779, San Diego, California) and Craig Michael Biddick (CRD #2382884, Registered Principal, Rancho Santa Fe, California). The firm was expelled from FINRA membership and Biddick was barred from association with any FINRA member in any capacity. The sanctions were based on findings that Biddick, on the firm's behalf, caused the transfer of customer holdings of a stock from the customers' accounts to a firm proprietary account without the customers' authorization for these transfers, and subsequently sold a portion of the shares, totaling \$38,946.06, and retained the rest. The findings stated that Biddick transferred the proceeds of the stock sales from the proprietary account to a firm bank account and used a portion of the funds for the firm's general business purposes, and did not pay any of the sales proceeds to the customers. The hearing panel found that this conduct constituted conversion and misappropriation of customer funds, in violation of NASD Rules 2330 and 2110. The findings also stated that the firm, acting through Biddick, engaged in a securities business when it was below its required minimum net capital, in violation of Exchange Act Rule 15c3-1 and NASD Rule 2110 as to the firm and NASD Rule 2110 as to Biddick. In light of the expulsion and bar, the hearing panel declined to determine whether the firm or Biddick engaged in alleged violations of NASD Rule 3010(b)(2), the Taping Rule.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (FINRA Case #2006003738501)

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.

Patrick Anthony Potopowicz (CRD #1217511, Registered Representative, Princeton, New Jersey) was named as a respondent in a FINRA complaint alleging that he recommended and effected excessive transactions in a public customer's account without having reasonable grounds for believing that such transactions were suitable for his customer in view of the size and frequency of the transactions, the transaction costs incurred, the concentration in precious metal stocks, and in light of his customer's financial situation, investment objectives and needs. The complaint alleges these transactions resulted in significant commission income for Potopowicz and losses for his customer. The complaint also alleges that Potopowicz entered unauthorized transactions in the customer's account without the customer's discretionary authorization or his member firm's acceptance of the account as discretionary. **(FINRA Case #2006004960901)**

Kapil Shashikant Shah (CRD #4409290, Registered Principal, Jersey City, New Jersey) was named as a respondent in a FINRA complaint alleging that he misrepresented or omitted material facts in his conversations with customers. The complaint alleges that Shah promised unrealistic returns to his customers on their investments and made an improper price prediction concerning a stock to a customer. **(FINRA Case #2006003684703)**

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

Carlton Capital Inc.
New York, New York
(January 8, 2009)

Firms Cancelled for Failure to Pay Outstanding Fees Pursuant to Rule 9553

(The cancellation date is listed after the entry.)

Ashton Capital Management, Inc.
San Diego, California
(January 5, 2009)

Axiom Management Partners LLC
New York, New York
(January 5, 2009)

Omni Financial Group, L.L.C.
Houston, Texas
(January 5, 2009)

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

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

Andrew James Aragona
Deerfield Beach, Florida
(January 28, 2009 – January 30, 2009)

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

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

William Anthony Kaso
Pembroke Pines, Florida
(September 26, 2008 – January 22, 2009)

Nicholas Anthony Natale
Delray Beach, Florida
(January 22, 2009)

Individuals Barred Pursuant to Rule 9552(h)

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

James Allen Boston
El Cajon, California
(January 2, 2009)

Stanley Virgil Brookins
Reynoldsburg, Ohio
(January 27, 2009)

Frederick Cahoon Bryant
Bay Village, Ohio
(January 27, 2009)

Bobby John Daugherty
Swannanoa, North Carolina
(January 26, 2009)

Craig M. Kamijima
Boca Raton, Florida
(January 28, 2009)

Louis Molinet
Braunefels, Texas
(January 20, 2009)

John William Yeager
New Lenox, Illinois
(January 12, 2009)

Individuals Suspended Pursuant to 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.)

James Kirk Baldi
Charlottesville, Virginia
(January 2, 2009)

Jack David Dunigan Jr.
Anaheim, California
(January 9, 2009)

Daniel A. Estrada
Casa Grande, Arizona
(January 15, 2009)

John Andrew Gilliam
St. Louis, Missouri
(January 2, 2009)

Donald William Grigley Jr.
Hamden, Connecticut
(January 29, 2009)

Hong Kyu Park
Fountain Valley, California
(January 26, 2009)

Jonathan Robert Schukal
Southport, Connecticut
(January 12, 2009)

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

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

Carl Jurbert Anderson III
Erie, Pennsylvania
(January 16, 2009)

Lewis Joseph Franklin III
Smithtown, New York
(January 8, 2009)

Charles Ray Hill
Lake City, Florida
(January 16, 2009)

Louis John Liberatore Sr.
Blue Point, New York
(January 8, 2009)

James Kenneth Maurice
Cedar Rapids, Iowa
(January 16, 2009)

Dennis Robert Metter
Chicago, Illinois
(January 8, 2009 – January 15, 2009)

Doria Sabia-Florence
Statesboro, Georgia
(January 8, 2009)

Andrea M. Sawchuk
Pottstown, Pennsylvania
(January 8, 2009 – January 14, 2009)

Brian Jonathon Schuster
Syracuse, Nebraska
(January 8, 2009)

Carlos Akira Shibata
Miami, Florida
(January 8, 2009)

Samuel Morton Wasserman
Sarasota, Florida
(February 20, 2007 – January 12, 2009)

Christopher Grey Weighart
Conshohocken, Pennsylvania
(January 16, 2009)

FINRA Fines Leonard & Co. for Sale of Unregistered Securities, Bars Broker for Unregistered Penny Stock Sales, Other Violations

FINRA Issues Regulatory Notice Regarding Sales of Unregistered Securities

The Financial Industry Regulatory Authority (FINRA) has fined Leonard & Co. of Troy, MI, \$225,000 for numerous violations, including the illegal sale of more than two million shares of penny stock on its customers' behalf. FINRA also required the firm to retain an independent consultant to review its supervisory systems and procedures.

In addition, FINRA has barred Robert J. Cole, formerly a registered representative with Leonard & Co., for his role in the illegal sales.

In a related action, FINRA issued Regulatory Notice 09-05, Unregistered Resales of Restricted Securities, to remind firms and brokers of their obligations to determine whether securities are eligible for public sale before participating in what may be illegal distributions. It also discusses the importance of recognizing "red flags" of possible illegal, unregistered distributions and reiterates firms' obligations to conduct searching inquiries in certain circumstances to avoid participating in illegal distributions.

"This action, and the accompanying Regulatory Notice, demonstrate FINRA's continuing commitment to ensuring that brokerage firms live up to their responsibilities as gatekeepers to the securities markets," said Susan L. Merrill, Executive Vice President and Chief of Enforcement. "FINRA will aggressively pursue firms and individuals who ignore those responsibilities and participate in illegal sales of unregistered securities."

FINRA found that Leonard & Co. and Cole participated in an illegal distribution of a penny stock, Shallbetter Industries, by selling over 2.2 million unregistered shares of the stock into the public markets from three related customer accounts. Cole, who handled the accounts, was aware that trading in the accounts was directed by a "control person" of Shallbetter. A control person is generally an individual who owns 10 percent or more of the stock of a company and can influence its policies and decision-making.

Most of the shares were deposited into the accounts in certificate form with restrictive legends attached to the certificates. Although the sales were made on behalf of a control person of Shallbetter, Cole arranged to have the restrictive legends removed from the stock certificates so the unregistered shares could be sold into the public markets.

Shallbetter is a thinly-traded penny stock. During the time of the sales activity, the company claimed in public filings with the Securities and Exchange Commission (SEC) that it owned mineral exploration licenses and interests in Outer Mongolia. The sales from the Leonard & Co. accounts occurred between August and November 2006 and generated over \$3.1 million in proceeds for the accounts.

FINRA found that the sales coincided with a campaign by third parties to promote Shallbetter through widespread spam email and the issuance of numerous press releases. The campaign resulted in significant increases in the price and trading volume of Shallbetter stock. During five days of the period, sales of Shallbetter from the accounts at Leonard & Co. accounted for more than 20 percent of the stock's total trading volume.

FINRA found that Cole had been told about the promotional campaign in advance by Shallbetter insiders. While in possession of this information, Cole purchased 15,000 Shallbetter shares for his own account and solicited purchases of 10,000 Shallbetter shares for two customers. He also acted to support the price of Shallbetter stock in advance of the promotional campaign by placing trades and by soliciting purchases of Shallbetter stock.

FINRA found that by selling more than two million shares of unregistered Shallbetter stock into the public markets for control persons of Shallbetter, Cole and Leonard & Co. violated the registration provisions of federal securities laws. FINRA also found that Cole and Leonard & Co. failed to conduct an adequate review of Shallbetter before recommending its purchase to customers of the firm. FINRA further found that Cole participated in a scheme to manipulate the price of Shallbetter stock, purchased and recommended purchases of Shallbetter stock while in possession of material nonpublic information, and sent numerous emails to customers that inappropriately touted various stocks, including Shallbetter.

In addition, FINRA found that Leonard & Co. was aware of numerous red flags indicating that an illegal distribution might be underway, but failed to conduct a reasonable inquiry into them. In fact, the firm failed to conduct an adequate inquiry even after FINRA's Market Regulation Department inquired about the unusually high volume of trading in Shallbetter stock. FINRA found that the facts available to Leonard & Co. had it conducted a reasonable inquiry included:

That the accountholder/control person who had deposited over two million Shallbetter shares into accounts at Leonard & Co. had the same address as Shallbetter, was closely associated with Shallbetter's management and controlled over 10 percent of Shallbetter's outstanding stock.

That the accountholder/control person used shares in the account, or proceeds from shares in the account, to pay legal and auditing expenses for Shallbetter.

That a former president and director of Shallbetter—who at the time was living with the accountholder/control person—directed the trading and transfers in the account.

FINRA found that Leonard & Co. failed to maintain a supervisory system reasonably designed to comply with the registration requirements, but instead relied on its clearing firm to provide such a review. FINRA, the SEC and the courts have repeatedly held that firms cannot rely on outside counsel, clearing firms, transfer agents,

issuers or issuer's counsel to discharge their obligations to undertake an inquiry into circumstances such as those present in this case. FINRA also found that Leonard & Co. failed to reasonably supervise Cole and ignored numerous red flags that he was engaging in activity that violated securities laws and regulations.

Other violations that FINRA found include the firm's failure to implement an adequate anti-money laundering (AML) program and failure to timely file suspicious activity reports in connection with certain activities, including liquidation of a large position of a thinly traded unregistered penny stock at the direction of a corporate insider; the wiring of proceeds to third parties, some of whom were overseas; and the accountholder's refusal to provide requested information about an entity to which he proposed to transfer funds.

Leonard & Co. also failed to retain email for 23 accounts, including the firm's executive management, registered operations staff and non-registered administrative staff, and allowed its Chief Operating Officer to act as a principal before he had requalified to act in that capacity as required by a prior settlement with FINRA.

In settling these matters, neither Leonard & Co. nor Cole admitted or denied the charges, but consented to the entry of FINRA's findings.