

Notices

Regulatory Notices

- 09-19** Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications; **Effective Date: June 15, 2009**
- 09-20** SEC Approval and Effective Date for New Consolidated FINRA Rules on the Transfer of Customer Accounts, Recommendations to Customers in OTC Equity Securities and Anti-Intimidation/Coordination; **Effective Date: June 15, 2009**
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Information Notice

- 04/29/09** Use of FINRA Logo

Disciplinary and Other FINRA Actions

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Eligibility Proceedings

Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications

Effective Date: June 15, 2009

Executive Summary

The FINRA Rule 9520 Series sets forth eligibility proceedings under which FINRA may allow a person subject to a statutory disqualification to enter or remain in the securities industry. In connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. and the formation of FINRA, FINRA adopted a revised definition of disqualification to conform to the definition of statutory disqualification under Section 3(a)(39) of the Securities Exchange Act of 1934 (Exchange Act or SEA). Consequently, FINRA's revised definition of disqualification incorporates three additional categories of statutory disqualification, including willful violations of the federal securities or commodities laws, grounds for statutory disqualification that were enacted by the Sarbanes-Oxley Act, and associations with certain other persons subject to statutory disqualification. FINRA will be required to approve a firm's continued membership, or, in the case of individuals, association or continued association with a member firm, in certain instances.

As further detailed in this *Notice*, the SEC recently approved amendments to FINRA's rules to address the circumstances under which persons must obtain FINRA approval to enter or remain in the securities industry, notwithstanding the existence of one of these additional categories of disqualification.¹ FINRA is reviewing its records to identify persons that meet any of the additional conditions that require the filing of an application with FINRA to obtain such approval and will notify firms if FINRA identifies any such persons. However, firms also are required to review their records and communicate with their associated persons as needed to determine whether they must file an application with FINRA.

April 2009

Notice Type

- Rule Amendment

Suggested Routing

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

Key Topic(s)

- Eligibility Proceedings
- Sarbanes-Oxley Act
- Statutory Disqualification
- Willful Violations

Referenced Rules & Notices

- Exchange Act Section 3(a)(39)
- FINRA By-Laws
- FINRA Rule 9520 Series

The FINRA Rule 9520 Series, as amended, is set forth in Attachment A of this *Notice*. In addition, two charts summarizing the circumstances under which persons must file an application to seek FINRA's approval as a result of the expanded definition of disqualification are set forth in Attachment B.

Questions concerning this *Notice* should be directed to:

- ▶ Lorraine Lee, Statutory Disqualification Administrator, Department of Member Regulation, at (202) 728-8442.
- ▶ M. Catherine Cottam, Assistant Chief Counsel, Department of Registration and Disclosure, at (240) 386-5115.
- ▶ Stan Macel, Assistant General Counsel, Office of General Counsel, at (202) 728-8056.

Background and Discussion

The Additional Categories of Disqualification

In light of FINRA's obligation to enforce the federal securities laws, and as part of the consolidation of the member regulatory functions of NASD and NYSE Regulation, Inc. and the formation of FINRA, FINRA adopted by Board and membership vote a revised By-Law definition of disqualification that is consistent with the federal securities laws, such that any person subject to a statutory disqualification under Exchange Act Section 3(a)(39) also is subject to disqualification under the FINRA By-Laws.² Prior to the amendments, the By-Laws listed some, but not all, of the grounds for statutory disqualification contained in Exchange Act Section 3(a)(39).

As a result of these amendments, FINRA has adopted the following three additional categories of disqualification.

1. Willful Violations or Failure to Supervise

Exchange Act Section 3(a)(39) incorporates by reference Exchange Act Sections 15(b)(4)(D) and (E), which subject a person to statutory disqualification if such person:

- ▶ has willfully violated any provision of the Exchange Act, the Securities Act of 1933 (Securities Act), the Investment Advisers Act of 1940, the Investment Company Act of 1940 or the rules or regulations thereunder (including the rules of the Municipal Securities Rulemaking Board (MSRB)) (collectively referred to as the federal securities laws), or of the Commodity Exchange Act (CEA) or the rules or regulations thereunder;
- ▶ has willfully aided or abetted violations of the federal securities laws or the CEA or the rules and regulations thereunder; or

- has failed reasonably to supervise, with a view towards preventing violations of the federal securities laws or of the CEA or the rules or regulations thereunder, another person who committed a violation, if such other person is subject to his supervision.

2. Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act)

Section 604 of the Sarbanes-Oxley Act expanded the definition of statutory disqualification in Exchange Act Section 3(a)(39) by creating and incorporating Exchange Act Section 15(b)(4)(H) so as to include persons that are:

subject to any final order of a state securities commission (or any agency or officer performing like functions), state authority that supervises or examines banks, savings associations, or credit unions, state insurance commission (or any agency or office performing like functions), an appropriate federal banking agency (as defined in Section 3 of the Federal Deposit Insurance Act), or the National Credit Union Administration, that

- bars such person from association with an entity regulated by such commission, authority, agency or officer, or from engaging in the business of securities, insurance, banking, savings association activities or credit union activities; or
- constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct.

3. Exchange Act Section 3(a)(39)(E) — Certain Affiliated Relationships

Exchange Act Section 3(a)(39)(E) subjects a person to statutory disqualification if the person is associated with any person who is known, or in the exercise of reasonable care should be known, by him to be a person described in Exchange Act Sections 3(a)(39)(A) through (D).³ Firms must bear in mind that, for purposes of identifying whether they are subject to disqualification under this provision, they must apply the definition of “associated person” set forth in the Exchange Act, which includes non-natural persons.⁴

Eligibility Proceedings: Filing of an Application for Approval

Absent the relief further discussed below, all persons subject to any of the additional categories of disqualification would be required to obtain approval from FINRA to enter or remain in the securities industry. A firm seeking to continue in membership, notwithstanding the existence of such a disqualification, would make an application by filing an MC-400A with FINRA’s Department of Registration and Disclosure (RAD). Similarly, a firm seeking to sponsor (*i.e.*, employ or associate with) a disqualified person would make an application by filing an MC-400 with RAD. If it approves the firm’s application, FINRA then submits the appropriate filing to the SEC.⁵

The SEC recently approved amendments to the FINRA Rule 9520 Series governing the circumstances under which firms or individuals subject to one of the additional categories of disqualification will be required to seek FINRA's approval to enter or remain in the securities industry, and that generally will require FINRA to submit a notice filing with the SEC.

As outlined in items (1) through (3) below, the need for a member to file an application with FINRA for approval notwithstanding the disqualification depends on:

- ▶ the type of the disqualification;
- ▶ the date of the disqualification; and
- ▶ whether the firm or individual is seeking admission, readmission or continuance in the securities industry.⁶

FINRA is reviewing its records to identify persons that meet any of the additional conditions that require the filing of an application with FINRA to obtain such approval and will notify firms if FINRA identifies any such persons.⁷ However, firms also are required to review their records and communicate with their associated persons as needed to determine whether they must file an application with FINRA.

Members also should refer to Attachment B for two charts that summarize the procedures outlined below. One chart addresses the application requirements for persons seeking admission or readmission to the securities industry; the second chart addresses application requirements for persons currently working in the securities industry and seeking to continue such employment, notwithstanding the existence of the statutory disqualification.

1. Statutory Disqualifications Arising from Willful Violations or Failure to Supervise (Exchange Act Section 15(b)(4)(D) or (E))

With respect to disqualifications arising solely from findings specified in Exchange Act Section 15(b)(4)(D) or (E) by the SEC, CFTC or an SRO as defined in the Uniform Forms (*i.e.*, Form U4, Form U5 and Form BD), a member shall file an application with RAD if the sanction is still in effect and:

- ▶ the disqualified member or person is seeking admission or readmission to the securities industry; or
- ▶ the disqualified member or person is seeking to continue in membership or association with a member, unless:

- ▶ such member or person is as of March 17, 2009, a member of, or an associated person of a member of, FINRA or another SRO⁸ and was, as of March 17, 2009, subject to the disqualification, in which event the member shall file an application with RAD only if there is a change in employer or if the member makes an application for the registration of the person as a principal pursuant to FINRA rules.

2. Statutory Disqualifications Arising from Sarbanes-Oxley Act (Exchange Act Section 15(b)(4)(H))

With respect to disqualifications arising solely from orders specified in Exchange Act Section 15(b)(4)(H)(i) and (ii), a member shall file an application with RAD if:

- ▶ the disqualified member or person is seeking admission or readmission to, or continuance in, the securities industry; unless:
 - ▶ such member or person is subject to a final order as described in Section 15(b)(4)(H)(ii),⁹ and
 - ▶ the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect, in which event an application need not be filed; or
 - ▶ the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), the sanctions are no longer in effect, and the order was entered 10 or more years ago, in which event an application need not be filed.

However, if the disqualified member or person is, as of March 17, 2009, a member of, or an associated person of a member of, FINRA or another SRO¹⁰ and was, as of March 17, 2009, subject to a final order as described in Section 15(b)(4)(H)(ii) and:

- ▶ the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are still in effect, the member shall file an application with RAD only if there is a change in employer, or if the member makes an application for the registration of the person as a principal pursuant to FINRA rules; or
- ▶ the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect, and the order was entered within the prior 10 years, the member shall file an application with RAD only if there is a change in employer, or if the member makes an application for the registration of the person as a principal pursuant to FINRA rules.

Moreover, where such member or person is, as of March 17, 2009, a member of, or an associated person of a member of, FINRA or another SRO¹¹ and was, as of March 17, 2009, subject to a bar as described in Exchange Act Section 15(b)(4)(H)(i), and the bar is still in effect¹² (and is not related to fraudulent, manipulative, or deceptive conduct), the member shall file an application with RAD only if there is a change in employer or if the member makes an application for the registration of the person as a principal pursuant to FINRA rules.

3. Statutory Disqualifications under Exchange Act Section 3(a)(39)(E) – Certain Affiliated Relationships

With respect to disqualifications arising solely under Section 3(a)(39)(E) of the Exchange Act, a member shall file an application with RAD if:

- ▶ the disqualified member or person is seeking admission or readmission to, or continuance in, the securities industry and the disqualified member or person is subject to a statutory disqualification under Exchange Act Section 3(a)(39)(E), solely because such member or person has associated with him any person¹³ who is known, or in the exercise of reasonable care should be known, to the disqualified member or person to be a person described by Exchange Act Section 3(a)(39)(A), (B), (C) or (D), and the associated person:
 - ▶ controls such disqualified member or person, is a general partner or officer (or person occupying a similar status or performing similar functions) of such disqualified member, is an employee, who, on behalf of such disqualified member, is engaged in securities advertising, public relations, research, sales, trading, or training or supervision of other employees who engage or propose to engage in such activities, except clerical and ministerial persons engaged in such activities, or is an employee with access to funds, securities or books and records, or
 - ▶ is a broker or dealer not registered with the SEC, or controls such (unregistered) broker or dealer, or is a general partner or officer (or person occupying a similar status or performing similar functions) of such broker or dealer.

However, the disqualified member or person seeking to continue in the securities industry is not required to file an application where such member or person is, as of March 17, 2009, a member of, or an associated person of a member of, FINRA or another SRO¹⁴ and was, as of March 17, 2009, subject to the disqualification.

Department of Member Regulation Review

Under the current eligibility rules, FINRA's Department of Member Regulation (Member Regulation) is responsible for evaluating applications for relief from a statutory disqualification filed by a disqualified member or sponsoring member. In certain circumstances, Member Regulation is authorized to approve the application, while in other cases, Member Regulation must make a recommendation to either approve or deny the applications to the National Adjudicatory Council (NAC).

The amendments to the FINRA Rule 9520 Series authorize Member Regulation to approve applications where the disqualification arises from findings or orders specified in Exchange Act Section 15(b)(4)(D), (E) or (H) or arises under Exchange Act Section 3(a)(39)(E) (*i.e.*, the additional categories of disqualification addressed in this *Notice*). In the event Member Regulation does not approve these applications, the disqualified member or sponsoring member has the right to have the matter decided by the NAC after a hearing and consideration by the Statutory Disqualification Committee under FINRA Rule 9524.¹⁵

In addition, if Member Regulation determines that an application relating to a disqualification that arises from findings or orders specified in Exchange Act Section 15(b)(4)(D), (E) or (H) or arises under Exchange Act Section 3(a)(39)(E) should be approved, but with specific supervisory requirements that have the consent of the disqualified member, sponsoring member and/or disqualified person, then Member Regulation may approve a supervisory plan, without submitting a recommendation to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC. If a supervisory plan is rejected, the disqualified member, sponsoring member and/or disqualified person may still request NAC consideration of the matter under FINRA Rule 9524.

Endnotes

- 1 See Exchange Act Release No. 59586 (March 17, 2009), 74 FR 12166 (March 23, 2009) (SEC Order Approving SR-FINRA-2008-045); Exchange Act Release No. 59722 (April 7, 2009) (SEC Order Approving SR-FINRA-2009-022).
- 2 See Exchange Act Release No. 55495 (March 20, 2007), 72 FR 14149 (March 26, 2007) (SR-NASD-2007-023). See also Exchange Act Release No. 56145 (July 26, 2007), 72 FR 42169 (August 1, 2007) (SEC Order Approving SR-NASD-2007-023), as amended by Exchange Act Release No. 56145A (May 30, 2008), 73 FR 32377 (June 6, 2008). See also NASD, SEC No-Action Letter, 2007 SEC No-Act. LEXIS 540 (July 27, 2007) (Letter from Catherine McGuire, SEC, regarding eligibility proceedings for persons subject to the categories of disqualification discussed in this *Notice*).
- 3 Exchange Act Sections 3(a)(39)(A) through (D) provide that a person is subject to a statutory disqualification if such person:
 - (A) has been and is expelled or suspended from membership or participating in, or barred or suspended from being associated with a member of, any self-regulatory organization (SRO), foreign equivalent of an SRO, foreign or international securities exchange, contract market designated pursuant to Section 5 of the CEA, or any substantially equivalent foreign statute or regulation or futures association registered under Section 17 of such Act, or any substantially equivalent foreign statute or regulation or has been and is denied trading privileges on any such contract market;
 - (B) Is subject to:
 - (i) An order of the SEC, other appropriate regulatory agency, or foreign financial regulatory authority:
 - (I) Denying, suspending for a period not exceeding 12 months, or revoking his registration as a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or limiting his activities as a foreign person performing a function substantially equivalent to any of the above; or
 - (II) Barring or suspending for a period not exceeding 12 months his being associated with a broker, dealer, municipal securities dealer, government securities broker, government securities dealer or foreign person performing a function substantially equivalent to any of the above; or
 - (ii) An order of the Commodity Futures Trading Commission denying, suspending or revoking his registration under the CEA; or
 - (iii) An order by a foreign financial regulatory authority denying, suspending or revoking the person's authority to engage in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent thereof;
 - (C) By his conduct while associated with a broker, dealer, municipal securities dealer, government securities broker or government securities dealer, or while associated with an entity or person required to be registered under the CEA, has been found to be a cause of any effective suspension, expulsion or order of the character described in subparagraph (A) or (B) of this paragraph, and in entering such a suspension, expulsion or order, the SEC, an appropriate regulatory agency, or any such SRO shall have jurisdiction to find whether or not any person was a cause thereof;

- (D) By his conduct while associated with any broker, dealer, municipal securities dealer, government securities broker, government securities dealer or any other entity engaged in transactions in securities, or while associated with an entity engaged in transactions in contracts of sale of a commodity for future delivery or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent thereof, has been found to be a cause of any effective suspension, expulsion or order by a foreign or international securities exchange or foreign financial regulatory authority empowered by a foreign government to administer or enforce its laws relating to financial transactions as described in subparagraph (A) or (B) of this paragraph.
- 4 See Exchange Act Section 3(a)(21) for the definition of person associated with a member.
 - 5 Under the regulatory scheme established by Exchange Act Section 15A(g)(2) and SEA Rule 19h-1, FINRA generally is required to file a notice with the SEC for any disqualified person that FINRA is proposing to admit to or continue in membership or association with a member. SEA Rule 19h-1 provides for SEC review of notices filed by SROs, including FINRA, proposing conditionally or unconditionally, to admit to, or continue any person in, membership or participation or association with a member, notwithstanding a statutory disqualification.
 - 6 Firms that are members of both FINRA and of the New York Stock Exchange (NYSE) (Dual Members) that previously have filed an application with, and obtained approval from the NYSE with respect to a disqualification arising under Exchange Act Sections 15(b)(4)(D), (E) or (H) or Exchange Act Section 3(a)(39)(E) generally would not be required to seek further approval from FINRA, unless the disqualified member or person meets one of the triggering events or otherwise must comply with the FINRA Rule 9520 Series due, for example, to a change in status addressed by the rules. Dual Members may contact RAD if they have questions regarding whether an application to FINRA is required.
 - 7 FINRA recently filed a proposed rule change to revise the questions on Forms U4 and U5 to enable FINRA and other regulators to identify more readily persons subject to statutory disqualification based on willful violations. See Exchange Act Release No. 59616 (March 20, 2009), 74 FR 13491 (March 27, 2009) (Notice of Filing of SR-FINRA-2009-008).
 - 8 For purposes of the amendments, an associated person would include a person that was associated with a member firm within 45 days prior to March 17, 2009, provided that the person is associated with another member within 45 days after March 17, 2009.
 - 9 This would include a finding of aiding and abetting a violation of such laws.
 - 10 See *supra* note 8.
 - 11 See *supra* note 8.

- 12 A person would no longer be subject to a statutory disqualification when the time limitation of a bar or license revocation has expired, provided that (1) application for reentry is not required or has been granted; (2) the bar or revocation has no continuing effect; and (3) the bar was not issued in connection with a final order based on violations of laws or regulations prohibiting fraudulent, manipulative or deceptive conduct, as described in Exchange Act Section 15(b)(4)(H)(ii).

As an example, a person subject to a statutory disqualification based on a three-month bar (or three-year bar) that ends automatically and has no continuing effect would no longer be subject to a statutory disqualification at the end of the three months (or three years) under Exchange Act Section 15(b)(4)(H)(i), unless the bar was issued in connection with a final order based on violations of laws or regulations prohibiting fraudulent, manipulative or deceptive conduct, as described in Exchange Act Section 15(b)(4)(H)(ii).

- 13 If the associated person is already subject to FINRA jurisdiction (and therefore is being processed) because he or she meets the By-Law definition of “associated person,” then there is no need for a separate filing (*i.e.*, application for the associated person would satisfy the filing requirement for the member firm/subject person).

If the associated person is not subject to FINRA jurisdiction (*e.g.*, an entity such as a holding company), then a separate application would have to be made for the member firm/subject person.

- 14 *See supra* note 8.

- 15 A technical change to FINRA Rule 9522 allows a member that has filed a statutory disqualification application to withdraw that application without receiving the NAC’s approval to do so.

Attachment A

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

* * * * *

9500. OTHER PROCEEDINGS

* * * * *

9520. Eligibility Proceedings

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9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) Initiation by FINRA

(1) Issuance of Notice of Disqualification or Ineligibility

If FINRA staff has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of FINRA, FINRA staff shall issue a written notice to the member or applicant for membership under NASD Rule 1013. The notice shall specify the grounds for such disqualification or ineligibility. FINRA staff shall not issue such written notice to members or applicants for membership under NASD Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member or applicant for membership under NASD Rule 1013 is required to file an application pursuant to a Regulatory Notice entitled "Eligibility Proceedings: Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications" (the "SD Regulatory Notice").

(2) through (4) No Change.

(b) Obligation of Member to Initiate Proceeding

(1) A member shall file an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with RAD, if the member determines prior to receiving a notice under paragraph (a) that:

[(1)](A) it has become a disqualified member;

[(2)](B) a person associated with such member or whose association is proposed by an applicant for membership under NASD Rule 1013 has become a disqualified person; or

[(3)](C) the member or applicant for membership under NASD Rule 1013 wishes to sponsor the association of a person who is a disqualified person.

(2) For any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, a member shall not file an application unless instructed to do so by the SD Regulatory Notice.

(c) Withdrawal of Application

A member may withdraw its application or written request for relief prior to a hearing by filing a written notice with RAD pursuant to Rules 9135, 9136, and 9137. A member may withdraw its application after the start of a hearing but prior to the issuance of a decision by the National Adjudicatory Council [with prior written consent of the National Adjudicatory Council] by filing a written notice with RAD and the Office of General Counsel pursuant to Rules 9135, 9136, and 9137.

(d) No Change.

(e) Member Regulation Consideration

(1) Matters that may be Approved by the Department of Member Regulation without the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, [may grant] is authorized to approve a written request for relief from the eligibility requirements by a disqualified member or a sponsoring member without the filing of an application by such disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

(A) through (C) No Change.

(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, [may] is authorized to approve an application filed by a disqualified member or sponsoring member if [a] the disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in paragraph (e)(1)):

(A) through (C) No Change.

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the SEC will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Exchange Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed; [or]

(E) The disqualified person's functions are purely clerical and/or ministerial in nature[.]; or

(F) The disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arises under Section 3(a)(39)(E) of the Exchange Act.

(3) No Change.

9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEA Rule 19h-1

(a) With respect to all disqualifications, except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, [A]after an application is filed, the Department of Member Regulation may recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan.

[(b)](1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) through (C) No Change.

(2) If a recommendation or supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under paragraph [(b)](a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 9524, as applicable.

[(c)](3) If the disqualified member, sponsoring member, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the Office of General Counsel by the Department of Member Regulation with a proposed Notice under SEA Rule 19h-1, where required. The Office of General Counsel shall forward the supervisory plan and proposed Notice under SEA Rule 19h-1, if any, to the Chairman of the Statutory Disqualification Committee, acting on behalf of the National Adjudicatory Council. The Chairman of the Statutory Disqualification Committee may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan or refer them to the National Adjudicatory Council for acceptance or rejection by the National Adjudicatory Council.

~~[(d)](4)~~ If the recommendation and supervisory plan is accepted by the National Adjudicatory Council or the Chairman of the Statutory Disqualification Committee, it shall be deemed final and, where required, the proposed Notice under SEA Rule 19h-1 will be filed by FINRA. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee or the National Adjudicatory Council, FINRA may take any other appropriate action with respect to the disqualified member, sponsoring member, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member, sponsoring member, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory plan under this paragraph (a) and the letter may not be introduced into evidence in any proceeding.

(b) With respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, in approving an application under Rule 9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan. The Department of Member Regulation shall prepare a proposed Notice under SEA Rule 19h-1, where required, and FINRA shall file such Notice.

(1) If a disqualified member, sponsoring member, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member, sponsoring member and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the National Adjudicatory Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;

(B) any right of the disqualified member, sponsoring member, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation or the General Counsel in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member, sponsoring member, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan.

(2) If the supervisory plan is rejected, the disqualified member, sponsoring member, and/or disqualified person shall be bound by the waivers made under paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under Rule 9524.

9524. National Adjudicatory Council Consideration

(a) No Change.

(b) **Decision**

(1) Decision of the National Adjudicatory Council

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the National Adjudicatory Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the disqualified member, sponsoring member, and/or disqualified person, as the case may be. At any time prior to the issuance of its recommendation, the National Adjudicatory Council may order the Parties to supplement the record with any additional information that the National Adjudicatory Council deems necessary. Alternatively, the National Adjudicatory Council may remand the eligibility proceeding. The National Adjudicatory Council shall prepare a proposed written decision pursuant to [sub]paragraph (b)(2).

(2) through (3) No Change.

Attachment B Statutory Disqualifications Arising from Amended Definition of Disqualification – Persons Seeking Admission or Re-Admission to Industry

Person Subject to Statutory Disqualification (SD) – New Admissions and Re-Admissions	Willful Violations ¹ Exchange Act Sections 15(b)(4)(D)&(E)	Sarbanes-Oxley Act (SOX) Section 15(b)(4)(H)		Certain Affiliated Relationships Exchange Act Section 3(a)(39)(E)
		SOX Bars Exchange Act Section 15(b)(4)(H)(i)	SOX Final Orders Exchange Act Section 15(b)(4)(H)(ii)	
Existing SDs ²	<p>If sanction is no longer in effect, then no application required.</p> <p>If sanction is still in effect, then application required.</p>	<p>Application required.</p> <p>That said, if bar is time-limited, and the time period has expired, then bar is no longer a SD and no application would be required unless related Fraudulent, Manipulative or Deceptive (FMD) final order, in which case refer to “SOX Final Orders” column.</p>	<p>Application required unless</p> <p>(1) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions) and the sanctions are no longer in effect; or</p> <p>(2) the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), the sanctions are no longer in effect, and the order was entered 10 or more years ago.</p>	<p>Application, as specified below, required for the member firm/subject person if an associated person that is subject to a specified SD, in summary, (1) controls the member; (2) is a general partner or officer of the member; (3) is an employee engaged in certain specified activities; or (4) is an unregistered broker-dealer, controls such an unregistered broker-dealer or is a general partner or officer of such an unregistered broker-dealer.</p> <p>If the associated person is already subject to FINRA jurisdiction (and therefore is being processed) because he or she falls within the By-Law definition of “associated person,” then there is no need for a separate filing (i.e., application for the associated person would satisfy the filing requirement for the member firm/subject person).</p> <p>If the associated person is not subject to FINRA jurisdiction (e.g., an entity such as a holding company), then a separate application would have to be made for the member firm/subject person.</p>
New SDs ³	Same as above.	Same as above.	Same as above.	Same as above.

1. References to “willful violations” also include willfully aiding and abetting an enumerated violation and failure to supervise an enumerated violation.

2. Existing SDs refer to statutory disqualifications that are in existence as of March 17, 2009.

3. New SDs refers to statutory disqualifications that arise after March 17, 2009.

Statutory Disqualifications Arising from Amended Definition of Disqualification — Persons Seeking to Continue in the Industry

Person Subject to Statutory Disqualification (SD) — Continuances ¹	Willful Violations ² Exchange Act Sections 15(b)(4)(D)&(E)	Sarbanes-Oxley Act (SOX) Section 15(b)(4)(H)		Certain Affiliated Relationships Exchange Act Section 3(a)(39)(E)
		SOX Bars Exchange Act Section 15(b)(4)(H)(i)	SOX Final Orders Exchange Act Section 15(b)(4)(H)(ii)	
Existing SDs ³	<p>If sanction is no longer in effect, then no application required.</p> <p>If sanction is still in effect, then application is required only upon a triggering event.⁴</p>	<p>If bar is no longer in effect and is not related to Fraudulent, Manipulative or Deceptive (FMD) conduct, then no application required.</p> <p>If bar is still in effect and is not related to FMD conduct, then no application required unless there is a triggering event.⁵</p> <p>If bar is still in effect and is related to FMD conduct, then application is required.</p>	<p>Application required, unless</p> <p>(1) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect;</p> <p>(2) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are still in effect, in which event application is required if there is a triggering event;⁶</p> <p>(3) the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), and the sanctions are no longer in effect, and order was entered 10 or more years ago (if the order was issued less than 10 years ago, then application is required if there is a triggering event).⁷</p>	No application required.

1 This encompasses a person associated with a member within 45 days prior to March 17, 2009, provided that the person is associated with another member firm within 45 days after March 17, 2009.

2 References to “willful violations” also include willfully aiding and abetting an enumerated violation and failure to supervise an enumerated violation.

3 Existing SDs refer to statutory disqualifications that are in existence as of March 17, 2009.

4 A triggering event occurs when the person subject to the statutory disqualification either changes employers or the member firm makes an application for the registration of such person as a principal pursuant to FINRA rules.

5 See *id.*

6 *Id.*

7 *Id.*

Statutory Disqualifications Arising from Amended Definition of Disqualification — Persons Seeking to Continue in the Industry

Person Subject to Statutory Disqualification (SD) – Continuances	Willful Violations Exchange Act Sections 15(b)(4)(D)&(E)	Sarbanes-Oxley Act (SOX) Section 15(b)(4)(H)	Certain Affiliated Relationships Exchange Act Section 3(a)(39)(E)
New SDs ⁸	<p>If sanction is no longer in effect, then no application required.</p> <p>If sanction is still in effect, then application required.</p>	<p>Application required.</p> <p>That said, if bar is time-limited, and the time period has expired, then bar is no longer SD, and no application would be required unless related FMD final order, in which case refer to “SOX Final Orders” column.</p>	<p>Application required unless</p> <p>(1) the sanctions do not involve licensing or registration revocation or suspension (or analogous sanctions) and the sanctions are no longer in effect; or</p> <p>(2) the sanctions do involve licensing or registration revocation or suspension (or analogous sanctions), the sanctions are no longer in effect, and the order was entered 10 or more years ago.</p>
			<p>Application, as specified below, required for the member firm/subject person if an associated person that is subject to a specified SD, in summary, (1) controls the member; (2) is a general partner or officer of the member; (3) is an employee engaged in certain specified activities; or (4) is an unregistered broker-dealer, controls such an unregistered broker-dealer or is a general partner or officer of such an unregistered broker-dealer.</p> <p>If the associated person is already subject to FINRA jurisdiction (and therefore is being processed) because he or she falls within the By-Law definition of “associated person,” then there is no need for a separate filing (<i>i.e.</i>, application for the associated person would satisfy the application requirement for the member firm/subject person).</p> <p>If the associated person is not subject to FINRA jurisdiction, e.g., an entity such as a holding company, then a separate application would have to be made for the member firm/subject person.</p>

8 New SDs refers to statutory disqualifications that arise after March 17, 2009.

SEC Approves New Consolidated FINRA Rules

SEC Approval and Effective Date for New Consolidated FINRA Rules on the Transfer of Customer Accounts, Recommendations to Customers in OTC Equity Securities and Anti-Intimidation/Coordination

Effective Date: June 15, 2009

Executive Summary

Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA established a process to develop a new consolidated rulebook (Consolidated FINRA Rulebook), which FINRA has discussed in previous *Information Notices*.¹ FINRA is proposing new consolidated rules in phases for approval by the SEC as part of the Consolidated FINRA Rulebook.² In February and March 2009, the SEC approved three new consolidated FINRA Rules on the transfer of customer accounts in the context of employment disputes, recommendations to customers in OTC Equity Securities and anti-intimidation/coordination, which will take effect on June 15, 2009.

Questions regarding this *Notice* should be directed to:

- Philip Shaikun, Associate Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8451 (regarding FINRA Rule 2114);
- Brant Brown, Associate General Counsel, OGC, at (202) 728-6927 (regarding FINRA Rule 5240); or
- Adam Arkel, Assistant General Counsel, OGC, at (202) 728-6961 (regarding FINRA Rule 2140).

April 2009

Notice Type

- Rule Approvals
- Consolidated Rulebook

Suggested Routing

- Compliance
- Legal
- Senior Management
- Trading

Key Topic(s)

- Anti-Intimidation/Coordination
- Customer Account Transfers
- Effective Dates of Consolidated Rules
- FINRA Manual
- OTC Equity Securities
- Recommendations to Customers
- Rulebook Consolidation

Referenced Rules & Notices

- FINRA Rule 2100 Series
- FINRA Rule 2110 Series
- FINRA Rule 2114
- FINRA Rule 2140
- FINRA Rule 5000 Series
- FINRA Rule 5200 Series
- FINRA Rule 5240
- FINRA Rule 6420
- Information Notice 03/12/08
- Information Notice 10/06/08
- Regulatory Notice 08-57

Discussion

In February and March 2009, the SEC approved three FINRA Rules as part of the Consolidated FINRA Rulebook:

- ▶ Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes);³
- ▶ Rule 2114 (Recommendations to Customers in OTC Equity Securities);⁴ and
- ▶ Rule 5240 (Anti-Intimidation/Coordination).⁵

The attachment to this *Notice* sets forth additional information regarding these new consolidated rules and includes a hyperlink to each related rule filing. The filings provide, among other things, FINRA's statement of the purpose of the rule changes and an exhibit showing the changes between the new rule text and the text of the NASD rule as it exists in the Transitional Rulebook. Also, the text of each new FINRA Rule is available in the online *FINRA Manual* at www.finra.org/finramanual.⁶

Rule Conversion Chart

As discussed in additional detail in *Information Notice 10/06/08* and *Regulatory Notice 08-57*, FINRA has posted a Rule Conversion Chart on its Web site to help firms become familiar with the new rules and show how the new rules relate to the NASD and/or Incorporated NYSE Rules in the Transitional Rulebook that they will replace.

Firms should be aware that the chart is intended as a reference aid only. FINRA reminds firms that the chart does not in any way serve as a substitute for diligent review of the relevant new rule language. The Rule Conversion Chart is located at www.finra.org/ruleconversionchart.

Endnotes

- 1 *See Information Notice 10/06/08* (Rulebook Consolidation Process: Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart); *see also Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The new FINRA Rules apply to all member firms, unless such rules have a more limited application by their terms. As the Consolidated FINRA Rulebook expands with the SEC's approval and with the new FINRA Rules taking effect, the rules in the Transitional Rulebook that address the same subject matter of regulation will be eliminated. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.
- 3 *See Exchange Act Release No. 59495* (March 3, 2009), 74 FR 10632 (March 11, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-052); *see also Exchange Act Release No. 59495A* (March 18, 2009), 74 FR 12417 (March 24, 2009) (Order Correcting Exchange Act Release No. 59495).
- 4 *See Exchange Act Release No. 59605* (March 19, 2009), 74 FR 13283 (March 26, 2009) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change; File No. SR-FINRA-2008-055).
- 5 *See Exchange Act Release No. 59335* (February 2, 2009), 74 FR 6335 (February 6, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-061).
- 6 FINRA updates the rule text on its online *Manual* within two business days of SEC approval of changes to the rule text.

Attachment A

List of Approved FINRA Rules (and Related Rule Filings)

The SEC approved the following new FINRA Rules in February and March 2009. The effective date of these rules is June 15, 2009.

FINRA Rule Filing SR-FINRA-2008-052

www.finra.org/rulefilings/2008-052

The rule change adopts, with certain modifications, NASD Interpretive Material (IM) 2110-7 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) as FINRA Rule 2140.

NASD IM-2110-7 states that it is inconsistent with just and equitable principles of trade for a member firm or person associated with a member firm to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other *bona fide* claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. IM-2110-7 further states that nothing in the Interpretation affects the operation of NASD Rule 11870 (Customer Account Transfer Contracts).

The rule change transfers NASD IM-2110-7, with conforming revisions, into the Consolidated FINRA Rulebook as stand-alone FINRA Rule 2140 rather than as interpretive material to NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).¹

RULE/SERIES NO.	RULE TITLE
Rule 2100 Series	TRANSACTIONS WITH CUSTOMERS
Rule 2140	Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

¹ FINRA has transferred NASD Rule 2110 to the Consolidated FINRA Rulebook without change as FINRA Rule 2010. See Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-028).

FINRA Rule Filing SR-FINRA-2008-055

www.finra.org/rulefilings/2008-055

The rule change adopts, with certain modifications, NASD Rule 2315 (Recommendations to Customers in OTC Equity Securities) as FINRA Rule 2114.

NASD Rule 2315 addresses potential fraud and abuse in transactions involving securities not listed on an exchange and certain other higher-risk securities. The rule, which supplements existing FINRA rules and the federal securities laws, requires a member to conduct a due diligence review of an issuer's current financial statements and current material business information before recommending the purchase or short sale of a security that is published in a "quotation medium" and is either (1) not listed on NASDAQ or a national securities exchange or (2) listed on a regional securities exchange and does not qualify for dissemination of transaction reports via the Consolidated Tape.

The rule change transfers NASD Rule 2315 into the Consolidated FINRA Rulebook as FINRA Rule 2114 and amends NASD Rule 2315 in four respects.

- First, the rule change expands the scope of the rule to cover a recommendation to purchase or sell short any OTC Equity Security (as defined in FINRA Rule 6420), irrespective of whether the security is published in a quotation medium.
- Second, the rule change adds a definition of "current material business information" to include "information that is ascertainable through the reasonable exercise of professional diligence and that a reasonable person would take into account in reaching an investment decision."
- Third, the rule change eliminates the exemption from the rule for a security with a worldwide average daily trading volume value of at least \$100,000 during each of the six calendar months preceding the recommendation, as well as the related exemption for a convertible security where the underlying security satisfies the trading volume exemption requirements.
- Finally, the rule change permits the required review to be conducted by a General Securities Principal (Series 24) or a General Securities Sales Supervisor (Series 8 or 9/10), or someone supervised by a General Securities Principal or General Securities Sales Supervisor. If the person designated to perform the review is not registered as a General Securities Principal or General Securities Sales Supervisor, the member must document the name of the General Securities Principal or General Securities Sales Supervisor who supervised the designated person.

RULE/SERIES NO.	RULE TITLE
Rule 2100 Series	TRANSACTIONS WITH CUSTOMERS
Rule 2110 Series	Recommendations
Rule 2114	Recommendations to Customers in OTC Equity Securities

FINRA Rule Filing SR-FINRA-2008-061

www.finra.org/rulefilings/2008-061

The rule change adopts, with certain modifications, NASD Interpretive Material (IM) 2110-5 (Anti-Intimidation/Coordination) as FINRA Rule 5240.

NASD IM-2110-5 identifies three general types of conduct that are inconsistent with just and equitable principles of trade:

- coordinating activities by member firms involving quotations, prices, trades and trade reporting (*e.g.*, agreements to report trades inaccurately or maintain current minimum spreads);
- directing or requesting another member firm to alter prices or quotations; and
- engaging in conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member firm or associated person of a member firm.

The rule change transfers IM-2110-5, with conforming revisions, into the Consolidated FINRA Rulebook as stand-alone FINRA Rule 5240 rather than as interpretive material to NASD Rule 2110.² The rule change also adds the phrase “or other person” to two paragraphs of the rule to clarify that coordination with or intimidation of a non-FINRA member firm is also prohibited.

RULE/SERIES NO.	RULE TITLE
Rule 5000 Series	SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES
Rule 5200 Series	QUOTATION AND TRADING OBLIGATIONS AND PRACTICES
Rule 5240	Anti-Intimidation/Coordination

² See *id.*

Trade Reporting

FINRA Adopts Amendments Relating to Reporting Transfers of Proprietary Positions in Debt and Equity Securities in Connection With Certain Corporate Control Transactions

Effective Date: May 4, 2009

Executive Summary

Effective May 4, 2009, firms are not required to report to FINRA for purposes of publication transfers of proprietary positions in debt and equity securities between a member firm and another member firm or non-member broker-dealer under certain specific conditions, as outlined in this *Notice*.

The text of the amendments can be found at www.finra.org/rulefilings/2009-024.

Questions regarding this *Notice* may be directed to:

- The Legal Section, Market Regulation, at (240) 386-5126; or
- The Office of General Counsel at (202) 728-8071.

Background and Discussion

Description of Trade Reporting Exception

On April 3, 2009, FINRA filed with the SEC a proposed rule change for immediate effectiveness to adopt a limited exception to the trade reporting rules.¹ Specifically, firms are not required to report to FINRA for purposes of publication transfers of proprietary positions in debt and equity securities between a member firm and another member firm or non-member broker-dealer under the following conditions.

April 2009

Notice Type

- Rule Amendment

Suggested Routing

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

Key Topic(s)

- Alternative Display Facility
- NMS Stocks
- OTC Equity Securities
- OTC Reporting Facility
- Trade Reporting and Compliance Engine
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- FINRA Rule 6282
- FINRA Rule 6380A
- FINRA Rule 6380B
- FINRA Rule 6622
- FINRA Rule 6750
- FINRA Rule 7130
- FINRA Rule 7230A
- FINRA Rule 7230B
- FINRA Rule 7330
- Schedule A to the FINRA By-Laws

- First, the transfer must be effected in connection with a merger of one firm with the other firm or a direct or indirect acquisition of one firm by the other firm or the other firm's parent company.
- Second, the transfer must not be in furtherance of a trading or investment strategy.

While such transfers are not reportable for publication purposes under the amended rules, firms nonetheless must report them to FINRA for regulatory purposes and for purposes of assessing applicable regulatory transaction fees pursuant to Section 3 of Schedule A to the FINRA By-Laws and/or trading activity fees under Section 1(b) of Schedule A to the FINRA By-Laws.²

To qualify for the exception, the position transfer must be effected as part of an overall sale and the consolidation of the firms' separate proprietary trading businesses. A position transfer driven by a trading or investment strategy does not qualify for the exception and must be reported for publication purposes. For example, as a result of a corporate control transaction, Firm 1 (a member firm) acquires all of the assets of Firm 2 (another member firm or non-member broker-dealer), or Firm 1's parent company acquires Firm 2, such that Firm 1 and Firm 2 become wholly owned by the same parent company. In connection with the corporate control transaction, Firm 1 and Firm 2 consolidate their separate sales and trading businesses onto a single platform and, along with the migration of sales and trading personnel, clients and systems and technology, Firm 2's proprietary positions are transferred to Firm 1. In this instance, the transfer from Firm 2 to Firm 1 would fall within the trade reporting exception and would not be reportable for publication purposes, but must be reported to FINRA for regulatory purposes.

By way of further example, Firm 1 (a member firm) and Firm 2 (another member firm or non-member broker-dealer) currently are wholly owned by the same parent company and operate separately. Firm 1 owns 100,000 shares of ABCD security and the value of ABCD has increased substantially since Firm 1 purchased the shares. As part of an investment strategy, Firm 1 sells the shares to Firm 2. In this instance, the sale from Firm 1 to Firm 2 would not fall within the trade reporting exception and must be reported to FINRA for publication purposes.

The trade reporting exception is expressly limited to transfers of proprietary positions that are effected in connection with a merger or a direct or indirect acquisition between two member firms or a member firm and a non-member broker-dealer only. FINRA notes that these corporate control transactions are among the changes in a firm's ownership or control that would trigger the notice requirements and membership application process under FINRA rules. Thus, the trade reporting exception generally applies where the merger or acquisition would require the firm to submit notice and/or an application under FINRA rules. However, because FINRA membership application rules are broader than the scope of this trade reporting exception, FINRA is clarifying that the exception will *not* be considered satisfied merely because a firm has submitted an application or notice under FINRA membership rules.

Specific Reporting Requirements

Firms must provide FINRA written notice of their intent to use this exception, including the basis for their determination that the transfer meets the terms of the exception, at least three business days in advance of the transfer. Such notice should be sent to FINRA's Market Regulation Department:

- via email at tradereporting@finra.org; or
- via regular mail at:

FINRA
Market Regulation Department
Attn: Director of Trade Reporting
9509 Key West Avenue
Rockville, MD 20850

Notifying FINRA in advance does not constitute approval by FINRA of the transaction as properly qualifying under the terms of the exception. Rather, a firm relying on the exception must ensure that a given transfer satisfies the terms of the exception, and the firm's advance written notice of the transfer to FINRA does not constitute an estoppel as to FINRA or otherwise bind FINRA in any subsequent administrative, civil or disciplinary proceeding with respect to a firm's misuse of the exception.

Under the amended rules, firms are required to report the transfer in the manner prescribed by FINRA and must designate that the reports are submitted for regulatory and not publication purposes. For transfers of equity securities positions, firms must submit a non-tape (either non-tape, non-clearing or clearing-only) report and, until further notice,³ shall append the unique modifier (.RA) used to denote "away from the market sales." Firms should note that FINRA does not consider transfers that qualify under the trade reporting exception described in this *Notice* to be "away from the market sales" (even if the value assigned to the transferred securities is not at the prevailing market price). By requiring firms to use the .RA modifier in this instance, FINRA is not in any way expanding its narrow interpretation of the "away from the market sales" trade reporting exception.⁴ For transfers of debt positions, firms are required to use a special value of "T" in the capacity field of the trade report. Firms must first request that FINRA Operations enable their reporting Market Participant Symbol (MPID) for position transfer entry by contacting FINRA Operations at (866) 776-0800 or FINRAOperations@finra.org. Firms also should refer to the applicable technical specifications for the FINRA facility to which they are reporting trades.

Firms generally should report to FINRA on the same day as the ultimate transfer of the positions on their books and records, unless later reporting is warranted under specific circumstances. FINRA expects that in most instances, if firms cannot report on the same day that the transfers are reflected on their books and records (*e.g.*, if the transfers take place after the close of the FINRA trade reporting facilities), firms will report no later than the following business day (T+1). However, FINRA recognizes that for some transfers, manual processing may be required or other operational issues may arise.

The amendments are operative on Monday, May 4, 2009.

Endnotes

- 1 See Securities Exchange Act Release No. 59713 (April 6, 2009), 74 FR 17271 (April 14, 2009) (notice of filing and immediate effectiveness of SR-FINRA-2009-024).
- 2 See Rules 6282(i)(2) and 7130(c) relating to the Alternative Display Facility; 6380A(e)(2) and 7230A(g) relating to the FINRA/NASDAQ Trade Reporting Facility; 6380B(e)(2) and 7230B(f) relating to the FINRA/NYSE Trade Reporting Facility; 6622 and 7330(g) relating to the OTC Reporting Facility; and 6750(b) relating to the Trade Reporting and Compliance Engine.
- 3 Ultimately, a new unique modifier will be implemented specifically for use in connection with transfers reported pursuant to the trade reporting exception described in this *Notice*. FINRA will announce the new modifier in a *Trade Reporting Notice* and will provide firms sufficient time to make any necessary systems changes.
- 4 See, e.g., Trade Reporting Frequently Asked Questions, Section 601 (Away from the Market Sales), available at www.finra.org/Industry/Regulation/Guidance/P038942.

Personal Securities Transactions

FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Personal Securities Transactions for or by Associated Persons

Comment Period Expires: June 5, 2009

Executive Summary

As part of the process to develop a new consolidated rulebook (the Consolidated FINRA Rulebook),¹ FINRA is requesting comment on proposed new FINRA Rule 3210 (Personal Securities Transactions for or by Associated Persons). The proposed rule, which combines and streamlines certain provisions of NASD Rule 3050 and Incorporated NYSE Rule 407² in addition to adopting additional requirements, would promote more effective oversight of the personal trading activities of associated persons of member firms.³

This *Notice* also requests comment on how firms currently obtain information pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable, and the processes and controls currently implemented upon receipt of such information.

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

Questions regarding this *Notice* should be directed to Adam H. Arkel, Assistant General Counsel, Office of General Counsel, at (202) 728-6961.

April 2009

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Personal Securities Transactions of Associated Persons
- Supervision

Referenced Rules & Notices

- NASD Rule 3040
- NASD Rule 3050
- NYSE Rule 407
- NYSE Rule Interpretation 407/01
- NYSE Rule 407A
- Regulatory Notice 08-24

Action Requested

FINRA encourages all interested parties to comment on the proposed rules. Comments must be received by June 5, 2009.

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

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

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 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.⁴

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*.⁵

Background and Discussion

Sound supervisory practices require that a member firm monitor personal securities transactions that are effected outside of the firm by or for its associated persons.⁶ Currently, NASD Rule 3050 and NYSE Rule 407 address this subject matter. Proposed FINRA Rule 3210 combines and streamlines certain provisions of the NASD and NYSE rules and adopts additional requirements designed to promote more effective oversight of the personal trading activities of associated persons.

Prior Written Consent Requirement

Based in large part on NYSE Rule 407, proposed FINRA Rule 3210(a) prohibits any associated person, without the prior written consent of his or her employer (referred to as the employer member) from opening or otherwise establishing at another member firm (referred to as the executing member), or at any other financial institution,⁷ any account in which securities transactions can be effected⁸ and in which such associated person has a personal financial interest.⁹ (FINRA notes that, as a general matter, “personal financial interest” would extend to a spouse’s account.) The proposed rule further adds a new requirement that, as a condition to granting prior written consent, the employer member must instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member.¹⁰ In addition, as discussed below, the proposed rule obligates the executing member to carry out the associated person’s instructions.

Notification by the Associated Person

Proposed FINRA Rule 3210(b) requires that any associated person, prior to opening or otherwise establishing an account pursuant to the rule, must notify in writing the executing member, or other financial institution, of his or her association with the employer member. This requirement is based in part on the associated person’s notification obligations under NASD Rules 3050(c) and (d). The proposed rule adds the requirement that the associated person must state in the notice provided to the executing member or other financial institution that he or she has a personal financial interest in the account.

Obligations of the Executing Member

Based in large part on NYSE Rule 407(a), proposed FINRA Rule 3210(c) requires that, when an executing member has actual notice that an associated person of an employer member has a personal financial interest in any account opened or otherwise established at the executing member, the executing member must not execute any securities transactions in that account unless it has obtained the employer member’s prior written consent. In addition, the proposed rule provides that the executing member must promptly obtain and implement an instruction from the associated person¹¹ directing that duplicate account statements and confirmations be provided to the employer member.¹²

Revocation of Employer Member's Consent

Proposed FINRA Rule 3210.04 sets forth a new requirement that, if an employer member does not receive the duplicate account statements and confirmations required pursuant to the rule in a timely manner, the employer member must revoke its consent to maintain the account and notify the executing member or other financial institution in writing of the revocation. The employer member would be required to obtain promptly records from the executing member that the account was closed.

Accounts Opened Prior to Association With an Employer Member

The proposed rule, similar to current provisions in NASD Rules 3050(c) and (d), makes allowance for accounts opened by an associated person prior to his or her association with the employer member. Specifically, proposed FINRA Rule 3210.01 provides that if the account was opened or otherwise established prior to association with the employer member, the associated person would be required, within fifteen business days of becoming associated, to obtain the employer member's consent to maintain the account and to notify in writing the executing member or other financial institution of his or her association with the employer member and personal financial interest. In addition, the proposed rule provides that the associated person must instruct the executing member or other financial institution to provide to the employer member duplicate account statements and confirmations as of the date of his or her association with the employer member.

Deleted Requirements

Proposed FINRA Rule 3210 deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407 that would be rendered outdated by the new rule or otherwise addressed elsewhere by new FINRA rules.

- ▶ The proposed rule eliminates NASD Rule 3050(a)'s requirement that the executing member use reasonable diligence to determine that the execution of the transaction will not adversely affect the interests of the employer member. FINRA believes that this requirement would no longer be needed in light of the approach taken by the proposed rule (*i.e.*, the employer member is responsible for supervising its associated persons' activities).
- ▶ The supervisory requirements of NYSE Rule 407 (*i.e.*, the account review requirements as set forth in NYSE Rule 407(b) and requirements for written procedures as set forth in NYSE Rule 407.11) would be eliminated because these issues are adequately addressed, in combination, by the proposed rule and the new consolidated supervisory rules proposed for inclusion in the Consolidated FINRA Rulebook.¹³

- NYSE Rule 407A (which addresses member reporting of securities accounts to the NYSE) would be deleted in its entirety from the Transitional Rulebook because the proposed rule requires disclosure at the member firm level of the same types of information that Rule 407A requires with respect to the NYSE. FINRA believes it is more appropriate to require member firms to obtain such information from their associated persons and to supervise such accounts for improper trading, rather than requiring such information be sent directly to FINRA.

Request for Comment

FINRA requests comment on proposed FINRA Rule 3210 during the comment period as set forth above. Among other matters that commenters may wish to address, FINRA is particularly interested in the following questions:

- What methodologies do firms currently employ to obtain information pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable? Do firms collect account activity information (confirmations and statements) electronically, in hard copy or both? Should the proposed rule address such information-gathering methodologies and, if so, how?
- What processes and controls do firms currently implement upon receipt of the information required under NASD Rule 3050 or NYSE Rule 407, as applicable?

Endnotes

- 1 The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, 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 member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice, March 12, 2008* (Rulebook Consolidation Process).
- 2 For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.
- 3 The proposed rule replaces NASD Rule 3050 and corresponding provisions in NYSE Rule 407 (together with its associated Rule Interpretation 407/01). NYSE Rule 407A would also be deleted in its entirety from the Transitional Rulebook.
- 4 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.
- 5 Section 19 of the Securities Exchange Act of 1934 (SEA or Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See SEA Section 19 and rules thereunder.
- 6 The terms “person associated with a member” and “associated person of a member” are defined in paragraph (rr) of Article I of the FINRA By-Laws.
- 7 Based on NASD Rule 3050(d) and NYSE Rule 407.13, proposed FINRA Rule 3210.05 defines the terms “other financial institution” and “financial institution other than a member” to include, without limitation, any broker-dealer that is registered pursuant to Section 15(b)(11) of the Exchange Act, domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.
- 8 FINRA notes that NYSE Rule 407 covers by its terms securities and commodities accounts. In contrast, NASD Rule 3050 generally addresses transactions in securities and the opening of accounts. For purposes of the proposed rule, FINRA does not believe that it is necessary to incorporate express reference to commodities accounts. Further, FINRA believes that specifying “any account in which securities transactions can be effected,” in place of the terms currently used in the NYSE and NASD rules, would set a clarifying standard that accords with the purpose of the proposed rule.

- 9 Generally, NYSE Rule 407 addresses transactions in which the associated person is “directly or indirectly interested” (NYSE Rule 407(a)) or with respect to which the associated person “has any financial interest or the power, directly or indirectly, to make investment decisions” (NYSE Rule 407(b)). In contrast, NASD Rules 3050(b) through (d) generally address accounts and/or transactions in which the associated person has a “financial interest” or over which he or she has “discretionary authority.” For purposes of the proposed rule, FINRA believes that specifying accounts in which the associated person has a “personal financial interest” sets an effective standard that also helps to distinguish transactions subject to this new rule from outside securities activities subject to proposed FINRA Rule 3110(b)(3) (currently, NASD Rule 3040) as set forth in *Regulatory Notice 08-24* (May 2008) (Supervision and Supervisory Controls). In this regard, to limit regulatory duplication, FINRA intends to amend proposed FINRA Rule 3110(b)(3) to exclude generally transactions effected in accounts in which the associated person alone has a personal financial interest (such transactions would be subject to proposed FINRA Rule 3210).
- 10 Based on NYSE Rule 407.12 and NASD Rule 3050(f), proposed FINRA Rule 3210.03 states that the requirement to provide to the employer member duplicate account statements and confirmations would not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements and confirmations.
- 11 Note that if the account is opened or otherwise established at a financial institution other than a member firm, proposed FINRA Rule 3210.02 provides that, for purposes of proposed FINRA Rule 3210(c), it would be the obligation of the associated person to instruct the institution to provide the duplicate account statements and confirmations to the employer member.
- 12 Currently, NASD Rule 3050(b) requires the executing member to transmit duplicate confirmations and statements upon request by the employer member. FINRA believes that, from the standpoint of sound supervisory practice, providing the duplicates should not be dependent upon receipt of such a request.
- 13 See *Regulatory Notice 08-24* (May 2008) (Supervision and Supervisory Controls).

ATTACHMENT A

Below is the text of proposed FINRA Rule 3210.

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3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

* * * * *

3200. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

3210. Personal Securities Transactions for or by Associated Persons

(a) No person associated with a member shall, without the prior written consent of the member (“employer member”), open or otherwise establish at a member other than the employer member (“executing member”), or at any other financial institution, any account in which securities transactions can be effected and in which such associated person has a personal financial interest. As a condition to such prior written consent, the employer member must instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member.

(b) Any associated person, prior to opening or otherwise establishing an account pursuant to paragraph (a) of this Rule, shall notify in writing the executing member, or other financial institution, of his or her association with the employer member and shall state in such notice that he or she has a personal financial interest in the account.

(c) When an executing member has actual notice that an associated person of an employer member has a personal financial interest in any account opened or otherwise established at the executing member, such executing member shall not execute any securities transactions in that account unless it has obtained the employer member’s prior written consent. In addition, such executing member shall promptly obtain and implement an instruction from the associated person directing that duplicate account statements and confirmations be provided to the employer member.

• • • Supplementary Material: — — — — —

.01 Account Opened Prior to Association With Employer Member. — For the purposes of paragraphs (a) and (b) of this Rule, if the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within fifteen business days of becoming so associated, shall obtain the written consent of the employer member to maintain the account and shall notify in writing the executing member or other financial institution of his or her association with the employer member and personal financial interest. The associated person shall instruct the executing member or other financial institution to provide to the employer member duplicate account statements and confirmations as of the date of his or her association with the employer member.

.02 Account at Financial Institution Other Than a Member. — For the purposes of paragraph (c) of this Rule, with respect to any account opened or otherwise established at a financial institution other than a member, it shall be the obligation of the associated person to instruct the financial institution to provide duplicate account statements and confirmations to the employer member.

.03 Duplicate Account Statements and Confirmations. — The requirement to provide to the employer member duplicate account statements and confirmations shall not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements and confirmations.

.04 Failure to Receive Duplicate Account Statements and Confirmations. — If an employer member does not receive the duplicate account statements and confirmations required pursuant to this Rule in a timely manner, the employer member shall revoke its consent to maintain the account, and shall so notify the executing member or other financial institution in writing. The employer member shall promptly obtain records from the executing member that the account was closed.

.05 Other Financial Institution. — For the purposes of this Rule, the terms "other financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to Section 15(b)(11) of the Exchange Act, domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

* * * * *

Information Notice

Use of FINRA™ Logo

Member firms occasionally request permission to use the FINRA logo on their Web sites, business cards, stationery or other marketing materials. This Notice is a reminder that firms may not use the FINRA logo in any manner. However, a firm may refer to itself as a “FINRA Member Firm” or “Member of FINRA.”

Also, pursuant to NASD IM-2210-4, if a firm refers to its FINRA membership on its Web site, it is required to provide a hyperlink to FINRA's Web site (www.finra.org). Firms can view more information about the hyperlink requirement in NTM 07-47 (www.finra.org/ntm/07-47).

If you have any questions regarding FINRA's logo and trademarks, send an email to trademarks@finra.org.

April 29, 2009

Suggested Routing

- Advertising
- Compliance
- Legal
- Operations
- Senior Management

Key Topics

- Use of FINRA Name and FINRA-Owned Corporate Names

Referenced Rules & Notices

- NTM 07-47
- NASD IM-2210-4



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Disciplinary and Other FINRA™ Actions

Firms Fined, Individuals Sanctioned

Choice Investments, Inc. (CRD® #17665, Austin, Texas) and Donald Arthur Itzen (CRD #853436, Registered Principal, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000, \$10,000 of which was jointly and severally with Itzen. Itzen was suspended from association with any FINRA member in any principal capacity for 20 business days. Without admitting or denying the findings, the firm and Itzen consented to the described sanctions and to the entry of findings that the firm, acting through Itzen, approved a research report for a company that was issued to the firm's customers, but did not contain a disclosure that the firm had received compensation for investment banking services from the company. The findings stated that the firm, acting through Itzen, failed to ensure that the research reports contained such disclosure. The findings also stated that the firm issued subsequent research reports that did not contain such disclosure.

The suspension was in effect from March 16, 2009, through April 13, 2009. (FINRA Case #2007007159701)

Hallmark Investments, Inc. (CRD #135003, New York, New York) and Steven Gary Dash (CRD #2438498, Registered Principal, New City, New York) submitted an Offer of Settlement in which the firm was censured and fined \$15,000, and Dash was suspended from association with any FINRA member in any capacity for two months. In light of Dash's financial status, no monetary sanctions were imposed. Without admitting or denying the allegations, the firm and Dash consented to the described sanctions and to the entry of findings that the firm, acting through Dash, filed a membership application that was incomplete or inaccurate so as to be misleading, and failed to correct the filing. The findings stated that the firm, acting through Dash, failed to file a required application with FINRA for approval of change of ownership. The findings also stated that Dash engaged in private securities transactions without providing prior written notice to his member firms or securing the firms' written approval.

The suspension is in effect from April 6, 2009, through June 5, 2009. (FINRA Case #2006003689501)

Reported for April 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).

Firm and Individual Fined

LF Financial, LLC (CRD #38619, Boca Raton, Florida) and Jed Philip Kaplan (CRD #1622929, Registered Principal, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm and Kaplan were censured and fined \$15,000, jointly and severally. Without admitting or denying the findings, the firm and Kaplan consented to the described sanctions and to the entry of findings that the firm, acting through Kaplan, failed to report, or timely report, disclosable settlements; failed to timely report disclosable regulatory orders; and failed to timely file summary and statistical information for customer complaints that the firm received. The findings stated that the firm, acting through Kaplan, failed to file a Uniform Application for Securities Industry Registration or Transfer (Form U4) amendment and failed to timely file amendments to Uniform Applications for Broker-Dealer Registration (Forms BD), Forms U4 or Uniform Termination Notices for Securities Industry Registration (Forms U5). (FINRA Case #2007007150401)

Firms Fined

Chase Investment Services Corp. (CRD #25574, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$150,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accurately complete Forms U5 following the termination of registered representatives alleged to have committed theft, fraud or violations of investment-related rules. The findings stated that the firm's failure to complete Forms U5 hindered the investing public's ability to access information regarding the termination of registered representatives. The findings also stated that the firm failed to establish and maintain a supervisory system and written procedures reasonably designed to achieve compliance with its obligation to complete and submit accurate Form U5 filings to FINRA. (FINRA Case #2007009764901)

City National Securities, Inc. (CRD #103705, Beverly Hills, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$315,000, and required to submit to a buyback offer to purchase at par auction rate securities (ARS) subject to auctions that have not been successful as of October 21, 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 six months from the date of the 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 21, 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 a Special Arbitration Program (SAP), and provide FINRA with a report 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 its communications with the public, including customers and prospective customers, in the marketing and sale of ARS, were not fair and balanced, and did not provide a sound basis for evaluating the facts in regards to the 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, that investments in ARS could become illiquid, and that customers might be unable to obtain access to funds invested in ARS for substantial time periods. The findings also stated that the firm 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 securities laws and applicable FINRA and MSRB rules, such as maintaining procedures to ensure that its registered representatives accurately described ARS to customers during sales presentations and provided customers with adequate disclosures of the risks of ARS. 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 written materials used in connection with the marketing and sale of ARS complied with the applicable disclosure standards in NASD® Rules 2210 and 2211, and MSRB Rule G-21. **(FINRA Case #2008014620101)**

David A. Noyes & Company (CRD #205, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report to the NASD/NASDAQ Trade Reporting Facility® (NNTRF) or the Over-the-Counter (OTC) Reporting Facility (OTCRF) the correct symbol indicating whether it executed transactions in reportable securities in a principal, “riskless” principal or agency capacity. The findings stated that the firm failed to report the short sale or short exempt indicator for short sales. The findings also stated that the firm transmitted reports to the Order Audit Trail System (OATS™) that contained inaccurate, incomplete or improperly formatted data, in that the reports contained inaccurate timestamps, incorrect order-type codes and incorrect information for proprietary transactions in a market-making security. The findings also included that the firm failed to provide order memoranda and failed to memorialize correctly order information, order receipt time or the order type code. **(FINRA Case #2007008322001)**

Deutsche Bank Securities Inc. (CRD #2525, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$43,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it transmitted reports to OATS that contained inaccurate data in that the reports were improperly submitted with a Reporting Exception Code of “P” when, in fact, the transactions were not intra-firm proprietary executions. The findings stated that the firm failed to report required transactions in Trade Reporting and Compliance Engine™ (TRACE™)-eligible securities to TRACE within 15 minutes of execution time. The findings also stated that the firm failed to report information regarding transactions effected in municipal securities to the Real-Time Transaction Reporting System (RTRS) within 15 minutes of time of

trade to an RTRS Portal. The findings also included that the firm failed to timely report transactions that required a .RO, .RA or .RX modifier to the NNTRF. FINRA found that the firm failed to provide written notification disclosing to its customers its correct capacity in transactions; failed to disclose the type of compensation it received on confirmations; failed to provide written notification disclosing to its customers that transactions were executed at an average price; and failed, when it acted as principal for its own account, to provide written notification disclosing to a customer that it was a market maker in the security. **(FINRA Case #2006005064401)**

EuroPacific Capital, Inc. (CRD #8361, Darien, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$37,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely adopt a written Anti-Money Laundering (AML) program, provide AML training and respond to information requests from the Financial Crimes Enforcement Network of the U.S. Department of the Treasury. The findings stated that the firm failed to file an application to obtain FINRA's approval for a material change in its business operations when its minimum net capital increased due to the receipt of customer checks. The findings also stated that the firm's Web site did not present balanced discussions of risks and contained misleading, exaggerated and unwarranted statements, and contained comparisons of services that failed to disclose all material differences. The findings also included that the firm failed to establish and maintain a supervisory system and written procedures reasonably designed to ensure compliance with rules concerning best execution of customer foreign securities transactions. **(FINRA Case #2005003364102)**

J.J.B. Hilliard, W.L. Lyons, LLC (CRD #453, Louisville, Kentucky) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to pay \$5,987, plus interest, in restitution to investors. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it sold or bought corporate bonds to or from customers and failed to sell or buy the bonds at a price that was fair, taking into consideration all relevant circumstances, including market conditions with respect to each bond at the time of the transaction, the expense involved and that the firm was entitled to a profit. **(FINRA Case #2006004293901)**

Macquarie Capital Markets North America Ltd. (CRD #38108, Toronto, Ontario, Canada) 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, as an Intermarket Trading System/Computer Assisted Execution System (ITS/CAES) market maker, it purchased or sold ITS/CAES securities, whether in a principal capacity or as an agent, at a price that was lower than the bid or higher than the offer displayed from an ITS Participant Exchange or ITS/CAES market maker. The findings stated that the firm executed block transactions in ITS/CAES securities as an ITS/CAES market maker at an execution price outside the best quotation for the security displayed by any ITS participant market or other ITS/CAES market maker, without sending to each other participant market and each ITS/CAES market maker displaying a bid or offer superior to the execution price, a commitment to trade, at the execution price, to satisfy the number of shares displayed in that participant market's bid or offer. **(FINRA Case #2006005741801)**

National Investor Services Corp. (CRD #39410, Bellevue, Nebraska) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$75,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish, maintain and enforce an adequate supervisory system and written supervisory procedures to supervise its securities lending business and registered securities lending representatives to prevent and detect fraudulent activity. The findings stated that the firm did not include a description of what managers were to look for in reviewing Loanet reports, the steps to be taken if questionable activity was discovered, and how to document and maintain documentation of supervisors' oversight activities. The findings also stated that the firm failed to take steps to detect and prevent a registered representative from participating in fraudulent stock loan transactions for his personal benefit. The findings also included that the firm failed to establish and maintain a separate system of follow-up and review to ensure that delegated supervisory authority and responsibility were being properly exercised. FINRA found that the firm permitted a stock loan supervisor to review his own transactions. **(FINRA Case #200701187701)**

Northeast Securities, Inc. (CRD #25996, Mitchelfield, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise its written supervisory procedures regarding Securities and Exchange Commission (SEC) Rules 202, 203 and 606, market order protection, soft dollars, physical security of equipment, best execution, trading halts, Chinese Walls, recordkeeping, anti-competitive practices, firm quotations, OATS, OATS clock synchronization, registration, qualification of supervisors, limit order display, the three-quote rule, short sale order marking, short sale indicator reporting and accepting trade reports within 20 minutes. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS and submitted inaccurate information to OATS. The findings stated that the firm failed to notify customers, in writing, at least annually, of the availability on request of information concerning the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request; whether the orders were directed orders or non-directed orders; and the transaction times, if any, that resulted in such orders. The findings also stated that the firm made available a report on its routing of non-directed orders in covered securities that included incorrect order routing information. The findings also included that the firm failed to show the time, or the correct time, of execution; the time, or the correct time, of entry; partial executions on brokerage order memoranda; failed to show the terms and conditions, or the accurate terms and conditions, on brokerage order memoranda; and failed to show the execution time in seconds for executions on one brokerage order memorandum. FINRA found that the firm failed to preserve, for a period of not less than three years, the first two in an accessible place, brokerage order memoranda and customer account statements. FINRA also found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and/or FINRA rules addressing SEC Rules 202, 203 and 606, market order protection, soft dollars, physical security of

equipment, best execution, trading halts, Chinese Walls, recordkeeping, anti-competitive practices, firm quotations, OATS, OATS clock synchronization, registration, qualification of supervisors, limit order display, the three-quote rule, short sale order marking, short sale indicator reporting and accepting trade reports within 20 minutes. (FINRA Case #2006006191401)

Raymond James & Associates, Inc. (CRD #705, St. Petersburg, Florida) 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 processed corporate and municipal bond transactions that it received from the registered investment advisors handling customers' accounts at the firm's introducing/correspondent firms, and used the introducing/correspondent firms' market participation identifier (MPID), as well as its own MPID, when reporting corporate bond trades to TRACE and when reporting municipal bond transactions to the Municipal Securities Rulemaking Board (MSRB), when it should have solely used its own MPID. (FINRA Case #2006003705501)

Schonfeld Securities, LLC (CRD #23304, Jericho, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$47,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in certain securities and, for each order, failed to make/annotate an affirmative determination that the firm would receive delivery of the security on the customer's behalf or that the firm could borrow the security on the customer's behalf for delivery by settlement date. The findings stated that in connection with orders, the firm effected short sales in certain securities for its proprietary account(s) and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for securities' delivery by settlement date. The findings also included that the firm accepted short sale orders in an equity security from another person, or effected short sales in an equity security for its own account, without borrowing the security, or entering into a bona fide arrangement to borrow the security; or having reasonable grounds to believe the security could be borrowed so that it could be delivered on the date delivery is due; and documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. FINRA found that the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning NASD Rule 3370 and SEC Rule 203(b)(1). FINRA also found that the firm failed to timely report Reportable Order Events (ROEs) to OATS. (FINRA Case #2005000686501)

Spartan Securities Group, Ltd. (CRD #104478, St. Petersburg, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$31,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to submit to the NNTRF, for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal," or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The findings stated that the firm failed to report last sale reports of transactions in designated securities to the NNTRF, and failed to report the correct symbol to the OTCRF indicating

whether the firm executed one transaction in reportable securities in a principal or agency capacity. The findings also stated that firm failed to submit to the OTCRF, for the offsetting “riskless” portion of “riskless” principal transactions in designated securities, either a clearing-only report with a capacity indicator of “riskless principal,” or a non-tape, non-clearing report with a capacity indicator of “riskless principal,” and failed to report last sale reports of transactions in OTC equity securities to the OTCRF. The findings also included that the firm incorrectly reported the second leg of “riskless” principal transactions as “principal” or “agent” to the OTCRF. FINRA found that the firm failed to transmit required information to OATS for ROEs, and transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. FINRA also found that the firm, when it acted as principal for its own account, failed to provide written notification disclosing to its customers that it was a market maker in each security. In addition, FINRA determined that the firm failed to show the execution time, the order receipt time, the correct capacity, and the terms and conditions on brokerage order memoranda, and failed to show the cancellation time on one brokerage order memorandum. Furthermore, FINRA determined that the firm failed to preserve brokerage order memoranda for a period of not less than three years, the first two in an accessible place. Moreover, FINRA determined that the firm executed short sale transactions and failed to report each of the transactions to the OTCRF with the correct symbol indicating whether the transaction was a buy, sell, sell short or cross for transactions in reportable securities. FINRA also found that the firm failed to make publicly available for a calendar quarter a report on its routing of non-directed orders in covered securities during that quarter. (FINRA Case #2007009924901)

StockCross Financial Services, Inc. (CRD #6670, Beverly Hills, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$60,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to preserve all employee electronic communications, including personal email and instant messaging services. The findings stated that the firm’s written procedures failed to provide for any reasonable follow-up and review to ensure that electronic communications were, in fact, being printed out and reviewed, and because it failed to adequately preserve employee electronic communications, it could not show that it was reviewing and approving them. The findings also stated that the firm failed to demonstrate that it was preserving or reviewing facsimile communications that branch office employees sent or received. FINRA found that the firm failed to make and preserve books and records related to customer accounts, and failed to maintain a record of the individual at a branch office who could explain the types of records maintained at that branch and the information contained in the records. (FINRA Case #2007009467901)

UBS International Inc. (CRD #107726, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to revise its written supervisory procedures regarding TRACE reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the lower of yield to call or yield to maturity for transactions in TRACE-eligible securities to TRACE. The findings stated that the firm failed to provide written notification disclosing to its customers required yield information concerning transactions in TRACE-eligible securities. 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 TRACE reporting. (FINRA Case #2007010449301)

The Vertical Trading Group, LLC (CRD #104353, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$25,000 and required to revise its written supervisory procedures regarding the One Percent Rule; the dissemination of quotations to vendors; monthly order execution information; SEC Regulation SHO's locate requirements; the acceptance of short sale orders for threshold securities; maintaining identical quotes; market order protection; best execution for block orders, not held orders and orders with special pricing terms or conditions; reporting the capacity in which trades are executed; ensuring the accuracy of trades reported on the member's behalf; the tick test; and books and records.

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to properly identify orders as short sale orders and, therefore, failed to report to the NNTRF the correct symbol indicating whether transactions were buy, sell, sell short, sell short exempt or cross for transactions in reportable securities, and to properly mark the orders as short. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable laws, regulations and FINRA rules concerning the One Percent Rule; the dissemination of quotations to vendors; monthly order execution information; Regulation SHO's locate requirements; the acceptance of short sale orders for threshold securities; maintaining identical quotes; market order protection; best execution for block orders, not held orders and orders with special pricing terms or conditions; reporting the capacity in which trades are executed; ensuring the accuracy of trades reported on the member's behalf; the tick test; and books and records. The findings also stated that the firm failed to produce documentation that it enforced its written supervisory procedures concerning the marking of order tickets and locate requirements. The findings also included that the firm failed to report the correct symbol to the NNTRF or OTCRF indicating whether the firm executed transactions in reportable securities in a principal, "riskless" principal or agency capacity. (FINRA Case #2006004088101)

Wachovia Capital Markets, LLC (CRD #126292, Charlotte, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$18,500 and required to revise its written supervisory procedures regarding best execution, sales indicator order marking and trade input, soft dollar agreements and OATS. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in designated securities to the NNTRF, and failed to designate some of them as late. The findings stated that the firm executed short sale transactions and failed to report them to the NNTRF with the correct symbol indicating whether the transactions were buy, sell, sell short, sell short exempt or cross for transactions in reportable securities. The findings also stated that the firm failed to submit to the NNTRF for the offsetting, "riskless" portion of "riskless" principal transaction(s) in designated securities, either a clearing-only report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity

indicator of “riskless principal.” The findings also included that the firm incorrectly submitted non-tape reports to the NNTRF that inaccurately classified last sale reports as the second leg of “riskless” principal transactions when they were “principal” sales that should have been media-reported to the NNTRF. FINRA found 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 best execution, sales indicator order marking and trade input, soft dollar agreements and OATS. **(FINRA Case #2007008312701)**

Individuals Barred or Suspended

John Wellington Albertson Jr. (CRD #4577872, Registered Representative, Round Rock, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 45 business days. The fine must be paid either immediately upon Albertson’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, Albertson consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation outside the scope of his relationship with his member firm, without providing prompt written notice to his member firm.

The suspension is in effect from March 2, 2009, through May 4, 2009.
(FINRA Case #2008013293501)

Shawn Paul Arlauckas (CRD #2877644, Registered Principal, Bricktown, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Arlauckas consented to the described sanction and to the entry of findings that he churned customers’ accounts, resulting in substantial losses, and recommended these excessive securities transactions without having reasonable grounds for believing that the transactions were suitable in view of the size and frequency of the transactions, the nature of the accounts, and the customers’ financial situation, investment objectives and needs. **(FINRA Case #2007009765701)**

Daniel Gene Barnes (CRD #4815833, Registered Representative, Raleigh, North Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for four months. The fine must be paid either immediately upon 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, Barnes consented to the described sanctions and to the entry of findings that he exercised discretion in a customer’s account to liquidate the customer’s mutual fund positions without the customer’s written authorization or his member firm’s acceptance of the account as discretionary.

The suspension is in effect from February 17, 2009, through June 16, 2009.
(FINRA Case #2008012426801)

Carlos Manuel Bravo (CRD #1209899, Registered Representative, Miami, Florida) submitted an Offer of Settlement in which he was suspended from association with any FINRA member in any capacity for 20 business days. In light of Bravo's financial status, no monetary sanctions were imposed. Without admitting or denying the allegations, Bravo consented to the described sanction and to the entry of findings that he engaged in private securities transactions, for compensation, without prompt written notice to, or prior written approval from, his member firm.

The suspension was in effect from March 2, 2009, through March 27, 2009.
(FINRA Case #2007011272601)

Christian Powers Call (CRD #2290196, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$5,000 and suspended from association with any FINRA member in any capacity for 45 days. The fine must be paid either immediately upon Call'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, Call consented to the described sanctions and to the entry of findings that he supplied price quotes to a propriety trader at another broker-dealer without any independent verification of the accuracy of the prices, but made it appear as if he were providing good faith price quotes. The findings stated that had Call attempted to verify the actual market prices of the corporate bonds at issue, he would have known that the pricing information he re-sent to the trader was inaccurate. The findings also stated that the trader relied on the inaccurate prices quotes to mark positions in his trading book, thereby enhancing his profit and loss statement at his firm, causing the firm to record inaccurate prices for corporate bonds on its books and records.

The suspension is in effect from March 2, 2009, through April 15, 2009.
(FINRA Case #2007009462301)

Bill Q. Chen (CRD #4442892, Registered Representative, Arcadia, California) submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Chen consented to the described sanction and to the entry of findings that he engaged in misuse of customer funds when, without a customer's knowledge, authorization or consent, he caused the transfer of \$10,000 from the customer's bank account to the bank account of a business acquaintance to whom Chen owned money. The findings stated that the firm's operations personnel detected the transaction and then Chen reversed it.
(FINRA Case #2007011324501)

Ronald R. Cino (CRD #1550944, Registered Representative, Mamaroneck, 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 five business days. Without admitting or denying the findings, Cino consented to the described sanctions and to the entry of findings that he exercised discretion and effected trades in customer accounts without the customers' written authorization and without his member firm's acceptance of the accounts as discretionary.

The suspension was in effect from March 2, 2009, through March 6, 2009.
(FINRA Case #2007009521601)

Patrick Vern Clarkson (CRD #4171787, Registered Representative, Eugene, Oregon) 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, Clarkson consented to the described sanction and to the entry of findings that he submitted variable life insurance applications for customers to his member firm, signing customers' names on various documents without the customers' knowledge, authorization or consent. The findings stated that Clarkson created checks purporting to be from the customers or purchased money orders with his own funds, signing the customers' names to the money orders and submitted them with the insurance applications to his member firm without the customers' knowledge, authorization or consent. The findings also stated that by engaging in this conduct, Clarkson received \$41,667.98 in commissions from his firm, which subsequently reversed the commissions. (FINRA Case #2007008391201)

Jordan Zuulun Cohen (CRD #4191994, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Cohen'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, Cohen consented to the described sanctions and to the entry of findings that he recommended and effected excessive and unsuitable securities transactions in a customer's non-discretionary account, given the customer's experience, investment objectives, risk tolerance, financial resources and circumstances. The findings stated that Cohen effected buy orders in a corporate customer's non-discretionary account without prior authorization or consent from the customer's signatory.

The suspension is in effect from March 2, 2009, through September 1, 2009.
(FINRA Case #2007009408501)

Dhulsini Hemani De Zoysa (CRD #3127323, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000, barred from association with any FINRA member in any capacity requiring Series 86 and/or Series 87 (Research Analyst) registration, and suspended from association with any member firm in any capacity for 12 months. The fine must be paid either immediately upon De Zoysa'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, De Zoysa consented to the described sanctions and to the entry of findings that she published research reports in which she made false, exaggerated, unwarranted or misleading statements, and published the reports, which she knew were false or misleading. The findings stated that De Zoysa was involved in a romantic relationship with an executive of a company within her coverage area and failed to disclose the

relationship, which created an actual, material conflict of interest. The findings also stated that De Zoysa, in contravention of her firm's directive, created and deleted documents on her laptop computer after commencement of the firm's internal investigation.

The suspension is in effect from February 17, 2009, through February 16, 2010.
(FINRA Case #2007010562701)

Verne T. Dickerson (CRD #5508658, Associated Person, Vienna, Virginia) 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, Dickerson consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his firm's background disclosure form and on his Form U4. The findings stated that Dickerson failed to respond to FINRA requests for information.
(FINRA Case #2008013978501)

William Andrew Drake Jr. (CRD #5481579, Associated Person, Tigard, 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 one month. The fine must be paid either immediately upon Drake'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, Drake consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension was in effect from February 17, 2009, through March 16, 2009.
(FINRA Case #2008012706601)

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

The U.S. Court of Appeals was petitioned for review, and the sanction is in effect pending consideration of the petition. **(FINRA Case #C9B20040098)**

Steven Roger Fence (CRD #2618764, Registered Representative, Little Egg Harbor, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Fence consented to the described sanction and to the entry of findings that he engaged in excessive and unsuitable trading in bonds and mutual funds in elderly customers' accounts without having a reasonable basis for believing that the recommendations were suitable based upon the customers' investment objectives, financial situation and needs. The findings stated that Fence failed to appear for FINRA on-the-record interviews. **(FINRA Case #2007007969801)**

Dianne Marie Goedtel (CRD #4690759, Registered Representative, Centereach, New York) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 business days. Without admitting or denying the findings, Goedtel consented to the described sanctions and to the entry of findings that she improperly altered a Mutual Fund Share Class Disclosures form for purposes of facilitating a married couple's mutual fund transactions instead of having the couple execute new forms. The findings stated that Goedtel did not disclose to her member firm or the couple that she had altered the disclosure form.

The suspension was in effect from March 2, 2009, through April 13, 2009.
(FINRA Case #2007010813201)

Jon David Gornbein (CRD #4177639, Registered Representative, Keego Harbor, Michigan) 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, Gornbein consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information. (FINRA Case #2007008641101)

Joseph William Hagan (CRD #1980623, Registered Representative, Colts Neck, New Jersey) was fined \$10,000, barred from association with any FINRA member in any principal capacity and suspended from association with any FINRA member in any capacity for three months. The sanctions were based on findings that Hagan evaded an Internal Revenue Service (IRS) garnishment of wages order by routing commissions he earned to an unregistered person at his member firm. The findings stated that Hagan willfully failed to disclose material information on his Forms U4.

The suspension is in effect from February 17, 2009, through May 16, 2009.
(FINRA Case #2006003825001)

Gary Allen Hanson (CRD #1909594, Registered Representative, Colorado Springs, Colorado) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for nine months. In light of Hanson's financial status, no monetary sanctions have been imposed. Without admitting or denying the findings, Hanson consented to the described sanction and to the entry of findings that, while associated with a member firm, he participated in outside business activities, for commissions and compensation, and failed to provide the firm with prompt written notice.

The suspension is in effect from February 17, 2009, through November 16, 2009.
(FINRA Case #2007010999601)

Douglas William Hemke (CRD #1204584, Registered Principal, St. Joseph, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$30,000, suspended from association with any FINRA member in any capacity for 30 business days and suspended from association with any FINRA member in any principal capacity for three months. The suspensions shall run concurrently. The fine must be paid either immediately upon Hemke's reassociation with a FINRA member firm following his suspensions, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the

findings, Hemke consented to the described sanctions and to the entry of findings that he conducted a securities business while failing to maintain his member firm's required minimum net capital. The findings stated that Hemke exercised discretion in customers' accounts without receiving written customer authorization. The findings also stated that Hemke exercised discretion in customers' accounts when his firm's procedures prohibited discretionary accounts, and later when his firm allowed discretionary accounts but only after written customer authorization was received and the accounts were approved as discretionary accounts. The findings also included that Hemke failed to enforce his firm's procedures relating to discretionary accounts.

The suspension in any capacity was in effect from February 17, 2009, through March 30, 2009. The suspension in all principal capacities is in effect from February 17, 2009, through May 16, 2009. **(FINRA Case #2007008095501)**

Mitsuhiro Ide (CRD #4782752, Registered Representative, Oklahoma City, Oklahoma) 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 six months. The fine must be paid either immediately upon Ide'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, Ide consented to the described sanctions and to the entry of findings that he engaged in an outside business activity, for compensation, without providing notice to his member firm. The findings stated that Ide provided inaccurate information and made misstatements to his firm relating to his undisclosed outside business activity on annual audit questionnaires and during a firm internal investigation.

The suspension is in effect from March 16, 2009, through September 15, 2009. **(FINRA Case #2007009360801)**

Jeff David Jewett (CRD #4568636, Registered Representative, Bend, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, which includes the disgorgement of \$5,000 in financial benefits received, and suspended from association with any FINRA member in any capacity for 18 months. The fine must be paid either immediately upon Jewett'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, Jewett consented to the described sanctions and to the entry of findings that he participated in private securities transactions, for compensation, without prior written notice to, or prior written approval from, his member firm.

The suspension is in effect from February 17, 2009, through August 16, 2010. **(FINRA Case #2007008994701)**

William Francis Kelly (CRD #2456876, Registered Representative, Fort Myers, Florida) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Kelly failed to respond to FINRA requests for information.

The findings stated that Kelly borrowed \$5,000 from a customer contrary to his member firm's written supervisory procedures prohibiting registered representatives from borrowing from a customer unless the customer was a family member; and the customer was not related to Kelly. **(FINRA Case #2007009131501)**

James Joseph Miller (CRD #1057886, Registered Representative, Tampa, 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, Miller consented to the described sanction and to the entry of findings that he received \$176,942 from customers to be deposited into their respective brokerage accounts but, instead, he deposited the funds into his personal bank account without the customers' authority, and used the funds to pay for his own personal expenses. **(FINRA Case #2008014125301)**

Pamela Louise Mirabella (CRD #4956888, Associated Person, Peabody, Massachusetts) 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 six months. The fine must be paid either immediately upon Mirabella'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, Mirabella consented to the described sanctions and to the entry of findings that she failed to respond timely to FINRA requests for information and to appear for an on-the-record interview.

The suspension is in effect from February 17, 2009, through August 16, 2009. **(FINRA Case #2008012150702)**

Rudy Rinehart Mueller (CRD #342122, Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, Mueller consented to the described sanctions and to the entry of findings that he executed discretion in customers' accounts without prior written authorization that his member firm accepted. In certain instances, Mueller exercised time and price discretion after the business day on which the customer granted authorization to purchase or sell a definite amount of a specified security, without the customers' written authorization.

The suspension was in effect from March 16, 2009, through March 27, 2009. **(FINRA Case #2008012178401)**

Patricia Estela Murray (CRD #2039682, Registered Representative, Birmingham, Alabama) 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, Murray consented to the described sanction and to the entry of findings that she charged a customer at her member firm a fictitious account "maintenance fee" when her firm imposed no such fee on customers. The findings stated that Murray directed the customer to pay the fee by way of a personal check written out to "cash." The findings also stated that the customer complied with Murray's instructions and gave her a check for \$4,025.61, which Murray subsequently cashed. **(FINRA Case #2008012850701)**

Matthew Edward O'Callaghan (CRD #5273940, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was censured, fined \$10,000 and suspended from association with any FINRA member in any capacity for 18 months. The fine must be paid either immediately upon O'Callaghan'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, O'Callaghan consented to the described sanctions and to the entry of findings that he improperly priced various corporate bond positions in his proprietary trading book to improve the profit and loss totals reported in his book. The findings stated that O'Callaghan's member firm became aware of the mismarkings during a routine reconciliation of his positions for daily mark-to-market purposes. The findings also stated that O'Callaghan's mismarkings resulted in his firm recording inaccurate prices for corporate bonds on its books and records.

The suspension is in effect from February 17, 2009, through August 16, 2010. (FINRA Case #2007009462302)

David Alejandro Pedroza (CRD #2326925, Registered Principal, Holmdel, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$40,000, suspended from association with any FINRA member in any capacity for four months and required to pay \$933.33 in disgorgement. The fine must be paid either immediately upon Pedroza'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, Pedroza consented to the described sanctions and to the entry of findings that he was the trader responsible for executing his member firm's transactions in the common stock of a Pink Sheet security, and was the co-head of the firm's OTC Bulletin Board™ (OTCBB™) and Pink Sheet trading desk. The findings stated that Pedroza failed to honor his firm's published quotation in the security in responding to liability orders and generally supervised another trader who declined orders, causing the firm to fail to honor its published quotation. The findings also stated that Pedroza filled market-on-close orders at a price above the penultimate trade of the day in the security, reducing the firm's losses by approximately \$56,000.

The suspension is in effect from March 2, 2009, through July 1, 2009. (FINRA Case #2005001265802)

Ronald Pellegrino (CRD #832857, Registered Principal, Bellingham, Washington) was barred from association with any FINRA member firm in any principal capacity. The SEC sustained the sanction following appeal of a National Adjudicatory Council (NAC) decision. The sanction was based on findings that Pellegrino, acting on a member firm's behalf, failed to develop an adequate supervisory system reasonably designed to achieve compliance with applicable securities laws, regulations and NASD Rules, and ignored "red flags" that should have resulted in additional supervisory scrutiny. The findings stated that Pellegrino's supervisory failures resulted in firm registered representatives making unsuitable recommendations and misleading customers as to the risks of proprietary products over an extended time. The findings also stated

that Pellegrino facilitated the representatives' misconduct by promoting sales to firm customers rather than improving compliance. The findings also stated that Pellegrino failed to enforce the firm's written supervisory procedures regarding suitability determinations, and failed to take reasonable steps to monitor and have the firm perform appropriate individual suitability determinations based on each investor's personal financial needs as prescribed in the firm's supervisory and compliance manuals rather than solely on suitability guidelines. **(FINRA Case #C3B20050012)**

Vance A. Philpotts (CRD #3097612, Associated Person, Cambria Heights, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Philpotts consented to the described sanction and to the entry of findings that, while employed as an unregistered income processing specialist with a member firm, he transferred dividends and other income totaling \$10,959.52 from the firm's operational account to his brokerage account for his own use and benefit, without authorization. The findings stated that Philpotts repaid half of the money he converted and signed a promissory note agreeing to pay the remainder in monthly installments. **(FINRA Case #2008012215701)**

Phillip Alan Pickle (CRD #2443472, Registered Principal, Broken Arrow, Oklahoma) 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 nine months. The fine must be paid either immediately upon Pickle'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, Pickle consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction and failed to give prior written notice to, or receive written approval from, his member firm. The findings stated that Pickle engaged in outside business activities, for compensation, without prompt written notice to his member firm. The findings also stated that Pickle denied receipt of outside compensation when his member firm specifically asked him.

The suspension is in effect from March 2, 2009, through December 1, 2009.
(FINRA Case #2007011096901)

Michael Julius Resnick (CRD #1267872, Registered Principal, Phoenix, Arizona) 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, Resnick consented to the described sanction and to the entry of findings that, while associated with a member firm, he contacted former member firm clients to determine if they were interested in moving their accounts to his current member firm so that he could provide assistance with the accounts. The findings stated that Resnick telephoned clients who had not responded to his earlier calls or correspondence, and left messages advising that he was going to submit a request to his former firm to have them reassigned to him as their registered representative unless they instructed him otherwise. The findings also stated that when the clients did not respond to his call, Resnick cut and pasted their signatures to broker of record

change forms without their authorization or consent. The findings also included that, as a result of his actions, Resnick was able to continue to serve as the broker of record for the customers' mutual fund accounts, but his current firm terminated him for his misconduct and ultimately returned the accounts to his former firm. **(FINRA Case #2008012530901)**

Gail Marie Rodriguez (CRD #4271558, Registered Representative, East Stroudsburg, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for four months. The fine must be paid either immediately upon Rodriguez' 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, Rodriguez consented to the described sanctions and to the entry of findings that, on three separate occasions, she deposited \$6.00 to an account she maintained at her bank through a bank automatic teller machine (ATM) but intentionally entered \$600 into the ATM as the deposit amount to cause the account to appear temporarily to hold more funds than it actually held. The findings stated that immediately after each deposit, Rodriguez caused roughly \$500 to be transferred directly from the account to which she made the deposits to a separate account she maintained at her bank to pay personal expenses. The findings also stated that the funds transferred to the second account temporarily enabled Rodriguez to have sufficient funds in that account to satisfy all payments and withdrawals made against it.

The suspension is in effect from March 16, 2009, through July 15, 2009. **(FINRA Case #2008014103401)**

Philip Donato Rossi (CRD #2001232, Registered Representative, Shaker Heights, Ohio) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Rossi engaged in outside business activities, for compensation, and failed to give prompt written notice to his member firm. The findings stated that Rossi failed to disclose material information on his Form U4 and failed to respond to FINRA requests for information. **(FINRA Case #2007010767201)**

Doria Sabia-Florence (CRD #1136269, Registered Representative, Statesboro, Georgia) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Sabia-Florence completed and forged Letters of Authorization (LOAs) instructing her member firm to transfer funds totaling \$85,100 from various customers' accounts to a firm account her relatives owned, without the customers' authorization. The findings stated that Sabia-Florence received checks totaling \$74,000 from her relatives' account and used the funds for her own benefit. The findings also stated that Sabia-Florence fraudulently induced a customer to give her \$30,000, representing that she would use the funds to purchase a bond for the customer's account but, instead, deposited the funds directly into her bank account and used the funds for her personal benefit. **(FINRA Case #2007008458901)**

Julianna Marie Shadinger (CRD #3215505, Registered Representative, South Bend, Indiana) submitted an Offer of Settlement in which she was fined \$5,000, suspended from association with any FINRA member in any capacity for six months, and required

to requalify by examination before reentering the securities industry. Without admitting or denying the allegations, Shadinger consented to the described sanctions and to the entry of findings that, by use of the instrumentalities of interstate commerce or the mails, she made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to public customers. The findings stated that Shadinger made unsuitable recommendations to the customers, causing their funds to be invested in Class A shares of a front-end load mutual fund, which did not have check writing privileges as Shadinger had described, and the funds also incurred fees in the accounts. The findings also stated that Shadinger failed to establish and maintain an available cash balance in the customers' accounts from which they could have written checks, but instead she liquidated mutual fund share positions to cover the amounts of the checks, thereby exercising discretion over their accounts. FINRA found that the customers did not grant Shadinger written authorization to exercise discretion, nor did her member firm accept the accounts as discretionary.

The suspension is in effect from February 17, 2009, through August 16, 2009. (FINRA Case #2006006045301)

Ralph Matthew Shino (CRD #1380293, Registered Principal, Scottsdale, Arizona) submitted an Offer of Settlement in which he was fined \$25,000 and suspended from association with any FINRA member in any principal capacity for six months. The fine must be paid either immediately upon Shino's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the allegations, Shino consented to the described sanctions and to the entry of findings that he failed to supervise a registered principal in a manner reasonably designed to achieve compliance with applicable laws, regulations and rules pertaining to his investment banking and securities business. The findings stated that Shino knew, or should have known, that firm customers were engaging in improper market timing and late trading, and that a registered representative was facilitating the activity. The findings also stated that Shino failed to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable laws, rules and regulations with respect to the individual's activity in customer accounts, his investment banking and securities business, his market-timing business or for the review of mutual fund order receipt, entry and execution to detect and prevent late trading. The findings also included that Shino failed to establish, maintain and enforce written supervisory procedures to supervise the types of business in which the firm and its representatives engaged.

The suspension is in effect from March 16, 2009, through September 15, 2009. (FINRA Case #E3A2003049501)

Yuvraj Singh (CRD #4548200, Registered Representative, Mountain View, California) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Singh failed to respond to FINRA requests for information and documents. (FINRA Case #2008012677502)

Jonathan Dominic Soranno (CRD #5039149, Registered Representative, Astoria, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Soranno consented to the described sanction and to the entry of findings that he executed short-term mutual fund switch transactions in a customer's non-discretionary IRA account without the customer's knowledge and authorization. The findings stated that to conceal his conduct, Soranno failed to send trade confirmations and prospectuses to the customer, failed to obtain mutual fund switch letters, and provided misleading responses to his firm's inquiries about the propriety of the trading in the customer's account. The findings also stated that the transactions were unsuitable given the customer's long-term investment goals and objectives, and caused the customer to suffer losses and incur commissions and fees, including \$3,280 in commission payments to Soranno. The findings included that Soranno provided misleading information on employment application documents submitted to another member firm. **(FINRA Case #2007009359901)**

Edward Randolph Stern (CRD #1565355, Registered Representative, Poulsbo, Washington) 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 30 business days. The fine must be paid either immediately upon Stern'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, Stern consented to the described sanctions and to the entry of findings that, upon learning that a customer was going to need \$350,000, he liquidated positions from the customer's non-discretionary account without the customer's prior authorization to sell the securities. The findings stated that Stern knew that the customer was not aware of the sales of his securities, and after the transactions occurred, he sent messages to the customer about the sales by voicemail and email.

The suspension was in effect from February 17, 2009, through March 30, 2009. **(FINRA Case #2008011992101)**

Cary William Sucoff (CRD #1156732, Registered Principal, Cold Spring Harbor, New York) and **Lewis Mason (CRD #1797652, Registered Representative, Old Westbury, New York)** submitted a Letter of Acceptance, Waiver and Consent in which each was fined \$10,000 and suspended from association with any FINRA member in any capacity for 15 business days. Without admitting or denying the findings, Sucoff and Mason consented to the described sanctions and to the entry of findings that they engaged in outside business activities, for compensation, without providing prompt written notice to their member firm.

The suspensions were in effect from March 16, 2009, through April 3, 2009. **(FINRA Case #2007007357901)**

Allerton Towne (CRD #1212315, Registered Representative, Boca Raton, Florida) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Towne intentionally, and without authorization, converted \$4,181.81 from a customer account to the account of a corporation he owned with

the same name, and used the funds for personal expenditures. The findings stated that Towne engaged in outside business activities, for compensation, and failed to notify his member firm. The findings also stated that Towne failed to respond to FINRA requests for documents. **(FINRA Case #2005003031001)**

Individuals Fined

Jason Patrick Kavanaugh (CRD #2693303, Registered Principal, Ann Arbor, Michigan) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000. The fine must be paid either immediately upon Kavanaugh's reassociation with a FINRA member 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, Kavanaugh consented to the described sanction and to the entry of findings that he engaged in a private securities transaction without providing written notification to, and receiving written approval from, his member firm. **(FINRA Case #2008012199301)**

Andrew Shubert (CRD #1457528, Registered Principal, Woodmere, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and fined \$10,000. Without admitting or denying the findings, Shubert consented to the described sanctions and to the entry of findings that he failed to establish and maintain written procedures to supervise his member firm's business consulting services to issuers, including procedures that required a principal to approve the business consulting agreements or to review or supervise the services the firm provided to issuers. The findings stated that, as a result of Schubert's failing to establish and maintain written procedures, his member firm failed to detect or prevent market making violations. **(FINRA Case #2006006784201)**

Decision Issued

The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of 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.

Richard Grant Cody (CRD #2794558, Registered Representative, Boston, Massachusetts) was fined \$27,500 and suspended from association with any FINRA member in any capacity for three months. The sanctions were based on findings that Cody recommended and effected quantitatively and qualitatively unsuitable trades in customer accounts. The findings stated that Cody sent misleading and unapproved summary spreadsheets of their account holdings to customers. The findings also stated that Cody failed to timely amend his Form U4 with material information.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #2005003188901)**

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.

Leonard Charles Brown (CRD #3079259, Registered Representative, Phoenix, Arizona) was named as a respondent in a FINRA complaint alleging that he received \$20,000 from a customer to be invested in a real estate project, but instead deposited the funds in a bank checking account in the name of a business he owned and used the funds to pay personal expenses without the customer's authorization. The complaint alleges that Brown electronically submitted to his member firm an Outside Business Activities questionnaire in which he informed the firm of his ownership of the business, but stated that the business was "cattle ranching" and that his duties did not involve raising capital or issuing debt. The complaint also alleges that Brown failed to return the funds to the customer. (FINRA Case #2007009081801)

Jesse John Hinkley (CRD #5098659, Registered Representative, New Fairfield, Connecticut) was named as a respondent in a FINRA complaint alleging that he engaged in improper telephone solicitations of potential customers in connection with the offer of securities, and made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in light of the circumstance under which they were made, not misleading. The complaint alleges that Hinkley made false representations in the form of unwarranted price predictions, that lacked a reasonable basis for the predictions and touted companies, but omitted to disclose any risks associated with the proposed investments. The complaint also alleges that Hinkley falsely represented that he had years of success as a broker in managing customer accounts, when he had actually been a broker for less than a year, and misleadingly suggested that past performance implied future performance. The complaint further alleges that Hinkley falsely represented a minimum share requirement for processing an order through his firm. In addition, the complaint alleges that Hinkley used sales scripts that a registered principal of his firm had not approved prior to use; did not disclose the name of his member firm; failed to provide or offer available investment information supporting each recommendation; were not fair and balanced, omitted material facts, were materially misleading; and contained unwarranted price predictions and performance projections. The complaint also alleges that Hinkley failed to respond to FINRA requests for information and documents, and failed to appear for an on-the-record interview. (FINRA Case #2007007358602)

Christopher Jacob Martinez (CRD #4072355, Registered Representative, Tucson, Arizona) was named as a respondent in a FINRA complaint alleging that he withdrew funds totaling \$51,300 from his member firm's customer annuity accounts and converted the funds to his own use, without the customers' request or authorization. The complaint alleges that Martinez failed to respond to FINRA requests for information and documents. (FINRA Case #2007010851901)

Maria Duarte Pumariega (CRD #2419535, Registered Representative, Miami, Florida) was named as a respondent in a FINRA complaint alleging that she converted \$140,000 from a customer without permission and authority, and used the funds for her own use and benefit. The complaint also alleges that Pumariega failed to respond to FINRA requests for information. (FINRA Case #2007011884701)

Michael Alan Rosenblatt (CRD #1322095, Registered Principal, Cherry Hill, New Jersey) and David Steven Forman (CRD #1143810, Registered Representative, Voorhees, New Jersey) were named as respondents in a FINRA complaint alleging that they took control of a customer's \$5 million life insurance policy, sending payments to avoid a lapse in the policy without the customer's knowledge or consent; facilitated the sale of the policy with forged and falsified documents, and retained the entire amount of the sale proceeds totaling \$942,000 for themselves. The complaint alleges that Forman and Rosenblatt induced the customer to sign certain documents in furtherance of the transaction by leading him to believe that the policy was being offered to potential buyers for his benefit. (FINRA Case #2007007989901)

Victoria Ann Toth (CRD #4667623, Registered Representative, Chester, New York) was named as a respondent in a FINRA complaint alleging that she misappropriated \$15,000 from a customer's account without permission, and used the funds for her own use and benefit. The complaint alleges that Toth failed to respond to FINRA requests for information or to provide testimony. (FINRA Case #2008012343001)

Scott Thomas Valente (CRD #1177354, Registered Representative, Schenectady, New York) was named as a respondent in a FINRA complaint alleging that he engaged in excessive and unsuitable trading in customers' accounts without having reasonable grounds for believing the transactions were suitable for the customers in view of the size and frequency of the transactions, the transaction costs incurred, and in light of the customers' financial situations, investment objectives and needs. The complaint alleges that Valente exercised discretion in the customers' accounts without the customers' prior written authorization and his member firm's acceptance of the accounts as discretionary. The complaint also alleges that Valente provided falsified documents to customers that misrepresented the value of their accounts and investments. (FINRA Case #2006007370402)

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

America First Associates, Corp.
Stewart Manor, New York
(February 6, 2009)

Firm Cancelled for Failure to Meet Eligibility Standards Pursuant to FINRA Rule 9555

Hanover Investment Securities, Inc.
Madisonville, Louisiana
(February 9, 2009)

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

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

Fox & Company Investments Inc.
Phoenix, Arizona
(February 25, 2009)

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

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

Benjamin Allan Centeno
Chino, California
(February 26, 2009 – March 17, 2009)

John Michael Curran
Coppell, Texas
(February 6, 2009)

Bruce Neal Orr
St. Augustine, Florida
(February 26, 2009)

Joseph Ricupero
Stewart Manor, New York
(February 6, 2009)

Individuals Barred Pursuant to FINRA Rule 9552(h)

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

John Joseph Callahan Jr.
Lagrangeville, New York
(February 11, 2009)

Charles Roland Douglass Jr.
Union, South Carolina
(February 17, 2009)

John Munsuk Lee
Fort Lee, New Jersey
(February 24, 2009)

Denise L. Wilms
Eastpointe, Michigan
(February 11, 2009)

Individuals Suspended Pursuant to FINRA 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.)

Gerardo A. Fernandez
Parkland, Florida
(February 17, 2009)

Catherine Marie Hennagir
Houston, Texas
(February 20, 2009)

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

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

Mayra Jeanette Angulo
Tucson, Arizona
(February 26, 2009)

Michael S. Berteletti
Staten Island, New York
(February 12, 2009)

Frank Anthony Caldararo Jr.
Commack, New York
(February 12, 2009)

Andrew Grigsby Costa
Fort Lauderdale, Florida
(February 12, 2009 – February 20, 2009)

Barry Carter Hixon
Jensen Beach, Florida
(February 3, 2009)

Mark Islas
Tucson, Arizona
(February 26, 2009)

Jason Lee Laney
Fresno, California
(February 12, 2009)

Michael Harold McClellan
Bakersfield, California
(February 3, 2009)

Edgar Olmeda
Flushing, New York
(February 3, 2009)

Jason Robert Swan
Portland, Oregon
(February 12, 2009)

FINRA Fines Wachovia Units More Than \$4.5 Million for Failures Relating to Trust and Mutual Fund Sales

Firm Provides More than \$5.4 Million in Remediation to Customers

FINRA fined two Wachovia units more than \$4.5 million for violations related to the sales of mutual funds and Unit Investment Trusts (UIT). More than \$5.4 million has been returned to affected customers.

Wachovia Securities was fined \$4.41 million for its failure to provide investors with sales charge discounts in eligible UIT transactions, its failure to ensure that investors received the benefit of Net Asset Value (NAV) transfer programs in applicable mutual fund purchases and for suitability violations related to the sale of Class B and C mutual fund shares. Wachovia Securities Financial Network was fined \$150,500 for suitability violations related to improper Class B share sales. The fines reflect the \$4 million-plus in additional commissions the firms received by selling Class B and C shares rather than Class A shares.

Wachovia has already returned over \$2.4 million to Class A purchasers in connection with 4,200 NAV transfer transactions and approximately \$3 million to customers in connection with over 20,000 UIT transactions. As part of the settlement, the firms will also provide remediation to 5,850 households that purchased Class B and C shares in over 14,500 transactions and to additional eligible NAV customers who did not receive the benefit of NAV transfer programs.

“Firms must consider all relevant factors when recommending securities,” said Susan L. Merrill, FINRA’s Executive Vice President and Chief of Enforcement. “The failure to provide available discounts or recommend a suitable share class wrongly increases costs to investors. We are pleased that through these settlements millions of dollars are being returned to customers.”

UITs are investment companies that offer redeemable shares, or units, of a generally fixed portfolio of securities in a one-time public offering and terminate on a specified date. During the relevant period, UIT sponsors generally offered sales charge discounts to investors, known as “breakpoint discounts” and “rollover discounts.” A breakpoint discount is a reduced sales charge based on the dollar amount of the purchase - the higher the dollar amount, the deeper the discount. A rollover discount is a reduced sales charge that an investor is entitled to when he or she purchases a new UIT from the same sponsor using the proceeds received from a terminated UIT.

FINRA found that Wachovia Securities failed to provide rollover discounts in connection with over 15,000 customer purchases of UITs. The firm also failed to provide breakpoint discounts in connection with approximately 5,000 customer UIT purchases. As a result, customers paid approximately \$2.71 million in excessive sales charges.

NAV Transfer programs were offered by many mutual fund families from 2001 through 2004. Under these programs, customers who redeemed fund shares for which they had paid a sales charge were permitted to use the proceeds to purchase Class A shares of a new mutual fund at NAV - that is, without paying another sales charge. FINRA found that Wachovia Securities failed to ensure that eligible investors received the benefit of

available NAV transfer programs. As a result, certain customers incurred front-end sales charges they should not have paid, or purchased other share classes that unnecessarily subjected them to higher fees and the potential of contingent deferred sales charges.

FINRA found that Wachovia Securities made unsuitable sales of Class B and C shares and Wachovia Securities Financial Network made unsuitable sales of Class B shares. Wachovia Securities recommended the purchase of Class B and C shares, and Wachovia Securities Financial Network recommended the purchase of B shares, without considering, on a consistent basis, that an equal investment in Class A shares would have generally been more advantageous for certain customers.

FINRA also found that Wachovia Securities had inadequate supervisory procedures relating to UIT, NAV transfer program and Class B and C sales and Wachovia Securities Financial Network had inadequate supervisory procedures relating to Class B share sales.

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

FINRA Fines Robert W. Baird & Co. \$500,000 for Fee-Based Account, Breakpoint Violations

Firm to Return More Than \$434,000 in Fees, Plus Interest, To Customers

FINRA fined Robert W. Baird & Co. \$500,000 for supervisory violations relating to its fee-based brokerage business. FINRA also ordered Baird to return \$434,510 in fees, plus interest, to 154 customers. Those customers either paid fees in fee-based accounts without generating activity or paid fees higher than those indicated on the Baird fee schedule.

Fee-based brokerage accounts first became available in 1999 as a result of a proposed Securities and Exchange Commission (SEC) rule that exempted brokers from certain elements of the Investment Advisers Act of 1940. In March 2007, a federal court struck down the final version of that SEC rule—and since then, fee-based brokerage accounts have become obsolete. Baird terminated its fee-based brokerage account program—called 360/One accounts—on Sept. 30, 2007.

Typically in fee-based brokerage accounts, customers were charged an annual fee that was usually a percentage of the account's assets with an annual minimum, rather than a commission for each transaction as in a traditional brokerage account. Firms were required to determine whether a fee-based account was appropriate for an investor—and remained appropriate for that investor—based on the projected cost to the investor, available alternative fee structures, the services provided and the investor's fee structure preferences. In most instances, investors who traded frequently benefited from being in a fee-based account, while investors who traded rarely paid less in a traditional brokerage account. Compensation earned by the firm and the broker from a fee-based account was generally not dependent on whether a customer bought or sold securities.

FINRA found that Baird's failure to adequately review its 360/One accounts during a period in which the 360/One program grew from approximately 7,000 accounts to over 11,000 accounts allowed numerous 360/One customers to remain in the program despite conducting no trades for at least eight consecutive quarters. These accounts paid over \$269,000 in fees during the inactive quarters (that is, excluding the first four consecutive quarters with no trades).

Baird also failed to have a supervisory system in place to automatically credit certain 360/One customers with breakpoint discounts that were specified in new account agreements. As a result, 53 customers paid fees higher than those indicated on the Baird fee schedule, resulting in total overpayments of approximately \$165,000.

In addition, from May 1999 through January 2005, Baird failed to adequately disclose to its fee-based customers that assets held on margin—for which the customer might already be paying interest—and short sales were included as eligible assets for purposes of fee calculation.

In settling this matter, the firm neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

FINRA Fines Citigroup Global Markets \$2 Million for Range of Trade Reporting Violations

Firm Published Erroneous Quotations and Transactions at and Around Opening on a Quadruple Witch Expiration Friday

FINRA imposed a \$2 million fine against Citigroup Global Markets for the erroneous publication of non-bona fide quotations and transactions at and around the NASDAQ market opening on a Quadruple Witch Expiration Friday; systemic Order Audit Trail System (OATS) reporting violations; fixed income transaction reporting violations; limit order display violations; and related supervisory failures. These violations occurred in 2006 and prior years.

FINRA found, as a result of a referral from the NASDAQ's MarketWatch Department, that Citigroup failed to properly monitor certain of its trading systems at the opening on June 17, 2005, a Quadruple Witch Expiration Friday. Quadruple Witch Expiration Fridays occur once each quarter, when stock index futures, index options, stock options, and options on stock index futures simultaneously expire.

These system failures resulted in the erroneous publication of approximately 6,800 non-bona fide transactions in more than 170 securities that the firm ultimately cancelled via Clearly Erroneous Petitions. The systems failures also resulted in the publication of thousands of non-bona fide quotations, which triggered executions by other firms at prices unrelated to the market value of the securities, requiring those firms to petition to cancel over 1,400 trades.

“Firms must establish and maintain operational controls and supervisory systems reasonably and effectively designed to ensure that their trading systems function correctly, especially on expiration days when price discovery is particularly important,” said Tom Gira, Executive Vice President of FINRA’s Market Regulation Department.

FINRA further found that Citigroup did not report approximately 6 million orders to OATS between August 1, 1999 and July 10, 2006. From July 2002 through September 2006, Citigroup inaccurately reported or failed to report over 300,000 transactions to FINRA’s Trade Reporting and Compliance Engine (TRACE) and inaccurately reported or failed to report more than 480,000 transactions to the Municipal Securities Rulemaking Board.

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