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Regulatory Notice

09-23

Revised Forms U4 and U5

SEC Approval of Proposed Changes to Forms U4 and U5 and FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

Effective Date: May 18, 2009

Effective Date (Regulatory Action Disclosure Questions): November 14, 2009

Executive Summary

The SEC recently approved amendments to Forms U4 and U5 as well as FINRA Rule 8312 (FINRA BrokerCheck® Disclosure).¹ The amendments, among other things, make significant changes to disclosure questions on the Forms, including the addition of questions about certain regulatory actions. The new regulatory action questions will enable FINRA and other regulators to identify more readily persons subject to a particular category of statutory disqualification under the federal securities laws and the FINRA By-Laws. Other amendments to the Forms include:

- new questions that require firms to report allegations of sales practice violations made against a registered person in an arbitration or litigation in which the registered person is not a named party; and
- ➤ an increase in the monetary threshold for reporting settlements of customer complaints, arbitrations or litigation from \$10,000 to \$15,000.

The revised Forms will be implemented in the Central Registration Depository (CRD® or CRD system) on May 18, 2009. The effective date for most of these changes (*i.e.*, the Forms changes and the amendment to FINRA Rule 8312)—with the exception of the new regulatory action disclosure questions—is May 18, 2009 (the "release date"). As discussed in more detail below, the effective date for the new regulatory action disclosure questions will be 180 days from the release date, or November 14, 2009.

May 2009

Notice Type

Rule Amendment

Suggested Routing

- ➤ Legal and Compliance
- Operations
- Registered Representatives
- Senior Management
- Training

Key Topic(s)

- Central Registration Depository
- ➤ Form U4
- ➤ Form U5
- Statutory Disqualification
- ➤ Sales Practice Violations
- Willful Violations

Referenced Rules & Notices

➤ FINRA Rule 8312



Copies of the revised Forms are available at www.finra.org/crd/individualformchanges.

Questions concerning this *Notice* should be directed to:

- ➤ Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821; or
- > Stan Macel, Assistant General Counsel, Office of General Counsel, at (202) 728-8056.

Background & Discussion

The SEC recently approved amendments to Form U4 (Uniform Application for Securities Industry Registration or Transfer) and Form U5 (Uniform Termination Notice for Securities Industry Registration) (together, the Forms) and to FINRA Rule 8312. As discussed in more detail below, the amendments:

- revise questions on the Forms to enable FINRA and other regulators to identify more readily individuals and firms subject to a particular category of statutory disqualification pursuant to Section 15(b)(4)(D) or (E) of the Exchange Act (referred to as willful violations);
- revise questions on the Forms regarding disclosure of arbitrations or civil litigation to elicit reporting of allegations of sales practice violations made against a registered person in arbitration or litigation in which that person is not a named party;
- ➤ raise the monetary threshold for reporting of settlements of customer complaints, arbitrations or civil litigation on the Forms from \$10,000 to \$15,000, and make a conforming change to reflect this revised monetary threshold in the description of "Historic Complaints" in FINRA Rule 8312;
- revise the definition of "Date of Termination" in Form U5, and enable firms to amend the "Date of Termination" and "Reason for Termination" sections of the Form U5, subject to certain conditions and notifications; and
- ➤ make additional clarifying, technical and conforming changes to the Forms.

These amendments become effective on **May 18, 2009**, except with regard to the new disclosure questions regarding willful violations, which become effective 180 days following this date, on **November 14, 2009**. Firms will be required to amend Forms U4 to respond to the new disclosure questions the first time they file Form U4 amendments for registered persons after May 18, 2009, at which time they may provide provisional "no" answers during the defined 180-day period), but must provide final answers to the questions no later than November 14, 2009, as discussed further below.

Revisions Regarding Willful Violations

The amendments modify the Forms to enable FINRA and other regulators to query the CRD system to identify persons who are subject to disqualification as a result of a finding of a willful violation. Specifically, the amendments add additional questions to existing Questions 14C and 14E on Form U4. Question 14C, which inquires about SEC and Commodity Futures Trading Commission (CFTC) regulatory actions, adds three new questions regarding willful violations, Questions 14C(6), (7) and (8). Similarly, Question 14E, which concerns findings by a self-regulatory organization (SRO), adds three identical questions in the context of findings by any SRO, Questions 14E(5), (6) and (7). The Form U4 Regulatory Action Disclosure Reporting Page (DRP) will continue to elicit specific information regarding the status of the events reported in response to these questions.

Adding new disclosure questions to Form U4 requires firms to amend such forms for all their registered persons. To ensure that firms have appropriate time to populate the forms accurately, FINRA will delay the effective date solely for the new regulatory action disclosure questions until 180 days from the effective date of the remainder of the proposed rule change, or November 14, 2009. This schedule will provide firms with up to 180 days from the release date to answer the regulatory action disclosure questions.

In addition, FINRA will allow firms, at their discretion, to file provisional "no" answers to the six new regulatory action questions during the 180-day period between the release date and the effective date of the regulatory action disclosure questions.² During this time, the regulatory action disclosure questions will appear (in the CRD system) in a manner designed to help denote that such questions are not effective until 180 days from the release date and that any answers provided in response to such questions are provisional until such time as those questions become effective (namely, 180 days from the release date). Any "no" answers filed in response to the new regulatory action disclosure questions during such 180-day period that are not amended before November 14, 2009, will become final, and the firm and subject registered person will be deemed to have represented that the person has not been the subject of any finding addressed by the question(s).

If a firm determines that a registered person must answer "yes" to any part of Form U4 Questions 14C or 14E, the amendment filings must include completed DRP(s) covering the proceedings or action reported.³ With respect to Form U5, the amendments did not alter Question 7D (Regulatory Action Disclosure), but added new Question 12C to the Form U5 Regulatory Action DRP. As of May 18, 2009, firms that answer "yes" to Question 7D on Form U5 will be required to provide more detailed information about the regulatory action in Question 12C of the DRP. For regulatory actions in which the SEC, CFTC or an SRO is the regulator involved, Question 12C requires firms to answer questions eliciting whether the action involves a willful violation. These questions

correspond to the questions added to the Form U4. A firm will not be required to amend Forms U5 to answer Question 12C on the DRP and/or add information to a Form U5 Regulatory Action DRP that was filed previously unless it is updating a regulatory action that it reported as pending on the current DRP.

Furthermore, FINRA will provide firms with the ability to upload a "batch" file of Form U4 amendments into the CRD system for all of their registered persons for purposes of filing "no" answers to all of the new regulatory action disclosure questions. This feature will enable firms to submit a single batch (or bulk) file for the purposes of filing such "no" answers on behalf of multiple registered persons.⁴

Lastly, FINRA has filed a proposed rule change with the SEC to allow firms to file amendments to the Form U4 disclosure information without obtaining the registered person's manual signature under certain circumstances.⁵

Revisions Regarding Allegations of Sales Practice Violations Against Registered Persons Made in Arbitrations or Litigation in Which the Registered Person Is Not a Named Party

The Forms have been revised to require the reporting of allegations of sales practices violations made against registered persons in a civil lawsuit or arbitration in which the registered person is not a named party. Specifically, Question 14I on Form U4 and Question 7E on Form U5 were amended to require the reporting of alleged sales practice violations made by a customer against persons identified in the body of a civil litigation complaint or an arbitration claim, even when those persons are not named as parties. The amendments add new Questions 14I(4) and (5) to Form U4 and Questions 7E(4) and (5) to Form U5, which in most respects reflect the language of the corresponding questions regarding alleged sales practice violations of persons identified in consumer complaints (i.e., Questions 14I(2) and (3) in Form U4 and Questions 7E(2) and (3) in Form U5). The new questions apply only to arbitration claims or civil litigation filed on or after May 18, 2009; applicants and firms are not required to answer Questions 14I(4) or (5) on Form U4 or Questions 7E(4) or (5) on Form U5 with respect to arbitration claims or civil litigation filed before May 18, 2009.

A "yes" answer to new Questions 14I(4) or 14I(5) in Form U4 or Questions 7E(4) or 7E(5) in Form U5 indicates that the applicant or registered person, though not named as a respondent/defendant in a customer-initiated arbitration or civil lawsuit, was either named in or could be reasonably identified from the body of the arbitration claim or civil litigation as a registered person who was involved in one or more of the alleged sales practice violations. A firm is required to report a "yes" answer only after it has made a good-faith determination after a reasonable investigation that the alleged sales practice violation(s) involved the registered person.⁷

As a result of these amendments, as of May 18, 2009, alleged sales practice violations made by a customer against persons identified in the body of a civil litigation complaint or arbitration claim (as described above) will be treated the same way that customer complaints are treated in the Forms.8 For example, such matters will be required to be reported no later than 30 days after receipt by the firm. In addition, as has been the practice with respect to customer complaints reported to the CRD system, registered persons will have an opportunity to provide context on the reported matter on Form U4; persons not currently registered with a FINRA member firm, but who were registered within the previous two years, will be afforded an opportunity to provide context on the reported matter through a Broker Comment.9 Such matters will be disclosed through BrokerCheck consistent with FINRA Rule 8312.10 To the extent such a matter becomes non-reportable (if, for example, the arbitration or litigation is dismissed and the dismissal is not part of a settlement, or it is settled for less than the monetary threshold designated on Form U4), it will, like other customer complaints that become non-reportable, be eligible for disclosure through BrokerCheck as an "Historic Complaint," provided it meets certain criteria.11

Revisions to the Monetary Threshold for Reporting Customer Complaints, Arbitrations or Litigation

Recognizing that the current monetary threshold for settlements of customer complaints, arbitrations or litigation was set in 1998 and has not been adjusted for inflation, the amendments raise the existing settlement amount from \$10,000 to \$15,000 to reflect more accurately the business criteria (including the cost of litigation) firms consider when deciding to settle claims. This change is reflected in Question 14I on Form U4 and Question 7E on Form U5.

In addition, the description of "Historic Complaints" in FINRA Rule 8312 has been amended to conform to this revised monetary threshold. Under FINRA Rule 8312, FINRA will release Historic Complaints under BrokerCheck where:

- ➤ any such matter became a Historic Complaint on or after March 19, 2007;
- ➤ the most recent Historic Complaint or currently reported customer complaint, arbitration or litigation is less than ten years old; and
- ➤ the person has a total of three or more currently disclosable regulatory actions, currently reported customer complaints, arbitrations or litigation, or Historic Complaints (subject to the limitation that they became a Historic Complaint on or after March 19, 2007), or any combination thereof.

Historic Complaints will include customer complaints, arbitrations or litigation that have been settled for less than \$10,000 prior to May 18, 2009 (subject to the limitation that they became a Historic Complaint on or after March 19, 2007), or settled for less than \$15,000 on or after May 18, 2009. As a result, FINRA will continue to release through BrokerCheck those customer complaints, arbitrations or litigation settled for more than \$10,000 but less than \$15,000 prior to May 18, 2009. Customer complaints, arbitrations or litigation settled for less than \$15,000 on or after May 18, 2009 will be considered Historic Complaints for purposes of BrokerCheck.

Revisions Regarding "Date of Termination" and "Reason for Termination"

Revisions to Form U5 provide that the date to be provided by a firm in the "Date of Termination" field is the "date that the firm terminated the individual's association with the firm in a capacity for which registration is required." The amendments further clarify that, in the case of full terminations, the "Date of Termination" provided by the firm will continue to be used by FINRA and other SROs and jurisdictions to determine whether an individual is required to requalify by examination or obtain an appropriate waiver upon reassociating with a firm. Pevisions to Form U5 also clarify that the relevant SRO or jurisdiction determines the effective date of termination of registration. In general, for purposes of retention of jurisdiction by FINRA, PINRA considers the effective date of termination to be the date that the Form U5 is received by CRD (generally the date of filing of the Form U5 with CRD).

The rule change also permits a firm, as of May 18, 2009, to amend the "Date of Termination" and "Reason for Termination" fields in a Form U5 it previously submitted, but in such cases it requires the firm to provide a reason for each amendment. To monitor such amendments, including those reporting terminations for cause, FINRA will notify other regulators and the broker-dealer with which the registered person is currently associated (if the person is associated with another firm) when a date of termination or reason for termination has been amended. The original date of termination or reason for termination will remain in the CRD system in form filing history.¹⁵

Additional Revisions

The Forms were amended to make various clarifying, technical and conforming changes generally intended to clarify the information elicited by regulators and to facilitate reporting by firms and regulators. For example, the amendments eliminated as unnecessary certain cross-references in Questions 14I on Form U4 and 7E on Form U5 regarding the manner in which individuals and firms must report allegations of sales practice violations against registered persons made through arbitration or civil litigation or through consumer-initiated complaints. Additionally, certain "free text" fields were converted to discrete fields on the DRPs of Forms U4 and U5. These revisions to the DRPs generally do not change the information currently elicited, but rather change the presentation of the DRPs.¹6 For example, the revised DRPs will enable filers to provide more specific information utilizing pre-established picklists for the following types of information:

- product type;
- sanction/disposition; and
- status of the sanction (i.e., whether the sanction remains in effect at the time of filing).

This format is designed to elicit additional details at the initial filing stage, and will allow for completeness checks to prevent firms from submitting filings without having provided information in response to the allegations and disposition detail questions. Such checks generally should make the filing process more efficient.

The amendments also add to Section 7 of Form U5 (Disclosure Questions) an optional "Disclosure Certification Checkbox" that will enable firms to affirmatively represent that all required disclosure for a terminated person has been reported and the record is current at the time of termination. Checking this box will allow the firm to bypass the process of re-reviewing a person's entire disclosure history for purposes of filing Form U5 in situations in which disclosure is up to date at the time of the person's termination.

The amendments make additional technical changes to the Forms. For example, they incorporate the definition of "found" from the Form U4 Instructions into the Form U5 instructions; provide more detailed instructions regarding the reporting of an internal review (conducted by the firm); and clarify how an individual may file comments to an Internal Review DRP.

Endnotes

- See Exchange Act Release No. 59916 (May 13, 2009) (SEC Order Approving SR-FINRA-2009-008).
- The CRD system will process Form U4 filings as follows: answers to current Questions 14C and 14E will be transferred without change to Questions 14C(1) through (5) and 14E(1) through (4), respectively. In addition, all registered persons will have "null" values in new Questions 14C(6), (7) and (8), and 14E(5), (6) and (7). In other words, answers to these new questions will be blank (i.e., not populated with either a "yes" or "no" answer). Firms must affirmatively answer these new questions by clicking the appropriate "yes" or "no" radio buttons. If a firm does not affirmatively answer the new questions for registered persons, the filing of any amendments to the Form will fail the CRD-system completeness check and will not be successfully submitted to the CRD system.
- 3 FINRA notes that there will be no charge for the submission of "no" answers to the new questions. A disclosure review fee will be assessed only in those situations in which a "yes" answer is submitted, in order to defray the costs associated with staff review of the disclosure event, consistent with current practice.

- FINRA will provide additional specific details regarding this feature to firms that elect to use it. However, in short, the feature will enable firms to sign onto CRD and file "no" answers for as many as 65,000 registered persons at one time. The feature will be available to all firms upon the implementation of the new Forms, and throughout the 180-day implementation period during which firms are required to submit answers to the questions. After the 180-day implementation period, the feature will be disabled.
- 5 See Exchange Act Release No. 59784 (April 17, 2009), 74 FR 18779 (April 24, 2009) (Notice of Filing of Proposed Rule Change: File No. SR-FINRA-2009-019).
- Formerly, firms were not required to report on a registered person's Form U4 that a customer had alleged a sales practice violation against such person in the body of a lawsuit or arbitration claim, unless the registered person also had been named as a defendant/ respondent. A firm also was not required to report on Form BD (Uniform Application for Broker-Dealer Registration) that it had been named as a respondent in a consumerinitiated arbitration or to report that a sales practices violation was alleged against one of its registered persons under these circumstances. As a result, this form of "customer complaint" against a registered person or firm has been unreported via the Forms and, therefore, unavailable to regulators or prospective broker-dealer employers of the registered person via CRD or to the public through BrokerCheck.

Endnotes (continued)

- 7 The Instructions to the Forms have been amended to note that the revised questions should be answered "yes" if the individual was not named as a respondent/defendant but (1) the Statement of Claim or Complaint specifically mentions the individual by name and alleges the individual was involved in one or more sales practice violations or (2) the Statement of Claim or Complaint does not mention the individual by name but the firm has made a good faith determination that the sales practice violation(s) alleged involves one or more particular individuals.
- 8 The Customer Complaint/Arbitration/Civil Litigation DRPs have corresponding changes, including, e.g., eliciting specifically whether, in the case of an arbitration or litigation, the individual was named as a respondent or defendant. Furthermore, the DRPs require the alleged damages and disposition for matters in which sales practice violations are alleged against an individual who was not named in an arbitration or litigation.
- Individuals who currently are registered with FINRA, are associated with a member firm and who wish to provide an update or context to information that is disclosed through BrokerCheck are required to file an amended Form U4. Individuals who are no longer registered with FINRA, but who have been FINRA-registered within the last two years (and thus about whom information is available through BrokerCheck pursuant to Rule 8312) may not provide an update or context to an event via the Form U4. Instead, such individuals may submit a Broker Comment to provide an update or context to information that is disclosed through BrokerCheck.

- FINRA recently filed a proposed rule change with the SEC seeking to expand BrokerCheck with respect to former associated persons to provide public access to certain information about such persons, regardless of when they were associated with a member, if they were the subject of any final regulatory action that is required to be reported on the Forms. See SR-FINRA-2009-029.
- 11 See FINRA Rule 8312(b)(7).
- 12 For partial terminations, a firm is only required to provide a "Date of Termination" when submitting post-dated termination requests during the renewal period (i.e., to effect a termination of registration at year-end). For all other partial terminations, the "Date of Termination" is an optional field for firms to complete.
- 13 Article 5, Section 4 of the FINRA By-Laws provides that FINRA generally retains initial jurisdiction over a person whose association with a member firm has been terminated for purposes of a complaint under FINRA's rules based upon conduct that commenced prior to termination for a period of two years after the effective date of termination of registration.
- 14 FINRA notes that Article 5, Section 3(a) of the FINRA By-Laws states that termination of registration shall not take effect so long as any complaint or action under FINRA's rules is pending against a member and to which complaint or action such associated person is also a respondent or so long as any complaint or action is pending against such person individually under FINRA's rules. See also In re Donald M. Bickerstaff, 52 S.E.C. 232, 233 (April 17, 1995) (noting that, absent a pending

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Endnotes (continued)

- complaint or an examination in process, termination of registration became effective upon receipt of the Form U5 termination notice). FINRA further notes that in the case of post-dated requests for full termination during the renewal period, for purposes of retention of jurisdiction by FINRA, the effective date of termination generally will be the (post-dated) date of termination provided by the firm and not the date that CRD received the form.
- 15 With respect to the requalification period, FINRA is not proposing to allow an amended date of termination to systematically reset the two-year window in CRD. Instead, should an individual be notified that he or she is required to requalify by examination as a result of an erroneous date of termination that was subsequently amended by a firm, the individual would be required to submit a request for a waiver, and FINRA would consider the amended date of termination in connection with its review of the request. FINRA does not expect this situation to occur often; moreover, FINRA would review such requests in an expeditious manner.
- As discussed *supra*, the Form U5 Regulatory Action DRP added Question 12C that corresponds to Form U4 Questions 14C (6 through 8) and 14E (5 through 7). The Forms U4 and U5 Regulatory Action DRPs have been expanded to ask details with respect to fines and penalties, including whether the money has been paid, is subject to a payment plan or has been waived.

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Regulatory Notice

09-24

Trade Reporting and Compliance Engine (TRACE)

SEC Approves Amendments Expanding the Definition of "TRACE-Eligible Security"

Effective Date: June 15, 2009

Executive Summary

Effective June 15, 2009, firms must begin reporting transactions in additional TRACE-eligible securities and otherwise comply with all other FINRA Rule 6700 Series requirements regarding such securities.

On April 14, 2009, the SEC approved the amendment that broadens the definition of "TRACE-eligible security" by deleting the following two requirements:

- (1) that TRACE-eligible securities be registered under the Securities Act of 1933 (Securities Act)²; and
- (2) with respect to securities that are resold in a Securities Act Rule 144A transaction,³ that such securities initially be offered and sold under the exemption from registration in Section 4(2) of the Securities Act.⁴

The amended rule extends price transparency to corporate bonds that are being purchased and sold by diverse market participants, including retail investors, and enhances the surveillance of the corporate bond market. The amended rule text is in Attachment A of this *Notice*.

Questions regarding this Notice should be directed to:

- ➤ Elliot R. Levine, Associate Vice President and Counsel, Transparency Services, at (202) 728-8405; or
- ➤ Sharon Zackula, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8985.

May 2009

Notice Type

Rule Amendment

Suggested Routing

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

Key Topic(s)

- TRACE-Eligible Security
- ➤ Transaction Reporting

Referenced Laws & Rules

- ➤ FINRA Rule 6710(a)
- Section 3 of the Securities Act
- ➤ Section 4(2) of the Securities Act
- Securities Act Rule 144(a)(3)
- Securities Act Rule 144A



Background & Discussion

FINRA Rule 6710(a) currently defines the term "TRACE-eligible security" to mean:

all United States dollar denominated debt securities that are depository eligible securities under NASD Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private issuers; and: (1) registered under the Securities Act; or (2) issued pursuant to Section 4(2) of the Securities Act and purchased or sold pursuant to Securities Act Rule 144A. The term "TRACE-eligible security" excludes debt issued by government-sponsored entities, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. For purposes of the Rule 6700 Series, the term "money market" instrument means a debt security that at issuance has a maturity of one year or less.⁵

The requirements that a TRACE-eligible security either be registered under the Securities Act or, prior to a resale transaction under Securities Act Rule 144A, offered and sold under Section 4(2) of the Securities Act resulted in the exclusion from TRACE of a number of transactions in corporate, dollar-denominated, depository-eligible debt securities, including many securities that are eligible for public sale. Often, such securities are not subject to the TRACE requirements because they are "exempted securities" under Section 3 of the Securities Act and not registered.⁶ For example, transactions in corporate debt securities that are issued subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters may be eligible for public sale, but are not reportable to TRACE because they are sold pursuant to an exemption under Section 3 of Securities Act. In addition, certain debt securities issued by banks and other financial institutions are also not TRACE-eligible securities for the same reason. Finally, securities in certain Securities Act Rule 144A transactions are also excluded because such securities initially were not offered and sold under Section 4(2) of the Securities Act. Except for Securities Act Rule 144A transactions, which are sales to certain institutional buyers exclusively, in many cases the securities excluded from TRACE are being purchased and sold by all types of market participants, including retail investors.

The rule change amends the definition of TRACE-eligible security by deleting these two requirements—that a debt security be registered under the Securities Act, or, if resold in a Securities Act Rule 144A transaction, initially offered and sold under Section 4(2) of the Securities Act. In addition, in connection with Rule 144A transactions, instead of requiring that such securities previously be offered and sold under the issuer exemption in Section 4(2) of the Securities Act, FINRA instead provides that if a security is a "restricted security" as defined in Securities Act Rule 144(a)(3),7 it is TRACE-eligible if it is sold pursuant to Securities Act Rule 144A. As amended, the definition of TRACE-eligible security provides:

The term "TRACE-eligible security" shall mean all United States dollar denominated debt securities that are depository eligible securities under NASD Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private issuers; and, if a "restricted security" as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A. The term "TRACE-eligible security" excludes debt issued by government-sponsored entities, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. For purposes of the Rule 6700 Series, the term "money market instrument" means a debt security that at issuance has a maturity of one year or less.

Firms must begin reporting transactions in the additional TRACE-eligible securities and otherwise comply with all other FINRA Rule 6700 Series requirements regarding such securities as of the effective date. The amended rule extends price transparency to corporate bonds that are being purchased and sold by diverse market participants, including retail investors, and enhances the surveillance of the corporate bond market.

The amendments to FINRA Rule 6710(a) become effective on June 15, 2009.

Endnotes

- 1 See Exchange Act Release No. 59768 (April 14, 2009), 75 FR 18271 (April 21, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-004).
- 2 15 U.S.C. 77a et seq.
- 3 17 C.F.R. 230.144A.
- 4 15 U.S.C. 77d(2).
- 5 The terms "Investment Grade" and "Non-Investment Grade" are defined in the Rule 6700 Series at Rule 6710(h) and Rule 6710(i), respectively.
- 6 15 U.S.C. 77c.

- 7 Securities Act Rule 144(a)(3) (17 C.F.R. 230.144(a)(3)) defines "restricted securities" as:
 - (i) Securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or a chain of transactions not involving any public offering; (ii) Securities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D or § 230.701(c); (iii) Securities acquired in a transaction or chain of transactions meeting the requirements of § 230.144A; (iv) Securities acquired from the issuer in a transaction subject to the conditions of Regulation CE (§ 230.1001); (v)...; (vi) Securities acquired in a transaction made under § 230.801 in the same extent and proportion that the securities held by the security holder of the class with respect to which the rights offering was made were, as of the record date for the rights offering, "restricted securities" within the meaning of this paragraph (a)(3); (vii) Securities acquired in a transaction made under § 230.802 to the same extent and proportion that the securities that were tendered or exchanged in the exchange offer or business combination were "restricted securities" within the meaning of this paragraph (a)(3); and (viii) Securities acquired from the issuer in a transaction subject to an exemption under section 4(6) (15 U.S.C. 77d(6)) of the Act.

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Attachment A

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

* * * * *

6700. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6710. Definitions

The terms used in this Rule 6700 Series shall have the same meaning as those defined in FINRA's By-Laws and rules unless otherwise specified.

(a) The term "TRACE-eligible security" shall mean all United States dollar denominated debt securities that are depository eligible securities under NASD Rule 11310(d); Investment Grade or Non-Investment Grade; issued by United States and/or foreign private issuers; [and: (1) registered under the Securities Act; or (2) issued pursuant to Section 4(2) of the Securities Act and purchased or] and, if a "restricted security" as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A. The term "TRACE-eligible security" excludes debt issued by government-sponsored entities, mortgage- or asset-backed securities, collateralized mortgage obligations, and money market instruments. For purposes of the Rule 6700 Series, the term "money market instrument" means a debt security that at issuance has a maturity of one year or less.

(b) through (j) No Change.

* * * * *

Regulatory Notice

09-25

Suitability and "Know Your Customer"

Proposed Consolidated FINRA Rules Governing Suitability and Know-Your-Customer Obligations

Comment Period Expires: June 29, 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 consolidated FINRA rules governing suitability and know-your-customer (KYC) obligations.

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

Questions regarding this *Notice* should be directed to James S. Wrona, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8270.

Action Requested

FINRA encourages all interested parties to comment on the proposed rules. Comments must be received by June 29, 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, NW Washington, DC 20006-1506

May 2009

Notice Type

- Request for Comment
- ➤ Consolidated FINRA Rulebook

Suggested Routing

- ➤ Legal
- Compliance
- > Senior Management

Key Topic(s)

- Suitability
- "Know Your Customer"

Referenced Rules & Notices

- ➤ FINRA Rule 2010
- NASD Rule 2310
- ➤ NASD IM-2310-3
- NASD Rule 3110NYSE Rule 405



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

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

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

Discussion

NASD Rule 2310, addressing suitability obligations, and Incorporated NYSE Rule 405,4 addressing know-your-customer obligations, are critical to protecting investors. As a result, FINRA proposes to include modified forms of both rules in the Consolidated FINRA Rulebook. Each is discussed separately below.

Suitability

FINRA proposes to use the NASD suitability rule as the model for a modified suitability rule for the Consolidated FINRA Rulebook, proposed FINRA Rule 2111, and eliminate NASD Rule 2310.5 The modified rule would codify various interpretations regarding the scope of the suitability rule, clarify the information to be gathered and used as part of a suitability analysis and create a clear exemption for recommended transactions involving institutional customers, subject to specified conditions.

The Scope of the Proposed Suitability Rule

FINRA proposes to explicitly apply suitability obligations to a recommended transaction or investment strategy involving a security or securities. In this regard, the proposal would codify longstanding SEC and FINRA decisions and other interpretations stating that NASD Rule 2310 covers both recommended securities and strategies. For instance, NASD IM-2310-3 (the institutional customer interpretive material (IM), discussed below) explicitly states that firms' responsibilities under NASD Rule 2310 "include having a reasonable basis for recommending a particular security or strategy...." As with the current NASD rule, the proposed suitability rule would apply only if the firm or associated person makes a recommendation.

FINRA also proposes to codify in one place the discussions of the three main suitability obligations (reasonable basis, customer specific and quantitative),⁶ which are currently located in various IMs following NASD Rule 2310. The three obligations are discussed in a single section of the proposed suitability rule's supplementary material.

The proposed rule's supplementary material, moreover, includes a modified form of the current requirement in an IM that a firm refrain from "recommending purchases beyond a customer's capability." Additionally, the supplementary material maintains the discussion in two IMs regarding the suitability rule's significance in promoting fair dealing with customers and ethical sales practices.

In light of the more expansive application of some FINRA rules, such as those addressing just and equitable principles of trade and communications with the public, and given the seamless nature of a broker-dealer's business in providing financial services, FINRA also seeks comment on whether it should propose expanding suitability obligations to all recommendations of investment products, services and strategies made in connection with a firm's business, regardless of whether the recommendations involve securities.

Information Gathering Regarding the Proposed Suitability Rule

Proposed FINRA Rule 2111 contains a number of minor changes regarding the gathering and use of information as part of the suitability analysis. For instance, the information that must be analyzed in determining whether a recommendation is suitable would include not only information disclosed by the customer in response to the member firm's or associated person's reasonable efforts to obtain it, but also information about the customer that is "known by the member or associated person." The proposal also requires members or associated persons to make reasonable efforts to obtain more information than is explicitly required by NASD Rule 2310 (e.g., age, investment experience, investment time horizon, liquidity needs and risk tolerance).

Clear Exemption for Institutional Customers

The proposed suitability rule includes in the rule text a clear exemption for transactions or investment strategies involving a security or securities recommended to institutional customers, subject to specified conditions. The suitability obligations applicable to institutional customers are currently located in NASD IM-2310-3 (the institutional customer IM). The proposed new provisions addressing institutional customers are significantly shorter and focus on three key factors:

➤ Whether the institutional customer affirmatively indicates that it is willing to forego the protection of the customer-specific obligation of the suitability rule;

- ➤ Whether the firm or associated person has a reasonable basis to believe that the institutional customer is capable of analyzing the risks of investments independently, both in general and with regard to particular transactions and investment strategies involving a security or securities; and
- ➤ Whether the firm or associated person has a reasonable basis to believe that the institutional customer is exercising independent judgment in evaluating the recommendations.

The proposal also clearly indicates that a firm fulfills its customer-specific suitability obligation to institutional customers if those factors are present.⁷ Finally, the proposal connects the definition of institutional customer to the definition of "institutional account" in NASD Rule 3110(c)(4). This change would eliminate the internal inconsistency that exists in the current NASD rule and would bring the definition of "institutional customer" up to date.⁸

Know Your Customer

FINRA proposes to transfer into the Consolidated FINRA Rulebook a modified version of NYSE Rule 405(1) requiring firms to use due diligence to know their customers and eliminate the NYSE version and its related supplementary material and rule interpretation. FINRA also proposes eliminating paragraphs (2) and (3) of NYSE Rule 405 and their related supplementary materials and rule interpretations as duplicative of NASD provisions that FINRA has proposed (or will be proposing) to be transferred into the Consolidated FINRA Rulebook. For instance, NYSE Rule 405(2) (Supervision of Accounts) is duplicative of NASD Rule 3010 (Supervision). Likewise, NYSE Rule 405(3) (Approval of Accounts) is duplicative of NASD Rules 3110(c)(1)(C) (Customer Account Information) and 3011 (Anti-Money Laundering Compliance Program) and, to a certain extent, the proposed modified version of NYSE Rule 405(1), discussed below.

The proposed FINRA know-your-customer obligation, proposed FINRA Rule 2090, captures the main ethical standard of NYSE Rule 405(1). Firms would be required to use due diligence, in regard to the opening and maintenance of every account, to know the essential facts concerning every customer (including the customer's financial profile and investment objectives or policy). This information may be used to aid the firm in all aspects of the customer/broker relationship, including, among other things, determining whether to approve the account, where to assign the account, whether to extend margin (and the extent thereof) and whether the customer has the financial ability to pay for transactions. The obligation arises at the beginning of the customer/broker relationship and does not depend on whether a recommendation has been made. FINRA *Notices* and other public pronouncements have stated that a similar know-your-customer obligation is embedded in the just and equitable principles of NASD Rule 2110 (now FINRA Rule 2010).¹¹

Endnotes

- 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 03/12/08 (Rulebook Consolidation Process).
- 2 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See Notice to Members 03-73 (November 2003) (NASD Announces Online Availability of Comments) for more information.
- 3 Section 19 of the Securities Exchange Act of 1934 (SEA or Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See SEA Section 19 and rules thereunder.
- 4 For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.
- 5 NYSE Rule 405 has been interpreted as including implicit suitability obligations that are consonant with those imposed by NASD Rule 2310. The explicit provisions of NYSE Rule 405 are discussed in a separate section of this *Notice*.

- There are three main suitability obligations: reasonable basis (firms must have a reasonable basis to believe, based on adequate due diligence, that a recommendation is suitable at least for some investors); customer specific (firms must have reasonable grounds to believe a recommendation is suitable for the specific investor); and quantitative (firms must have a reasonable basis to believe the number of recommended transactions within a certain period is not excessive.)
- 7 The current institutional customer IM is limited to customer-specific suitability. That remains true under the proposed rule.
- NASD Rule 3110(c)(4) states that an "institutional account" includes an account of "(A) a bank, savings and loan association, insurance company, or registered investment company; (B) an investment adviser...; or (C) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million." (FINRA is proposing to adopt NASD Rule 3110(c)(4) as FINRA Rule 4512(c). See Regulatory Notice 08-25.) NASD Rule 2310 currently refers to the definition of "institutional account" in NASD Rule 3110(c)(4), but the institutional customer IM uses a different definition for the term "institutional customer." Most NASD rules that refer to institutional accounts/customers use the definition in NASD Rule 3110(c)(4), which has a different monetary threshold (\$50 million in assets) than does the institutional customer IM (\$10 million invested in securities and/or under management) and, unlike the institutional customer IM, NASD Rule 3110 allows a natural person to be viewed as an institutional account.

Regulatory Notice

Endnotes

- 9 FINRA is proposing to adopt a modified version of NASD Rule 3010 as FINRA Rule 3110. See Regulatory Notice 08-24 (May 2008).
- 10 FINRA also is proposing to eliminate NYSE Rule Interpretation 405/04 (Accounts in which Member Organizations have an Interest) because the same content is addressed by SEA Section 11(a), and the provision is specific to floor activities. FINRA, however, proposes to retain NYSE Rule 405(4) in the Transitional Rulebook and address its content at a later phase of the rulebook consolidation process.
- 11 See Exchange Act Release No. 44178 (April 12, 2001), 66 FR 20697, 20698 n.7 (April 24, 2001) (Notice of Filing and Immediate Effectiveness of NASD Proposed Rule Change Relating to Suitability Rule; SR-NASD-2001-20).

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ATTACHMENT A

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

Text of Proposed New FINRA Rules

* * * *

2000. DUTIES AND CONFLICTS

* * * * *

2100. TRANSACTIONS WITH CUSTOMERS [GENERAL STANDARDS]

* * * * *

2110. Recommendations

2111. Suitability

(a) A member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the facts known by the member or associated person or disclosed by the customer in response to the member's or associated person's reasonable efforts to obtain information concerning the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the member or associated person considers to be reasonable in making recommendations.

(b) A member or associated person fulfills the customer-specific suitability obligation for an institutional account, as defined in NASD Rule 3110(c)(4), if (1) the institutional customer affirmatively indicates that it is willing to forego the protection of the customer-specific obligation of the suitability rule and (2) the member or associated person has a reasonable basis to believe that the institutional customer is (A) capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities and (B) exercising independent judgment in evaluating the member's or associated person's recommendations. Where an institutional customer has delegated decision-making authority to an agent, such as an investment advisor or a bank trust department, these factors shall be applied to the agent.

• • • Supplementary Material: —————

.01 General Principles. Implicit in all member and associated person relationships with customers and others is the fundamental responsibility for fair dealing. Sales efforts must therefore be undertaken only on a basis that can be judged as being within the ethical standards of FINRA's rules, with particular emphasis on the requirement to deal fairly with the public. The suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct.

.02 Components of Suitability Obligations. There are three main suitability obligations under Rule 2111: reasonable-basis suitability, customer-specific suitability and quantitative suitability. The reasonable-basis obligation requires a member or associated person to have a reasonable basis to believe, based on adequate due diligence, that the recommendation is suitable for at least some investors. In general, what constitutes adequate due diligence will vary depending on, among other things, the complexity of and risks associated with the security or investment strategy and the member's or associated person's familiarity with the security or investment strategy. The customer-specific obligation requires that a member or associated person have reasonable grounds to believe that the recommendation is suitable for a particular customer based on that customer's profile, as delineated in Rule 2111(a). Ouantitative suitability requires a member or associated person who has actual or de facto control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.

.03 Customers' Financial Ability. Rule 2111 prohibits a member or associated person from recommending a transaction or investment strategy involving a security or securities or the continuing purchase of a security or securities or use of an investment strategy involving a security or securities if such recommendation is inconsistent with the reasonable expectation that the customer has the financial ability to meet such a commitment.

9

2090. Know Your Customer

Every member shall use due diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer.

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

.01 Essential Facts. For purposes of this Rule, facts "essential" to "knowing the customer" include the customer's financial profile and investment objectives or policy.

* * * *

Regulatory Notice

Regulatory Notice

09-26

Continuing Education

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

Executive Summary

This Notice advises firms of the second-quarter 2009 Securities Industry/Regulatory Council on Continuing Education Firm Element Advisory, which identifies regulatory and sales practice topics that firms should consider in their Firm Element training plans. Topics updated or added since the prior Advisory are indicated in the document as such.

The updated Firm Element Advisory is available at www.cecouncil.com/publications/council publications/FEA Semi Annual Update.pdf

Questions concerning this Notice should be directed to:

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

Background/Discussion

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

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

The updated FEA is available on the Council's Web site at www.cecouncil.com/publications/council publications/FEA Semi Annual Update.pdf

May 2009

Notice Type

➤ Guidance

Suggested Routing

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

Key Topic(s)

- ➤ Continuing Education
- Firm Element



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

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Regulatory Notice

09-27

Member Private Offerings

SEC Approves New FINRA Rule 5122 Relating to Private Placements of Securities Issued by a Member Firm or a Control Entity

Effective Date: June 17, 2009

Executive Summary

Effective June 17, 2009, new FINRA Rule 5122 will require FINRA member firms and associated persons that engage in a private placement of such firm's securities or those of a control entity (member private offering or MPO) to comply with certain disclosure and filing requirements and limitations of the use of proceeds.¹

The new rule provides additional regulation of certain private placements, which are generally excluded from the scope of existing rules, including FINRA Rule 5110 (Corporate Financing Rule – Underwriting Terms and Arrangements) and NASD Rule 2720 (Distribution of Securities of Members and Affiliates – Conflicts of Interest), because these existing rules generally apply only to public offerings.² The text of FINRA Rule 5122 is set forth in Attachment A of this *Notice*.

The rule will not apply retroactively to any offerings that have already commenced selling efforts as of the effective date, June 17, 2009.

Questions concerning this Notice should be directed to:

- Paul Mathews, Director, Corporate Financing Department, at (240) 386-4623;
- ➤ Lisa Toms, Associate Director and Senior Counsel, Corporate Financing Department, at (240) 386-4661;
- ➤ Gary Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104; and
- ➤ Stan Macel, Assistant General Counsel, OGC, at (202) 728-8056.

May 2009

Notice Type

Rule Amendment

Suggested Routing

- ➤ Corporate Financing
- Executive Representation
- Legal and Compliance
- Operations
- Senior Management

Key Topic(s)

- ➤ Affiliates
- Control Entity
- ➤ Institutional Accounts
- Member Private Offerings
- Private Placements
- > Private Placement Memorandum
- Regulation D

Referenced Rules & Notices

- ➤ FINRA Rule 5110
- ➤ FINRA Rule 5122
- ➤ NASD Rule 2720
- ➤ NASD Rule 2810
- ➤ NASD Rule 3110



Background & Discussion

The offering of securities by a member firm or a control entity of the firm in a private placement raises conflicts of interest and has been an area of regulatory concern in recent years. To address these concerns, FINRA Rule 5122 requires a member firm or associated person that engages in a private placement of unregistered securities issued by the firm or a control entity of such firm to:

- (1) disclose to investors in a private placement memorandum, term sheet or other offering document the intended use of offering proceeds and the offering expenses;
- (2) file such offering document with FINRA's Corporate Financing Department at or prior to the time it is provided to any investor; and
- (3) commit that at least 85 percent of the offering proceeds will be used for business purposes, which shall not include offering costs, discounts, commissions and any other cash or non-cash sales incentives.

Definitions

Rule 5122(a) provides a set of definitions for the application of the rule. The term "member private offering" means a private placement of unregistered securities issued by a member firm or control entity. The term "private placement" is defined as a non-public offering of securities conducted in reliance on an available exemption from registration under the Securities Act. A "control entity" is any entity that controls or is under common control with a member firm, or that is controlled by a firm or its associated persons. "Control" means a beneficial interest, as defined in Rule 5130(i)(1), of more than 50 percent of the outstanding voting securities of a corporation, or the right to more than 50 percent of the distributable profits or losses of a partnership or other non-corporate legal entity.

The power to direct the management or policies of a corporation or partnership alone (e.g., the general partner of a partnership)—absent meeting the majority ownership or right to the majority of profits—would not constitute "control" as defined in Rule 5122. Performance and management fees earned by a general partner should not be included in the determination of partnership profit or loss percentages for purposes of the rule. However, if such performance and management fees are subsequently re-invested in the partnership, thereby increasing the general partner's ownership interest, then such interests should be considered in determining whether the partnership is a control entity.

In addition, for purposes of this rule, entities may calculate the percentage of control using a "flow through" concept by looking through ownership levels to calculate the total percentage of control. For example, if member firm ABC owns 50 percent of corporation DEF that in turn holds a 60 percent interest in corporation GHI, and ABC is engaged in a private offering of GHI, ABC would have a 30 percent interest in GHI (50 percent of 60 percent), and thus GHI would not be considered a control entity under this definition.

The determination of control should be made immediately after the closing of an offering. For example, if member firm ABC has an 80 percent ownership interest in corporation DEF and sells 50 percent of the shares it owns in DEF in a private placement, member firm ABC's ownership interest in DEF immediately after the closing would be 40 percent and below the threshold of Rule 5122. However, if the member firm elects to conduct the private placements in stages, Rule 5122(a)(3) requires that determination of control be made after each such offering closes. For example, if member firm ABC elects to sell 50 percent of its interest in DEF in two stages, Rule 5122 would apply to the first offering as ABC would retain a 60 percent interest in DEF upon the closing of the first offering and DEF would still be considered a control entity. The subsequent offering would reduce ABC's ownership interest in company DEF to 40 percent, and thus Rule 5122 would not apply to the subsequent offering.

If an offering is intended to raise sufficient funds such that the firm would not control the entity raising capital under the control standard, but fails to raise sufficient funds, the firm must promptly come into compliance with the rule, including providing the required disclosures to investors, filings with FINRA and limitations on the use of offering proceeds as discussed below.³

Rule 5122 applies to MPOs, and is intended to address potential conflicts and abuses that can occur when a member firm sells its own securities or those issued by a control entity. Accordingly, the provisions of the rule do not apply when the firm with the conflict does not offer or sell the securities, and the securities are instead sold by another member firm. For example, the rule does not apply if member firm ABC sells all of the securities issued by member firm DEF in an MPO unless member firm ABC is also a control entity of member firm DEF. If DEF offers or sells any of the securities, however, then the rule would apply (unless the MPO qualifies for an available exemption from the rule).

Disclosure Requirements

FINRA believes that every investor in an MPO should receive basic information concerning the offering. Consequently, Rule 5122(b)(1) requires firms to provide a written offering document to each prospective investor in an MPO, whether or not accredited, and that the offering document disclose the intended use of offering proceeds as well as offering expenses and selling compensation.⁴ If the offering has a private placement memorandum or term sheet, then such memorandum or term sheet must be provided to each prospective investor and must contain these disclosures. If the offering does not have a private placement memorandum or term sheet, then the member firm must prepare an offering document that discloses the intended use of offering proceeds as well as offering expenses and selling compensation. The rule does not require a particular form of disclosure.⁵

Filing Requirements

Rule 5122(b)(2) requires that a member firm file a private placement memorandum, term sheet or other offering document with FINRA's Corporate Financing Department at or prior to the first time such document is provided to any prospective investor. The firm must also file any amendments or exhibits to the offering document with FINRA within ten days of being provided to any investor or prospective investor. The filing requirement is intended to allow FINRA staff to identify those offering documents that are deficient "on their face" from the other requirements of the rule. Notably, the filing requirement differs from that in Rule 5110 (Corporate Financing Rule) in that FINRA staff will not review the offering and issue a "no-objections" letter before a member may commence the offering.

Offering documents should be submitted as PDFs to the Corporate Financing Department via email at *corpfin@finra.org*.⁶ Firms must include their CRD number for identification purposes as part of their email submission. As provided in the rule, information filed with FINRA pursuant to FINRA Rule 5122 will be subject to confidential treatment.⁷ In addition, the rule imposes no additional requirements regarding the filing of advertisements or sales materials, which continue to be governed by NASD Rule 2210.

Use of Offering Proceeds

Rule 5122(b)(3) requires that each time an MPO is closed at least 85 percent of the offering proceeds raised be used for business purposes (excluding offering costs, discounts, commissions or any other cash or non-cash sales incentives). The use of offering proceeds also must be consistent with the required disclosures to investors, as described above. This requirement was created to address abuses where firms or control entities used substantial amounts of offering proceeds for selling compensation and related party benefits, rather than business purposes. The rule, however, does not limit the total amount of underwriting compensation, although no more than 15 percent of the money raised from investors in the private placement could be used to pay underwriting expenses. This percentage is consistent with the limitation of offering fees and expenses, including compensation, in NASD Rule 2810 (Direct Participation Programs), and the North American Securities Administrators Association (NASAA) guidelines with respect to public offerings subject to state regulation.

Exemptions

Rule 5122(c) provides a number of exemptions from the rule based on type of offerings and type of investors. First, the rule exempts MPOs sold solely to the following:

- ➤ institutional accounts, as defined in NASD Rule 3110(c)(4);
- qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;
- qualified institutional buyers, as defined in Securities Act Rule 144A;
- investment companies, as defined in Section 3 of the Investment Company Act;
- ➤ an entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A; and
- banks, as defined in Section 3(a)(2) of the Securities Act.

In addition, Rule 5122 excludes the following types of offerings, which do not raise the concerns raised by previous FINRA enforcement actions:

- offerings of exempted securities, as defined by Section 3(a)(12) of the Exchange Act;
- ➤ offerings made pursuant to Securities Act Rule 144A or SEC Regulation S;
- ➤ offerings in which a firm acts primarily in a wholesaling capacity (*i.e.*, it intends, as evidenced by a selling agreement, to sell through its affiliate broker-dealers, less than 20 percent of the securities in the offering);

- offerings of exempted securities with short term maturities under Section 3(a)(3) of the Securities Act;
- ➤ offerings of subordinated loans under SEA Rule 15c3-1, Appendix D¹0;
- ➤ offerings of "variable contracts," as defined in NASD Rule 2820(b)(2);
- ➤ offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referred to in Rule 5110(b)(8)(E);
- offerings of securities of a commodity pool operated by a commodity pool operator, as defined under Section 1a(5) of the Commodity Exchange Act;
- offerings of equity and credit derivatives, including OTC options, provided that the derivative is not based principally on the member or any of its control entities; and
- ➤ offerings filed with FINRA under Rule 5110 or NASD Rules 2720 or 2810.

Finally, the rule exempts the following types of MPOs, in which investors are expected to have access to sufficient information about the issuer and its securities, in addition to the information provided by the firm conducting the MPO:

- ➤ offerings of unregistered investment-grade rated debt and preferred securities;
- > offerings to employees and affiliates of the issuer or its control entities; and
- offerings of securities issued in conversions, stock splits and restructuring transactions made to existing investors without the need for additional consideration or investments on the part of the investor.

Types of exemptions may be combined without triggering the requirements of the rule. For example, if an MPO is offered to both qualified purchasers and employees or affiliates of the issuer or its control entities, as long as these purchasers qualify for exemptions under the rule, the MPO would be exempt from the rule's requirements.

Endnotes

- See Exchange Act Release No. 59599 (March 19, 2009), 74 FR 12913 (March 25, 2009) (SR-FINRA-2008-020) (MPO Approval Order).
- FINRA Rule 5110 and NASD Rules 2720 and 2810 govern member firm participation in public offerings of securities.
- 3 For example, if member firm ABC intends to sell 50 percent of its 80 percent interest in (or 40 percent of) corporation DEF, but fails to obtain enough purchasers and subsequently amends its offering to sell only 25 percent of its 80 percent interest (or 20 percent), then ABC must promptly come into compliance with the rule. The fact that ABC believed that DEF would not be a control entity upon the completion of the offering does not excuse its obligation to comply with the terms of Rule 5122.
- 4 FINRA recognizes that changing the business purpose or use of proceeds in an offering may in some instances benefit investors, and reminds firms that they may change the use of proceeds, provided they make appropriate disclosures to investors and file amended offering documents with the Corporate Financing Department.
- 5 See Supplementary Material 5122.01.

- The Department's mailbox may also be accessed through the FINRA Web site at www.finra.org/Industry/Compliance/
 RegulatoryFilings/index.htm. The offering documents will be deemed filed for purposes of the rule upon email submission to this mailbox. An email response will be generated by the Department to notify filers that the MPO filing has been received. Because the Department will not issue a "no-objections" letter before a firm may commence the offering, firms should maintain records evidencing their submission of offering documents.
- 7 See Rule 5122(d). This confidential treatment provision is similar to that provided in Rule 5110(b)(3).
- 8 See MPO Approval Order.
- 9 FINRA has proposed transferring NASD Rule 2810 without material change into the Consolidated FINRA Rulebook as FINRA Rule 2310. *See* SR-FINRA-2009-016.
- Firms' offerings of subordinated loans are subject to an alternative disclosure regime. In 2002, the SEC approved a rule change to require, as part of a subordination agreement, the execution of a Subordination Agreement Investor Disclosure Document. See Exchange Act Release No. 45954 (May 17, 2002), 67 FR 36281 (May 23, 2002); see also Notice to Members 02-32 (June 2002).

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ATTACHMENT A

The following is the text of new Rule 5122.

- 5000. SECURITIES OFFERING AND TRADING STANDARDS AND **PRACTICES**
- 5100. SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION

5120. Offerings of Members' Securities

5122. Private Placements of Securities Issued by Members

(a) Definitions

(1) Member Private Offering

A "member private offering" means a private placement of unregistered securities issued by a member or a control entity.

(2) Control Entity

A "control entity" means any entity that controls or is under common control with a member, or that is controlled by a member or its associated persons.

(3) Control

The term "control" means beneficial interest, as defined in Rule 5130(i)(1), of more than 50 percent of the outstanding voting securities of a corporation, or the right to more than 50 percent of the distributable profits or losses of a partnership or other non-corporate legal entity. Control will be determined immediately after the closing of an offering, and in the case of an offering with multiple intended closings, immediately following each closing.

(4) Private Placement

The term "private placement" means a non-public offering of securities conducted in reliance on an available exemption from registration under the Securities Act.

(b) Requirements

No member or associated person may offer or sell any security in a Member Private Offering unless the following conditions have been met:

(1) Disclosure Requirements

- (A) If an offering has a private placement memorandum or term sheet, then such memorandum or term sheet must be provided to each prospective investor and must contain disclosures addressing:
 - (i) intended use of the offering proceeds; and
 - (ii) offering expenses and the amount of selling compensation that will be paid to the member and its associated persons.
- (B) If an offering does not have a private placement memorandum or term sheet, then the member must prepare an offering document that contains the disclosures required in subparagraph (b)(1)(A)(i) and (ii) and provide such document to each prospective investor.

(2) Filing Requirements

A member must file the private placement memorandum, term sheet or such other offering document with the Corporate Financing Department at or prior to the first time the document is provided to any prospective investor. Any amendment(s) or exhibit(s) to the private placement memorandum, term sheet or other offering document also must be filed with the Department within ten days of being provided to any investor or prospective investor.

(3) Use of Offering Proceeds

For each Member Private Offering, at least 85% of the offering proceeds raised must be used for business purposes, which shall not include offering costs, discounts, commissions or any other cash or non-cash sales incentives. The use of the offering proceeds also must be consistent with the disclosures required in paragraph (b)(1).

If, in connection with the offer and sale of any security in a Member Private Offering, a member or associated person discovers after the fact that one or more of the conditions listed above have not been met, the member or associated person must promptly conform the offering to comply with this Rule.

(c) Exemptions

The following Member Private Offerings are exempt from the requirements of this Rule:

- (1) offerings sold solely to:
 - (A) institutional accounts, as defined in NASD Rule 3110(c)(4);
- (B) qualified purchasers, as defined in Section 2(a)(51)(A) of the Investment Company Act;
- (C) qualified institutional buyers, as defined in Securities Act Rule 144A:
- (D) investment companies, as defined in Section 3 of the Investment Company Act;
- (E) an entity composed exclusively of qualified institutional buyers, as defined in Securities Act Rule 144A; and
 - (F) banks, as defined in Section 3(a)(2) of the Securities Act.
- (2) offerings of exempted securities, as defined in Section 3(a)(12) of the Exchange Act;
- (3) offerings made pursuant to Securities Act Rule 144A or SEC Regulation S;
- (4) offerings in which a member acts primarily in a wholesaling capacity (i.e., it intends, as evidenced by a selling agreement, to sell through its affiliate broker-dealers, less than 20% of the securities in the offering);
- (5) offerings of exempted securities with short term maturities under Section 3(a)(3) of the Securities Act;
- (6) offerings of subordinated loans under SEA Rule 15c3-1, Appendix D (see NASD Notice to Members 02-32 (June 2002));
 - (7) offerings of "variable contracts," as defined in NASD Rule 2820(b)(2);
- (8) offerings of modified guaranteed annuity contracts and modified guaranteed life insurance policies, as referenced in Rule 5110(b)(8)(E);
- (9) offerings of unregistered investment grade rated debt and preferred securities:

- (10) offerings to employees and affiliates of the issuer or its control entities;
- (11) offerings of securities issued in conversions, stock splits and restructuring transactions that are executed by an already existing investor without the need for additional consideration or investments on the part of the investor;
- (12) offerings of securities of a commodity pool operated by a commodity pool operator, as defined under Section 1a(5) of the Commodity Exchange Act;
- (13) offerings of equity and credit derivatives, including OTC options; provided that the derivative is not based principally on the member or any if its control entities; and
- (14) offerings filed with the Department under Rule 5110 or NASD Rules 2720 or 2810.

(d) Confidential Treatment

FINRA shall accord confidential treatment to all documents and information filed pursuant to this Rule and shall utilize such documents and information solely for the purpose of review to determine compliance with the provisions of applicable FINRA rules or for other regulatory purposes deemed appropriate by FINRA.

(e) Application for Exemption

Pursuant to the Rule 9600 Series, FINRA may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

• • • Supplementary Material: -----

.01. Private Placement Memorandum. Nothing in this rule shall require a member to prepare a private placement memorandum. A member may satisfy the disclosure and filing requirements in the Rule with an offering document that does not meet the additional requirements of Securities Act Rule 502.

* * * * *

Regulatory Notice

Regulatory Notice

09-28

Indications of Interest

FINRA Reminds Firms of Their Obligation to Provide Accurate Information in Disseminating, or Using Services to Disseminate, Indications of Interest

Executive Summary

FINRA is issuing this *Notice* to remind firms of their obligation to communicate accurate information when disseminating, or using services to disseminate, indications of interest to the marketplace.

Questions regarding this *Notice* may be directed to: Quality of Markets, Market Regulation, (240) 386-2500; The Legal Section, Market Regulation, at (240) 386-5126; or The Office of General Counsel at (202) 728-8071.

Background and Discussion

Indications of interest are expressions of trading interest that contain one or more of the following elements: security name, side of the market, size, capacity, and/or price. Firms have the ability to communicate or advertise proprietary or customer trading interest in the form of indications of interest to the marketplace through their own systems or several service providers that disseminate the information to subscribers and/or the marketplace.

A firm may choose to disseminate indications of interest to inform other market participants that it seeks to, or represents trading interest that seeks to, interact with other order flow in the security. While there is no prohibition on the dissemination of such indications of interest for this or other proper, lawful purposes, firms are reminded that, to the extent that they disseminate or use such services to communicate indications of interest, such indications must be truthful, accurate and not misleading.¹

One attribute that is often associated with an indication of interest is whether it is what is commonly referred to as a "natural" indication of interest. However, the meaning of the term "natural" may differ across firms and service providers.² In this regard, a "natural" indication of interest may be considered to solely refer to interest a firm represents on an agency

May 2009

Notice Type

➤ Guidance

Suggested Routing

- Compliance
- Legal
- Trading

Key Topic(s)

Indications of Interest

Referenced Rules & Notices

- ➤ FINRA Rule 2010
- ➤ FINRA Rule 2020
- NASD Rule 2210
- NASD Rule 3010
- NASD Rule 3310NTM 06-50
- ➤ IM-3310



basis or refer not only to agency interest but also proprietary interest in certain specific contexts (e.g., proprietary interest that was established as the result of the facilitation of a customer order or the execution of a customer order on a riskless principal basis).

Accordingly, FINRA could view as untruthful, inaccurate, or misleading a firm's representation of firm proprietary interest as a "natural" indication of interest in a manner that is inconsistent with disclosures made by a firm with respect to the content of its indications, or alternatively through a service provider's system in a manner contrary to a service provider's guidelines. Depending on the circumstances, FINRA also could view as untruthful, inaccurate or misleading a firm's continuing dissemination of a "natural" indication of interest to the marketplace when the firm no longer represents or has any such interest.

The communication of untruthful, inaccurate or misleading information relating to indications of interest would be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade.³ In addition, depending on the nature and content of the communication, such communications may also violate NASD Rule 3310 (Publication of Transactions and Quotations) and IM-3310 (Manipulative and Deceptive Quotations) as well as FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices), NASD Rule 2210 (Communications with the Public) and the anti-fraud provisions of the federal securities laws.

FINRA also reminds firms that directly disseminate or use services to disseminate indications of interest that they must establish, maintain and enforce written supervisory procedures and supervisory systems that are reasonably designed to ensure, among other things, that the information disseminated by or on behalf of the firm or its associated persons is truthful, accurate and not misleading.⁴

Endnotes

- FINRA also reminds firms that advertising a firm's trading activity or interest in contexts other than indications of interest is also subject to FINRA rules and the anti-fraud provisions of the federal securities laws. See NASD Notice to Members 06-50 (Sept. 2006).
- 2 Each service provider typically provides policies and user guidelines relating to the manner in which firms should characterize system
- entries, including the input of "natural" indications of interest. Firms must familiarize themselves with these policies and guidelines to ensure that indications of interest or any other information submitted are consistent with the applicable service provider guidelines.
- 3 See FINRA Rule 2010.
- 4 See NASD Rule 3010.

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Election Notice

Notice of Special Meeting of Large Firms and Proxy

Executive Summary

The Financial Industry Regulatory Authority, Inc. (FINRA) will conduct a special meeting of large firms on Wednesday, June 10, 2009, at 10 a.m. at FINRA's Washington, DC office at 1735 K Street, NW. The purpose of the meeting is to elect individuals to fill the two vacant Large Firm Governor seats on FINRA's Board of Governors.

It is important that all large firms be represented by proxy or in person at the special meeting. Large firms are urged to vote in the election using one of the methods described below. For a proxy to be considered valid, it must be signed by the executive representative of a large firm eligible to vote in the election.

Large firms that are members of FINRA as of the close of business on May 14, 2009 (the special meeting record date), will be eligible to vote in this election

Note: This *Notice* was distributed in writing to all large firms. In addition, it was sent electronically to the executive representative of each FINRA member firm and it is posted on FINRA's Web site at www.finra.org/notices/election/051509.

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

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

May 15, 2009

Suggested Routing

- Executive Representatives
- Senior Management



Election of Large Firm Candidates to the Board of Governors

There are two Large Firm Governor vacancies to be filled at this meeting.¹ Pursuant to Article XXII, Sec. 3, in the event of any vacancy among the Large Firm Governors during the Transitional Period,² where a position is vacant for more than 12 months, nominations to fill the vacancy are made by the NYSE Group Committee³ of FINRA's Board of Governors and voted upon by the FINRA member firms entitled to vote for that category of Governor.

Notice of the nominees selected by the NYSE Group Committee was provided to firms on March 27, 2009.⁴ No other individual came forward within the 45-day petition period to have his or her name added as an additional candidate.⁵ Therefore, the two candidates for the vacant seats are:

- Seth H. Waugh, CEO of Deutsche Bank Americas
- > James D. Weddle, Managing Partner of Edward Jones

Attachment A includes the candidate profiles.

Term of Office

The elected individuals will complete the terms vacated by Governors Thomas Russo and Robert McCann, and serve until the first annual meeting of member firms following the Transitional Period, or until his or her successor is duly elected or qualified, or until death, resignation, disqualification or removal.⁶

The Transitional Period will conclude on July 30, 2010.

Additionally, the By-Laws expressly provide that the term of office of a governor shall terminate immediately upon a determination by the Board, by a majority vote of the remaining governors, that the governor no longer satisfies the classification for which the governor was elected and the governor's continued service would violate the compositional requirements of the Board set forth in the FINRA By-Laws.

There are three Large Firm Governor seats on the Board. In addition to the two vacant seats being filled through this special election, the other Large Firm Governor is Richard F. Brueckner, Chairman and CEO of Pershing LLC.

Voting Eligibility

Firms are eligible to vote for the industry nominees who are running for seats that are in the same size category as their own firm. Therefore, only large firms are eligible to vote in this election. A proxy containing the nominees for the Large Firm Governor vacancies was mailed with a copy of this *Notice* to all eligible large firms.

Voting Methods

Large firms will be able to submit a proxy by any lawful means, including the use of the following methods:

- > Telephone;
- ➤ U.S. mail; or
- > Internet.

Alternatively, large firms may attend the special meeting and vote in person. The enclosed proxy contains detailed instructions on the proxy submission procedures. As mentioned above, it is important that all large firms be represented at the special meeting. Following receipt of this *Notice* and proxy, executive representatives of large firms may receive telephone reminders during the election period. This will ensure that sufficient proxies are received by FINRA to satisfy the special meeting quorum requirements of Section 215(c) of Title 8 of the General Corporation Law of the State of Delaware, as well as to ensure broad participation in the election by large firms that are eligible to vote.

Revocation of Proxies

If you have given a revocable proxy pursuant to a proxy card distributed by FINRA or otherwise in the manner described herein, you may nonetheless revoke your proxy by attending the special meeting and voting in person. In addition, you may revoke any such proxy you give at any time before the special meeting by delivering to FINRA's Corporate Secretary a written statement revoking it or by duly delivering another proxy at a later time. Your attendance at the special meeting will not in and of itself constitute a revocation of your proxy.

Endnotes

- To be eligible to serve, Large Firm Governors must be registered with a Large Firm. A Large Firm is defined as a firm that employs more than 500 registered persons. See Article I (y) of the FINRA By-Laws.
- Pursuant to Article I (zz) of the FINRA By-Laws, the Transitional Period means the period commencing on the date of the Closing and ending on the third anniversary of the date of the Closing; however, the initial member elected governors shall hold office, subject to certain qualifications, until the first annual meeting of members following the Transitional Period. See Article XXII, Section 3 of the FINRA By-Laws.
- The NYSE Group Committee is comprised of the five Public Governors appointed by the NYSE Group, Inc. Board of Directors (NYSE Board), the Large Firm Governors nominated by the NYSE Board and the Floor Member Governor appointed by the NYSE Board.

- 4 See Election Notice 03/27/09.
- Pursuant to Article VII, Section 10 of FINRA's By-Laws a person who has not been nominated may be included on the ballot for the election if he or she timely presents the requisite number of petitions in support of his or her nomination.
- See Article XXII, Section 3 of the FINRA By-Laws.

Attachment A: Profiles of FINRA Large Firm Governor Candidates

Seth H. Waugh

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

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

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

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

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

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

James D. Weddle

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

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

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

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

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

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

Information Notice

Continuing Education Planning

Executive Summary

On May 19, 2009, the FINRA released the semi-annual Firm Element Advisory (see <u>Regulatory Notice 09-26</u>). FINRA suggests that firms consult the Firm Element Advisory when developing their Firm Element training needs analysis.

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

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

- ➤ **Podcasts:** Short audio recordings on specific targeted topics, which can be heard online or downloaded to a portable media player (see www.finra.org/podcasts).
- ➤ **Webcasts:** Online streaming video presentations that take about 10 minutes to watch; monthly completion tracking reports are available (see www.finra.org/webcasts).
- ➤ E-Learning Courses: More in-depth online training featuring assessment tests, scenarios, real-time completion tracking and certificates of completion (see www.finra.org/elearning).

May 20, 2009

Suggested Routing

- Compliance
- ➤ Continuing Education
- ➤ Legal
- ➤ Training

Key Topics

- Continuing Education
- > Firm Element

Referenced Rules & Notices

➤ Regulatory Notice 09-26



Discussion

FIRM ELEMENT ADVISORY TOPICS

FINRA OFFERING

Anti-Money Laundering

For Staff Working With Retail Customers:

- AML—Retail: Exploring New Risks (E-Learning)
- AML—Retail: Recognizing and Escalating Suspicious Activity (E-Learning)
- AML—Retail: The Responsibility to Know Your Customer (E-Learning)
- AML—Retail: Recognizing Red Flags (<u>E-Learning</u>)
- AML—Retail: Customer Identification Procedures (E-Learning – available 2009) NEW
- AML—Do You Know Your Customer? (Webcast)
- AML—Examples of Red Flags (Webcast)

For Staff Working With Institutional Customers:

- AML—Institutional: Exploring New Risks (E-Learning)
- AML—Institutional: Identification and Reporting Issues (E-Learning)
- AML—Institutional: Identifying and Managing Higher-Risk Clients (E-Learning)
- AML—Institutional: Recognizing Red Flags (<u>E-Learning</u>)
- AML Institutional: Customer Identification Procedures (E-Learning available 2009) **NEW**
- AML—Institutional: Know Your Customer (Webcast)
- AML—Enhanced Due Diligence for Foreign Private Banking Accounts (E-Learning and Webcast available 2009) **NEW**
- AML—Enhanced Due Diligence for Foreign Correspondent Accounts (E-Learning and Webcast – available 2009) NEW

For Staff Working in Operations:

- Anti-Money Laundering for Operations Staff (Webcast)
- AML—Operations: Recognizing Red Flags (<u>E-Learning</u>)
- AML Operations: Customer Identification Procedures (E-Learning available 2009)

For Compliance Staff:

What to Expect: Anti-Money Laundering (<u>Webcast</u>) **NEW**

FIRM ELEMENT ADVISORY TOPICS FINRA OFFERING Communications General • Communications with the Public: An Introduction to Compliance Issues (E-Learning) • Communications with the Public: What a Registered Representative Should Know (Webcast) • What to Expect: Filing Communications for Review (Webcast) Principal Approval of Sales Material (<u>Podcast</u>) **Electronic Communications** • Electronic Communications: Social Networking Web Sites (Podcast) **NEW** • Electronic Communications: Blogs, Bulletin Boards and Chat Rooms (Podcast) **NEW** • Electronic Communications: Web Sites (Podcast) **NEW** "Free Lunch" Seminars • "Free Lunch" Seminars Seniors: Free Lunch (Podcast) **Misleading Communications** • Seniors: Communications (Podcast) **Fairness Opinions Corporate Finance** and Institutional • Fairness Opinions (Podcast) Business SEC Rule 144 • Private Placements (E-Learning and Webcast) **NEW Customer Accounts Customer Account Transfers** • Report of the Customer Account Transfer Taskforce (Podcast) **Trading Ahead of Customer Limit Orders** • Life of an Equity Trade (E-Learning and Webcast) NEW **Ethics and Business Conduct** • Insider Trading (E-Learning) **NEW** • Conflicts of Interest (E-Learning and Webcast) • Ethics: The Importance of Ethical Behavior (Webcast)

FIRM ELEMENT ADVISORY TOPICS	FINRA OFFERING
Finance and Operations	Recordkeeping Requirements • Record Retention Relief (Podcast)
Gifts and Business Entertainment	 Gifts and Gratuities Business Gifts (E-Learning and Webcast) Foreign Corrupt Practices Act: Avoiding Improper Payments (E-Learning – to be updated in 2009) NEW
Insurance/Annuities	Life Settlements • Life Settlements (Webcast) Margin and Margin Accounts • Margin Accounts (Webcast)
Mark-Ups/ Mark-Downs	Fair Prices and Commissions Debt Mark-Ups (E-Learning) Debt Mark-Ups (Webcast) Debt Securities Mark-Up Interpretation (Podcast)
Research	Trading Ahead of Research Reports • Trading Ahead of Research Reports (Podcast) NEW
Sales Practices & Supervision	 529 College Savings Plans 529 College Savings Plan Sales Practices (E-Learning) 529 Plans: The In-State Versus Out-of-State Decision (Webcast) Municipal Securities Supervisory Requirements MSRB Supervision Rules (Webcast with E-Learning course available in 2009) NEW
	 New Products Hedge Funds: Understanding Sales Practice Responsibilities (E-Learning) Structured Products (E-Learning and Webcast) New Product Suitability Considerations (Webcast) Equity-Indexed Annuities (Webcast) Private Placements (E-Learning and Webcast)

FIRM ELEMENT ADVISORY TOPICS

FINRA OFFERING

Obligations With Regard to Cash Alternatives

• Cash Alternatives (Podcast) NEW

Sales of Securities in a High-Yield Environment

• High-Yield Environment Instruments (Podcast) NEW

Senior Investors

- Senior Investor Suitability Considerations (E-Learning)
- Retail Supervision: Sales to Senior Investors (<u>E-Learning</u>)
- Supervisory Considerations for Working with Seniors (E-Learning and Webcast)
- Considerations for Working with Seniors (<u>Webcast</u>)
- Protecting Seniors (Podcast)
- Seniors: Diminished Capacity (Podcast)
- Seniors: Free Lunch (Podcast)
- Seniors: Supervision (Podcast)
- Seniors: Suitability (Podcast)
- Seniors: Communications (Podcast)
- Considerations of Financial Issues Common to Seniors (E-Learning available 2009) **NEW**

Variable Annuities

- Variable Annuities: Sales Practice Issues for 1035 Exchanges (E-Learning)
- Variable Annuities: Suitability and Disclosure for New Purchases (E-Learning)
- Variable Annuities: Requirements for Representatives (E-Learning and Webcast)
- Variable Annuities: Requirements for Supervisors (E-Learning and Webcast)

Disciplinary and Other FINRA Actions

Firm Suspended, Individual Sanctioned

CMG Institutional Trading, LLC (CRD® #47264, Chicago, Illinois) and Shawn Derrick Baldwin (CRD #4281564, Registered Principal, Chicago, Illinois) were fined \$25,000, jointly and severally, and were suspended in any capacity for two years. The Securities and Exchange Commission (SEC) affirmed the sanctions following appeal of a NAC decision. The sanctions were based on findings that the firm and Baldwin failed to respond completely and fully to FINRA™ requests for information.

The suspensions are in effect from April 6, 2009, through April 5, 2011. (FINRA Case #E8A2005025201)

Firms Fined

Aletheia Securities, Inc. (CRD #44784, Santa Monica, California) 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 Trade Reporting and Compliance Engine™ (TRACE™) reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of the execution time; failed to report transactions in TRACE-eligible securities to TRACE that it was required to report; failed to report the correct trade execution time for transactions in TRACE-eligible securities; and incorrectly reported transactions as block transactions with a customer, when, in fact, it should have reported the individual customer transactions that comprised each block. The findings stated that the firm's separate and distinct violations of NASD® Rule 6230(a) and its pattern or practice of late reporting without exceptional circumstances violated NASD Rule 2110. 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 for TRACE reporting. (FINRA Case #2006005961501)

BNP Paribas Securities Corp. (CRD #15794, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$17,500 and required to revise its written supervisory procedures regarding the reporting of options positions. Without admitting or denying the findings, the firm consented to the described

Reported for May 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).



sanctions and to the entry of findings that it failed to report reportable positions in conventional options by the close of business on the next business day following the day on which the transactions took place, and failed, in some instances, to respond properly after the Securities Industry Automation Corporation (SIAC) rejected the trades. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA Rules concerning the reporting of options positions. (FINRA Case #2007007861301)

Great Point Capital LLC (CRD #114203, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to revise its written supervisory procedures regarding NASD Rules 3350, 6130(d)(6), and SEC Rules 200(g) and 203(b)(1). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it 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 that the security can be borrowed so that it can be delivered on the date delivery is due; and documenting compliance with SEC Rule 203(b)(1). The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA Rules concerning NASD Rules 3350, 6130(d)(6), and SEC Rules 200(g) and 203(b)(1). (FINRA Case #2006005053101)

Intrade, LLC (CRD #104047, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline transactions in reportable securities in the NASD/NASDAQ Trade Reporting Facility (NNTRF) within 20 minutes after execution. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA Rules concerning NASD Rule 6130. (FINRA Case #2008012327101)

Kingside Partners, LLC (CRD #139930, New York, New York) 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 transmit Reportable Order Events (ROEs) to the Order Audit Trail System™ (OATS™). The findings stated that the firm failed to enforce its written supervisory procedures, which specified that the designated principal shall access the OATS Web Interface daily to review the firm's reporting statistics. (FINRA Case #2007008540301)

Mitsubishi UFJ Securities (USA), Inc. (CRD #19685, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it permitted an employee to perform certain functions requiring principal registration while he was not registered with FINRA in that capacity. (FINRA Case #2007008490201)

Individuals Barred or Suspended

Joe Russell Bancroft (CRD #4534394, Registered Representative, Poplar Bluff, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Bancroft consented to the described sanction and to the entry of findings that he misappropriated \$10,500 worth of cash premium payments that he received from insurance customers for his personal use. The findings stated that Bancroft attempted to cover up his misuse of customer funds by depositing some of the more recent cash payments he received from customers into the accounts of other customers whose money he had previously misappropriated. (FINRA Case #2008015912901)

Linton Fred Banwell (CRD #11952, Registered Principal, Clarkston, Michigan) 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, Banwell consented to the described sanctions and to the entry of findings that he exercised discretion in a public customer's account by using the proceeds of matured certificates of deposit in the customer's securities account to purchase \$17,000 of a mutual fund without the customer's prior written authorization. The findings stated that Banwell's member firm did not accept the customer's account as discretionary (in writing or otherwise) prior to his exercising discretionary power.

The suspension was in effect from April 6, 2009, through April 13, 2009. **(FINRA Case #2007011066801)**

Michael Ross Berkoff (CRD #2571295, Registered Representative, Greenacres, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Berkoff'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, Berkoff consented to the described sanctions and to the entry of findings that he failed to enter a stop-loss order a customer requested, and borrowed \$8,000 from the customer in violation of his member firm's procedures and NASD Rules 2110 and 2370.

The suspension is in effect from April 6, 2009, through May 18, 2009. **(FINRA Case #2007011925501)**

Mary Mae Bickford (CRD #4997726, Registered Representative, Coon Rapids, Minnesota) 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, Bickford consented to the described sanction and to the entry of findings that, while associated with a member firm, she converted \$21,667.05 of non-securities to her personal use by effecting unauthorized journal transactions from her member firm's suspense account to her personal brokerage account at the firm. The findings stated that Bickford failed to fully respond to FINRA requests for information. (FINRA Case #2007011102901)

Brian Scott Brown (CRD #4674731, Registered Representative, Brooklyn, New York) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Brown willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer (Form U4), and failed to respond to FINRA requests for information. **(FINRA Case #2008013493101)**

Christopher John Brunert (CRD #3055225, Registered Representative, Kings Park, New York) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Brunert fraudulently obtained a customer's signature on a wire transfer form in order to misappropriate \$100,000 from the customer. The findings stated that Brunert transferred the funds into a bank account that he and a relative controlled for his own use and benefit, and used the funds to pay credit card debts and other expenses. The findings also stated that Brunert failed to respond to FINRA requests for information and to appear for an on-the-record interview. (FINRA Case #2008012476701)

Peter M. Castelluccio (CRD #4125302, Associated Person, Hewitt, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid pursuant to an installment plan either immediately upon Castelluccio'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, Castelluccio consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension is in effect from April 6, 2009, through July 5, 2009. **(FINRA Case #2008012581401)**

Young Jin Chun (CRD #2785584, Registered Representative, Suffern, New York) submitted an Offer of Settlement in which she was fined \$10,000 and suspended from association with any FINRA member in any capacity for one year. The fine must be paid either immediately upon Chun's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the allegations, Chun consented to the described sanctions and to the entry of findings that she created false documents by misrepresenting that a customer had not been previously declined life insurance on variable life insurance applications when, in fact, the customer had been previously declined life insurance. Moreover, Chun's actions caused the firm's books and records to contain false and misleading information related to the customer's life insurance application history.

The suspension is in effect from March 16, 2009, through March 15, 2010. (FINRA Case #2006005940901)

Robert A. Clipper (CRD #5109047, Registered Representative, Bay City, Michigan) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Clipper received \$5,000 from insurance customers to pay insurance premiums and made improper use of the funds to pay his insurance agency's business expenses. The findings stated that Clipper failed to completely respond to FINRA requests for information. (FINRA Case #2007009785301)

Jason Adam Craig (CRD #4016543, Associated Person, Washington Township, Michigan) was barred from association with any FINRA member in any capacity. The SEC imposed the sanction following appeal of a NAC decision. The sanction was based on findings that Craig willfully failed to disclose material information on his Form U4. (FINRA Case #E8A2004095901)

Michael Vincent Davies (CRD #1889502, Registered Representative, Northville, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Davies' reassociation with a FINRA member firm following his suspension, or prior to the filling of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Davies consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to give prior written notice to, or receive prior written approval from, his member firm.

The suspension is in effect from April 6, 2009, through October 5, 2009. **(FINRA Case #2007011285101)**

Miriam Therese Dever (CRD #702034, Registered Representative, West Roxbury, 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 three months. Without admitting or denying the findings, Dever consented to the described sanctions and to the entry of findings that she signed a customer's name, without the customer's authorization or consent, to forms to consolidate accounts in accordance with her wishes. The findings also stated that Dever failed to disclose material information on her Form U4.

The suspension is in effect from April 20, 2009, through July 19, 2009. **(FINRA Case #2007010858601)**

Peggy Lyn Fry (CRD #1239569, Associated Person, Aurora, Colorado) 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, Fry consented to the described sanction and to the entry of findings that, while associated with a member firm, she transferred, or caused the transfer of, \$25,000 from a customer's brokerage account to her personal bank account, without the customer's knowledge or consent, by creating a false Automatic Clearing House Transaction Request Form to which she forged the customer's signature and used the funds to pay personal expenses. The findings stated that the firm repaid the customer's funds, plus interest, and then Fry repaid the firm. (FINRA Case #2008012267901)

Alan Joseph Ganim (CRD #1150852, Registered Representative, Chardon, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for three months. In light of Ganim's financial status, no monetary sanctions were imposed. Without admitting or denying the findings, Ganim consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension is in effect from April 6, 2009, through July 5, 2009. **(FINRA Case #2007010192201)**

David Garcia (CRD #4809280, Registered Representative, Bartlett, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Garcia'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, Garcia consented to the described sanctions and to the entry of findings that he directed an individual to telephone the insurance affiliate of his member firm for a client history interview and to impersonate an insurance customer to obtain approval of life insurance policies for the customer prior to the deadline date.

The suspension was in effect from March 16, 2009, through April 27, 2009. **(FINRA Case #2007010314101)**

John A. Gargiulo (CRD #3174988, Registered Representative, Point Pleasant, New Jersey) was barred from association with any FINRA member in any capacity and ordered to pay \$3,000, plus interest, in restitution. The sanctions were based on findings that Gargiulo failed to respond to FINRA requests for information and engaged in unauthorized transactions in a customer's account. (FINRA Case #2006005919501)

Carol Ann Geske (CRD #1353390, Registered Principal, Shelburne, Vermont) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for one month. Without admitting or denying the findings, Geske consented to the described sanctions and to the entry of findings that, after learning that a customer's enrollment form in a mutual fund had been rejected because it was submitted more than 30 days after it had been signed, she signed the customer's name on a new enrollment form without the customer's authorization or consent rather than asking the customer to sign a new application.

The suspension was in effect from April 6, 2009, through May 5, 2009. **(FINRA Case #2008012224701)**

Kevin Mark Glodek (CRD #2419411, Registered Representative, New York, New York) was fined \$25,000 and suspended from association with any FINRA member in any capacity for six months. The NAC imposed the sanctions following appeal of an OHO decision The sanctions were based on findings that Glodek made material misrepresentations to customers in connection with the sale of stock. The misrepresentations included predictions of the future price of a stock.

This decision has been appealed to the SEC and the sanctions are not in effect pending the appeal. (FINRA Case #E9B2002010501)

Tonya Marie Griffin (CRD #4568590, Registered Representative, Brodhead, Wisconsin) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Griffin failed to respond to FINRA requests for information. (FINRA Case #2006006968202)

Chuck Richard Hayworth (CRD #2759746, Registered Representative, Wake Forest, North Carolina) 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, Hayworth consented to the described sanction and to the entry of findings that he prepared and submitted 403(b) Employee Retirement Income Security Act (ERISA) Distribution Request forms on public investors' behalf authorizing the distribution of 403(b) assets to rollover Individual Retirement Accounts (IRAs) at his member firm. The findings stated that, even though the investors had consented to the transfers, they were ineligible for rollovers because they were currently still employed by the 403(b) plan sponsor. The findings also stated that Hayworth was aware of their ineligibility but provided false employment-status information and forged the plan administrator's signature on each distribution request form to facilitate the rollovers. (FINRA Case #2007010709901)

Edward James Jeffery (CRD #2296293, Registered Principal, Portland, Oregon) 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. Without admitting or denying the findings, Jeffery consented to the described sanctions and to the entry of findings that he effected discretionary transactions in a customer's account without written discretionary authority and without his member firm's acceptance of the customer's accounts as discretionary.

The suspension is in effect from April 6, 2009, through May 18, 2009. (FINRA Case #2007011939401)

Patrick James Jensen (CRD #1952963, Registered Representative, Spring Lake, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for one year. In light of Jensen's financial status, no monetary sanction was imposed. Without admitting or denying the findings, Jensen consented to the described sanction and to the entry of findings that he paid \$18,000 to another firm's trader and the trader's relative so that the trader would continue to conduct his firm's securities transactions through its account with Jensen. The findings stated that Jensen, while serving as the registered representative of record on a customer's corporate account, shared in losses and gains in the account without written authorization from his member firm or the customer, and he did not share in the profits and losses in direct proportion to his financial contributions to the account.

The suspension is in effect from April 6, 2009, through April 5, 2010. **(FINRA Case #2007009082701)**

Kurt H. Johansson (CRD #708249, Registered Principal, Idaho Falls, Idaho) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Johansson failed to respond completely to FINRA requests for information and documents and failed to appear for a FINRA on-the-record interview. **(FINRA Case #2006007018301)**

Corbin Taylor Jones (CRD #4468964, Registered Representative, Cave Creek, Arizona) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Jones failed to respond to FINRA requests for information and to appear for on-the-record interviews. The findings stated that Jones participated in a private securities transaction without prior notice to his member firm. (FINRA Case #2006004969704)

Jill A. Kleinerman (CRD #2233277, Registered Representative, Lewis Center, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$2,500 and suspended from association with any FINRA member in any capacity for 30 days. In light of Kleinerman's financial status, the imposed fine was \$2,500. Without admitting or denying the findings, Kleinerman consented to the described sanctions and to the entry of findings that, in order to obtain authorization for withdrawals totaling \$37,299.55 for a public customer directly from her IRA securities account, Kleinerman completed a distribution request form, dated the form in her own handwriting, affixed a photocopy of the customer's signature onto the form and submitted it to her member firm. The findings stated that Kleinerman used a photocopy of the customer's signature several times on distribution request forms with the customer's full knowledge or consent.

The suspension is in effect from April 20, 2009, through May 19, 2009. (FINRA Case #2007008322701)

Derek Jon Kuklenski (CRD #5475749, Registered Representative, Orlando, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was censured and barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Kuklenski consented to the described sanctions and to the entry of findings that he misappropriated \$200 in customer funds from his member firm by removing the funds from a cash drawer after regular business hours. (FINRA Case #2008014018101)

Bennett Joseph Lacour III (CRD #603964, Registered Representative, Ormond Beach, Florida) was barred from association with any FINRA member in any capacity and ordered to pay \$4,400, plus interest, in restitution to a customer. The sanctions were based on findings that Lacour borrowed \$5,000 from a customer contrary to his firm's written supervisory procedures prohibiting registered representatives from borrowing from a customer without prior review and approval by the firm, unless the customer was a family member or financial institution, which the customer was not. The findings stated that Lacour failed to pay the loan in full and failed to respond to FINRA requests for information. (FINRA Case #2007011010401)

Alexis Lesko (CRD #4731218, Registered Representative, Frackville, Pennsylvania) 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, Lesko consented to the described sanction and to the entry of findings that she misappropriated \$24,520 from customers' accounts at the bank affiliated with her member firm. The findings stated that Lesko prepared fraudulent cash advance checks to cause unauthorized withdrawals from customers' bank accounts and then deposited the funds into her personal bank account. (FINRA Case #2008013983601)

Nathan James Lorne (CRD #3277561, Registered Representative, Denver, Colorado) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Lorne made unauthorized withdrawals totaling approximately \$12,101 from an organization for which he was treasurer, and hid the withdrawals from the organization's officers and submitted false financial reports to the organization. The findings stated that Lorne converted the funds for his own personal use, except for a small amount that was for legitimate expense reimbursement, but repaid the organization after he was confronted about the unauthorized withdrawals. The findings also stated that Lorne engaged in outside business activities and failed to provide prompt written notice to his member firm, and made misrepresentations to his firm regarding any outside business activity. (FINRA Case #2006005523401)

Kevin J. MacDonald (CRD #5357796, Registered Representative, Brookline, Massachusetts) was barred from association with any FINRA member in any capacity. The sanction was based on findings that MacDonald willfully failed to disclose material information on his Form U4 and failed to respond to FINRA requests for information. (FINRA Case #2007010344801)

James Russell McCarthy Jr. (CRD #1123445, Registered Principal, Southborough, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$20,000 and suspended from association with any FINRA member in any principal capacity for two months. The fine must be paid pursuant to an installment payment plan either immediately upon McCarthy'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, McCarthy consented to the described sanctions and to the entry of findings that he permitted an individual to perform functions requiring principal registration without being registered with FINRA in that capacity. The findings stated that McCarthy failed to enforce his member firm's written supervisory procedures requiring that a Watch/Restricted list be maintained while the firm participated in underwriting activities. The findings also stated that McCarthy failed to file a Suspicious Activity Report (SAR) in connection with suspicious stock transactions and wire activity involving the sale of over one billion shares of a sub-penny stock from the account of one customer resulting in total proceeds of over \$786,000.

The suspension is in effect from April 20, 2009, through June 19, 2009. **(FINRA Case #2006003916902)**

Laurence J. McKeever (CRD #4172869, Registered Principal, Pearl River, 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, McKeever consented to the described sanction and to the entry of findings that he failed to appear for FINRA on-the-record interviews. (FINRA Case #2008012179101)

Matthew T. McKinney (CRD #4516034, Registered Representative, Issaquah, Washington) 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, McKinney consented to the described sanction and to the entry of findings that he was assigned a corporate credit card by an affiliate of his member firm and, without the knowledge, authorization or consent of the affiliate or the firm, used the credit card to purchase merchandise for his personal benefit and purchased additional merchandise for his personal benefit which was billed directly by the vendors to the affiliate. The findings stated that McKinney, without the knowledge, authorization or consent of the affiliate or his firm, sold some of the merchandise that he obtained and retained the proceeds of the sales. The findings also stated that McKinney failed to respond to FINRA requests for information. (FINRA Case #2007008624001)

Frederick Lee Mathis (CRD #4831306, Registered Representative, Marietta, Georgia) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Mathis used his manager's user identification and password to make unauthorized credits to his brokerage account at his member firm and to his bank account at his firm's bank affiliate. The findings stated that Mathis credited a total of \$1,205 from the firm account used to provide credits to customers to which he was not entitled. The findings also stated that Mathis failed to respond to FINRA requests for documents and information. (FINRA Case #2007011906401)

Robert Brian Meadows (CRD #1780941, Registered Representative, Playa Del Rey, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any FINRA member in any capacity for 90 days. The fine must be paid either immediately upon Meadow'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, Meadows consented to the described sanctions and to the entry of findings that, while associated with a member firm, he borrowed \$30,000 from a customer who was also a personal friend. The findings stated that Meadows did not obtain consent from the firm to borrow from the customer when the firm's written procedures prohibited registered persons from borrowing from customers except under certain circumstances and also required the firm's prior review and approval. The findings also stated that Meadows failed to disclose the loan when completing the firm's annual compliance questionnaires.

The suspension is in effect from April 6, 2009, through July 4, 2009. **(FINRA Case #2008013400501)**

Charles James Moni (CRD #822557, Registered Representative, Princeton, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Moni'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, Moni consented to the described sanctions and to the entry of findings that he recommended concentrated positions in the security of a clinical-stage drug development company to customers of his member firm. The findings stated that the concentrated positions were unsuitable for Moni's customers in light of their financial profile, personal circumstances and limited ability to withstand loss.

The suspension is in effect from April 6, 2009, through July 5, 2009. **(FINRA Case #2006005007601)**

Raymond Lee Noragon (CRD #4499699, Registered Principal, Alpharetta, Georgia) 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. Without admitting or denying the allegations, Noragon consented to the described sanctions and to the entry of findings that he failed to enforce his member firm's supervisory procedures when he failed to cause his firm to conduct an annual compliance meeting, and failed to ensure that Offices of Supervisory Jurisdiction (OSJ) and non-OSJ branch offices were examined and the examinations documented. The findings stated that Noragan approved his member firm's participation as an underwriter in securities offerings without ensuring that the prospectuses used in connection with the offerings contained adequate disclosures and were not materially misleading.

The suspension is in effect from April 6, 2009, through October 5, 2009. **(FINRA Case #2007007321102)**

Richard Vincent Patrick (CRD #2202549, Registered Principal, Little Silver, 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, Patrick consented to the described sanction and to the entry of findings that he engaged in an outside business activity without prompt written notice to his member firm; conducted private securities transactions without prior written notice to, or prior written approval from, his member firms; and failed to respond to FINRA requests for information and documents. (FINRA Case #2008013359401)

Monty Chad Patton (CRD #2372126, Registered Representative, Oklahoma City, Oklahoma) 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 18 months. The fine must be paid either immediately upon Patton'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, Patton consented to the described sanctions and to the entry of findings that he prepared and submitted a 403(b) ERISA Distribution Request form on a public investor's behalf authorizing the distribution of

403(b) assets to a rollover IRA at his member firm. The findings stated that, even though the investor had consented to the transfer of her 403(b) assets, she was ineligible because she was currently employed by the 403(b) plan sponsor. The findings also stated that Patton was aware of her ineligibility, but provided false employment-status information and forged the plan administrator's signature on a distribution form to facilitate the rollover.

The suspension is in effect from April 20, 2009, through October 19, 2010. (FINRA Case #2007010821101)

Joseph Aloyisius Pramer III (CRD #1079663, Registered Representative, Norwalk, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 business days. Without admitting or denying the findings, Pramer consented to the described sanctions and to the entry of findings that he altered customer telephone records at his member firm by deleting or inaccurately updating the numbers to slow down other registered representatives at his firm that he believed would be assigned to call his customers after he resigned. The findings stated that by changing customer telephone numbers, Pramer caused his member firm to create and maintain inaccurate books and records.

The suspension is in effect from April 20, 2009, through June 1, 2009. (FINRA Case #2007009372601)

Shon Charles Prejean (CRD #2768150, Registered Principal, Houston, Texas) 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, Prejean consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information and documents. (FINRA Case #2007007659502)

Mark Steven Ramos (CRD #1399655, Registered Principal, Orland Park, Illinois) submitted an Offer of Settlement in which he was fined \$5,000, barred from association with any FINRA member in any principal capacity and suspended from association with any FINRA member in any capacity for one year. The fine must be paid either immediately upon Ramos' 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, Ramos consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension is in effect from April 6, 2009, through April 5, 2010. (FINRA Case #2007011247201)

Michael Dean Reysack (CRD #4276593, Registered Representative, Ankeny, Iowa) 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 Reysack'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, Reysack consented to the described sanctions and to the entry of findings that he engaged in private securities transactions outside the scope of his employment with his member firm and without providing prior written notice to, or receiving written approval or acknowledgment from, his member firm of his role in the transactions. The findings stated that Reysack had previously disclosed his involvement in a real estate venture to the firm and the firm approved this activity, but cautioned him not to solicit other individuals to invest in his real estate venture.

The suspension is in effect from March 16, 2009, through September 15, 2009. (FINRA Case #2008013269801)

Raghavan Sathianathan (CRD #1743692, Registered Representative, Montclair, New Jersey) was barred from association with any FINRA member in any capacity. The U.S. Court of Appeals denied Sathianathan's petition for review. The SEC sustained the sanctions the NAC imposed following appeal of an OHO decision. The sanctions were based on findings that Sathianathan recommended and effected securities transactions for customers that were not suitable in light of their financial situations, investment objectives, circumstances and needs. The findings stated that Sathianathan exercised discretion in a customer's account without the customer's prior written authorization and his member firm's acceptance of the account as discretionary. (FINRA Case #C9B20030076)

Jeff Ross Spencer (CRD #5066973, Registered Representative, Hickory, North Carolina) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Spencer falsified a customer's signature on documents submitted to his member firm to open multiple accounts for the customer, and failed to respond to FINRA requests for information. (FINRA Case #2007009380301)

David Steven Stahl (CRD #834163, Registered Representative, Fairlawn, New Jersey) 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. The fine must be paid pursuant to an installment plan either immediately upon Stahl'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, Stahl consented to the described sanctions and to the entry of findings that he exercised discretion in customers' accounts without the customers' prior written authorization or his member firm's written acceptance of the accounts as discretionary.

The suspension was in effect from April 6, 2009, through April 20, 2009. **(FINRA Case #2008012048901)**

Robert Kyle Stewart (CRD #2102132, Registered Representative, Mountain Home, Arkansas) 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, Stewart consented to the described sanction and to the entry of findings that he accepted \$445,914.13 from an elderly public customer for investment in a corporation he organized and owned, and failed to issue the customer any

ownership interest. The findings stated that rather than using the funds as intended, Stewart converted the funds to his own use and benefit by depositing the funds into the corporation's bank account and paid personal expenses directly from the account or transferred funds to his personal bank account, thereby converting the funds without the customer's knowledge or consent. (FINRA Case #2007011438101)

John Patrick Walsh (CRD #1993952, Registered Principal, Yonkers, 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, Walsh consented to the described sanction and to the entry of findings that he misappropriated stock and mutual fund shares valued at \$2,057,248.52 from his member firm, sold the stock and made personal use of the proceeds. The findings stated that Walsh misappropriated \$198,574.50 from a credit union affiliated with his firm by procuring a line of credit and creating false holdings in stock at his firm to secure the loan. (FINRA Case #2008012561701)

Individual Fined

Robert Eugene Strong (CRD #3079588, Registered Principal, New York, New York) was fined \$10,000. The SEC imposed the sanction following appeal of a NAC decision. The sanction was based on findings that Strong failed to supervise a research analyst who sold securities in his personal trading account contrary to the recommendations contained in various firm research reports, and allowed the trader to execute purchase transactions during the blackout periods. The sanctions stated that Strong failed to include, or included insufficient or inaccurate required disclosures in research reports, and failed to timely file an annual attestation of supervisory procedures for research analysts. (FINRA Case #C0420050005)

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.

Kale Edgar Evans (CRD #2236466, Registered Supervisor, San Diego, California) was named as a respondent in a FINRA complaint alleging that he engaged in a speculative and reckless course of trading in a customer's account that included a short sale, repeated excessive concentrations in individual stocks and extensive use of margin interest. The complaint alleges that Evans recommended and effected transactions in the customer's account without reasonable grounds for believing the transactions were suitable in light of the information known to him about the customer's financial circumstances, needs and investment objectives. The complaint also alleges that Evans made a settlement payment to the customer without his member firm's knowledge and consent. The complaint further alleges that Evans engaged in a course of conduct

with the customer and her assets that was inconsistent with high standards of commercial honor and just and equitable principals of trade that enabled him to use, control and dissipate the proceeds of an insurance policy in a manner that harmed the customer while inuring to his personal benefit. (FINRA Case #2006005977901)

Rani Tarek Jarkas (CRD #2642904, Registered Principal, San Francisco, California) was named as a respondent in a FINRA complaint alleging that he recommended or, in the exercise of discretion, executed securities transactions in a customer's account at his member firm without having a reasonable basis for believing that the volume of trading he recommended was suitable for the customer in light of information known to him about the customer's financial circumstances, needs, other security holdings and investment objectives. (FINRA Case #2005003052001)

Steve T. Newman (CRD #4778356, Registered Representative, San Antonio, Texas) was named as a respondent in a FINRA complaint alleging that he received insurance premium payments totaling \$24,353 from a customer and, rather than depositing the checks in an account for his member firm or submitting them to the firm, he deposited the checks into an account over which he maintained control and thereafter misappropriated the funds, using a portion of the funds for his own use and benefit. The complaint alleges that Newman failed to provide on-the-record testimony that FINRA requested. (FINRA Case #2007009893501)

David Michael Piazza (CRD #4347282, Registered Representative, Montgomery, Illinois) was named as a respondent in a FINRA complaint alleging that he received a \$5,280 insurance premium payment from a customer, entered the payment into an insurance company's payment receipt system, failed to deposit the check into the company's bank account and, instead, deposited it into his own account, thereby misappropriating the customer's funds. The complaint alleges that Piazza did not place the customer's business with any insurance company until a later date, used other customers' premium payments to make up for the premium payments he had misappropriated and, to avoid detection of his conduct, temporarily changed the billing and mailing addresses on customers' accounts to his own address. The complaint also alleges that Piazza failed to respond to FINRA requests for information and documents. (FINRA Case #2008012835301)

Martin Dennis Ross (CRD #2221937, Registered Representative, Boca Raton, Florida) was named as a respondent in a FINRA complaint alleging that he engaged in prearranged or other manipulative trades primarily in order to artificially affect the market price for a security. The complaint alleges that Ross, by the use of any means or instrumentality of interstate commerce or of the mails, knowingly or recklessly engaged in manipulative or deceptive devices or contrivances in connections with the purchase or sale of securities, and knowingly or recklessly effected transactions in, or induced the purchase or sale of securities by means of manipulative, deceptive or other fraudulent devices or contrivances. The complaint also alleges that Ross aided and abetted the market manipulation of a security by an individual by knowingly or recklessly ignoring red flags or suspicious events associated with the trading of the security that should have alerted him to the manipulation. (FINRA Case #2007008732902)

Debbie Michelle Saleh (CRD #2454630, Registered Representative, Calabasas, California) was named as a respondent in a FINRA complaint alleging that she made recommendations to customers without reasonable grounds for believing that the recommendations and resultant transactions were suitable for the customers on the basis of information she knew about their other security holdings and their financial situations and needs, including but not limited to, undue concentration and risk of loss of principal. The complaint alleges that Saleh recommended and caused customers to liquidate variable annuities in whole or in part and to purchase other variable annuities, and made the recommendations without having reasonable grounds for believing them to be suitable. The complaint also alleges that Saleh, without the customers' knowledge, authorization or consent, placed, or caused to be placed, false customer signatures on variable annuities documents requiring signatures and placed, or caused to be placed, false and inaccurate information on documents related to annuity transactions, omitted to disclose that the transactions were annuity exchanges and submitted the forms to her member firm and to insurance companies for transactions. The complaint further alleges that Saleh provided, or caused to be provided, false portfolio statements and insurance account histories to customers that reflected false and inaccurate information regarding investments in variable annuities, creating the appearance that the purported value of their investment portfolio was greater than it actually was. In addition, the complaint alleges that Saleh provided, or caused to be provided, false portfolio statements to customers that reflected securities positions that did not exist in their account, and failed to disclose to each of the customers or to her firm that certain annuity transactions constituted an exchange or switch between insurance products and some of these actions caused her firm's books and records to reflect inaccurate information. Moreover, the complaint alleges that Saleh effected transactions in customers' accounts without the customers' knowledge, authorization or consent, and effected these purchases and sales without receiving prior written authorization from the customers to exercise discretion and without the firm's written acceptance of the accounts as discretionary. Furthermore, the complaint alleges that Saleh falsely represented that she was a customer in telephone conversations with an insurance company. The complaint also alleges that Saleh, by engaging in this misconduct, directly or indirectly, in connection with the purchase or sale of securities, by use of means of instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities exchange, with scienter, employed devices, schemes or artifices to defraud; made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in acts, practices or courses of business which operated or would operate as fraud or deceit upon any person. Furthermore, the complaint alleges that Saleh made false and misleading statements during FINRA on-the-record testimony. (FINRA Case #2005002169201)

Lance Nathaniel Scida (CRD #4634133, Registered Principal, Highlands Ranch, Colorado) and Dennis Dale Bailey (CRD #3060060, Registered Representative, Wichita, Kansas) were named as respondents in a FINRA complaint alleging that they made recommendations to customers to buy and sell Collateralized Mortgage Obligation (CMO) securities without having reasonable grounds to believe the investments were suitable based upon the customers' investment experience, financial status and investment objectives. The complaint alleges that, in connection with their recommendations, Scida and Bailey made material misrepresentations and 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, and acted recklessly in making the misrepresentations and omissions. The complaint also alleges that Scida and Bailey exercised discretion in non-discretionary accounts without written authorization from their customers or a member firm principal. (FINRA Case #2006005546007)

Jordan Paul Zaro (CRD #854313, Registered Principal, Chicago, Illinois) was named as a respondent in a FINRA complaint alleging that he created false account statements showing positions in municipal securities and a money market account that a customer did not own, and created the impression that the customer's total investment portfolio was worth \$750,000 more than it really was. The complaint alleges that Zaro exercised control over the customer's account which he traded under oral discretionary authority but without the customer's prior written authorization from and Zaro's member firm's written acceptance of the accounts as discretionary. The complaint also alleges that Zaro's trading was unsuitable and excessive in size and frequency in view of the customer's financial situation and needs. (FINRA Case #2007009851101)

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

Empire Financial Group, Inc. Longwood, Florida (March 27, 2009)

Firms Expelled for Failure to Supply Financial Information Pursuant to FINRA Rule 9552

One Financial Securities, Ltd. Houston, Texas (March 10, 2009)

S&F Securities, LLC Winter Park, Florida (March 10, 2009)

Firm Suspended for Failure to Pay Arbitration 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.)

Empire Financial Group, Inc. Longwood, Florida (March 23, 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.)

Michael D. Kirk Las Vegas, Nevada (March 24, 2009)

Christopher Robert Ranni Monroe, New York (March 13, 2009)

Robert Alexander Stewart Jr. Cincinnati, Ohio (November 26, 2001 – March 31, 2009)

Individuals Barred Pursuant to FINRA Rule 9552(h)

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

Mark Allen Butler Chicago, Illinois (March 6, 2009)

Jeffrey P. Shipman Paxton, Massachusetts (March 13, 2009)

David Scott Sutton Somerset, Kentucky (March 18, 2009)

Keith Andrew Wetteland Aurora, Illinois (March 19, 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.)

Alfred Mirza Allos Commerce Township, Michigan (March 2, 2009)

Melissa Anne Debaca Kingman, Arizona (March 27, 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.)

John Thomas Blanchette Henderson, Kentucky (March 25, 2009)

James Joseph Bovino Hohokus, New Jersey (March 17, 2009)

Lance Sloan Cooper Mountain Brook, Alabama (March 17, 2009)

Sean Michael Daly Tuxedo Park, New York (March 25, 2009)

Stephan Todd Day Winston-Salem, North Carolina (March 5, 2009)

Steven Martini Delran, New Jersey (March 5, 2009)

Diana DeWeese McKinney Lynchburg, Virginia (March 25, 2009)

Edward Mark McNally Studio City, California (March 17, 2009) Theodore Angelo Pena Oradell, New Jersey (May 9, 2007 – March 2, 2009)

Albert Fredric Prud'homme Fort Mill, South Carolina (March 17, 2009)

Anthony Alfred Rossi Jr. Jensen Beach, Florida (March 17, 2009)

FINRA Announces Agreements with Four Additional Firms to Settle Auction Rate Securities Violations

Settlements Include Total Fines of \$850,000, Offers to Initiate or Complete Repurchase of \$554 Million in Customer ARS Holdings at Time ARS Auctions Seized

The Financial Industry Regulatory Authority (FINRA) has entered into final settlements with four additional firms to settle charges relating to the sale of Auction Rate Securities (ARS) that became illiquid when auctions froze in February 2008. To date, FINRA has concluded final settlements with nine firms, imposing a total of \$2.6 million in fines and guaranteeing the return of more than \$1.2 billion to investors. Investigations continue at a number of additional firms.

The settlements announced today are with NatCity Investments, Inc. of Cleveland, which was fined \$300,000; M&T Securities, Inc. of Buffalo, which was fined \$200,000; Janney Montgomery Scott LLC of Philadelphia, which was fined \$200,000 and M&I Financial Advisors, Inc. of Milwaukee, which was fined \$150,000. All four firms agreed to initiate or complete offers to repurchase ARS sold to their customers where the auctions for the ARS had failed.

FINRA also announced that SunTrust Investment Services, Inc. and SunTrust Robinson Humphrey, Inc., both of Atlanta, determined not to finalize previously announced settlements in principle with FINRA. FINRA's investigation into both firms' ARS-related activities is continuing.

"Firms have an obligation to use fair and balanced marketing materials when selling any security, including Auction Rate Securities," said Susan L. Merrill, FINRA Executive Vice President and Chief of Enforcement. "This includes full disclosure of liquidity risks, which unfortunately became a reality in the ARS market last year. As with our previous ARS settlements, FINRA's top priority was to assure investors' access to the millions of dollars they invested in ARS."

FINRA's investigation found that each firm sold ARS using advertising, marketing materials or other internal communications with its sales force that were not fair and balanced and therefore did not provide a sound basis for investors to evaluate the benefits and risks of purchasing ARS. In particular, the firms failed to adequately disclose to customers the potential for ARS auctions to fail and the consequences of such failures. FINRA's investigation also found evidence that each firm failed to establish and maintain a supervisory system reasonably designed to achieve compliance with the securities laws and FINRA rules with respect to the marketing and sale of ARS.

In the actions, the firms agreed to a comprehensive settlement plan that has been applied in FINRA's previous ARS settlements. That plan includes several elements, including offers to repurchase at par ARS that were purchased by individual investors and some institutions between May 31, 2006, and Feb. 28, 2008. The firms have also agreed to make whole individual investors who sold ARS below par after Feb. 28, 2008.

In addition to individual retail ARS investors, the buy-back offers include non-profit charitable organizations and religious corporations or entities, trusts, corporate trusts, corporations, pension plans, educational institutions, incorporated non-profit organizations, limited liability companies, limited partnerships, non-public companies, partnerships, personal holding companies and unincorporated associations that made individual ARS purchases and whose account value did not exceed \$10 million.

Each firm is required to provide notice to its eligible customers promptly. Repurchases must begin no later than 30 days after the settlement is approved and must be completed no later than 60 days after settlement approval. Beginning no later than six months after settlement approval, each firm has also agreed to make its best efforts to provide liquidity to all other investors who purchased ARS during the same time period but who were not eligible for the initial repurchase.

FINRA noted that in the settlements announced today, each firm received credit for actions already taken to provide extraordinary remediation and other benefits to their ARS customers. Janney Montgomery Scott was credited for initiating its own offers in October 2008 to buy back frozen ARS from all customer accounts, irrespective of whether such ARS were purchased through the firm. Janney Montgomery Scott has already completed its repurchases. In addition, the firm was credited for extending costneutral loans to affected customers in March 2008, shortly after the ARS auctions failed. M&I Financial was credited for initiating its own offers in August 2008 to buy back ARS from those customers from whom it had not already repurchased ARS earlier in the year. M&I Financial has already completed its repurchases. M&T Securities was credited for initiating its own offers in December 2008 to buy back frozen ARS from customer accounts, without regard to when such ARS were purchased, and for providing cost-neutral lines of credit and demand notes through M&T Bank. NatCity was credited for having previously bought back ARS held by customers from whom it received complaints.

As part of the settlement plan, the firms also agreed to participate in a special FINRA-administered arbitration program to resolve investor claims for any consequential damages - that is, damages they may have suffered from their inability to access funds invested in ARS. Under this program, ARS investors may participate in an expedited arbitration paid for by the firm. The participating firm may not contest liability related to the illiquidity of the ARS holdings, nor to the ARS sales, including any claims of misrepresentations or omissions by the firm's sales agents. To speed the arbitration process under the special procedure, cases claiming consequential damages under \$1 million will be decided by a single public (non-securities industry) arbitrator. In cases with consequential damage claims of \$1 million or more, the parties can, by mutual agreement, expand the panel to include three public arbitrators. Additional information can be found at www.finra.org/ars.

In concluding these settlements, the firms neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

FINRA Bars Broker for Converting and Improperly Using More Than \$500,000 from a Catholic Nun's Holdings, Another \$80,000 from Three Elderly Customers

Victims Have Received Restitution from Broker, Legg Mason and Citigroup

The Financial Industry Regulatory Authority (FINRA) has barred broker William Joseph Boyle from the securities industry for wrongfully converting and using funds from customer accounts and for failing to cooperate with FINRA investigators. Boyle's misconduct occurred both while he was working for Legg Mason Wood Walker, which was acquired by Citigroup in 2006, and at Citigroup.

FINRA found that Boyle deceived a 64-year-old nun into giving him two separate checks totaling approximately \$531,000, which she believed would be deposited into accounts for her benefit. Instead, Boyle deposited one check into his personal joint bank account and the second into a mutual fund account held in his name. Boyle similarly persuaded a retired couple and an elderly widow to give him additional checks totaling approximately \$80,000—which he again deposited into his own accounts, using the funds for his own benefit.

"FINRA is committed to identifying and expelling anyone under our jurisdiction who preys on the trust and goodwill of his customers, particularly vulnerable customers like seniors," said Susan L. Merrill, FINRA Executive Vice President and Chief of Enforcement.

The nun inherited approximately \$532,000 in mutual fund holdings when her mother died. Because she has taken a vow of poverty, the nun had intended for the money to go to her religious order. The nun's mother held an account at Legg Mason and Boyle was the broker who handled the mother's account. In October 2004, shortly after her mother's death, the nun opened an account with Boyle at Legg Mason and transferred the mutual fund holdings into that account. When Boyle recommended another investment later that month, a portion of her mutual fund holdings was sold and a \$125,000 check was mailed to her from Legg Mason. Boyle instructed the nun to sign the check and mail it back to him. Without the nun's knowledge, Boyle then deposited the \$125,000 into his own personal joint bank account and used these funds for his own benefit.

In 2005, Boyle proposed investing the nun's remaining assets in a tax exempt fund held outside of the firm. Boyle arranged for the sale of the remaining mutual fund holdings in the nun's account. He then instructed the nun to execute a Letter of Authorization, created by Boyle, which instructed Legg Mason to take the cash resulting from the sale of the mutual fund positions together with existing cash in the account and issue a check payable to a mutual fund company in the amount of \$406,013.89. This amount represented all of the nun's remaining assets held in her account. Without her knowledge, the funds were deposited into an account at the mutual fund company that was controlled by Boyle. Boyle used these funds for his own benefit, including funding International Sports Management LLC, an entity Boyle founded and used to market his financial services to aspiring professional athletes.

FINRA found that in 2006, Boyle convinced a retired couple to invest \$50,000 in an outside real estate venture. Boyle liquidated mutual fund holdings in the couple's Citigroup account and arranged for Citigroup to send them a \$50,000 check. Boyle instructed the couple to issue a separate check from their personal checking account held outside of Citigroup made payable to Boyle's firm, International Sports Management. The retired husband, 81, was a former air traffic controller and his wife, 75, a former nurse. Despite their belief that they were investing in a real estate product, Boyle used the money for his own benefit without their knowledge.

FINRA further found that in 2007, a retired 83-year-old widow gave Boyle a check for \$30,000 for the specific purpose of depositing the check into her Citigroup brokerage account. Instead, Boyle deposited the \$30,000 check into International Sports Management's account and used the money for his own benefit without the widow's knowledge.

FINRA received information regarding Boyle's misconduct in November 2007. At about that time, Boyle refunded \$50,000 to the retired couple. Of the approximately \$531,000 that Boyle received from the nun, he refunded approximately \$39,000. Although neither Legg Mason nor Citigroup was a party to this action, Legg Mason reimbursed the nun for the remainder of the money that Boyle had misappropriated and Citigroup reimbursed \$30,000 to the elderly widow.

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

First New York Securities, Four of its Former Traders Ordered to Pay Over \$436,000 for Covering Short Sales with Secondary Offering Shares

Sanctions Include \$265,000 in Fines, Over \$171,000 in Disgorgement

The Financial Industry Regulatory Authority (FINRA) announced that it has fined First New York Securities L.L.C. \$170,000 for improperly covering short positions with secondary offering shares and related oversight failures. The firm was also ordered to disgorge more than \$171,000 in trading profits earned from the prohibited conduct. Four of the firm's former traders who conducted the transactions were fined a total of \$95,000.

During the relevant time, the Securities and Exchange Commission—through Rule 105 of Regulation M—prohibited covering a short sale with securities obtained in secondary offerings when the short sale occurs during a specific restricted period—typically five business days—before the secondary offering is priced.

"Rule 105 is designed to promote the integrity and orderliness of the secondary offering process," said Tom Gira, FINRA's Executive Vice President for Market Regulation. "This case illustrates FINRA's commitment to ensure registered firm compliance with this important rule."

A FINRA investigation found that in 2005, the firm and four traders violated Rule 105 in connection with five public offerings by selling shares short during the restricted period and then covering their short positions with shares received through the offering. By engaging in this prohibited conduct, the firm and the four traders effectively eliminated their market risk and earned a profit of \$171,504.

FINRA ordered Joseph E. Edelman to pay a fine of \$50,000 and Larry Chachkes to pay a fine of \$30,000. The other two traders—Michael M. Cho and Kevin A. Williams—were each ordered to pay a fine of \$7,500.

In addition, FINRA found that the firm failed to adequately supervise the activities of the four traders and failed to establish and enforce a supervisory system and written supervisory procedures reasonably designed to achieve compliance with, and prevent violations of Rule 105.

The firm also was found to have provided inaccurate information in response to an inquiry from FINRA. The communication of the inaccurate information was caused by the firm's failure to have in place adequate supervisory procedures reasonably designed to ensure the firm provided responsive information to regulatory inquiries. The firm also failed to maintain adequate books and records in connection with the subject transactions.

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

FINRA Hearing Panel Fines Mutual Service Corp. More than \$1.5 Million for Supervisory Failures, Falsifying Records Relating to VA Exchanges

Panel Bars Three Individuals, Fines and Suspends Three Others

A Financial Industry Regulatory Authority (FINRA) hearing panel has fined Mutual Service Corporation (MSC) of West Palm Beach, FL, more than \$1.5 million for failing to conduct timely reviews of variable annuity transactions, falsifying various books and records of the firm to make it appear that the variable annuity transactions were reviewed in a timely manner, and providing false and misleading information to FINRA during its investigation. The hearing panel sanctioned six current and former MSC personnel for their roles in the wrongdoing.

Three current or former employees—Denise Roth, a manager in MSC's operations department; Gari Sanfilippo, a former senior compliance examiner; and Kevin Cohen, a former compliance examiner—were permanently barred from the securities industry for falsifying the books and records of the firm. MSC's former Chief Administrative Officer and Executive Vice President, Dennis S. Kaminski; its Director of Operations, Susan Coates; and its former Chief Compliance Officer and Vice President, Michael Poston, each were sanctioned for their supervisory failures. Kaminski and Coates each were fined \$50,000 and suspended for six months from associating with any securities firm in a principal capacity. Poston was fined \$20,000 and suspended from serving in a principal capacity for seven months.

Cohen and Sanfilippo have appealed the ruling to FINRA's National Adjudicatory Council (NAC), while the NAC unilaterally has called Kaminski's case for review of the sanctions. Sanctions against all three have been stayed pending a ruling from the NAC.

The hearing panel found that MSC has a history of failing to supervise sales and exchanges of variable annuities adequately. As part of a settlement with FINRA in 2001, MSC agreed to implement procedures to provide dedicated, heightened oversight of variable annuities transactions. Specifically, the firm created a "trade review team" (TRT) to review variable annuity exchange transactions that appeared on the firm's "red flag" blotter exception report, which captured exchange transactions that required further scrutiny.

According to the hearing panel, between March and June 2004, there was a "complete meltdown of MSC's supervisory system for the review of variable annuity transactions." During those months, Kaminski and Poston directed MSC compliance personnel to stop reviewing transactions that appeared on the firm's red flag blotter. Despite having oversight responsibility for all variable transactions and being aware of the supervisory failures, Coates failed to act decisively to correct the situation.

While the backlog of transaction reviews was developing, Kaminski, Poston and other MSC managers met in May 2004 with FINRA staff regarding the firm's review of variable annuity transactions. The hearing panel found that the MSC representatives misled FINRA about the firm's supervisory efforts relating to the red flag blotters and failed to mention that MSC had suspended review of the blotters. The hearing panel also found that the MSC representatives misled FINRA about the use of a prototype exception report that had not actually yet been utilized.

During the time that the review of the red flag blotter was suspended, 597 transactions that appeared on the red flag blotter between March 15 and June 1, 2004, were not reviewed by TRT in a timely fashion. Those transactions were not reviewed until August to October 2004.

To make it appear that these TRT reviews had been done in a timely manner, Roth, Sanfilippo and Cohen ensured that the trade review forms and the red flag blotters for the transactions were backdated to within one or two days of the transaction. In addition, the hearing panel found that Cohen created 49 fake letters in October 2004 and placed them in the firm's files to make it appear that a newly developed variable annuity exception report had been in use since January 2004. In actuality, this exception report was not used by the firm until October 2004. The hearing panel found that MSC, Roth, Sanfilippo and Cohen intentionally falsified MSC's records to deceive FINRA staff and termed those violations "egregious."

During the course of FINRA's investigation, after FINRA staff learned of MSC's failure to timely review the red flag blotters, FINRA requested documents and information relating to the backlogged transactions. The hearing panel found "incontrovertible evidence that MSC did not respond completely and truthfully to the request for information." Instead, MSC produced documents that had been changed to eliminate the backdating.

In determining MSC's sanction, the hearing panel cited several aggravating factors. It considered first the firm's disciplinary history of deficient supervision of variable annuity transactions, but found more disturbing the fact that MSC deceived FINRA staff regarding the status of its supervisory system and procedures. The hearing panel found that MSC's supervisory and record keeping violations were "egregious."

Susan Coates' suspension is in effect from February 16, 2009, through August 16, 2009. Michael Poston's suspensions are in effect from February 16, 2009, through September 14, 2009.

FINRA Fines 25 Firms More Than \$2.1 Million for Failures in Mutual Fund Breakpoint Review, Other Violations

Case Concludes Series of Actions Arising From FINRA's Mutual Fund Breakpoint Initiative

FINRA announced that it has fined 25 broker-dealers a total of \$2,145,000 for failures related to their completion of FINRA's (then NASD's) firm self-assessment of mutual fund breakpoint discount compliance.

The self-assessment required firms that sold front-end load mutual funds to review their compliance in providing breakpoint discounts to customers during 2001 and 2002 and report those results to FINRA. Breakpoint discounts are volume discounts applicable to front-end sales charges (front-end loads) on Class A mutual fund shares. The self-assessment followed findings by NASD, the NYSE and the Securities and Exchange Commission that nearly one in three mutual fund transactions that appeared eligible for a breakpoint discount did not receive one.

"FINRA is hindered in carrying out its regulatory mission when firms fail to adequately self-assess their conduct and report the results accurately and in a timely manner," said Susan L. Merrill, FINRA Executive Vice President and Chief of Enforcement. "Today's settlements are a clear message that when firms are required to perform self-assessments, FINRA demands that they be diligent and fully compliant."

The findings made in today's settlements result from FINRA's review of firms' compliance with the self-assessment requirements. The violations include failing to accurately report information; failing to send timely notices and responses to customers concerning the availability of breakpoint discounts; failing to provide timely refunds for missed breakpoints to customers; and failing to correctly calculate such refunds.

In addition, FINRA found that three firms—Fox & Company Investments, Inc., First Midwest Securities, Inc. and Chase Investment Services, Corp.—failed to deliver breakpoint discounts during a later review period and continued to fail to have reasonable written supervisory procedures in place to assure that appropriate breakpoint discounts would be delivered to their customers during that later period.

In its review, FINRA found that 14 firms—J.J.B. Hilliard, W.L. Lyons Inc., New England Securities, SunAmerica Securities, Inc., Multi-Financial Securities Corporation, H. Beck, Inc., Leonard & Company, Fox & Company Investments, Inc., Investors Capital Corp.,

vFinance Investments, Inc., FSC Securities Corporation, National Securities Corporation, Advantage Capital Corporation, Steven L. Falk & Associates, Inc. and Securities America, Inc.—failed to accurately and/or fully complete their self-assessments.

FINRA further found that six of the firms—Multi-Financial Securities Corporation, Intersecurities Inc., SWS Financial Services, Spelman & Co. Inc., Securities America, Inc., and SIGMA Financial Corporation—failed to accurately complete a comprehensive trade-by-trade review of transactions. The trade-by-trade review was a required part of their customer remediation process following the self-assessment.

Six firms—ProEquities, Inc., FSC Securities Corporation, Lincoln Investment Planning, Inc., New England Securities, Gary Goldberg & Co., Inc., and Leonard & Company—failed to provide timely refunds of breakpoint discounts to their customers. In addition, five firms—Leonard & Company, Gary Goldberg & Co., Inc., Financial West Group, GunnAllen Financial, Inc. and ProEquities, Inc.—failed to notify their customers on a timely basis—or failed to notify them at all—of the potential for reimbursement for missed breakpoint discounts. In addition, GunnAllen and ProEquities did not timely respond to customer inquiries about breakpoint discounts.

The names of the firms charged and fines assessed are:

\$500,000
\$500,000
\$300,000
\$150,000
\$140,000
\$70,000
\$60,000
\$55,000
\$50,000
\$50,000
\$45,000
\$32,500
\$27,500
\$25,000
\$25,000
\$25,000
\$19,500
\$15,000
\$15,000
\$10,000
\$7,500
\$7,000
\$6,000
\$5,000
\$5,000

The fines for two firms—New England Securities and H. Beck, Inc.—include other charges in addition to breakpoint self-assessment failures. The additional findings against H. Beck relate to fee-based brokerage violations. Additional findings against New England Securities involve anti-money laundering violations, customer complaint and other reporting violations and supervisory deficiencies.

All 25 firms settled these matters without admitting or denying the findings, but consented to the entry of FINRA's findings.

FINRA Fines Wachovia Securities and First Clearing \$1.1 Million for Failing to Provide Required Notifications to Customers

Firms Also Required to Retain Independent Consultant to Review Procedures

The Financial Industry Regulatory Authority (FINRA) announced that it has fined Wachovia Securities, LLC and First Clearing, LLC, both of St. Louis, MO, \$1.1 million for the firms' failure to provide more than 800,000 required notifications to customers over a five-year period ending in 2008. As a part of the settlement with FINRA, the firms are required to retain an independent consultant to review their supervisory systems and processes.

At the time of the activity at issue, Wachovia Securities and First Clearing were both subsidiaries and non-bank affiliates of Wachovia Corporation. On Dec. 31, 2008, Wachovia Corporation was acquired by Wells Fargo & Company.

FINRA found that the failures by Wachovia Securities and First Clearing were the result of various computer programming and operational problems that went undetected by the firms' internal controls procedures and supervisors. Those failures included over 300,000 notifications of changes in investment objectives and approximately 340,000 notifications of changes of address.

"These notices are an important form of investor protection—they help protect against changes that are erroneous, unauthorized, or, in the worst case, indicative of an effort to conceal misconduct involving a customer's account," said Susan L. Merrill, FINRA Executive Vice President and Chief of Enforcement. "It is crucial that firms meet their customer notification obligations."

FINRA also found that First Clearing failed to send notifications of the existence of clearing agreements to over 54,000 customers and failed to send required margin disclosure statements to more than 50,000 customers. First Clearing also failed to provide customers with trade confirmations for certain bond transactions that accurately reflected the ratings of bonds; failed to provide required information to holders of certain debt, including information about partial call notifications; and, failed to send notifications to customers about certain asset transfers.

In addition, FINRA found that Wachovia Securities and First Clearing failed to have written policies or procedures in place relating to the required notifications and failed to assign supervisory review for various automated mailing systems. FINRA found that the violations went undetected because of the firms' failure to implement appropriate

internal controls and testing. FINRA also found that Wachovia Securities and First Clearing failed to establish adequate supervisory systems and procedures relating to the required notifications.

FINRA found that the firms' actions of Wachovia Securities and First Clearing violated the supervision, internal testing and controls, and other provisions of FINRA rules, as well the record keeping provisions of both FINRA rules and the federal securities laws.

In settling these matters, Wachovia Securities and First Clearing neither admitted nor denied the charges, but consented to the entry of FINRA's findings.

Morgan Stanley to Pay More than \$7 Million to Resolve FINRA Charges Relating to Misconduct in Early Retirement Investment Promotion

FINRA Also Bars Broker, Charges Second Broker, Suspends Supervisor

The Financial Industry Regulatory Authority (FINRA) announced that it has fined Morgan Stanley & Co. \$3 million—and ordered it to pay more than \$4.2 million in restitution to 90 Rochester, NY-area retirees—to resolve charges that its supervisory system failed to detect and prevent brokers from persuading Eastman Kodak Company and Xerox Corporation employees to take early retirement based upon unrealistic promises of consistently high investment returns and by espousing unsuitable investment strategies.

FINRA found that Morgan Stanley failed to reasonably supervise the activities of Michael J. Kazacos and David M. Isabella, two former registered representatives in its Rochester branch office. FINRA has permanently barred Kazacos from the securities industry for committing numerous violations of FINRA rules in connection with his solicitation and handling of IRA rollover/retirement accounts, such as making unrealistic predictions that customers would earn investment returns of 10 percent each year.

In a formal disciplinary complaint, FINRA charged Isabella with having engaged in similar misconduct. The matter will be adjudicated before a three-member FINRA Hearing Panel. FINRA also found that Ira S. Miller, the manager of Morgan Stanley's Rochester branch, failed to reasonably supervise both representatives. Miller was fined \$50,000, suspended from acting in a principal capacity for one year and ordered to requalify as a principal before serving in such capacity in the future. The suspension is in effect from April 20, 2009, through April 19, 2010.

FINRA found that as a result of the misconduct, at least 184 customers suffered financial hardships, including market losses, a reduction in principal and the inability to sustain expected withdrawal rates. In many cases, the customer's initial investment was eroded by market declines and the customer's monthly withdrawals were not funded by income but were really distributions of principal. Some customers were forced to return to work at a greatly reduced income in order to meet their basic living expenses. FINRA has ordered Morgan Stanley to pay restitution to 90 former customers of Kazacos or Isabella who sustained losses. The firm has previously settled with 101 other customers of those brokers.

"Protecting investors who have retired or are considering retirement has been one of FINRA's top priorities," said Susan L. Merrill, Executive Vice President and Chief of Enforcement. "Brokerage firms and brokers who serve investors considering retirement must ensure that their customers are given suitable investment recommendations based upon reasonable assumptions of market performance and are given thorough disclosure of investment risks. The supervisory failures of Morgan Stanley and its management led to losses suffered by customers at a vulnerable time in their lives—retirement—which could have been avoided."

Specifically, FINRA found that, from 1998 through 2003, Kazacos persuaded retirees and potential retirees to invest their retirement assets with him by representing that these investors would earn 10 percent returns each year and would be able to satisfy their income needs by withdrawing annually a similar percentage for living expenses without reducing their principal. Kazacos' statements encouraged several individuals to move their retirement accounts to Morgan Stanley, with some deciding to retire sooner than they otherwise might have.

FINRA found that Kazacos told customers in their 50s that, even though they had not reached the minimum age for taking withdrawals from their qualified retirement accounts (59-and-a-half), they could begin taking systematic distributions from their accounts, without penalty, by relying upon Section 72(t) of the Internal Revenue Code. FINRA also found that Kazacos failed to inform these customers of the risks associated with his recommended investment strategies.

FINRA further found that, once Kazacos began servicing the retirement accounts—which were often the only source of income for the retirees—he implemented unsuitable investment strategies that exposed the accounts to greater risk, particularly in a declining market, and reduced the principal in many accounts. He invested many of the customers in mutual funds, with an unsuitably high concentration in equity funds. Kazacos also recommended unsuitable variable annuity transactions.

As to Isabella, a former Xerox employee, FINRA charged that from 2000 through 2003, he solicited many of that company's retirees and potential retirees to invest with him at Morgan Stanley. Isabella allegedly represented to prospective customers that, if they invested their retirement money with him, they would earn approximately 10 percent returns or more each year and be able to satisfy their income needs by withdrawing a consistent amount of money each year without reducing their principal.

In addition to the violations above, FINRA charged Isabella with falsifying records concerning the financial situations and goals of his customers. FINRA also alleged that, in exchange for various gifts to certain Xerox employees, Isabella improperly obtained confidential employment records regarding, among other things, the retirement status of prospective customers employed by Xerox. He utilized this confidential information to attract new customers. FINRA further alleged that, in communicating with prospective customers, Isabella used a professional designation—Retirement Planning Specialist—that he did not actually possess. Finally, FINRA charged Isabella with providing false testimony during its investigation.

FINRA found that Morgan Stanley failed to enforce a reasonable supervisory system to ensure that Kazacos and Isabella provided customers with appropriate risk disclosures concerning their retirement accounts. During the relevant time period, Kazacos and Isabella generated approximately \$15.4 million in gross commissions. The firm knew or should have known that these representatives were actively marketing their early retirement programs to retirees and potential retirees. Nevertheless, the firm failed to take reasonable steps to ensure, among other things, that customers received proper risk disclosures and that Kazacos and Isabella did not promise or promote unrealistic investment returns. FINRA further found that Morgan Stanley also failed to ensure that the securities and accounts that those representatives recommended for the retirees, such as variable annuities and fee-based managed accounts, were properly reviewed for suitability and other concerns.

FINRA also found that Miller failed to take appropriate action to reasonably supervise Kazacos and Isabella to prevent their unsuitable investment recommendations and failures to disclose risks to many customers.

In settling these matters, Morgan Stanley, Kazacos and Miller neither admitted nor denied the findings, but consented to the entry of FINRA's findings