

Notices

Regulatory Notices

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Best Execution and Interpositioning

SEC Approves Amendments Regarding Best Execution and Interpositioning

Effective Date: September 8, 2009

Executive Summary

The SEC approved amendments to NASD Rule 2320's requirements concerning a firm's best execution obligations and interpositioning.¹ As amended, the rule applies the standards in Rule 2320(a) to the execution of all customer orders, including those involving interposed third parties. The changes became effective September 8, 2009.

The text of the amendments can be found in the online FINRA Manual at www.finra.org/finramanual.

Questions regarding this *Notice* should be directed to Brant K. Brown, Associate General Counsel, Office of General Counsel, at (202) 728-6927.

Background & Discussion

NASD Rule 2320(a) requires firms and their associated persons to use reasonable diligence to ascertain the best market for a security when handling transactions for or with a customer or a customer of another broker-dealer. Among the factors to be considered in determining whether a firm has used reasonable diligence are:

- the character of the market for the security;
- the size and type of transaction;
- the number of markets checked;
- accessibility of the quotation; and
- the terms and conditions of the order.

October 2009

Notice Type

- Rule Amendment

Suggested Routing

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

Key Topics

- Best Execution
- Interpositioning

Referenced Rules & Notices

- FINRA Rule 2010
- NASD Rule 2320
- NASD Rule 2440

In addition, Rule 2320(a) requires that the firm buy or sell in the best market “so that the resultant price to the customer is as favorable as possible under prevailing market conditions.” Prior to the amendments, NASD Rule 2320(b) stated that a firm was prohibited from interposing a third party between the firm and the best available market for a security unless the firm could demonstrate that, to its knowledge, “at the time of the transaction the total cost or proceeds of the transaction . . . was better than the prevailing inter-dealer market for the security.”

On September 8, 2009, the SEC approved amendments to NASD Rule 2320 regarding the interposing of a third party between a firm and the best available market for a security. The amendments delete the requirement that, if a firm interposes a third-party, the total costs and proceeds of the transaction must be better than the prevailing market and replace it with a specific obligation to apply the factors enumerated in Rule 2320(a) when a firm interjects a third party between the firm and the best available market.

FINRA adopted the new rule language because of the substantial changes to the ways in which markets function that have taken place since the rule was originally adopted, including technological advances, increased market transparency in the equities markets, and the development of electronic communication networks and order routing services. These changes enable firms, under certain circumstances, to use intermediaries and third parties to improve the handling of customer orders with no additional cost to the customer and with minimal or no delay in the execution of the customer’s order. Additionally, there are occasions when the use of a third party may be necessary to effectuate the execution of an order. For example, a firm may need to involve a third party if it receives an order for a foreign security that may not trade in the United States and the firm lacks the ability to execute the order without involving another broker-dealer. The rule change addresses the potential overbreadth of NASD Rule 2320(b) while making clear that interpositioning third parties in a way that results in customer harm is still prohibited.

NASD Rule 2320, as amended, makes clear that the standards in paragraph (a) apply to the handling of all customer orders, including those involving interposed third parties. Although the resultant price a customer pays remains a crucial factor in determining whether a firm has fulfilled its best execution obligations under Rule 2320, particularly in the context of retail customer order executions, the rule allows an analysis of a variety of factors, based on the terms of the customer’s order and instructions, rather than focusing solely on cost any time a firm interposes a third party between the firm and the best available market for a security. FINRA stresses, however, that interpositioning that is unnecessary or that violates a firm’s general best execution obligations—either because of unnecessary costs to the customer or improperly delayed executions—is still prohibited.² Thus, the rule continues to prohibit interpositioning that adversely affects the customer, and the cost to the customer remains a central part of determining whether a firm has met its best execution obligations.

Endnotes

- 1 See Securities Exchange Act Release No. 60635 (September 8, 2009), 74 FR 47302 (September 15, 2009) (Order Approving File No. SR-FINRA-2007-024).
- 2 Firms should be mindful that other FINRA rules also continue to govern the handling of customer orders and charges on those orders. In particular, FINRA Rule 2010 requires that firms and their associated persons observe high standards of commercial honor and just and equitable principles of trade. NASD Rule 2440 requires that firms charge fair prices and commissions in their dealings with customers.

Business Continuity Planning

FINRA Provides Guidance on Pandemic Preparedness

Executive Summary

In response to the outbreak of influenza A (H1N1) or swine flu, FINRA conducted a survey of certain firms to determine pandemic preparedness. This *Notice* describes the results of the survey, and is designed to help firms understand the concerns and risk-mitigating actions and take appropriate measures to prepare for the effects of a pandemic. This *Notice* also addresses areas of regulatory guidance that FINRA has provided during previous significant business disruptions.

The information in this *Notice* does not create new rules or obligations on firms, nor does the implementation of any or all of the guidance create a “safe harbor” relative to any FINRA rules or other securities regulations.

Questions or comments concerning this *Notice* may be directed to Terry Miller, Member Regulation, at (202) 728-8159.

Background & Discussion

2009 Pandemic Survey

In light of current events involving H1N1 swine flu, FINRA conducted a survey of selected firms to determine preparedness for a global pandemic or similar disaster.¹ This survey continues FINRA’s efforts to assist firms with business continuity planning by facilitating the exchange of information. The pandemic survey was modeled on the survey FINRA conducted following Hurricanes Katrina and Rita in 2005. The 2005 survey resulted in *NTM 06-74*, which provided valuable insight into effective business continuity planning and implementation.

As part of having a comprehensive business continuity plan, firms must conduct their own operational risk analysis to determine their vulnerability to various types of business disruptions, such as a pandemic, hurricane, earthquake, flood or cyber event.² In the case of a pandemic, however, all

October 2009

Notice Type

- Guidance

Suggested Routing

- Compliance
- Continuing Education
- Internal Audit
- Legal
- Operations
- Registration
- Senior Management
- Systems
- Trading
- Training

Key Topics

- Business Continuity
- Capital and Financial Reporting Requirements
- Continuing Education
- Disaster Recovery
- Emergency Preparedness
- Extensions of Credit and Securities Delivery
- Filing and Reporting Requirements
- Licensing
- Pandemic Influenza
- Supervision
- Trade Reporting

Referenced Rules & Notices

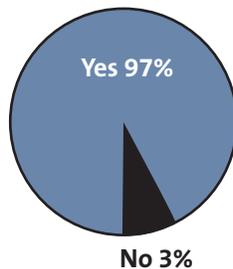
- NASD Rule 3510
- NASD Rule 3520
- NTM 04-37
- NTM 05-48
- NTM 05-57
- NTM 06-31
- NTM 06-74
- NTM 07-49

firms are susceptible in some form to this type of business disruption. The extent to which they need to prepare for one depends on, among other things, the size of the firm, its office locations, its counterparty and service provider relationships, and the nature of its business.

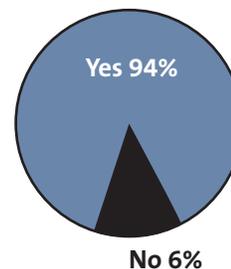
FINRA is publishing this *Notice* to raise awareness of the regulatory and compliance issues surfaced by firms in the pandemic survey. Additionally, this *Notice* considers comments made in response to *NTM 06-31 (NASD Requests Comment on Regulatory Relief that Should Be Granted in Response to a Possible Pandemic or Other Major Business Disruption)*. Depending on the nature and impact of a pandemic, FINRA may provide specific guidance on regulatory and compliance issues similar to the guidance FINRA has provided during previous significant business disruptions. Firms must not, however, prepare for the effects of a pandemic with the presumption that such regulatory guidance will come in the form of relief from compliance with rules and regulations.

Pandemic Survey Results and Discussion

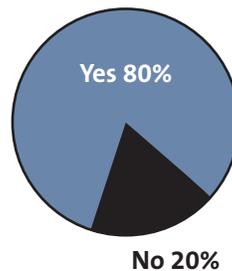
Respondents Having Conducted Reviews of the Potential Impact of a Pandemic



Respondents with BCPs Specifically Addressing Pandemic



Respondents Having Tested Their Pandemic Plans

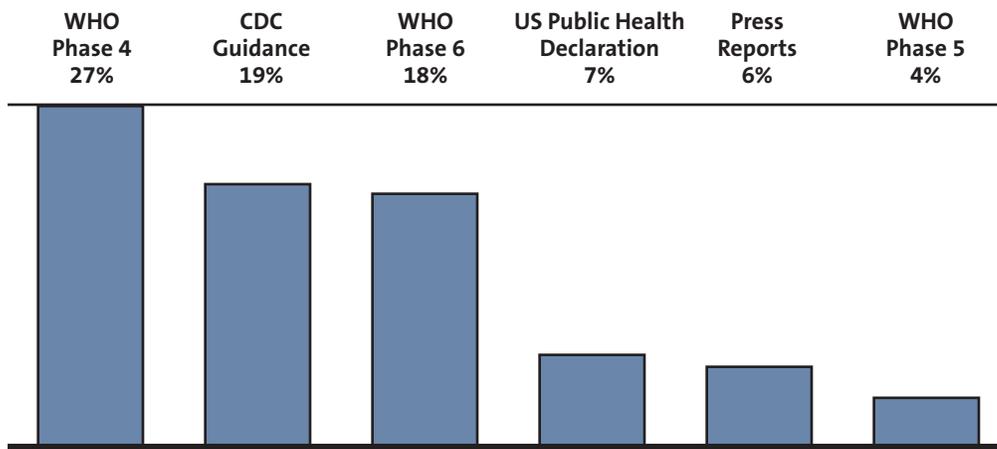


The survey found that most respondents identified multiple events that could trigger implementation of their plans, indicating measured or tiered approaches to a pandemic depending on facts and circumstances. Many respondents indicated they have updated their plans to reflect developments related to H1N1, such as this virus' low death rate versus its high virulence or ability to spread infectiously (as of the publication date of this *Notice*).

FINRA also found that some firms have partnered with federal, state and local health organizations to obtain better information and priority access to medications and vaccines. Many firms have performed pandemic planning drills, such as simulations, tabletop exercises, structured walkthroughs or the Financial Services Sector Coordinating Council,³ Financial Services Authority⁴ or Monetary Authority of Singapore pandemic exercises. And some firms performed technology-related planning exercises, such as testing remote access permissions and abilities, backup location readiness and the ability to conduct production-level business.

Eighty-nine percent of survey respondents indicated their pandemic plans are working well or very well and 97 percent indicated their BCPs address the most significant challenges likely to be faced during a pandemic. Only 4 percent of survey respondents indicated they had experienced above-average absenteeism due to H1N1.

The following chart details the types of pandemic plan triggers noted by survey respondents, including World Health Organization (WHO) Phase declarations⁵ and Center for Disease Control (CDC)⁶ guidance.



Twenty percent of responses indicating “Other” triggers referenced such events as employees or their family members contracting the virus, infections in the vicinity of firm, actions by local governments and health agencies, and directions from the broker-dealer’s parent company. As noted, many firms have updated their plans’ triggers to include events more relevant to their situation.

Business Challenges

The three most significant challenges respondents identified as likely during a serious pandemic outbreak were absenteeism (25%), telecommunications disruptions (12%) and remote work arrangements (12%). Additional concerns included commuting (9%), provision of customer service (8%), transportation (6%), trade clearance and settlement (5%), counterparties (4%), market volatility (4%), regulatory filings (4%), power disruptions (2%) and access to online accounts (1%).

Regulatory Guidance

A majority of survey respondents indicated regulatory guidance they might request would depend on the facts and circumstances of a pandemic, including scope, duration, severity and the potential impact of deep and prolonged absenteeism. Respondents believed the two most beneficial areas of regulatory guidance in the event of a serious pandemic would relate to regulatory filings (11%) and continuing education (10%). Additionally, firms indicated potential interest in regulatory guidance relating to emergency office locations (9%), registration filings (9%), supervision (9%), books and records (8%), FOCUS filings (8%), qualification examinations (7%), communications (6%), and credit/margin regulation (4%). Eight percent of responses indicated other areas of potential guidance relating to order handling, best execution, prompt processing and forwarding requirements, providing customers access to funds and overall time extensions. *NTMs 05-57* and *07-49*, issued after Hurricane Katrina and the California Wildfires, respectively, provide context around the types of regulatory guidance FINRA would likely consider in the event of a pandemic.

Activation of Plan Actions or Protocols

Survey respondents have activated the following pandemic plan actions or protocols in response to H1N1:

- ▶ implementation of social distancing policies and capabilities;
- ▶ distribution of hand sanitizers, masks, gloves and hygiene products;
- ▶ increased sanitizing and disinfecting of facilities;

- increased use of communication channels to disseminate important health and safety information and calm employee and customer concerns;
- travel restrictions and quarantines (voluntary and/or mandatory) often based on CDC recommendations;
- minimization or elimination of group meetings;
- enhanced use of remote meeting and conference call capabilities;
- reassessment and revision of human resource policies and testing of information technology (IT) and remote work capabilities; and
- increased allowable sick time and encouragement to use such time.

Regulatory and Business Considerations

As noted above, survey respondents ranked absenteeism, remote work arrangements and telecommunications disruptions as the three most significant challenges likely to be faced during a pandemic. These and other related topics that firms may need to consider in drafting and/or refining their pandemic plans are discussed below.

Absenteeism

One of the most immediate impacts of a full-blown pandemic will be increased employee absenteeism, either voluntary or forced. Absentee rates could reach into the double digits during a pandemic and the federal government has recommended that companies plan for 40 percent of their staff being absent for a two-week period at the height of a pandemic.⁷ Personnel will stay away from work to care for themselves or dependents, or because they are concerned about falling ill or spreading the virus. Transportation difficulties leading to absenteeism would arise in a pandemic, as noted by one firm with 25 percent of its employees relying on public transportation. Government agencies may seek to limit the spread of the virus by implementing school closures and international and/or domestic travel restrictions or quarantines.

Firms must ensure they prepare for the continuity of operations in light of increased absenteeism, which presents unique vulnerabilities in cases where vital institutional knowledge is vested in specific personnel. In such cases, firms could cross-train employees or create step-by-step instructions so that other employees can fulfill the functions of absent ones.

Telecommuting

During such a period of heightened absenteeism, increased stress on telecommunications networks is expected as adults work from home and out-of-school children “surf” the Internet. Many survey respondents indicated that they believe they have taken appropriate measures to ensure telecommunications and remote work arrangements will function as designed and intended during a pandemic but that they remain vulnerable to telecommunications disruptions. One firm obtained dedicated, priority broadband service for the homes of those employees it determined were most critical. The reliability of such service exceeds that of regular home and business Internet service. The firm selected representatives from various groups and departments across the firm to receive this dedicated service. Additionally, this firm negotiated employee discounts on business-level Internet service. Overall, the firm proactively confronts the potential challenge of a stressed telecommunications network by having layers of telecommunications redundancy, including dedicated service, business and home networks, wireless cards and Blackberries/PDAs residing on multiple carriers.

Due to the heavy reliance on telecommuting in pandemic plans, many firms noted the importance of testing the assumptions and support structures on which their plans are based. Respondents have tested remote access capabilities and backup sites and servers by moving back office, trading and IT personnel to recovery locations to confirm functionality. Some firms even performed production-level activities in a live environment from recovery locations. One firm conducted a test of its system capacity and user knowledge by having over 1,000 users simultaneously attempt remote work. The firm followed this test with a survey to determine lessons learned from the employee perspective. Even with robust testing, however, firms noted they remain vulnerable to telecommunications networks being overwhelmed in a full-blown pandemic.

The Department of Homeland Security (DHS) conducted a study in 2007 on the impact of a deadly pandemic on the nation’s communication network. It was recognized that telecommuting would be a “key component of the national response to pandemic influenza.” The study identified potential telecommunications congestion points, recommended preparations and best practices, and modeled pandemic impacts at multiple levels of severity. Firms are encouraged to review this study, as well as the information on FINRA’s BCP and pandemic Web pages (see www.finra.org/bcp), and update their plans accordingly. Below are some key findings from the DHS study.

Potential Congestion Points and Associated Risks	
For Enterprise Networks	Remote access resources, such as VPN and firewalls, may be overloaded
	Remote access applications, such as webmail, may be overloaded
	Servers may only be able to handle a limited number of outside connections
For Residential Internet Access Networks	Competition between telecommuters and recreational users for bandwidth
	Network service provider capacity is oversubscribed in the range of 10:1 → 100:1

Recommended Preparations and Best Practices	
For Enterprise Networks	Limit remote access to critical users and applications
	Disable multimedia and social networking capabilities during critical periods
	Obtain Telecommunication Service Provider (TSP) status and capabilities through the Department of Homeland Security
For Telecommuters	Critical users should not rely on residential Internet access and should secure premium or dedicated service
	Practice bandwidth-saving through actions such as transferring large amounts of data at night and logging off corporate VPN connections when not in use
	Stagger telecommute arrangements by scheduling employees to remote-work at designated times during the day/night in order to disperse and equalize bandwidth requirements

It is important to note that many of the preparations and best practices recommended by the DHS study would need to be designed, configured, enabled or implemented **prior** to the outbreak of a pandemic in order to be effective. FINRA recommends that firms consult their IT personnel as part of their pandemic planning.

Additionally, the DHS survey addresses the heightened cyber-security risk likely present during an outright pandemic due to the significant increase in online users. For example, the study notes that personnel normally protected by corporate firewalls and IT departments would need to rely on the security of their own home networks. The DHS study includes cyber-security best practices both for business and home users.

Remote Work Arrangements

Many firms intend to employ a number of techniques to help limit the spread and impact of a virus. According to survey respondents, social distancing is a preferred method and may include travel restrictions, employee quarantining, revised sick leave policies, special pandemic leave time or specialized seating plans for densely populated floors/buildings. Many techniques will involve remote work arrangements, such as working from home or a backup/recovery location. Since associated persons may need to work from remote locations during a pandemic, it is important that firm's supervisory systems are adequately designed to provide reasonable supervision of employees' activities (regardless of their functions) while working from remote locations.

Annual Review, Testing and Updating

FINRA recognizes that it can be challenging to prepare for an event that has yet to fully materialize. As one survey respondent noted, "predictions of a pandemic are unreliable." FINRA's BCP rule requires firms to conduct an annual review of their BCPs to determine if any modifications are necessary. Testing is not only an important component of the annual review, but it is also essential to the construction and maintenance of an effective BCP program. For example, a firm may test the functionality of back-up technology or of a designated "emergency personnel team" in a simulated business disruption such as a pandemic outbreak. Testing in such a manner would help a firm determine whether it has met the "reasonably designed" threshold of FINRA's BCP rule. As noted in *NTM 06-74*, which describes firms' experiences involving Hurricanes Katrina and Rita, those firms that had thoroughly tested their BCPs faced minimal disruptions. Firms that had not performed adequate testing encountered unanticipated problems, such as servers and systems incapable of handling workload and capacity requirements. Additionally, basic testing should ensure relevant staff has appropriate access, permissions and connectivity to allow them to function successfully from recovery sites and remote locations. While preparing for an unpredictable event can be challenging, testing is an effective risk-reduction method.

One respondent, who had not tested the firm's pandemic plan, indicated the plan was theory-based rather than providing detailed, practical guidance and instruction to employees. As such, the firm had not tested its plan because there was little tangible material to test. With the outbreak of H1N1, the firm found the general concepts of its pandemic plan were not useful. The firm has since begun updating its pandemic plan to provide more useful information to staff.

As noted above, numerous firms indicated they have updated their plans based on the behavior of H1N1. Many firms originally had their plans' triggers based on WHO pandemic declarations. In practice, however, some firms found WHO H1N1 declarations to be disconnected from their local situation. These firms have since updated their plans to include more relevant triggers based on local events, such as local health department guidance and school closings.

Key Dependencies

Firms need to identify their key dependencies and the risks a pandemic poses to these relationships. Key dependencies and critical relationships may be both internal and external to the firm. They may include dependencies on clearing firms, telecommunications networks, outsourcing/off-shoring providers, internal departments, mail service, utilities or other counterparties. As an example, reports in the media discussed the impact of H1N1 on an Indian outsourcing company, which in turn had outsourced to lower-cost Mexico. Due to H1N1, workers in Mexico were forced into remote work arrangements, in turn impacting the level of service contracted by a U.S. firm through the Indian company. In *NTM 05-48*, FINRA reminds firms that outsourcing covered activities in no way diminishes a firm's responsibility for either its performance or its full compliance with all applicable federal securities laws and regulations, and FINRA and MSRB rules. Firms should consider updating service-level agreements with their vendors, if they have not done so already, to address the potential impacts of a pandemic. Whether a key dependency is internal or external, firms must understand where a pandemic may concurrently impact a critical relationship.

Partnering with Local Health Departments

Many respondents discussed how their local health departments, upon the encouragement of the CDC, have become allies and integral parts of their pandemic planning and response. Local health departments have sponsored scenario tabletop exercises, educated firm employees and agreed to provide real-time information on the local impacts of H1N1 to respondents so that they may respond to the pandemic accordingly.

One firm has taken its cooperation with local health officials to a beneficial level. This firm became a “closed point of dispensing” site (also known as a “closed POD”). Under this arrangement, local health authorities, in partnership with the CDC, will dispense or “push” enough doses of the pandemic vaccine to immunize the firm’s employees and their immediate families. This push method allows for local health officials to target certain population groups through advance planning. During the height of a pandemic, local health officials will not need to worry about vaccinating these groups in the traditional “pull” method, in which the public is pulled into vaccination clinics. The pull method is more labor and planning intensive for local health officials because so many variables, such as location, staffing and supplies, are unknown. To learn more about the closed (or push) point of dispensing program, contact your local city, county/parish or state health officials.

Summary

The survey results indicate that many firms have taken seriously the issue of pandemic preparedness. Almost all respondents have conducted a review of the potential impact of a pandemic and have BCPs specifically addressing a pandemic. The majority of firms that responded to the survey have also tested their pandemic plans. While these results are encouraging, firms must continue to prepare for the potential effects of a pandemic.

Survey responses highlight the importance of plan testing and employee cross-training. Responses also note the importance of having a comprehensive telecommunications strategy designed to address predicted Internet traffic congestion and slowdowns. Firms should take advantage of the useful and pertinent information provided by their peers and highlighted in this Notice and on FINRA’s BCP and Pandemic Web pages at www.finra.org/bcp. Importantly, remember that many of the preparations and practices noted by survey respondents would need to be enacted prior to the outbreak of a pandemic in order to be effective.

Endnotes

- 1 Approximately 150 firms, including clearing and carrying firms and those with significant trading or retail operations, were asked to participate in this survey. 109 firms responded to the survey with some electing not to answer every question.
- 2 NASD Rules 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information) comprise the NASD Rule Series 3500 (Emergency Preparedness) and require, among other things, that firms establish a written business continuity plan identifying procedures relating to an emergency or significant business disruption and report to FINRA, via such electronic or other means as FINRA may specify, prescribed emergency contact information that includes the designation of two emergency contact persons.

The SEC recently approved the adoption of NASD Rules 3510 and 3520 as FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information). See Exchange Act Release No. 60534 (August 19, 2009); 74 FR 44410 (August 28, 2009). FINRA will announce the effective date of FINRA Rule 4370 in a *Regulatory Notice* published pursuant to the protocol FINRA has established for announcing the effective date of new FINRA rules that are being adopted as part of the consolidated rulebook (Consolidated FINRA Rulebook). See *Information Notice 10/6/08*.
- 3 The Financial Services Sector Coordinating Council is affiliated with the Department of Homeland Security and was established to address the protection of critical US infrastructure.
- 4 The Financial Services Authority is the United Kingdom's independent, non-governmental regulatory body charged with maintaining market confidence, promoting public awareness, protecting consumers and reducing financial crime.
- 5 For information on the WHO pandemic phase descriptions, visit:
<http://www.who.int/csr/disease/influenza/GIPA3AideMemoire.pdf>
- 6 The CDC, which is part of the Department of Health and Human Services, serves as the national focus for developing and applying disease prevention and control, environmental health, and health promotion and health education activities designed to improve the health of the people of the United States.
- 7 Homeland Security Council. *National Strategy for Pandemic Influenza Implementation Plan*. May 2006.

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SEC Approves New Consolidated FINRA Rules

SEC Approval and Effective Dates for New Consolidated FINRA Rules

Effective Date (all rules except FINRA Rule 3310):
December 14, 2009

Effective Date (FINRA Rule 3310): January 1, 2010

Executive Summary

Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA established a process to develop a new consolidated rulebook (Consolidated FINRA Rulebook), which FINRA has discussed in previous *Information Notices*.¹ FINRA is proposing new consolidated rules in phases for approval by the SEC as part of the Consolidated FINRA Rulebook.² In August and September, the SEC approved eleven new consolidated FINRA Rules. The new rules, except for FINRA Rule 3310 (Anti-Money Laundering Compliance Program), take effect on December 14, 2009. FINRA Rule 3310 takes effect on January 1, 2010.

Questions regarding this *Notice* should be directed to:

- ▶ Patricia Albrecht, Assistant General Counsel, Office of General Counsel (OGC), at (202) 728-8026 (regarding FINRA Rules 2220, 3310 and 4370);
- ▶ Adam Arkel, Assistant General Counsel, OGC, at (202) 728-6961 (regarding FINRA Rules 2262 and 2269);
- ▶ Afshin Atabaki, Assistant General Counsel, OGC, at (202) 728-8902 (regarding FINRA Rule 2150);
- ▶ Brant Brown, Associate General Counsel, OGC, at (202) 728-8264 (regarding FINRA Rule 5230); or
- ▶ Racquel Russell, Assistant General Counsel, OGC, at (202) 728-8363 (regarding FINRA Rules 2124, 2264, 5250 and 5260).

October 2009

Notice Type

- ▶ Consolidated Rulebook
- ▶ Rule Approval

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management

Key Topics

- ▶ Anti-Money Laundering
- ▶ Business Continuity Plans
- ▶ Control Relationship with Issuer
- ▶ Customers' Securities or Funds
- ▶ Emergency Contact Information
- ▶ Margin Disclosure Statement
- ▶ Market Making
- ▶ Market Price of a Security
- ▶ Net Transactions with Customers
- ▶ Options Communications
- ▶ Participation or Interest in Primary or Secondary Distribution
- ▶ Trading Halts

Referenced Rules & Notices

- ▶ FINRA Rule 2124
- ▶ FINRA Rule 2150
- ▶ FINRA Rule 2220
- ▶ FINRA Rule 2262
- ▶ FINRA Rule 2264
- ▶ FINRA Rule 2269
- ▶ FINRA Rule 3310
- ▶ FINRA Rule 4370
- ▶ FINRA Rule 5230
- ▶ FINRA Rule 5250
- ▶ FINRA Rule 5260
- ▶ Information Notice 03/12/08
- ▶ Information Notice 10/06/08
- ▶ Regulatory Notice 08-57

Background & Discussion

In August and September 2009, the SEC approved eleven FINRA Rules as part of the Consolidated FINRA Rulebook:

- Rule 2124 (Net Transactions with Customers);³
- Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts);⁴
- Rule 2220 (Options Communications);⁵
- Rule 2262 (Disclosure of Control Relationship with Issuer);⁶
- Rule 2264 (Margin Disclosure Statement);⁷
- Rule 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution);⁸
- Rule 3310 (Anti-Money Laundering Compliance Program);⁹
- Rule 4370 (Business Continuity Plans and Emergency Contact Information);¹⁰
- Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security);¹¹
- Rule 5250 (Payments for Market Making);¹² and
- Rule 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts).¹³

The attachment to this *Notice* sets forth additional information regarding these new consolidated rules and includes a hyperlink to each related rule filing. The filings provide, among other things, FINRA's statement of the purpose of the rule changes and an exhibit showing the changes between the new rule text and the text of the NASD rule as it exists in the Transitional Rulebook. Also, the text of each new FINRA Rule is available in the online *FINRA Manual* at www.finra.org/finramanual.¹⁴

Rule Conversion Chart

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

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

Endnotes

- 1 *See Information Notice 10/06/08* (Rulebook Consolidation Process: Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart); *see also Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The new FINRA Rules apply to all member firms, unless such rules have a more limited application by their terms. As the Consolidated FINRA Rulebook expands with the SEC's approval and with the new FINRA Rules taking effect, the rules in the Transitional Rulebook that address the same subject matter of regulation will be eliminated. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.
- 3 *See Exchange Act Release No. 60534* (August 19, 2009), 74 FR 44410 (August 28, 2009) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA-2009-036).
- 4 *See Exchange Act Release No. 60701* (September 21, 2009); 74 FR 49425 (September 28, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-014).
- 5 *See supra* note 3.
- 6 *See Exchange Act Release No. 60659* (September 11, 2009), 74 FR 48117 (September 21, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-044).
- 7 *See Exchange Act Release No. 60697* (September 21, 2009), 74 FR 49051 (September 25, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-052).
- 8 *See supra* note 6.
- 9 *See Exchange Act Release No. 60645* (September 10, 2009), 74 FR 47630 (September 16, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-039).
- 10 *See supra* note 3.
- 11 *See Exchange Act Release No. 60648* (September 10, 2009), 74 FR 47837 (September 17, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-048).
- 12 *See supra* note 3.
- 13 *See supra* note 6.
- 14 FINRA updates the rule text on its online *Manual* within two business days of SEC approval of changes to the rule text.

Attachment A

List of Approved FINRA Rules (and Related Rule Filings)

The SEC approved the following new FINRA Rules in August and September 2009. The effective date of the all of the rules, except FINRA Rule 3310 (Anti-Money Laundering Compliance Program), is December 14, 2009. The effective date of FINRA Rule 3310 is January 1, 2010.

FINRA Rule Filing SR-FINRA-2009-014

www.finra.org/rulefilings/2009-014

FINRA Rule 2150

The rule change adopts certain paragraphs of NASD Rule 2330 (Customers' Securities or Funds) as FINRA Rule 2150 (Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts) in the Consolidated FINRA Rulebook with minor changes. The rule change also deletes Incorporated NYSE Rule 352 (with the exception of paragraphs (e), (f) and (g)) from the Transitional Rulebook.

FINRA Rule 2150 prohibits member firms and associated persons from making improper use of a customer's securities or funds and from guaranteeing a customer against loss in connection with any securities transaction or in any securities account of the customer. FINRA Rule 2150 also prohibits member firms and associated persons from sharing in the profits or losses in a customer's account except under certain limited conditions. Additionally, the rule permits, under certain conditions, a member firm or associated person acting as an investment adviser to receive compensation based on a share in the profits or gains in a customer's account.

Supplementary material to FINRA Rule 2150 codifies existing staff guidance that a "guarantee" extended to all holders of a particular security by an issuer as part of that security generally would not be subject to the prohibition against guarantees and that a permissible sharing arrangement remains subject to other applicable FINRA rules. The supplementary material also provides clarification regarding: (1) reimbursement to a customer for transaction losses on an after-the-fact basis; (2) a member firm's ability to correct a *bona fide* error; and (3) applicable record retention requirements.

Rule/Series Number	Rule Title
2000 Series	DUTIES AND CONFLICTS
2100 Series	TRANSACTIONS WITH CUSTOMERS
Rule 2150	Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts

FINRA Rule Filing SR-FINRA-2009-036

www.finra.org/rulefilings/2009-036

The rule change adopts, without material change:

- NASD Rule 2441 (Net Transactions with Customers) as FINRA Rule 2124;
- NASD Rule 2220 (Options Communications) as FINRA Rule 2220;
- NASD Rule 3510 (Business Continuity Plans) and NASD 3520 (Emergency Contact Information) as FINRA Rule 4370; and
- NASD Rule 2460 (Payment for Market Making) as FINRA Rule 5250.

FINRA Rule 2124

FINRA Rule 2124 (Net Transactions with Customers) requires member firms to provide disclosure and obtain consent when trading on a “net” basis with customers. With respect to non-institutional customers, the member firm must obtain the customer’s written consent on an order-by-order basis prior to executing the transaction and such consent must evidence the customer’s understanding of the terms and conditions of the order. With respect to institutional customers, a member firm must obtain the customer’s consent prior to executing the transaction and such consent may be obtained by either: (1) use of a negative consent letter; (2) oral disclosure and consent on an order-by order basis; or (3) written consent on an order-by-order basis.

FINRA Rule 2220

FINRA Rule 2220 (Options Communications) sets forth a member firm’s obligations with respect to its options communications with the public and carries over the 2008 revisions to NASD Rule 2220 that make the options communications rule more consistent with FINRA’s general rules on communications with the public and the options communications rules of other self-regulatory organizations.¹ Among other things, those revisions include: (1) using, to the extent appropriate, the same terminology and definitions as in FINRA’s general rules on communications with the public; (2) making the requirements for principal review of correspondence concerning options the same as for correspondence generally; and (3) updating the standards on the content of communications that precede the delivery of the options disclosure document (ODD).

FINRA Rule 4370

FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information) requires a member firm to create, maintain, review at least annually and update upon any material change, a written business continuity plan identifying procedures relating to an emergency or significant business disruption and enumerates the minimum elements that a member firm's business continuity plan must address, to the extent those elements are applicable and necessary to the firm's business. Additionally, the rule requires each member firm to disclose (at a minimum, in writing at account opening, by posting on the member firm's Web site, and by mailing it upon request) to its customers how its business continuity plan addresses the possibility of a future significant business disruption and how the member firm plans to respond to events of varying scope.

FINRA Rule 4370 also requires each firm to provide (and promptly update upon any material change) to FINRA via electronic process or other means as FINRA may specify, prescribed emergency contact information, including the designation of two emergency contact persons. FINRA Rule 4370, however, modifies the former requirement in NASD Rule 3520 that both persons must be registered principals and members of senior management to require, instead, that only one of those persons must be a member of senior management and a registered principal of the member firm. The rule requires, however, that someone designated as a second emergency contact person who is not a registered principal must be a member of senior management who has knowledge of the firm's business operations. FINRA Rule 4370 also clarifies that both emergency contact persons must be associated persons of the member firm. Finally, the new rule codifies current guidance that, for a firm with only one associated person (*e.g.*, a sole proprietorship without any other associated persons), the second emergency contact person may be an individual, either registered with another firm or nonregistered, who has knowledge of the member firm's business operations, such as the firm's attorney, accountant or clearing firm contact.

FINRA Rule 5250

FINRA Rule 5250 (Payments for Market Making) prohibits any payments by an issuer or an issuer's affiliates and promoters, directly or indirectly, to a member firm or person associated with a member firm for publishing a quotation, acting as a market maker or submitting an application in connection therewith. The rule, however, contains two exceptions that permit a member firm to accept: (1) payment for bona fide services, including, but not limited to, investment banking services; and (2) reimbursement for registration or listing fees.

Rule/Series Number	Rule Title
2000 Series	DUTIES AND CONFLICTS
2100 Series	TRANSACTIONS WITH CUSTOMERS
2120 Series	Commissions, Mark Ups and Charges Disclosures
Rule 2124	Net Transactions with Customers
2200 Series	COMMUNICATIONS AND DISCLOSURES
Rule 2220	Options Communications
4000 Series	FINANCIAL AND OPERATIONAL RULES
4300 Series	OPERATIONS
Rule 4370	Business Continuity Plans and Emergency Contact Information
5000 Series	SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES
5200 Series	QUOTATION AND TRADING OBLIGATIONS AND PRACTICES
Rule 5250	Payments for Market Making

FINRA Rule Filing SR-FINRA-2009-039

www.finra.org/rulefilings/2009-039

FINRA Rule 3310

The rule change adopts NASD Rule 3011 (AML Compliance Program) without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 3310 (AML Compliance Program) and adopts NASD IM-3011-1, subject to certain amendments, and NASD IM-3011-2 (Review of AML Compliance Person Information), without substantive change, as supplementary material to FINRA Rule 3310. Additionally, the rule change deletes Incorporated NYSE Rule 445 (AML Compliance Program) in its entirety as duplicative.

FINRA Rule 3310 requires each member firm to develop and implement a written AML program (that must be approved, in writing, by a member of senior management) that is reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act (BSA) and the implementing regulations promulgated by the Department of the Treasury. The rule also sets forth the minimum requirements for an AML compliance program, including the requirement that a firm provide for annual (on a calendar-year basis) independent testing for compliance to be conducted by member firm personnel or by a qualified outside party. The rule permits a member firm that does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts to conduct its independent tests every two years (on a calendar-year basis).

FINRA Rule 3310, however, does not retain the exception in NASD IM-3011-1 that permits, under certain conditions, the AML compliance program testing to be conducted by persons who report to either the AML compliance person or persons performing the functions being tested. The Financial Crimes Enforcement Network (FinCEN), a bureau within the Department of the Treasury that is responsible for administering the BSA and its implementing regulations, has stated that the independent testing provision of the BSA precludes AML program testing by personnel with an interest in the outcome of the testing and that an independent testing exception, such as the one in NASD IM-3011-1, is inconsistent with the BSA's independent testing provision and FinCEN's interpretation of this provision.

Rule/Series Number	Rule Title
3000 Series	SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS
3300 Series	ANTI-MONEY LAUNDERING
Rule 3310	Anti-Money Laundering Compliance Program

FINRA Rule Filing SR-FINRA-2009-044

www.finra.org/rulefilings/2009-044

The rule change adopts without material change NASD Rules 2240 (Disclosure of Control Relationship with Issuer), 2250 (Disclosure of Participation or Interest in Primary or Secondary Distribution) and 3340 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) as FINRA rules in the Consolidated FINRA Rulebook and deletes Incorporated NYSE Rules 312(f)(1) through 312(f)(3) and 321.24. The rule change renumbers NASD Rules 2240, 2250 and 3340 as FINRA Rules 2262, 2269 and 5260, respectively, in the Consolidated FINRA Rulebook.

FINRA Rules 2262 and 2269

FINRA Rules 2262 (Disclosure of Control Relationship with Issuer) and 2269 (Disclosure of Participation or Interest in Primary or Secondary Distribution) address disclosures or notifications that member firms must provide to customers in connection with securities transactions. Rule 2262 provides that a member firm controlled by, controlling or under common control with the issuer of any security must, before entering into any contract with or for a customer for the purchase or sale of such security, disclose to the customer the existence of such control; if such disclosure is not made in writing, it must be supplemented by written disclosure at or before the completion of the transaction. Rule 2269 provides that if a member firm is acting as a broker for a customer, or is acting for both the customer and some other person, or is acting as a dealer and receives or has promise of receiving a fee from a customer for advising the customer with respect to securities, then the member firm must, at or before the completion of any transaction for or with the customer in any security in the primary or secondary distribution of which the member firm is participating or is otherwise financially interested, give the customer written notification of the existence of such participation or interest.

Rule/Series Number	Rule Title
2200 Series	Communications and Disclosures
2260 Series	Disclosures
Rule 2262	Disclosure of Control Relationship with Issuer
Rule 2269	Disclosure of Participation or Interest in Primary or Secondary Distribution

FINRA Rule 5260

FINRA Rule 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts) generally prohibits members from, directly or indirectly, effecting transactions or publishing quotations or indications of interest in: (1) any security with respect to which a trading halt is in effect; (2) any security future when there is a regulatory trading halt in effect with respect to the underlying security; or (3) any future on a narrow-based securities index when one or more underlying securities that constitute 50 percent or more of the market capitalization of the index has a regulatory trading halt that is currently in effect. The rule also provides that, in the event that FINRA halts over-the-counter trading and quoting in an NMS stock because the Alternative Display Facility (ADF) or a Trade Reporting Facility (TRF) is unable to transmit real-time information to the applicable Securities Information Processor, member firms are not prohibited from trading through other markets for which trading is not halted.

Rule/Series Number	Rule Title
5000 Series	Securities Offering and Trading Standards and Practices
5200 Series	Quotation and Trading Obligations and Practices
Rule 5260	Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

FINRA Rule Filing SR-FINRA-2009-048

www.finra.org/rulefilings/2009-048

FINRA Rule 5230

The rule change adopts, with certain modifications, NASD Rule 3330 (Payment Designed to Influence Market Prices, Other than Paid Advertising) as FINRA Rule 5230 (Payments Involving Publications that Influence the Market Price of a Security) in the Consolidated FINRA Rulebook.

NASD Rule 3330 provided that no member firm may, “directly or indirectly, give, permit to be given, or offer to give, anything of value to any person for the purpose of influencing or rewarding the action of such person in connection with the publication or circulation in any newspaper, investment service, or similar publication, of any matter which has, or is intended to have, an effect upon the market price of any security . . .” The rule includes an exception for any matter that is “clearly distinguishable as paid advertising.”

FINRA Rule 5230 adopts these requirements with two changes. First, the rule change updates the list of media to which the rule refers to include electronic and other types of media, including magazines, Web sites and television programs. Second, Rule 5230 expands the exceptions in the rule beyond paid advertising to also include compensation paid in connection with research reports and communications published in reliance on Section 17(b) of the Securities Act of 1933.

Rule/Series Number	Rule Title
5000 Series	SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES
5200 Series	QUOTATION AND TRADING OBLIGATIONS AND PRACTICES
Rule 5230	Payments Involving Publications that Influence the Market Price of a Security

FINRA Rule Filing SR-FINRA-2009-052

www.finra.org/rulefilings/2009-052

FINRA Rule 2264

The rule change adopts NASD Rule 2341 (Margin Disclosure Statement) with minor changes as FINRA Rule 2264 (Margin Disclosure Statement) in the Consolidated FINRA Rulebook.

NASD Rule 2341 required member firms that open margin accounts for or on behalf of non-institutional customers to deliver to such customers, prior to or at the time of opening the account, a specified margin disclosure statement highlighting the risks involved in trading securities in a margin account. Member firms also had to provide the margin disclosure statement (or an abbreviated version provided by the rule) to non-institutional margin account customers not less than once a calendar year. NASD Rule 2341 also provided member firms with the flexibility to use an alternative disclosure statement provided that the alternative disclosures are substantially similar to the disclosures specified in the rule. Additionally, NASD Rule 2341 required member firms to deliver the initial and annual disclosure statement, in writing or electronically, to customers covered by the rule on an individual basis. The former rule also required member firms that permit non-institutional customers to open accounts online, or engage in transactions in securities online, to post the margin disclosure statement on their Web sites in a clear and conspicuous manner.

FINRA Rule 2264 adopts the requirements of the former rule with two changes. First, the new rule clarifies that the initial margin disclosure statement may be furnished to customers in a separate document (or contained by itself on a separate page as part of another document), and that the annual disclosure statement may be provided within other documentation, such as the account statement, and does not have to be on a separate page. Second, because electronic documents may be considered a form of "writing," Rule 2264 revises the former requirement that disclosure statements may be provided either "in writing or electronically" to clarify that the documents may be provided "in paper or electronic form."

1 See Exchange Act Release No. 58738 (October 6, 2008), 73 FR 60371 (October 10, 2008) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-013). FINRA recently proposed for comment substantial revisions to its general rules on communications with the public. See Regulatory Notice 09-55 (September 2009). FINRA expects to make conforming changes to FINRA Rule 2220 upon the SEC's approval of any proposed changes to the general communications rules.

Continuing Education

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

Executive Summary

This *Notice* advises firms of the Fall 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 spring Advisory are indicated in the document as such.

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

This *Notice* also includes resources the Council is making available to help firms with their Firm Element planning.

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 Firm Element 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.

October 2009

Notice Type

- Guidance

Suggested Routing

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

Key Topics

- Continuing Education
- Firm Element

New Firm Element Planning Resources

Firms have asked the Council for more resources to help with Firm Element planning. In response to that request, the Council has developed tools for use by firms in addition to or in conjunction with the Firm Element Advisory:

- ▶ **Guide to Firm Element Needs Analysis and Training Plan Development:** Offers suggestions for effectively performing the Needs Analysis and developing training plans. The document is available at www.cecouncil.com/publications/council_publications/Guide_to_Firm_Element.pdf.
- ▶ **The Firm Element Organizer:** A Web-based tool that can be used to search through an extensive database of regulatory resources related to specific investment products or services. The Organizer provides links to the identified resources and is available at www.cecouncil.com/firm_element/organizer.
- ▶ **Training Resources:** The Council has also included a section in the FEA that lists training resources provided by industry regulators that can be used for Firm Element training or can assist registered persons when preparing for their Regulatory Element sessions.

The Council recommends using all the available tools to make the Firm Element planning more efficient and effective.

Election Notice

Notice of SFAB Election and Ballots

Executive Summary

The purpose of this *Notice* is to distribute to eligible FINRA small firm members¹ the ballots to elect two regional members of the Small Firm Advisory Board (SFAB). Two seats on the SFAB are up for election, the North and the West Region seats.

FINRA small firms in the North and West Regions as of the close of business on October 22, 2009, are eligible to vote in this election. Eligible FINRA small firms can vote for one candidate running for the SFAB seat representing the region to which they are assigned in the Central Registration Depository. Firms are urged to vote in the election of SFAB members.

Ballots are due on Friday, November 20, 2009, and the newly elected SFAB members will take office in January 2010. Attachment A lists the candidates certified by the Corporate Secretary of FINRA as satisfying requirements for each regional SFAB seat. Information about each candidate is available at www.finra.org/sfab/candidateprofiles.

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

- Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949;
- T. Grant Callery, Executive Vice President and General Counsel, at (202) 728-8285; or
- Chip Jones, Senior Vice President, Member Relations, at (240) 386-4797.

SFAB Election

The SFAB comprises ten members consisting of:

- five regional members elected by small firms in the five regions (one from each region); and
- five at-large members appointed by FINRA.

October 23, 2009

Suggested Routing

- Executive Representatives
- Senior Management

Additionally, the Small Firm Governors² of the FINRA Board serve as ex-officio members of the SFAB.

The five regional members represent the following geographic areas:

- Midwest Region:** Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Districts 4 and 8)
- New York Region:** New York (the counties of Nassau and Suffolk, and the five boroughs of New York City) (District 10)
- North Region:** Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia (Districts 9 and 11)
- South Region:** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, the Canal Zone, Puerto Rico and the Virgin Islands (Districts 5, 6 and 7)
- West Region:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and the former U.S. Trust Territories (Districts 1, 2 and 3)

As mentioned above, the North and West Region seats are currently up for election.

Candidate Eligibility

Any senior member of a small firm whose primary place of business and whose firm has its main office (as indicated in FINRA records) in the North or West region was eligible to have his or her name placed on the SFAB ballot for that region. Senior members of firms include owners, FINOPs, chief executive officers, presidents, chief compliance officers, chief operating officers or individuals of comparable status.

SFAB members must also continue to meet their qualifications for election at all times during their terms of office.

Attachment A lists the candidates certified by the Corporate Secretary of FINRA as satisfying requirements for each regional SFAB seat. Information about each candidate is available at www.finra.org/sfab/candidateprofiles.

Terms of SFAB Members

The successful candidate will be the individual who receives the most votes in his or her region. Each successful candidate will be elected to serve a three-year term.

The term of an SFAB member shall terminate immediately upon a determination by the SFAB, by a majority vote of the remaining members, that the member no longer satisfies the eligibility criteria. Additionally, the FINRA Board may remove from the SFAB a member who is unable or fails to discharge the member's duties or violates SFAB policies.

Once an individual has completed a full three-year elected term on the SFAB, he or she is ineligible to run for reelection to the SFAB for another three years.³

Voting Eligibility

As mentioned above, eligible FINRA small firms can vote for a candidate running for the SFAB seat representing the region to which they are assigned in the Central Registration Depository.

Ballots have been mailed, along with a copy of this *Notice*, to the executive representatives of small firm members in the North and West Regions to elect the two regional members of the SFAB. Firms may vote for only one candidate listed on the ballot.

Voting Methods

Firms will be able to vote by telephone, the Internet or by U.S. mail. The ballot sent to eligible small firms contains detailed instructions on the submission procedures.

It is important that all eligible member firms vote. Ballots are due on Friday, November 20, 2009.

Endnotes

- 1 A small firm is defined as a member firm that employs at least one and no more than 150 registered persons. *See* Article I (ww) of the FINRA By-Laws.
- 2 A Small Firm Governor is defined as a member of the FINRA Board elected by small firm members. In order to be eligible to serve, a Small Firm Governor must be registered with a member firm that is a small firm and must be an Industry Governor. *See* Article I (xx) of the FINRA By-Laws.
- 3 The composition of the SFAB was revised in 2008 and, in order to maintain continuity on the SFAB, FINRA phased in three-year terms. The individuals currently seated as the North Region and West Region SFAB Representatives were elected to two-year terms in 2008 and, therefore, were eligible for re-election.

Attachment A: SFAB Candidates for North and West Region Seats

North Region Candidates

Michael C. Braun	Moors & Cabot, Inc. Chief Operating Officer-Chief Financial Officer
W. Dean Karrash	Burke, Lawton, Brewer & Burke, LLC Sr. Executive V. P., Chief Financial Officer & Chief Compliance Officer
John D. Lane	Lane Capital Markets CEO, Founder, President
Tina Blakeley Maloney	Winslow, Evans & Crocker, Inc. Chairman/Financial Operations and Compliance
Tommasina Anne Olson	LifeVest Financial, Inc. President/Chief Compliance Officer

West Region Candidates

Cynthia Aragon	FAT Securities, LLC Chief Compliance Officer
Gerard P. Gloisten	GBS Financial Corp. President
Daniel W. Roberts	Roberts & Ryan Investments Inc. President and CEO
Doug Schriener	Harrison Douglas, Inc. President

Information Notice

Extension of Current Rate for Fees Paid Under Section 31 of the Exchange Act

Executive Summary

Beginning October 1, 2009, the Securities and Exchange Commission (SEC) will be operating under a continuing resolution for fiscal year (FY) 2010. As such, the Section 31 rate applicable to the sales of specified securities transactions on the exchanges and in the over-the-counter markets will remain at the current rate of \$25.70 per million dollars until further notice.

Questions concerning this *Notice* may be directed to:

- ▶ Kathleen O'Mara, Office of Oversight, Liaison and Counsel, at (240) 386-5309; or
- ▶ Robert Wood, Senior Vice President, Finance, at (240) 386-5298.

Discussion

Beginning October 1, 2009, the SEC will be operating under a continuing resolution for fiscal year (FY) 2010. The SEC has specified, among other things, that the fee paid under Section 31 of the Securities Exchange Act of 1934 (Exchange Act) will remain at the current rate of \$25.70 per million dollars while it operates under a continuing resolution.

Further, as the SEC has previously announced, the rate for the Section 31 fee will decrease from \$25.70 per million dollars to \$12.70 per million dollars 30 days after the date of enactment of its regular FY 2010 appropriation. FINRA will notify firms through an *Information Notice* when the SEC's regular appropriation is enacted and a final date has been determined for implementing the rate change to \$12.70 per million dollars.

October 2, 2009

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Trading

Key Topics

- ▶ Section 31 Fee

Referenced Rules & Notices

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

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

A copy of the SEC's April 30, 2009, order regarding fee rates for FY 2010 is available at: www.sec.gov/rules/other/2009/33-9030.pdf.

Information Notice

Continuing Education Planning

Executive Summary

On October 23, 2009, the Securities Industry/Regulatory Council on Continuing Education (the Council) released the semi-annual Firm Element Advisory (see *Regulatory Notice 09-61*). The Council 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 that the Council has outlined in the Firm Element Advisory. These may be suitable for Firm Element training and are available on demand through www.finra.org/onlinelearning.

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).

October 23, 2009

Suggested Routing

- Compliance
- Continuing Education
- Legal
- Training

Key Topics

- Continuing Education
- Firm Element

Referenced Rules & Notices

- Notice 09-61

Discussion

FIRM ELEMENT ADVISORY TOPICS

FINRA OFFERING

Alternative Investments

Non-Traditional Exchange-Traded Funds

- Non-Traditional Exchange-Traded Funds ([Podcast](#)) **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 Considerations ([Webcast](#))
- Private Placements ([E-Learning](#) and [Webcast](#))

Public Offerings of DPPs and REITs

- Public Offerings of DPPs and REITs ([Podcast](#))

Obligations With Regard to Cash Alternatives

- Cash Alternatives ([Podcast](#)) **NEW**

Sales of Securities in a High Yield Environment

- High Yield Environment Instruments ([Podcast](#)) **NEW**

Anti-Money Laundering

For Staff Working With Retail Customers:

- AML—Retail: Exploring New Risks ([E-Learning](#))
- AML—Retail: Recognizing and Escalating Suspicious Activity ([E-Learning](#))
- AML—Retail: The Responsibility to Know Your Customer ([E-Learning](#))
- AML—Retail: Recognizing Red Flags ([E-Learning](#))
- AML—Retail: Customer Identification Procedures ([E-Learning](#)) **NEW**
- AML: Do You Know Your Customer ([Webcast](#))
- AML: Examples of Red Flags ([Webcast](#))

**FIRM ELEMENT
ADVISORY TOPICS**
FINRA OFFERING
**Anti-Money
Laundering**
Continued

For Staff Working With Institutional Customers:

- AML—Institutional: Exploring New Risks ([E-Learning](#))
- AML—Institutional: Identification and Reporting Issues ([E-Learning](#))
- AML—Institutional: Identifying and Managing Higher-Risk Clients ([E-Learning](#))
- AML—Institutional: Recognizing Red Flags ([E-Learning](#))
- AML—Institutional: Customer Identification Procedures ([E-Learning](#))
NEW
- AML—Institutional: Know Your Customer ([Webcast](#))
- AML—Due diligence for foreign private banking accounts ([Webcast](#))
NEW
- AML—Due diligence for foreign correspondent accounts ([Webcast](#))
NEW

For Staff Working in Operations:

- Anti-Money Laundering for Operations Staff ([Webcast](#))
- AML—Operations: Recognizing Red Flags ([E-Learning](#))
- AML—Operations: Customer Identification Procedures ([E-Learning](#)) **NEW**

For Compliance Staff:

- What to Expect: Anti-Money Laundering Reviews During Routine Exams ([Webcast](#))
- AML Law Enforcement Requests ([Podcast](#))

Business Continuity

- Business Continuity Planning: Recent Survey Findings ([Podcast](#))

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 ([Podcast](#))

FIRM ELEMENT ADVISORY TOPICS	FINRA OFFERING
Communications Continued	Electronic Communications <ul style="list-style-type: none"> • Electronic Communications: Social Networking Web Sites (Podcast) NEW • Electronic Communications: Blogs, Bulletin Boards and Chat Rooms (Podcast) NEW • Electronic Communications: Web Sites (Podcast) NEW Misleading Communications <ul style="list-style-type: none"> • Seniors: Communications (Podcast)
Corporate Finance and Institutional Business	Conflicts of Interest <ul style="list-style-type: none"> • Conflicts of Interest (E-Learning and Webcast) Fairness Opinions <ul style="list-style-type: none"> • Fairness Opinions (Podcast) Resales of Unregistered Restricted Securities <ul style="list-style-type: none"> • Unregistered Resales of Restricted Securities (Podcast) NEW SEC Rule 144 <ul style="list-style-type: none"> • Private Placements (E-Learning and Webcast)
Customer Accounts	<ul style="list-style-type: none"> • Customer Information Protection (E-learning – available 2009) NEW Customer Account Transfers <ul style="list-style-type: none"> • Report of the Customer Account Transfer Taskforce (Podcast) Federal Trade Commission (FTC) Red Flag Rule <ul style="list-style-type: none"> • FTC’s Red Flags Rule Template (Podcast) NEW
Ethics and Business Conduct	<ul style="list-style-type: none"> • Ethics: The Importance of Ethical Behavior (Webcast) • Insider Trading (E-Learning) NEW
Finance and Operations	Recordkeeping Requirements <ul style="list-style-type: none"> • Books and Records (E-Learning) • Record Retention Relief (Podcast)

**FIRM ELEMENT
ADVISORY TOPICS**
FINRA OFFERING
**Gifts and Business
Entertainment**
Gifts and Gratuities

- Business Gifts ([E-Learning](#) and [Webcast](#))
- Foreign Corrupt Practices Act: Avoiding Improper Payments ([E-Learning](#)) **UPDATED**

Insurance/Annuities
Deferred 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](#))

Variable 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

- Foreign Research Analyst Exemption ([Podcast](#))

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](#))

Proprietary Trading

- Unauthorized Proprietary Trading ([Podcast](#)) **NEW**

FIRM ELEMENT ADVISORY TOPICS	FINRA OFFERING
Senior Investors	<p>Suitability</p> <ul style="list-style-type: none"> • Senior Investor Suitability Considerations (E-Learning) • Considerations for Working with Seniors (Webcast) • Seniors: Suitability (Podcast) <p>Supervision</p> <ul style="list-style-type: none"> • Retail Supervision: Sales to Senior Investors Retail (E-Learning) • Supervisory Considerations for Working with Seniors (E-Learning and Webcast) • Seniors: Supervision (Podcast) <p>Free Lunch Seminars</p> <ul style="list-style-type: none"> • Seniors: Free Lunch (Podcast) <p>Other</p> <ul style="list-style-type: none"> • Senior Investor Issues: Diminished Capacity (E-Learning – available 2009) NEW • Seniors: Communications (Podcast) • Seniors: Diminished Capacity (Podcast)
Trading Practices and Supervision	<ul style="list-style-type: none"> • Retail Branch Office Supervision: Compliance with Regulations (E-Learning) • Retail Branch Office Supervision: Understanding Supervisory Responsibilities (E-Learning) • Supervision: Obligations for Firms with Institutional Clients (E-Learning) • Supervision of Recommendations after a Registered Representative Changes Firms (Podcast) • Understanding Supervisory Controls (Podcast)
Transaction Reporting and Data Dissemination	<ul style="list-style-type: none"> • Life of an Equity Trade (E-Learning and Webcast) • Municipal and Trace Transaction Reporting Teleconference (Podcast)