

Notices

Regulatory Notices

- 10-08 Filing Requirements for Members that Carry Customer Margin Accounts; New Customer Margin Balance Form; **Effective Date of Rule Requirements: February 8, 2010; Availability of New Form: March 1, 2010**
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Customer Margin Accounts

Filing Requirements for Members that Carry Customer Margin Accounts; New Customer Margin Balance Form

Effective Date of Rule Requirements: February 8, 2010

Availability of New Form: March 1, 2010

Executive Summary

Beginning March 1, 2010, members subject to new FINRA Rule 4521(d)¹ must file FINRA's new Customer Margin Balance Form (covering the February 2010 reporting period).²

FINRA Rule 4521(d) governs filing requirements for customer margin accounts and became effective on February 8, 2010. The rule, adopted as part of the new consolidated financial responsibility rules, replaces Incorporated NYSE Rules 421(2) and 421.40 and applies to all FINRA members that carry customer margin accounts.³

The text of FINRA Rule 4521(d) is in Attachment A.

Questions concerning this *Notice* should be directed to:

- Glen Garofalo, Director, Credit Regulation, at (646) 315-8464;
- Debra German, Senior Credit Coordinator, Credit Regulation, at (646) 315-8467; or
- Theresa Reynolds, Credit Regulation Coordinator, Credit Regulation, at (646) 315-8567.

February 2010

Notice Type

- Guidance

Suggested Routing

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

Key Topic(s)

- Financial Responsibility
- Customer Margin Accounts

Referenced Rules & Notices

- FINRA Rule 4521(d)
- FINRA Rule 4521(e)
- FINRA Rule 4521(f)
- Incorporated NYSE Rules 421(2) and 421.40
- Section 4(g) of Schedule A to the FINRA By-Laws
- Regulatory Notice 09-71

Background & Discussion

FINRA Rule 4521(d) Requirements

FINRA Rule 4521(d) provides that, unless otherwise permitted by FINRA in writing, each member carrying margin accounts for customers is required to submit, on a settlement date basis, as of the last business day of the month: (A) the total of all debit balances in securities margin accounts; and (B) the total of all free credit balances in all cash accounts and all securities margin accounts.

*Please note: members must submit **three** separate data points, as the free credit balance total for cash accounts and the free credit balance total for securities margin accounts are two **separate** items.*

If a member has no information to submit, it should note that on the report. Reports are due as promptly as possible after the last business day of the month, but in no event later than the sixth business day of the following month. In connection with this requirement, members should note:

- ▶ The data in the member's report should reflect the status of all accounts on a settlement date basis, as of the last business day of each month.
- ▶ Each member must submit a single combined report (including all domestic and foreign main offices and branches).
- ▶ Customer balances in the account(s) of guarantors and in the related guaranteed accounts should not be combined.

Rule 4521(d) requires that a member must only include free credit balances in cash and securities margin accounts in the report. Balances in short accounts and in special memorandum accounts (see Regulation T of the Board of Governors of the Federal Reserve System) are not considered free credit balances. Members should note:

- ▶ "Balances in short accounts" refers to balances derived from the proceeds of short sales.
- ▶ Credit balances in cash accounts and securities margin accounts are considered free (withdrawable) when the firm has no lien or claim against them, nor has imposed any other encumbrance, irrespective of whether the same customer has offsetting debits in another account.

Lastly, Rule 4521(d) requires that reported debit or credit balance information not include the accounts of other FINRA members, or of the associated persons of the member submitting the report where such associated person's account is excluded from the definition of "customer" pursuant to Exchange Act Rule 15c3-3.

New FINRA Customer Margin Balance Form

Members that are required to file information pursuant to FINRA Rule 4521(d) must do so through the FINRA Firm Gateway (www.finra.org/firmgateway), where the new Customer Margin Balance Form will be available beginning March 1, 2010.⁴

Late Fee

Members should note that, unless FINRA grants a specific temporary extension of time, a late fee of \$100 shall apply for each day (for a period not to exceed ten business days) that information required pursuant to Rule 4521(d) is not timely filed.⁵

Public Availability of Data

Data collected pursuant to NYSE Rules 421(2) and 421.40 has historically been made available to the public in aggregate form on the NYSE Web site.⁶ Beginning in March 2010, FINRA will post the data collected pursuant to FINRA Rule 4521(d), also in aggregate form, on FINRA's Web site.

Endnotes

- 1 Effective with the rule change, NYSE Form R-1, which Dual Members currently file pursuant to Incorporated NYSE Rule 421.40, has been discontinued.
- 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 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 3/12/08* (Rulebook Consolidation Process).
- 3 FINRA Rule 4521(d) is substantively similar to Incorporated NYSE Rule 421.40. See *Regulatory Notice 09-71* (SEC Approves Consolidated FINRA Rules Governing Financial Responsibility) (December 2009). See also Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Granting Approval to Proposed Rule Change; File No. SR-FINRA-2008-067); Exchange Act Release No. 61408 (January 22, 2010), 75 FR 4596 (January 28, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2010-004).
- 4 Members should note that their Regulation Filing Applications Account Administrator can provide access to the Customer Margin Balance Form in the Firm Gateway, and also provide a FINRA user ID, if needed. Members can also contact the FINRA Help Desk at (800) 321-6273 and refer to www.finra.org/regulationfiling for additional information on requesting entitlement.
- 5 See FINRA Rules 4521(e) and (f) and Section 4(g) of Schedule A to the FINRA By-Laws.
- 6 Similar information, in modified form, has also been posted on FINRA's Web site at www.finra.org/statistics/margin.

ATTACHMENT A

Below is the text of new FINRA Rule 4521(d).

* * * * *

4521. Notifications, Questionnaires and Reports

* * * * *

(d) (1) Unless otherwise permitted by FINRA in writing, members carrying margin accounts for customers are required to submit, on a settlement date basis, the information specified in paragraphs (d)(2)(A) and (d)(2)(B) of this Rule as of the last business day of the month. If a member has no information to submit, a report should be filed with a notation thereon to that effect. Reports are due as promptly as possible after the last business day of the month, but in no event later than the sixth business day of the following month. Members shall use such form as FINRA may prescribe for these reporting purposes.

(2) Each member carrying margin accounts for customers shall submit reports containing the following customer information:

(A) Total of all debit balances in securities margin accounts; and

(B) Total of all free credit balances in all cash accounts and all securities margin accounts.

(3) For purposes of this paragraph (d):

(A) Only free credit balances in cash and securities margin accounts shall be included in the member's report. Balances in short accounts and in special memorandum accounts (see Regulation T of the Board of Governors of the Federal Reserve System) shall not be considered as free credit balances.

(B) Reported debit or credit balance information shall not include the accounts of other FINRA members, or of the associated persons of the member submitting the report where such associated person's account is excluded from the definition of customer pursuant to SEA Rule 15c3-3.

* * * * *

Reverse Convertibles

FINRA Reminds Firms of Their Sales Practice Obligations With Reverse Exchangeable Securities (Reverse Convertibles)

Executive Summary

Reverse exchangeable securities, commonly called “reverse convertibles,” are popular structured products with retail investors, due in large part to the high yields they offer. However, reverse convertibles are complex investments that often involve terms, features and risks that can be difficult for retail investors and registered representatives to evaluate. Firms that sell reverse convertibles are reminded to ensure that their promotional materials or communications to the public regarding these products are fair and balanced, and do not understate the risks associated with them. Firms are also reminded to ensure that their registered representatives understand the risks, terms and costs associated with these products, and that they perform an adequate suitability analysis before recommending them to any customer.

General questions concerning this *Notice* should be directed to:

- ▶ Laura Gansler, Associate Vice President, Emerging Regulatory Issues, at (202) 728-8275; or
- ▶ Donald Lopezi, Director, Examination Programs, at (202-728-8132).

Questions relating to communications with the public should be directed to Amy C. Sochard, Director, Programs & Investigations, Advertising Regulation, at (240) 386-4508.

February 2010

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Legal
- ▶ Senior Management

Key Topic(s)

- ▶ Communications With the Public
- ▶ Options
- ▶ Reverse Exchangeable Securities (Reverse Convertibles)
- ▶ Structured Products
- ▶ Suitability
- ▶ Supervision and Training

Referenced Rules & Notices

- ▶ Incorporated NYSE Rule 342
- ▶ NASD Rule 2210
- ▶ NASD Rule 2310
- ▶ NASD Rule 3010
- ▶ NASD Rule 3012
- ▶ NTM 05-26
- ▶ NTM 05-59

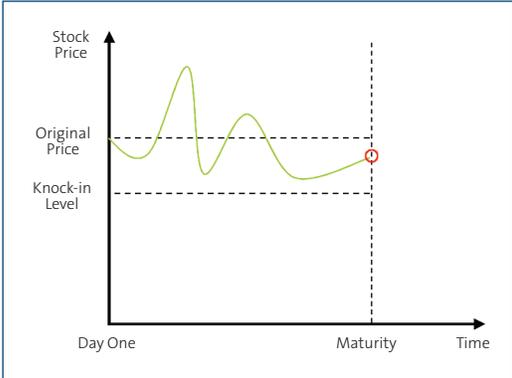
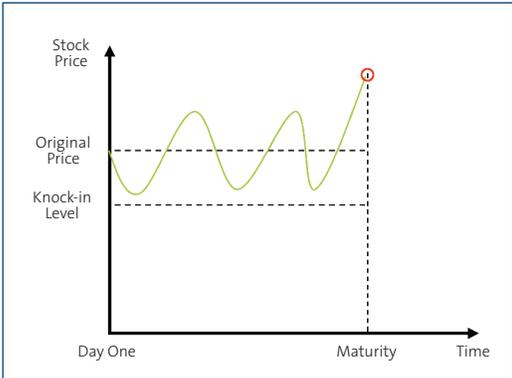
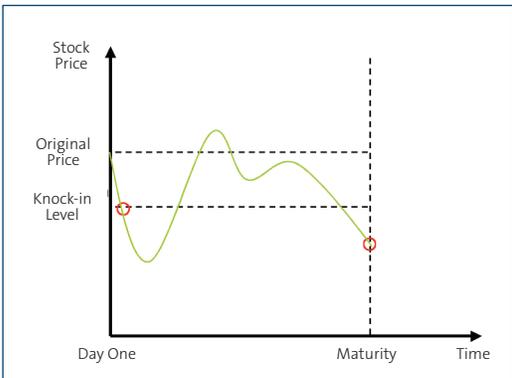
Background & Discussion

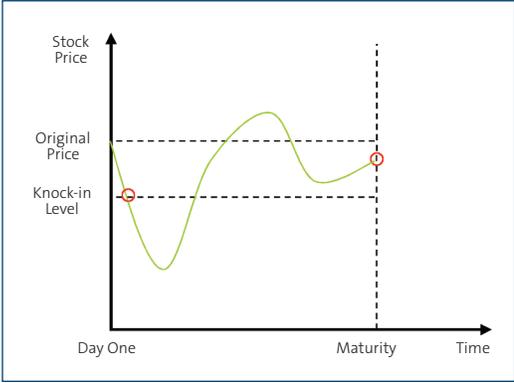
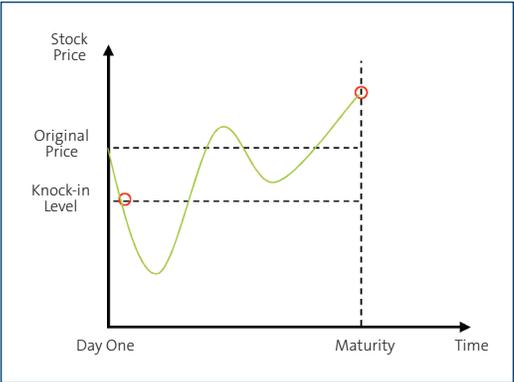
A reverse convertible is a structured product that typically consists of a high-yield, short-term note of the issuer that is linked to the performance of an unrelated reference asset, usually common stock, a basket of stocks, an index or another instrument. The initial investment for most reverse convertibles is \$1,000 per security, and most have maturity dates ranging from three months to one year. The coupon rate on the note component of a reverse convertible is usually higher than the yield on a conventional debt instrument of the issuer with a similar maturity, or of an issuer with a comparable debt rating. Some recently issued reverse convertibles have annualized coupon rates of 30 percent or more.

The higher yield reflects the risk that, instead of a full return of principal at maturity, the investor could receive less than a full return of principal if the value of the reference asset has fallen below a certain level, often referred to as the “knock-in” or “barrier” level. Depending on the underlying asset, the investor could receive a predetermined number of shares of common stock (or cash equivalent), which would amount to less than the investor’s original investment. Each reverse convertible has its own terms and conditions, but, generally, if the price of the reference asset remains above the knock-in level throughout the life of the note, the investor will receive a full return of principal. In some cases, the investor will also receive a full return of principal if the price of the reference asset ends above the knock-in level at maturity, even if it has fallen below it during the term of the investment; in other cases, any breach of the knock-in level will trigger repayment of less than the original principal (*e.g.*, in shares of stock). However, the investor typically will not participate in any appreciation in the value of the reference asset during the life of the note.

In effect, the investor in the reverse convertible is selling the issuer a put option on the reference asset in exchange for an above-market coupon during the life of the note. Generally speaking, the higher the coupon rate, the higher the expected volatility of the reference asset, which in turn means a greater likelihood that the knock-in price will be breached and the investor will receive less than a full return of principal at maturity.

Reverse convertibles can have complex pay-out structures involving multiple variables that can make it difficult for registered representatives and their customers to accurately assess their risks, costs and potential benefits. For example,¹ the pay-out structure of reverse convertibles with common stock as the reference asset could result in the following scenarios:

Scenario ²	Stock Price Visual	At maturity, the investor gets
<p>1. The stock price never declines below the knock-in level, but ends below the original price.</p>	 <p>The graph plots Stock Price on the vertical axis and Time on the horizontal axis. A horizontal dashed line represents the Knock-in Level, and another higher horizontal dashed line represents the Original Price. The stock price starts at the Original Price on Day One, fluctuates above the Knock-in Level, and ends at a point below the Original Price at Maturity. A red circle marks the end point at Maturity.</p>	<p>Full return of principal in cash (despite the decline in the stock price), plus any fixed coupon payments.</p>
<p>2. The stock price never declines below the knock-in level, and ends above the original price.</p>	 <p>The graph plots Stock Price on the vertical axis and Time on the horizontal axis. A horizontal dashed line represents the Knock-in Level, and another higher horizontal dashed line represents the Original Price. The stock price starts at the Original Price on Day One, fluctuates above the Knock-in Level, and ends at a point above the Original Price at Maturity. A red circle marks the end point at Maturity.</p>	<p>Full return of principal in cash, plus any fixed coupon payments, but no participation in the increase in the stock price.</p>
<p>3. The stock price ends below the knock-in level.</p>	 <p>The graph plots Stock Price on the vertical axis and Time on the horizontal axis. A horizontal dashed line represents the Knock-in Level, and another higher horizontal dashed line represents the Original Price. The stock price starts at the Original Price on Day One, fluctuates, and ends at a point below the Knock-in Level at Maturity. A red circle marks the end point at Maturity.</p>	<p>Predetermined number of shares of stock (or cash equivalent), worth less than the principal amount, plus any fixed coupon payments.</p>

Scenario ²	Stock Price Visual	At maturity, the investor gets
<p>4. The stock price declines below the knock-in level, but ends between the original price and knock-in level.</p>	 <p>The graph plots Stock Price on the vertical axis and Time on the horizontal axis. A green line starts at 'Original Price' on the vertical axis at 'Day One'. It drops below the 'Knock-in Level', then rises above it, and finally ends at a point between the 'Original Price' and the 'Knock-in Level' at 'Maturity'. Dashed horizontal lines indicate the 'Original Price' and 'Knock-in Level' levels. A vertical dashed line marks the 'Maturity' point.</p>	<p>Predetermined number of shares of stock (or cash equivalent) worth less than the principal amount, plus any fixed coupon payments; or full return of principal in cash, plus any fixed coupon payments, depending on the issuer and product.</p>
<p>5. The stock price declines below the knock-in level, but ends above the original price.</p>	 <p>The graph plots Stock Price on the vertical axis and Time on the horizontal axis. A green line starts at 'Original Price' on the vertical axis at 'Day One'. It drops below the 'Knock-in Level', then rises above it, and finally ends at a point above the 'Original Price' at 'Maturity'. Dashed horizontal lines indicate the 'Original Price' and 'Knock-in Level' levels. A vertical dashed line marks the 'Maturity' point.</p>	<p>Full return of principal in cash, plus any fixed coupon payments, but no participation in the increase in the stock price.</p>

Because the note component of a reverse convertible is an unsecured debt obligation of the issuer, the payment of the coupon is subject to the credit risk of the issuer. While the note component carries the issuer's rating, that rating does not reflect the product's market risk, including the risk that the price of the reference asset will fall below the knock-in level. Some reverse convertibles have call provisions that give the issuer the option to require redemption of the investment before maturity. There may also be complex tax implications associated with reverse convertibles, with tax treatment depending on whether the investor receives a return of principal or stock at maturity.

Communications With the Public and Other Sales Practices

Reverse convertibles are complex investments that may be difficult for investors to understand. Before recommending a reverse convertible to a retail customer, a registered representative should discuss the product with the customer to ensure that the customer makes an informed decision about whether to purchase the reverse convertible. The registered representative and retail customer should discuss such matters as the following:

- How the product works, including its payout structure, relevant information about the reference asset and, if applicable, that the investor will not participate in any appreciation in the value of the reference asset;
- The fact that the principal value of the investment is not guaranteed and the customer might suffer a loss on the investment;
- The ability of an investor to sell the product prior to maturity, and the potential sales price, may depend on the willingness of the issuer or another party to maintain a secondary market; and
- If applicable, the fact that the firm has published its own research reports regarding the reference asset, the content of that research and how the research is or is not relevant to a recommendation to purchase or sell the reverse convertible.

Under NASD Rule 2210, firms must ensure that all communications with the public are based on principles of fair dealing and good faith, fair and balanced, and provide a sound basis for evaluating the facts about any particular security or type of security, industry or service. No firm may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading. For example, communications with the public should disclose the product and liquidity information noted above to the extent reasonably necessary to balance any discussion of the benefits and advantages of a reverse convertible. In addition, no firm may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public, or publish, circulate or distribute any public communication that the firm knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

Firms are reminded that providing risk disclosure in a prospectus or supplement does not cure otherwise deficient disclosure in sales material, even if that sales material is accompanied or preceded by the prospectus or prospectus supplement.

Firms and their registered representatives should not suggest that reverse convertibles are ordinary debt securities. If a firm or registered representative refers to the product's credit rating, they may not suggest that the rating has any bearing on the expected performance of the reference asset, nor may they exaggerate the probability that the investor will receive a full return of principal.

Firms must not present annualized yield or coupon information for reverse convertibles in a misleading manner. For example, a 10 percent per annum coupon provides an actual return of roughly 2.5 percent (based on a 360-day year) over a three-month term. For products that mature in less than a year, firms must balance any communication that promotes or touts annualized yield with prominent disclosure of the actual percentage return and the term of the note.

Suitability

NASD Rule 2310 requires that, before recommending the purchase or sale of a security, firms must have a reasonable basis for determining that the product is both suitable for at least some investors, and suitable for each specific customer to whom it is recommended. To assess the general suitability of a reverse convertible for at least some investors, firms must carefully review and understand the risks, costs, terms and conditions of the product. The firm must fully understand a reverse convertible's terms and features, including its payout structure, call features, the conditions under which the investor would and would not receive a full return of principal, the volatility of the reference asset and the product's credit, market and other risks. Because each reverse convertible is unique, firms must perform this analysis for each reverse convertible they recommend.³

To assess the suitability of an investment for a specific customer, Rule 2310 requires that firms "shall make reasonable efforts to obtain information concerning: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer." The firm's consideration of the benefits of the product to a particular customer (such as the promise of an above market coupon rate) must take into account the potential volatility

of the reference asset, the risk that the investor may receive less than the value of the principal upon maturity, and the other risks and costs associated with the product. Depending upon the terms of a specific reverse convertible, even an above market coupon rate may not be reasonable given the risks and costs associated with the product for a particular customer. Firms should also consider the equity position that would result should the customer receive shares in the reference asset instead of a return of principal, and whether that position would be suitable for the customer.⁴

In addition, NASD IM-2310-2(e) (Fair Dealing with Customers with Regard to Derivative Products or New Financial Products) emphasizes the obligation of firms to deal fairly with customers when making recommendations or accepting orders for new financial products. The IM states that “[a]s new products are introduced from time to time, it is important that firms make every effort to familiarize themselves with each customer’s financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products.”

Eligible Accounts

Given the put option component of reverse convertibles, firms should also consider whether purchases of reverse convertibles should be restricted to investors whose accounts have been approved for options trading, and whether it would be appropriate to apply the suitability requirements for option trading to those products, including the requirement for firms recommending opening transactions in option contracts to have reasonable grounds for believing that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating these risks.⁵ Firms that do not limit reverse convertibles to accounts approved for options trading should develop other comparable procedures designed to ensure that reverse convertibles are only sold to persons for whom the risk of such products is appropriate. These firms should be prepared to demonstrate the basis for allowing investors with accounts not approved for trading options to purchase reverse convertibles. Firms also are reminded that approving an account to trade reverse convertibles is not a substitute for a thorough suitability analysis.⁶

Supervision and Training

FINRA firms must have adequate written supervisory procedures and supervisory controls that are reasonably designed to ensure that sales of reverse convertibles comply with the federal securities laws and FINRA rules.⁷ Firms must also adequately train employees who sell, or who supervise those who sell, reverse convertibles. Among other things, that training should emphasize the need to understand and consider:

- ▶ the costs and risks associated with the product;
- ▶ the terms and conditions of the product, including the pay-out structure at maturity;
- ▶ the reference stock, index or other asset;
- ▶ the investment's potential for growth;
- ▶ the product's liquidity before maturity; and
- ▶ any other features that might impact the product's suitability, both generally and for a specific customer.

Endnotes

- 1 The examples in this *Notice* are hypothetical composites based on terms and structures of real notes, and are included for illustrative purposes only.
- 2 These scenarios assume that the reverse convertibles are not callable. If one is called, generally the investor would receive the principal amount plus accrued interest.
- 3 See *NTM 05-59*.
- 4 *Ibid.*
- 5 See FINRA Rule 2360(b)(19).
- 6 See *NTM 05-59*. Also see *NTM 05-26* regarding vetting new products.
- 7 See NASD Rules 3010; NASD Rule 3012; and Incorporated NYSE Rule 342 and its related supplementary material and interpretations. 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 member firms 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 3/12/08* (Rulebook Consolidation Process).

SEC Approves New Consolidated FINRA Rules

SEC Approval and Effective Date for New Consolidated FINRA Rules

Effective Date: April 19, 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 January, the SEC approved three new consolidated FINRA rules, all of which take effect on April 19, 2010.

Questions regarding this *Notice* should be directed to:

- Brant Brown, Associate General Counsel, Office of General Counsel (OGC), at (202) 728-6927 (regarding FINRA Rule 5330);
- Erika Lazar, Senior Attorney, OGC, at (202) 728-8013 (regarding FINRA Rule 5160); or
- Matthew Vitek, Counsel, OGC, at (202) 728-6961 (regarding FINRA Rule 4570).

February 2010

Notice Type

- Consolidated Rulebook
- Rule Approval

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topics

- Adjustment of Orders
- Books and Records
- Selling Agreements

Referenced Rules & Notices

- FINRA Rule 4570
- FINRA Rule 5160
- FINRA Rule 5330
- Information Notice 03/12/08
- Information Notice 10/06/08
- Regulatory Notice 08-57

Background & Discussion

In January 2010, the SEC approved three FINRA rules as part of the Consolidated FINRA Rulebook:

- ▶ Rule 4570 (Custodian of Books and Records);³
- ▶ Rule 5160 (Disclosure of Price and Concessions in Selling Agreements);⁴ and
- ▶ Rule 5330 (Adjustment of Orders).⁵

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

Rule Conversion Charts

As discussed in additional detail in *Information Notice 10/06/08* and *Regulatory Notice 08-57*, FINRA has posted three Rule Conversion Charts 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 charts are intended as a reference aid only. FINRA reminds firms that the charts do not in any way serve as a substitute for diligent review of the relevant new rule language. The Rule Conversion Charts are 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. 61332 (January 12, 2010); 75 FR 3270 (January 20, 2010) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-080).
- 4 *See* Exchange Act Release No. 61417 (January 25, 2010); 75 FR 5157 (February 1, 2010) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-086).
- 5 *See* Exchange Act Release No. 61338 (January 12, 2010); 75 FR 2899 (January 19, 2010) (Order Approving Proposed Rule Change; File No. SR-FINRA-2009-084).
- 6 FINRA updates the rule text on its online *Manual* within two business days of SEC approval of changes to the rule text.

ATTACHMENT A

List of Approved Rules (and Related Rule Filings)

The SEC approved the following new FINRA Rules in January 2010. The effective date of all of the rules is April 19, 2010.

FINRA Rule Filing SR-FINRA-2009-080

www.finra.org/rulefilings/2009-080

FINRA Rule 4570

The rule change adopts, with minor changes, NASD Rule 3121 (Custodian of the Record) as FINRA Rule 4570 (Custodian of Books and Records) in the Consolidated FINRA Rulebook.

Rule 4570 provides that, at the time a firm files a Form BDW, the firm must designate a person associated with the member on the Form BDW as the custodian of the firm's books and records. The rule change made minor revisions to the text and the title of the rule to reflect that the associated person is designated as the custodian of the member's "books and records" (rather than "the record") to be consistent with the terminology used in Form BDW.

Rule/Series Number	Rule Title
Rule 4000 Series	FINANCIAL AND OPERATIONAL RULES
Rule 4500 Series	BOOKS, RECORDS AND REPORTS
Rule 4570	Custodian of Books and Records

FINRA Rule Filing SR-FINRA-2009-084

www.finra.org/rulefilings/2009-084

FINRA Rule 5330

The rule change adopts, with several changes, NASD Rule 3220 (Adjustment of Open Orders) as FINRA Rule 5330 (Adjustment of Orders) in the Consolidated FINRA Rulebook.

Rule 5330 sets forth the requirements for a member firm regarding orders held by the firm that involve a security that is subject to a dividend, payment or distribution. The rule establishes different requirements depending upon whether the dividend, payment or distribution is in cash, stock, combined cash and stock, or determined by the stockholder.

In addition to making numerous formatting and technical changes to the rule to conform it more closely to analogous rules of other self-regulatory organizations, the rule change also included several substantive changes. First, the rule change amended the provision regarding the adjustment of an order in the case of a stock dividend or split to require that the order be rounded down to the next lowest share, rather than the next lowest round lot. Second, the rule change clarified the treatment of orders involving securities that are subject to a combined cash and stock dividend/split by specifying that, in these circumstances, firms should calculate the cash portion of the adjustment using the existing formula in subparagraph (1) of the rule and should calculate the stock portion of the adjustment using the existing formula in subparagraph (2) of the rule. Third, the rule change broadened the obligation of firms to cancel orders involving securities subject to a reverse split so that the rule now requires that all such orders be cancelled. Finally, the rule change amended the rule to require that firms notify customers who have pending orders that are not otherwise required to be adjusted under the rule of any stock splits in the security.

Rule/Series Number	Rule Title
Rule 5000 Series	SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES
Rule 5300 Series	HANDLING OF CUSTOMER ORDERS
Rule 5330	Adjustments of Orders

FINRA Rule Filing SR-FINRA-2009-086

www.finra.org/rulefilings/2009-086

FINRA Rule 5160

The rule change adopts, without material change, NASD Rule 2770 (Disclosure of Price in Selling Agreements) as FINRA Rule 5160 (Disclosure of Price and Concessions in Selling Agreements) in the Consolidated FINRA Rulebook.

Rule 5160 requires that selling syndicate agreements or selling group agreements: (1) set forth the price at which securities are to be sold to the public or the formula by which such price can be ascertained and (2) state clearly to whom and under what circumstances concessions, if any, may be allowed. The rule change amended only the title of the rule to clarify the rule's scope.

Rule/Series Number	Rule Title
Rule 5000 Series	SECURITIES OFFERING AND TRADING STANDARDS AND PRACTICES
Rule 5100 Series	SECURITIES OFFERINGS, UNDERWRITING AND COMPENSATION
Rule 5160	Disclosure of Price and Concessions in Selling Agreements

Deficient Claims

Amendments to the Arbitration Rules Regarding Deficient Claims

Effective Date: March 22, 2010

Executive Summary

Effective March 22, 2010, the Codes of Arbitration Procedure for Customer and Industry Disputes are amended to clarify that if a claim deficiency is corrected within 30 days from the time a party receives notice of a deficiency, the claim will be considered filed on the date the initial statement of claim was filed.¹

The text of the amendments is set forth in Attachment A.

Questions concerning this Notice should be directed to:

- Kenneth L. Andrichik, Senior Vice President, Chief Counsel and Director of Mediation and Strategy, Dispute Resolution (DR), at (212) 858-3915 or ken.andrichik@finra.org; or
- Mignon McLemore, Assistant Chief Counsel, DR, at (202) 728-8151 or mignon.mclemore@finra.org.

Background and Discussion

When parties initiate claims in FINRA's arbitration forum, they must file a signed and dated Submission Agreement and a statement of claim explaining the facts and outlining the remedies requested.² Parties must also pay all required filing fees at the time they file their claims.³ If the parties' claims do not meet the criteria for filing a claim under the Codes or otherwise do not comply with the Codes—for instance, the party failed to file the correct number of supporting documents for the claim—the claims are considered deficient.⁴

February 2010

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Arbitration
- Code of Arbitration Procedure
- Corrected Deficiency
- Deficient Claims

Referenced Rules & Notices

- Rule 12307(b)
- Rule 13307(b)

Currently, Rule 12307 of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rule 13307 of the Code of Arbitration Procedure for Industry Disputes (Industry Code), which address deficient claims (the “deficient claims rules”), state that the Director of FINRA Dispute Resolution (Director) will not serve a claim that is deficient. Under the current deficient claims rules, parties are permitted to correct all deficiencies; if all deficiencies are not corrected within 30 days from the time a party receives notice of a deficiency, the Director will close the case without serving the claim and refund part of the filing fee.⁵ However, the rules do not specify which date the Director will use as the date of filing if a party corrects a deficient claim within 30 days of receiving notice of a deficiency.

As amended, Rules 12307(b) and 13307(b) of the Codes state that if the deficiency is corrected within 30 days from the time the party receives notice of a deficiency, the claim will be considered filed on the date the initial statement of claim was filed. The amendments should help resolve issues concerning whether a claim is eligible for submission to arbitration under the Codes,⁶ and whether statutes of limitation, if applicable, should apply.

Effective Date Provisions

The amendments become effective on March 22, 2010, and apply to claims filed on or after that date.

Endnotes

- 1 Exchange Act Release No. 61311 (Jan. 7, 2010), 75 Federal Register 2179 (Jan. 7, 2010) (File No. SR-FINRA-2009-072).
- 2 Rule 12302(a)(1) of the Customer Code and Rule 13302(a)(1) of the Industry Code.
- 3 *Id.*
- 4 Rule 12307 of the Customer Code and Rule 13307 of the Industry Code. A claim may be deficient because, for example, the party failed to file a properly signed and dated Submission Agreement, failed to pay all required filing fees, or failed to file the correct number of copies of the Submission Agreement, statement of claim or other supporting documents.
- 5 Rules 12307(b) and 13307(b) of the Codes.
- 6 Under the Codes, no claim shall be eligible for submission to arbitration where six years have elapsed from the occurrence or event giving rise to the claim. See Rule 12206(a) of the Customer Code and Rule 13206(a) of the Industry Code.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

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

* * * * *

Customer Code

12307. Deficient Claims

(a) No change.

(b) The Director will notify the claimant in writing if the claim is deficient. If the deficiency is corrected within 30 days from the time the claimant receives notice, the claim will be considered filed on the date the initial statement of claim was filed with the Director under Rule 12300(a). If all deficiencies are not corrected within 30 days [from the time the claimant receives notice], the Director will close the case without serving the claim, and will refund part of the filing fee in the amount indicated in the schedule under Rule 12900(c).

(c) No change.

* * * * *

Industry Code

13307. Deficient Claims

(a) No change.

(b) The Director will notify the claimant in writing if the claim is deficient. If the deficiency is corrected within 30 days from the time the claimant receives notice, the claim will be considered filed on the date the initial statement of claim was filed with the Director under Rule 13300(a). If all deficiencies are not corrected within 30 days [from the time the claimant receives notice], the Director will close the case without serving the claim, and will refund part of the filing fee in the amount indicated in the schedule under Rule 13900(c).

(c) No change.

* * * * *

FOCUS Reporting

Guidance on FAS 167 for FOCUS Reporting

Executive Summary

This *Notice* provides FINRA member firms with guidance from the staff of the Division of Trading and Markets of the Securities and Exchange Commission (SEC) on the procedures for reporting adjustments on the FOCUS Report resulting from the Financial Accounting Standard Board's Statement of Financial Accounting Standards No. 167 (FAS 167), *Amendments to FASB Interpretation No. 46(R)*. The provisions of FAS 167 are effective at the start of a firm's first fiscal year beginning after November 15, 2009, or as of January 1, 2010, for firms reporting earnings on a calendar-year basis.

Questions concerning this *Notice* should be directed to:

- Kris Dailey, Vice President, Risk Oversight & Operational Regulation (ROOR), at (646) 315-8434;
- Yui Chan, Managing Director, ROOR, at (646) 315-8426; or
- Susan DeMando Scott, Associate Vice President, Financial Operations Department, at (202) 728-8411.

Questions regarding the applicability of FAS 167 to your firm should be discussed with your independent public accountant. Questions regarding the procedures for reporting the adjustments resulting from the application of FAS 167 on the FOCUS Report may be directed to your FINRA Regulatory Coordinator.

February 2010

Notice Type

- Guidance

Suggested Routing

- Accounting
- Compliance
- Legal
- Regulatory Reporting
- Senior Management

Key Topic(s)

- FAS 167
- FOCUS Reporting
- Variable Interest Entities

Referenced Rules & Notices

- SEA Rule 15c3-1
- SEA Rule 15c3-3
- SEA Rule 17a-5

Background and Discussion

FAS 167, among other things, established new standards for reporting transfers of assets to special-purpose entities, known as variable interest entities (VIEs) under Generally Accepted Accounting Principles (GAAP) and for consolidating VIEs. FAS 167 may require firms to consolidate assets, liabilities and equity in certain VIEs that were not previously consolidated. Rule 15c3-1 of the Securities Exchange Act of 1934 (SEA) requires that broker-dealers' FOCUS Reports be prepared in accordance with GAAP. Accordingly, firms are required to consider the impact of the FAS 167 provisions on all future FOCUS Report filings, commencing with the January 2010 FOCUS Report.

FINRA has sought guidance from the staff of the Division of Trading and Markets of the SEC as to the appropriate reporting of balances resulting from the application of FAS 167 on firms' FOCUS Reports. Based on the SEC staff's guidance, firms shall report balances resulting from the application of FAS 167 within existing line items on the FOCUS Report, in accordance with the procedures outlined below.

Firms affected by the requirements of FAS 167 shall report the balances resulting from the application of such standards on their FOCUS Report as follows:

- ▶ Any assets and liabilities resulting from the application of FAS 167 shall be reported in FOCUS line items #537 (SPE Assets) and #1687 (SPE Liabilities), respectively. As these line items are not exclusively designated for FAS 167-related adjustments, the line items may also contain balances unrelated to FAS 167 assets and liabilities. Firms shall use the line item "memo" function within the eFOCUS Filing System¹ to identify the amount of the total balances reported in these line items that resulted from the application of FAS 167. Assets and liabilities reported on FOCUS resulting from the application of FAS 167 shall have no impact on the computation of net capital under SEA Rule 15c3-1 and the reserve formula computation under SEA Rule 15c3-3. Haircut charges and aggregate indebtedness shall not be applicable on FAS 167 balance sheet classifications.
- ▶ Any revenues and expenses resulting from the application of FAS 167 shall be reported in FOCUS line items #3995 (Other Revenue) and #4100 (Other Expenses), respectively. Firms shall use the line item "memo" function within the eFOCUS Filing System to identify the amount of the total balances reported in these line items that resulted from the application of FAS 167.
- ▶ Any changes to a firm's ownership equity accounts shall be reported in the respective line item on the FOCUS Report. Firms shall use the line item "memo" function within the eFOCUS Filing System to identify the amount of the total balances reported in these line items that resulted from the application of FAS 167.

- Any asset or liability, such as a proprietary inventory position, that is eliminated as a result of a consolidation from the application of FAS 167 shall be reclassified for FOCUS reporting purposes, so that it continues to be reflected in the FOCUS line item on which it was reported prior to the consolidation. Firms shall use the line item “memo” function within the eFOCUS Filing System to disclose each balance that is reclassified. Firms shall continue to mark to market such reclassified proprietary inventory positions and apply the appropriate net capital treatment (*e.g.*, haircuts) related to these reclassified items in their computation of net capital, as well as continue to include such reclassified items as proprietary inventory positions for purposes of the reserve formula computation allocation.

The consolidation resulting from the application of FAS 167 does not preclude firms from the requirement to consolidate any subsidiary or affiliate for which it guarantees, pursuant to the requirements under Appendix C of SEA Rule 15c3-1.

Endnotes

- 1 FINRA's eFOCUS Filing System (eFOCUS) provides firms with the ability to use the line item “memo” feature to provide additional information about a particular balance reported on the FOCUS Report.

Expedited Proceedings

SEC Approves Amendments to the FINRA Rule 9550 Series Governing Expedited Proceedings

Effective Date: March 25, 2010

Executive Summary

The FINRA Rule 9550 Series provides a procedural mechanism for FINRA to address certain types of misconduct more quickly than would be possible using the ordinary FINRA disciplinary process. The SEC recently approved amendments that make the following changes to the rule series:

- Modify various time requirements regarding expedited proceedings;
- Add an expedited proceeding for failure to pay restitution; and
- Harmonize a remedy in an expedited procedure with a remedy in the FINRA By-Laws.¹

The amended rule text is set forth in Attachment A and is effective March 25, 2010.

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.

Background & Discussion

On December 28, 2009, the SEC approved amendments to the Rule 9550 Series governing expedited proceedings.² The changes are discussed on the following pages.

February 2010

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Expedited Proceedings
- Hearings
- Restitution
- Sanctions

Referenced Rules & Notices

- FINRA Rule 9550 Series
- Article VI, Section 3(b) of the FINRA By-Laws

Shortening Time Periods

The Rule 9550 Series provides a procedural mechanism for FINRA to address certain types of misconduct in an accelerated timeframe. However, the rule series allows firms and associated persons to request a hearing that often results in a stay of the action. The amendments shorten the time within which a hearing must be held from 60 days after a hearing request to 30 days after the request in relation to the following FINRA rules:

- ▶ Rule 9551 (Failure to Comply with Public Communication Standards);
- ▶ Rule 9552 (Failure to Provide Information or Keep Information Current);
- ▶ Rule 9553 (Failure to Pay FINRA Dues, Fees and Other Charges);
- ▶ Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement); and
- ▶ Rule 9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services).³

In addition to modifying the timing of hearings, the amendments shorten the period before a suspension automatically turns into an expulsion or bar under Rule 9552. That rule generally allows FINRA to suspend a firm or associated person for failure to provide any information requested or required to be filed pursuant to the FINRA By-Laws or rules. Under Rule 9552, FINRA may provide written notice to such firm or person specifying the nature of the failure and stating that failure to take corrective action within 21 days after service of the notice will result in suspension. The rule previously provided that a firm or person suspended under the rule who fails to request termination of the suspension within six months is automatically expelled or barred. The recently approved amendments shorten that timeframe from six months to three months.

Adding an Expedited Procedure for Failure to Pay Restitution

The amendments modify Rule 9554, which contains expedited procedures for failures to comply with FINRA arbitration awards, to also explicitly permit FINRA to take expedited action for failures to comply with FINRA orders of restitution or FINRA settlements providing for restitution. In general, restitution is a remedy used to restore victims to their position before the wrongful conduct occurred and to compensate them for unjust losses or injury suffered as the result of another's wrongdoing.⁴ The SEC and FINRA have long stressed the significance of imposing restitution where an "identifiable person... has suffered a quantifiable loss as a result of a respondent's misconduct."⁵

Harmonizing Remedies

The amendments also harmonize the remedy for an *individual's* failure to comply with an arbitration award in Rule 9554 with the remedy for the same misconduct in Article VI, Section 3(b) of the FINRA By-Laws. Specifically, the amendments limit the remedy available in such actions to suspensions.

Endnotes

- 1 See Exchange Act Release No. 61242 (December 28, 2009), 75 FR 167 (January 4, 2010) (Order Approving File No. SR-FINRA-2009-076).
- 2 *Id.*
- 3 FINRA implemented the changes regarding the timing of the hearings by amending Rule 9559, which contains the hearing provisions for the Rule 9550 Series. FINRA also made conforming changes to Rule 9559 regarding the pre-hearing exchange of documents between the parties to the expedited proceeding.
- 4 See *David Joseph Dambro*, 51 S.E.C. 513, 518 (1993).
- 5 FINRA Sanction Guidelines, at 4; see also *Dambro*, 51 S.E.C. at 518.

ATTACHMENT A

Text of Amended Rules

New language is underlined; deletions are in brackets.

* * * * *

9550. Expedited Proceedings

* * * * *

9552. Failure to Provide Information or Keep Information Current

(a) through (g) No Change.

(h) Defaults

A member or person who is suspended under this Rule and fails to request termination of the suspension within three [six] months of issuance of the original notice of suspension will automatically be expelled or barred.

(i) No Change.

* * * * *

9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution

(a) Notice of Suspension or[,] Cancellation [or Bar]

If a member, person associated with a member or person subject to FINRA's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under Article VI, Section 3 of the FINRA By-Laws or a FINRA order of restitution or FINRA settlement agreement providing for restitution, FINRA staff may provide written notice to such member or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension [or bar] from associating with any member.

(b) Service of Notice of Suspension[,] or Cancellation [or Bar]

FINRA staff shall serve the member or person with such notice in accordance with Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) No Change.

(d) Effective Date of Suspension[,], or Cancellation [or Bar]

The suspension[,], or cancellation [or bar] referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) No Change.

(f) Failure to Request Hearing

If a member or person does not timely request a hearing, the suspension[,], or cancellation [or bar] specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final FINRA action.

(g) through (h) No Change.

* * * * *

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) through (e) No Change.

(f) Time of Hearing

(1) through (2) No Change.

(3) A hearing shall be held within 30 [60] days after a respondent subject to a notice issued under Rules 9551 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(4) No Change.

(g) No Change.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than seven days before the hearing in an action brought under Rules 9556 and 9558, and not less than 14 [40] days before the hearing in an action brought under Rules 9551 through 9555, FINRA staff shall provide to the respondent who requested the hearing, by facsimile or overnight courier, all documents that were

considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by FINRA until the date upon which FINRA serves a final decision or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than seven [14] days before the hearing in an action brought under Rules 9551 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile or by overnight courier.

(i) through (s) No Change.

* * * * *

Trade Reporting Notice

FINRA Extends Implementation of Amendments Requiring Related Market Center Indicator in Non-Tape Reports Submitted to FINRA

Revised Effective Date: May 3, 2010

Executive Summary

FINRA is extending to Monday, May 3, 2010, the effective date of rule amendments that require firms to identify the Related Market Center in non-tape reports submitted to a FINRA trade reporting facility. This *Notice* supplements, and should be read in conjunction with, *Regulatory Notice 09-54* (September 2009).

Questions regarding this *Notice* may be directed to:

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

Discussion

In *Regulatory Notice 09-54*, FINRA announced SEC approval of amendments to FINRA trade reporting rules to require that firms submitting a non-tape report (either a non-tape, non-clearing report or clearing-only report) to the Alternative Display Facility (ADF), a Trade Reporting Facility (TRF) or the OTC Reporting Facility (ORF) (referred to herein as the “FINRA Facilities”) associated with a previously executed trade that was not reported to that same FINRA Facility identify the facility or market where the associated trade was reported for dissemination purposes (the “Related Market Center”).¹ Firms should refer to *Regulatory Notice 09-54* for a discussion of the amendments and guidance on populating the Related Market Center field.

In response to requests by the industry, FINRA is extending the effective date of the amendments to afford firms additional time to implement and test the systems changes necessary to comply with the new rules.

February 8, 2010

Key Topic(s)

- Agency Trades
- Alternative Display Facility
- NMS Stocks
- Non-Tape Reports
- OTC Equity Securities
- OTC Reporting Facility
- Related Market Center
- Riskless Principal Trades
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- FINRA Rule 7130
- FINRA Rule 7230A
- FINRA Rule 7230B
- FINRA Rule 7330
- Regulatory Notice 09-54

FINRA also is taking this opportunity to reiterate and clarify several points made in *Regulatory Notice 09-54*.

- If a firm does not know or have a reasonable basis to identify where the trade was ultimately executed or, in the case of OTC trades, where the trade was ultimately reported, the firm must populate the Related Market Center field with a standard indicator representing “unknown venue.” Firms should not guess the execution/reporting venue and should not identify the venue to which the order was routed as the Related Market Center.

For example, a firm routes an order to Exchange A and knows that orders routed to Exchange A can be either executed on and reported through Exchange A or routed away. If the firm does not receive a confirmation of execution venue or does not otherwise know with certainty that the trade was executed on Exchange A, the firm must use the “unknown venue” indicator and not identify Exchange A as the Related Market Center. However, if, by way of further example, the firm used an order type that does not permit the exchange to route the order away, it would have a reasonable basis to identify Exchange A as the Related Market Center.

- Where a firm has a reasonable basis for identifying a FINRA Facility as the Related Market Center (*e.g.*, the firm has a give-up agreement with another firm that generally reports all trades to TRF A), FINRA would not consider it a violation if, unbeknownst to the firm, the trade is ultimately reported to a different FINRA Facility. Moreover, FINRA would not expect the firm to submit a new non-tape report to correct the Related Market Center information if it subsequently is advised that, due to unforeseen circumstances, the tape report was submitted to TRF B (*e.g.*, because TRF A was down at the time the trade was reported).
- FINRA does not expect the “unknown venue” indicator to be used where the “executing party,” as defined in the trade reporting rules, submits both the tape and non-tape report(s). For example, an alternative trading system (ATS) that executes and reports a cross for publication purposes can identify, with certainty, the FINRA Facility to which the original tape report was submitted. Thus, use of the “unknown venue” indicator in related non-tape report(s) would be unacceptable in this instance.
- Where the tape and non-tape reports are submitted to the same FINRA Facility, the firm can either leave the Related Market Center field blank or populate the Related Market Center field with the indicator for that facility. The Related Market Center chart, which was included in *Regulatory Notice 09-54*, has been updated below to reflect that firms have this option.

Tape Report	Populate Related Market Center Field in Associated Non-Tape Report With Indicator for...
Single tape report through a single exchange or FINRA Facility	Specific exchange or facility
Single tape report through a single foreign exchange	"Foreign exchange"
Multiple tape reports through a single exchange or FINRA Facility	Specific exchange or facility
Multiple tape reports through one or more foreign exchanges	"Foreign exchange"
Multiple tape reports through different exchanges and/or FINRA Facilities	"Multiple venues"
Routed venue provides information about where the trade was ultimately executed and/or reported	Specific exchange or facility
Routed venue does not provide information about where the trade was ultimately executed and/or reported	"Unknown venue"
Multiple tape reports through different exchanges and/or FINRA Facilities and one or more are unknown to the firm	"Multiple venues"
Non-tape report and associated tape report(s) submitted to the same FINRA Facility	Specific facility <i>or</i> leave Related MarketCenter field blank (only instance this field is permitted to be blank)

Endnotes

- 1 See FINRA Rules 7130(d), 7230A(i), 7230B(h) and 7330(h).

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Election Notice

District Elections

Nominees for the District Committees and District Nominating Committees

Executive Summary

This Election Notice announces the nominees for upcoming vacancies on the District Committees and the District Nominating Committees.¹ The individuals identified in this Notice have been nominated for the District Committees and District Nominating Committees, for terms beginning in June 2010. The term of office for District Committee members is three years, unless an individual is selected to complete an existing term.² Each District Nominating Committee member serves a one-year term. The length of the term of each nominee and the Committee for which they are being nominated are specified in Attachment A.

These nominees will be considered duly elected on March 26, 2010, to terms beginning June 1, 2010, unless an election is contested in accordance with the procedures summarized below.

Note: FINRA distributed this *Notice* electronically only to the executive representative of each member firm and it is posted on FINRA's Web site at www.finra.org/Notices/Election/021210. Executive representatives should circulate this Notice to their firm's branch managers.

Questions concerning this *Notice* may be directed to:

- The District Office contact noted in Attachment A;
- Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, at (202) 728-8949; or via email at CorporateSecretary@finra.org.

February 12, 2010

Suggested Routing

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

Additional Candidates

If a person meets the qualifications, is eligible to serve,³ has not been nominated by a District Nominating Committee as a candidate or alternate, and wants to be considered for election to a District Committee or the District Nominating Committee, he or she must deliver a written notice to the district director or regional director within 14 calendar days of the date of this *Notice*—**February 26, 2010**.

Petition Process

If an additional candidate or candidates come forward by February 26, 2010, the Corporate Secretary will provide each such candidate with a list of firms eligible to vote in their district. The list will include the name of the executive representative and the mailing address for each firm.

To be considered for nomination, an additional candidate must submit a petition to the District Nominating Committee with signatures from at least 10 percent of executive representatives of firms eligible to vote in the district within 30 calendar days of receipt of the list of firms. If an additional candidate submits a petition with the requisite number of valid signatures by March 26, 2010, he or she will be considered nominated and the election will be contested.

Contested Election Procedures

If an election is contested, the Corporate Secretary of FINRA will send an *Election Notice* and ballot to the executive representatives of the FINRA firms eligible to vote in the district listing the names of the candidates nominated by the District Nominating Committee, the candidates who have petitioned to be on the ballot and the contested election procedures with instructions on how to vote.

Additional information pertaining to the district election procedures can be found in Article VIII of FINRA Regulation's By-Laws.

Endnotes

- 1 In addition to nominating a slate of candidates for each of these committees, each District Nominating Committee may nominate one alternate candidate for each committee. The nomination of alternate candidates is permitted under Section 8.17 of the By-Laws of FINRA Regulation. Attachment A identifies each District Nominating Committee's slate of nominees, plus alternate candidates (if any).
- 2 Some nominees are filling existing vacancies and therefore may serve less than a three-year term, as indicated on Attachment A.
- 3 To be eligible to serve, an individual must (1) be registered with a FINRA firm eligible to vote in the District for District Committee elections and (2) work primarily from such FINRA firm's principal office or a branch office that is located within the district where the member serves on a District Committee or District Nominating Committee. *See* Sections 8.2 or 8.9 of FINRA Regulation's By-Laws, as applicable.

District 1

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

Christian A. Zrull, District Director

Christian.Zrull@finra.org

One Montgomery Street, Suite 2100, San Francisco, CA 94104

(415) 217-1100

(415) 956-1931 fax

District Nominating Committee Chair: Kevin T. Kitchin

- ▶ District Committee members to be elected to terms expiring May 31, 2013: 3
- ▶ District Committee member to be elected to a term expiring May 31, 2012: 1
- ▶ District Committee member to be elected to a term expiring May 31, 2011: 1

District Committee Nominees for Terms Expiring May 31, 2013

Joseph F. Helmer	Caldwell Securities, Incorporated	Sausalito, CA
Stephen C. Rogers	RFS Partners	San Francisco, CA
David G. McClurg	McClurg Capital Corporation	San Rafael, CA

District Committee Nominees for Terms Expiring May 31, 2012

Douglas C. Heske	Nollenberger Capital Partners, Inc.	San Francisco, CA
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District Committee Nominees for Terms Expiring May 31, 2011

Susan Katherine Campbell	Protected Investors of America	Oakland, CA
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Alternate Candidate

Peter A. Sigal	Charles Schwab & Co., Inc.	San Francisco, CA
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- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2011: 5

District Nominating Committee Nominees for Terms Expiring May 31, 2011

James H. Williams	Financial Telesis	San Rafael, CA
Leonard Berry	Backstrom McCarley Berry & Co., LLC	San Francisco, CA
Robert Angle	White Pacific Securities, Inc.	San Francisco, CA
Edward M. Stephens	FSC Securities Corporation	Santa Rosa, CA
Francis X. Roche, II	RBC Capital Markets Corp.	San Francisco, CA

Alternate Candidate

Kevin T. Kitchin	Wells Fargo Advisors, LLC	San Francisco, CA
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District 2

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

David A. Greene, District Director

David.Greene@finra.org

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071-3126 (213) 613-2634
(213) 613-2601 Fax

District Nominating Committee Chair: Valorie A. Seyfert

- District Committee members to be elected to terms expiring May 31, 2013: 3

District Committee Nominees for Terms Expiring May 31, 2013

Bardea C. Huppert	Farmers Financial Solutions, LLC	Agoura Hills, CA
Timothy U. Morton	WBB Securities, LLC	San Diego, CA
Maureen M. Maloney	Grubb & Ellis Securities, Inc.	Santa Ana, CA

Alternate Candidate

Cynthia M. Aragon	FAT Securities, LLC	West Hollywood, CA
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- District Nominating Committee members to be elected to terms expiring May 31, 2011: 5

District Nominating Committee Nominees for Terms Expiring May 31, 2011

M. LaRae Bakerink	WBB Securities, LLC	San Diego, CA
Steven K. Klein	Farmers Financial Solutions, LLC	Agoura Hills, CA
Craig Watanabe	United Planners	Pasadena, CA
Ismael Manzanares, Jr.	Higgins Capital Management, Inc.	San Diego, CA
Kevin K. Hull	Grubb & Ellis Securities, Inc.	Santa Ana, CA

District 3

Arizona, Colorado, New Mexico, Utah and Wyoming

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

Joseph.McCarthy@finra.org

4600 S. Syracuse Street, Suite 1400, Denver, CO 80237

(303) 446-3100

(303) 620-9450 fax

Alaska, Idaho, Montana, Oregon and Washington

Gerald J. Dougherty, Deputy Director

Gerald.Dougherty@finra.org

601 Union Street, Suite 1616, Seattle, WA 98101-2327

(206) 624-0790

(206) 623-2518 fax

District Nominating Committee Chair: Russell R. Diachok

- ▶ District Committee members to be elected to terms expiring May 31, 2013: 3
-

District Committee Nominees for Terms Expiring May 31, 2013

Robert B. Joki	ING Financial Partners, Inc.	Mountlake Terrace, WA
Alfred P. Reeves, III	Affiliated Funding & Europa Securities	Denver, CO
Edward K. Riley	E.K. Riley Investments, LLC	Seattle, WA

Alternate Candidate

Daniel E. Wright	Jackson National Life	Denver, CO
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- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2011: 5
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District Nominating Committee Nominees for Terms Expiring May 31, 2011

Russell R. Diachok	Geneos Wealth Management, Inc.	Centennial, CO
David J. Director	McAdams Wright Ragen, Inc.	Seattle, WA
Chester J. Hebert	Colorado Financial Service Corp.	Centennial, CO
Steven S. Iversen	Foothill Securities, Inc.	Albuquerque, NM
Douglas W. Schriener	Harrison Douglas, Inc.	Aurora, CO

Alternate Candidate

Jodee Brubaker-Rager	Geneos Wealth Management, Inc.	Centennial, CO
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District 4

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

Thomas D. Clough, Associate Vice President and District Director

Tom.Clough@finra.org

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

(816) 421-5700

(816) 421-5029 fax

District Nominating Committee Chair: Patricia Bartholomew

- ▶ District Committee members to be elected to terms expiring May 31, 2013: 3

District Committee Nominees for Terms Expiring May 31, 2013

William Yates	TD Ameritrade Clearing, Inc.	Bellevue, NE
Craig Markham	Walnut Street Securities, Inc.	St. Louis, MO
Allen Cole	Benjamin F. Edwards & Company, Inc.	Clayton, MO

Alternate Candidate

Michael Lenzmeier	Agency Trading Group, Inc.	Wayzata, MN
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- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2011: 5

District Nominating Committee Nominees for Terms Expiring May 31, 2011

Richard Link	Edward Jones	St. Louis, MO
Robert E. Hillard	Arlington Securities, Inc.	St. Louis, MO
Timothy Lyle	Broker-Dealer Financial Services Corp.	Johnston, IA
Andrew Small	Scottrade, Inc.	St. Louis, MO
Patricia Bartholomew	Craig-Hallum Capital Group LLC	Minneapolis, MN

District 5

Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Tennessee

Keith E. Hinrichs, District Director

Keith.Hinrichs@finra.org

1100 Poydras Street, Energy Centre, Suite 850 New Orleans, LA 70163-0802

(504) 522-6527

(504) 522-4077 fax

District Nominating Committee Chair: J. French Hill

- ▶ District Committee members to be elected to terms expiring May 31, 2013: 3

District Committee Nominees for Terms Expiring May 31, 2013

James D. Alger	Delta Trust Investments, Inc.	Little Rock, AR
Martin F. Shea, Jr.	Vining Sparks IBG, LP	Memphis, TN
Raymond A. Thompson	Dorsey & Company, Inc.	New Orleans, LA

Alternate Candidate

J. David Coker	Coker & Palmer	Jackson, MS
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- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2011: 5

District Nominating Committee Nominees for Terms Expiring May 31, 2011

J. French Hill	Delta Trust Investments, Inc.	Little Rock, AR
Philip J. Dorsey	Dorsey & Company, Inc.	New Orleans, LA
James T. Ritt	Morgan Keegan & Co., Inc.	Memphis, TN
Tom R. Steele	Equitable Advisors, Inc.	Nashville, TN
Gary K. Wunderlich, Jr.	Wunderlich Securities, Inc.	Memphis, TN

Alternate Candidate

Robert Keenan	St. Bernard Financial Services, Inc.	Russellville, AR
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District 6

Texas

Michael G. Rufino, Senior Vice President

Michael.Rufino@finra.org

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

(972) 701-8554

(972) 716-7646 fax

District Nominating Committee Chair: Bryan T. Emerson

- ▶ District Committee members to be elected to terms expiring May 31, 2013: 3

District Committee Nominees for Terms Expiring May 31, 2013

John P. Dennis, III	Woodrock Securities, L.P.	Houston, TX
Robert A. Estrada	Estrada Hinojosa & Company, Inc.	Dallas, TX
Jacob D. Palmer	SWBC Investment Services, LLC	San Antonio, TX

District Committee Nominees for Terms Expiring May 31, 2012

Daniel C. Dooley	Maplewood Investment Advisors, Inc.	Dallas, TX
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Alternate Candidate

Terry R. Pender	Raymond James Financial Services, Inc.	Plano, TX
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- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2011: 5

District Nominating Committee Nominees for Terms Expiring May 31, 2011

Cynthia E. Besek	Maplewood Investment Advisors, Inc.	Dallas, TX
Kennard (Ken) R. George	VSR Financial Services, Inc.	Dripping Springs, TX
Alan K. Goldfarb	Weaver Tidwell Capital, LLC.	Dallas, TX
Brent T. Johnson	Multi-Financial Securities Corporation	Houston, TX
Fenner R. Weller, Jr.	Weller Anderson & Company, Ltd	Houston, TX

Alternate Candidate

Sennett Kirk, III	Kirk Securities Corporation	Denton, TX
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District 7

Georgia, North Carolina and South Carolina

Daniel J. Stefek, Associate Vice President and District Director

Daniel.Stefek@finra.org

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

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

Mitchell C. Atkins, Vice President and District Director

Mitch.Atkins@finra.org

Crystal Corporate Center 2500 N. Military Trail, Suite 302, Boca Raton, FL 33431
(561) 443-8000
(561) 443-7995 fax

District Nominating Committee Chair: Charles F. O'Kelley

- ▶ District Committee members to be elected to terms expiring May 31, 2013: 3
-

District Committee Nominees for Terms Expiring May 31, 2013

Leopold E. Guzman	Guzman & Company	Coral Gables, FL
W. Lawrence Key	Wells Fargo Advisors, LLC	Charlotte, NC
John T. Rhett, III	SunTrust Investment Services, Inc.	Atlanta, GA

Alternate Candidate

Michael S. Hill	Summit Brokerage Services	Boca Raton, FL
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- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2011: 5
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District Nominating Committee Nominees for Terms Expiring May 31, 2011

Jed E. Bandes	Mutual Trust Co. of America Securities	Clearwater, FL
Susan J. Hechtlinger	SunTrust Investment Services, Inc.	Atlanta, GA
Landrum H. Henderson	Robert W. Baird & Co., Inc.	Charlotte, NC
Alan L. Maxwell	Wells Fargo Securities, LLC	Charlotte, NC
James A. Klotz	FMSBonds, Inc.	Boca Raton, FL

District 8

Illinois, Indiana, Kentucky, Michigan, Ohio and Wisconsin

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

Carla.Romano@finra.org

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

(312) 899-4400

(312) 899-4399 fax

District Nominating Committee Chair: Richard M. Arceci

- District Committee members to be elected to terms expiring May 31, 2013: 3

District Committee Nominees for Terms Expiring May 31, 2013

Jeffrey V. Gery	Lincoln Financial Advisors Corporation	Fort Wayne, Indiana
Phillip E. Gutman, Jr.	William Blair & Company, LLC	Chicago, Illinois
Nicholas A. Filing	OneAmerica Securities, Inc.	Indianapolis, Indiana

Alternate Candidate

Debra DeVoe	SunGard Institutional Brokerage, Inc.	Lombard, Illinois
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- District Nominating Committee members to be elected to terms expiring May 31, 2011: 5

District Nominating Committee Nominees for Terms Expiring May 31, 2011

Joel Blumenschein	Freedom Investors Corp.	Brookfield, Wisconsin
Earl Clifford Oberlin, III	NRP Financial, Inc.	Bryan, Ohio
James M. Rogers	JJB Hilliard, WL Lyons LLC	Louisville, Kentucky
Barbara A. Turner	The O.N. Equity Sales Company	Cincinnati, Ohio
Julie E. Vander Weele	Mesirow Financial, Inc.	Chicago, Illinois

Alternate Candidate

Carol Foley	Podesta & Company	Chicago, Illinois
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District 9

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

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

Gary.Liebowitz@finra.org

581 Main Street, 7th Floor, Woodbridge, NJ 07095

(732) 596-2025

(732) 596-2001 fax

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

Robert B. Kaplan, Vice President and District Director

Robert.Kaplan@finra.org

1835 Market Street, Suite 1900, Philadelphia, PA 19103

(215) 963-1992

(215) 963-7442 fax

District Nominating Committee Chair: John P. Meegan

- ▶ District Committee members to be elected to terms expiring May 31, 2013: 3
-

District Committee Nominees for Terms Expiring May 31, 2013

Michael Carroll	Wells Fargo Advisors, LLC	Red Bank, NJ
Greg Plifka	RBC Capital Markets Corporation	Parsippany, NJ
Craig Tillotson	Hefren-Tillotson, Inc	Wexford, PA

Alternate Candidate

Andrew Shainberg	Pruco Securities, LLC	Newark, NJ
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- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2011: 5
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District Nominating Committee Nominees for Terms Expiring May 31, 2011

Wayne Holly	Sage Ruddy & Co.	Rochester, NY
John Ivan	Janney Montgomery Scott, LLC	Philadelphia, PA
Michael Row	Pershing, LLC	Jersey City, NJ
Richard Seelaus	R. Seelaus & Co., Inc.	Summit, NJ
Thomas Wallace	Johnston, Lemon & Co., Incorporated	Washington, DC

District 10

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

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

Hans.Reich@finra.org

One Liberty Plaza, 49th Floor, 165 Broadway, New York, NY 10006 (212) 858-4000
(212) 858-4078 fax

District Nominating Committee Chair: Allen Meyer

- ▶ District Committee members to be elected to terms expiring May 31, 2013: 4
- ▶ District Committee members to be elected to terms expiring May 31, 2012: 2

District Committee Nominees for Terms Expiring May 31, 2013

Gordon Charlop	Rosenblatt Securities, Inc.	New York, NY
Carl K. Oppenheimer	Oppenheimer & Close, Inc.	New York, NY
Alfred Petrillo	Jefferies Execution Services, Inc.	New York, NY
Richard A. Sorrentino	Collins Stewart LLC	New York, NY

District Committee Nominees for Terms Expiring May 31, 2012

Robert Hackel	R.F. Lafferty & Co., Inc.	New York, NY
George Mandl	Mitsubishi UFJ Securities (USA) Inc.	New York, NY

Alternate Candidate

Andrew Collier	BOC International (USA) Inc.	New York, NY
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- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2011: 5

District Nominating Committee Nominees for Terms Expiring May 31, 2011

James A. Brodie	Dinosaur Securities, LLC	New York, NY
Kathryn G. Casparian	CIBC World Markets Corp.	New York, NY
Paul S. Ehrenstein	Zenith American Securities Corp.	New York, NY
James D. Lamke	Sanford C. Bernstein & Co. Inc.	New York, NY
Tom M. Wirtshafter	American Portfolios Financial Services, Inc.	

Alternate Candidate

Raymond C. Holland, Sr.	Triad Securities Corp.	New York, NY
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District 11

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

Elizabeth F. Page, District Director

Elizabeth.Page@finra.org

99 High Street, Suite 900, Boston MA 02110

(617) 532-3401

(617) 451-3524 fax

District Nominating Committee Chair: Joseph Gritzer

- ▶ District Committee members to be elected to terms expiring May 31, 2013: 3
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District Committee Nominees for Terms Expiring May 31, 2013

Norman L. Ashkenas	Fidelity Brokerage Services	Marlborough, MA
Jonathan Goldstein	Greenwich Prime Trading Group, LLC	Stamford, CT
Lawrence F. McIntosh	USI Securities, Inc.	Glastonbury, CT

Alternate Candidate

John S. McPhee	Leerink Swann LLC	Boston, MA
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- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2011: 5
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District Nominating Committee Nominees for Terms Expiring May 31, 2011

Michael Callaghan	Harvest Capital LLC	Wethersfield, CT
David J. Freniere	LPL Financial Corporation	Boston, MA
Moira C. Lowe	Phoenix Equity Planning Corp.	Hartford, CT
Tina Blakeley Maloney	Winslow, Evans & Crocker, Inc.	Boston, MA
Robert J. Reilly	UBS Securities, LLC	Boston, MA

Alternate Candidate

Martin W. Courage	Barclays Capital Inc.	Boston, MA
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