

Notices

Regulatory Notices

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Registration and Qualification Requirements for Certain Operations Personnel

FINRA Requests Comment on Proposed Registration Category, Qualification Examination and Continuing Education Requirements for Operations Professionals

Comment Period Expires: July 12, 2010

Executive Summary

FINRA requests comment on a proposal to establish a registration category, qualification examination and continuing education requirements for certain operations personnel. The proposal would expand FINRA's registration requirements to include as qualified and registered persons certain individuals who are engaged in, or supervising, activities relating to sales and trading support and the handling of customer assets to enhance the regulatory structure surrounding a member firm's back-office operations. As further detailed in this *Notice*, the proposed Operations Professional registration category generally is aimed at capturing those persons with decision-making and/or oversight authority in direct furtherance of the covered operations functions. Persons required to register under this proposal also would be subject to FINRA's continuing education requirements.

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

Questions regarding this *Notice* should be directed to:

- ▶ Joe McDonald, Director, Testing and Continuing Education Department, at (240) 386-5065; or
- ▶ Erika L. Lazar, Counsel, Office of General Counsel, at (202) 728-8013.

May 2010

Notice Type

- ▶ Request for Comment

Suggested Routing

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

Key Topics

- ▶ Continuing Education
- ▶ Examination
- ▶ Qualification
- ▶ Registration
- ▶ Representative

Referenced Rules & Notices

- ▶ FINRA Rule 8310
- ▶ NASD Rule 1021
- ▶ NASD Rule 1031
- ▶ NASD Rule 1120
- ▶ Incorporated NYSE Rule 345.10
- ▶ Information Notice 03/12/08
- ▶ Information Notice 10/06/08
- ▶ Regulatory Notice 08-57

Action Requested

FINRA encourages all interested parties to comment on the proposed rules. Comments must be received by July 12, 2010.

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

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

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

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

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this Notice will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.¹

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.²

I. Background

Given the growing complexity of the financial services industry and the importance of services provided by a firm's so-called "back-office" personnel, FINRA has concerns about the potential for regulatory gaps in the area of licensing and education requirements for individuals performing operations functions. Historically, federal and state law and self-regulatory organization rules, including NASD Rules 1021 and 1031, have required that individuals engaged in or supervising the securities or investment banking business of a member firm be qualified and registered persons. These requirements generally have applied to, among others, individuals with customer contact providing advice (sales persons and investment bankers) or effecting securities transactions (traders), and their supervisors. However, unregistered individuals who perform operations functions within a member firm also play an integral role in the business of the firm, and their activities often have a meaningful connection to client funds, accounts and transactions.

II. Proposal

FINRA believes that licensing and education requirements for certain operations personnel are needed to help ensure that investor protection mechanisms are in place in all areas of a member firm's business that could harm a customer, a firm, the integrity of the marketplace or the public. Accordingly, FINRA proposes expanding its registration requirements to include as qualified and registered persons certain individuals (as further detailed in Section II.A. below) who are engaged in, or supervising, activities relating to sales and trading support and the handling of customer assets (Operations Professionals) to enhance the regulatory structure surrounding a firm's back-office operations.

A. Depth of Personnel Included in the New Registration Category

Generally, the proposed registration category for Operations Professionals is aimed at capturing those persons with decision-making and/or oversight authority in direct furtherance of the covered operations functions, which are described in detail in Section II.B. below (the covered functions). Persons subject to the new registration category generally are those persons who are directly responsible for overseeing that tasks within the covered functions are performed correctly in accordance with industry rules, firm protocols, policies and procedures, and who are charged with protecting the functional and control integrity of the covered functions for the firm.

More specifically, the following persons would be required to register with FINRA as an Operations Professional (collectively, covered persons):

- (1) Senior management with responsibility over the covered functions;
- (2) Supervisors, managers or other persons responsible for approving or authorizing work in direct furtherance of the covered functions, including work of other persons in the covered functions;
- (3) Persons with the authority or discretion to commit the firm's capital in direct furtherance of the covered functions or to commit the firm to any contract or agreement (written or oral) in direct furtherance of the covered functions (including, *e.g.*, a person who has the discretion to commit the firm to any contract or agreement involving securities lending or borrowing activities).

The requirements would not apply to persons who perform a covered function, but whose responsibilities are below these three specified levels, or persons who perform a function ancillary to a covered function or whose function is to serve a role that can be viewed as supportive of, or advisory to, the performance of a covered function, such as internal audit, legal or compliance personnel. Also, the requirements would not apply to persons who are engaged solely in clerical or ministerial activities in any of the covered functions.

Importantly, those persons subject to the new Operations Professional registration category would be considered associated persons of a firm irrespective of their employing entity and would be subject to all FINRA rules applicable to associated persons and/or registered persons.³

To implement this proposal, FINRA is proposing amendments to proposed FINRA Rule 1230 (Registration Categories) to add a new representative registration category for Operations Professionals.⁴ Also, in light of the fact that the Operations Professional registration category would encompass individuals engaged in or supervising stock loan/securities lending activities, the proposed registration categories for a “Securities Lending Representative” and a “Securities Lending Supervisor” would be eliminated.⁵

B. Functions for Inclusion in the New Registration Category

The three categories of persons identified in Section II.A. above that conduct activities or functions for the firm in one or more of the following covered functions would be required to register as an Operations Professional:

- Development and approval of pricing models used for valuations;
- Trade confirmation, account statements, settlement, margin;
- Stock loan/securities lending;
- Prime brokerage (services to other broker-dealers and financial institutions);
- Client on-boarding (customer account data and document maintenance);
- Capturing of business requirements for sales and trading systems and any other systems related to the covered functions, and validation that these systems meet such business requirements;
- With respect to the covered functions, defining and approving business security requirements and policies for information technology (including, but not limited to, systems and data);
- Defining information entitlement policy in connection with the covered functions;
- Financial Controller (including general ledger);
- Collection, maintenance, re-investment (*i.e.*, sweeps) and disbursement of funds;
- Bank, custody, depository and firm account management and reconciliation;
- Segregation, possession and control, fail control, buy ins;
- Receipt and delivery of securities and funds, account transfers;
- Financial regulatory reporting; and
- Posting entries to the books and records of a firm in connection with the covered functions.

C. Operations Professional Qualification Examination

FINRA proposes the establishment of a new qualification examination for Operations Professionals that would provide reasonable assurance that such individuals understand their professional responsibilities, including key regulatory and control themes, as well as the importance of identifying and escalating red flags that may harm a firm, its customers, the integrity of the marketplace or the public. The SEC staff has previously indicated its support for the establishment of a qualification examination for covered persons to heighten their awareness of operating in a regulated environment and to demonstrate a basic understanding of the securities industry.

In general, given the diversity of functions performed by covered persons, FINRA proposes the development of a single principles-based qualification examination with a regulatory focus to test for a broad understanding of a broker-dealer's business at a basic level; a basic understanding of the operations functions that support a broker-dealer's business; and the regulations designed to achieve investor protection and market integrity that drive the operations processes and procedures conducted at a broker-dealer. Any individual whose activities go beyond those proposed for the Operations Professional registration category would be required to separately qualify and register in the appropriate category or categories of registration attendant to such activities.

The proposed Operations Professional qualification examination is not intended to be a competency examination, but would test for general securities industry knowledge with a regulatory focus to alert such persons that they are functioning in a heavily regulated industry. The continuing education components associated with the Operations Professional registration category (described in detail in Section II.E. below) would provide competency training specific to the covered functions.

The breadth and depth of coverage of the qualification examination would be determined through the use of testing industry standards used to develop examinations, and would include input and advice from covered persons active in the securities industry.

The following are the three key content themes of the new Operations Professional qualification examination:

- ▶ **Professional Conduct and Ethical Considerations:** This section of the examination would assess a candidate's core knowledge addressed on other FINRA examinations that is appropriate for the Operations Professional. The questions in this section would assess knowledge of what are considered serious violations of securities industry rules. This category would include ethics-based questions that address issues such as data integrity, escalation of regulatory red flags and separation of duties.

- ▶ **Essential Product and Market Knowledge for an Operations Professional:** This section of the examination would assess a candidate's basic product and market knowledge, including definitions and characteristics of major product categories (*i.e.*, equities, debt, packaged securities, options and markets). The Operations Professional would not be expected to know the same level of detail about the products and markets as a product specialist or a representative selling products to customers.
- ▶ **Knowledge Associated With Operations Activities:** This section of the examination would assess a candidate's broad-based knowledge regarding the covered functions outlined above that support a broker-dealer's business, and the underlying rules that drive the processes associated with these activities (*i.e.*, customer account set-up and transfers, recordkeeping requirements, rules associated with the protection of customer assets and transaction processing, uniform practices associated with making good delivery of securities, making payments for securities and meeting settlement requirements, credit and margin rules, and how to obtain supervisory approval for any of the above).

D. Exception to Operations Professional Examination Requirement

FINRA is proposing an exception to the Operations Professional qualification examination requirement for persons who currently hold certain registrations (each an eligible registration) or have held one during the two years immediately prior to registering as an Operations Professional. The proposed exception also would apply to persons who do not hold an eligible registration, but prefer an alternative to taking the Operations Professional examination. Such persons would be permitted to register in an eligible registration category (subject to passing the corresponding qualification examination or obtaining a waiver) and use such registration to qualify for Operations Professional registration.

A person who wishes to obtain Operations Professional registration under the proposed exception would not be automatically waived-in, but would have to opt-in by requesting Operations Professional registration via Form U4 (the Uniform Application for Securities Industry Registration or Transfer) in the Central Registration Depository (CRD®).⁶ If there are no other deficiencies (funds, fingerprints, etc.), the Operations Professional registration would be approved automatically at the time such request is made. (*See also* Section II.F. below regarding the transition period and implementation date.) FINRA would not assess a separate registration fee for persons relying on the proposed exception to register as Operations Professionals.

FINRA conducted a review of the content outlines for each qualification examination it recognizes and identified examinations with broad content coverage that would be eligible for an exception to the Operations Professional examination requirement.

Accordingly, persons that hold the following representative level registration categories, or who have held such registration categories within the two years immediately prior to registering as an Operations Professional, would be qualified to register as an Operations Professional without passing the Operations Professional qualification examination:

- Investment Company Products/Variable Contracts Representative (Series 6)
- General Securities Representative (Series 7)
- United Kingdom Securities Representative (Series 17) or Canada Securities Representative (Series 37 or 38)

Additionally, persons who hold (or have held) certain principal-level registration categories would be qualified to register as an Operations Professional without passing the Operations Professional examination. Most principal-level qualification examinations have a prerequisite examination requirement that is satisfied with one of the representative qualification examinations listed above; however, FINRA also proposes to include principal-level qualification examinations that do not have a prerequisite, or that have a prerequisite that can be met with a qualification examination not on the above list (*e.g.*, Series 62), because it is likely that such principals are familiar with the content to be covered in the Operations Professional qualification examination as a result of the requirements of their positions.

Accordingly, persons who hold the following principal-level registration categories, or who have held such registration categories within the two years immediately prior to registering as an Operations Professional, would be qualified to register as an Operations Professional without passing the Operations Professional qualification examination:

- Registered Options Principal (Series 4)
- General Securities Sales Supervisor (Series 9/10)
- Compliance Officer (Series 14)
- Supervisory Analyst (Series 16)
- General Securities Principal – Sales Supervisor (Series 23)
- General Securities Principal (Series 24)
- Investment Company Products/Variable Products Principal (Series 26)
- Financial and Operations Principal (Series 27)
- Introducing Broker/Dealer Financial and Operations Principal (Series 28)
- Municipal Fund Securities Limited Principal (Series 51)
- Municipal Securities Principal (Series 53)

The proposed exception would not apply to persons whose eligible registrations have been revoked or terminated pursuant to FINRA Rule 8310 (Sanctions for Violations of the Rules) within the two years immediately prior to registering as an Operations Professional.

FINRA notes that operations personnel who would be subject to the Operations Professional registration requirements are generally acting in a supervisory position, so many persons will already hold one of the eligible registrations that would qualify for the exception to the Operations Professional examination requirement. As noted above, entry-level operations personnel would not typically be subject to the proposed requirements for Operations Professionals.

E. Continuing Education Requirements for Operations Professionals

FINRA would require that individuals registered as Operations Professionals be subject to FINRA's Regulatory Element and Firm Element continuing education requirements as set forth in NASD Rule 1120 (Continuing Education Requirements). The continuing education elements for this registration category would provide learning materials appropriate for Operations Professionals, given the breadth of functions that are covered by this registration requirement.

The Regulatory Element program for Operations Professionals would provide instruction for Operations Professionals to:

- (1) maintain and improve understanding of the regulatory and ethical aspects associated with the covered functions;
- (2) identify suspicious activities and/or red flags that could harm a customer, a firm, issuers of securities or the integrity of the marketplace;
- (3) maintain and improve knowledge and understanding of the covered functions; and
- (4) assist the Operations Professionals in keeping up with changes in the industry and regulations that impact their work.

Operations Professionals would be required to complete scenario-based modules based on the key content themes of the Operations Professional qualification examination, as described in Section II.C. above. The breadth and depth of coverage of the modules would be determined through the use of existing industry standards currently used to develop continuing education content and would include input and advice from operations professionals active in the securities industry. Individuals would be expected to complete the Regulatory Element continuing education requirement two years after passing the qualification examination and then every three years thereafter. FINRA expects that the continuing education content for Operations Professionals would be available two years after the launch of the qualification examination.

Individuals who avail themselves of the proposed exception to the Operations Professional qualification examination requirement with an eligible registration (described in Section II.D. above) would be subject to the Regulatory Element program

appropriate for such other registration category. For example, a person who registers as an Operations Professional by holding a General Securities Representative registration under the exception would be subject to the S101 continuing education program.

Operations Professionals would also be subject to Firm Element training. To implement this change, FINRA would expand NASD Rule 1120(b) to include Operations Professionals in the definition of “covered registered persons,” and to require that firms deliver Firm Element training to Operations Professionals subject to the new registration and qualification requirements.⁷

F. Transition Period and Implementation Date

1. Persons Acting as Operations Professionals as of the Effective Date of the New Registration Requirement

FINRA is proposing a six- to nine-month transition period for existing personnel that meet the depth of personnel criteria and are engaged in the covered functions as of the effective date of the proposed registration category. During this six- to nine-month period (which would begin on the date the proposed registration category takes effect), covered persons would be required to register with FINRA as Operations Professionals. FINRA believes that a six- to nine-month transition period will provide firms with an opportunity to identify persons who would be subject to the Operations Professional requirements, and provide such covered persons an opportunity to register as an Operations Professional by doing one of the following, as applicable:

- (1) requesting Operations Professional registration via Form U4 in CRD and passing the Operations Professional qualification examination;
- (2) requesting Operations Professional registration via Form U4 in CRD pursuant to the proposed exception, based on their holding, or having held within the past two years, an eligible registration (*see* Section II.D. above);⁸ or
- (3) registering with FINRA in one of the eligible registrations and, pursuant to the proposed exception (*see* Section II.D. above), requesting Operations Professional registration via Form U4 in CRD.

2. Persons Who Begin Work as Operations Professionals Following the Effective Date of the New Registration Requirement

The six- to nine-month transition period would not apply to persons who meet the depth of coverage criteria and begin work in the covered functions *following* the effective date of the proposed registration category (*i.e.*, new hires or existing associated persons who transition into the covered functions). Such persons would be required to register as an Operations Professional *prior to engaging in* any of the activities that would qualify them as covered persons, regardless of whether they begin work during the transition period or after it expires, and would be permitted to register as described in paragraphs (1) – (3) of Section II.F.1. above.

Endnotes

- 1 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
- 2 Section 19 of the Securities Exchange Act of 1934 (SEA or Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See SEA Section 19 and rules thereunder.
- 3 *See Notice to Members 05-48* (Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers). The *Notice* reminds members that "in the absence of specific NASD [or FINRA] rules, MSRB rules, or federal securities laws or regulations that contemplate an arrangement between members and other registered broker-dealers with respect to such activities or functions (e.g., clearing agreements executed pursuant to NASD Rule 3230), any third-party service providers conducting activities or functions that require registration and qualification under NASD [or FINRA] rules will generally be considered associated persons of the member and be required to have all necessary registrations and qualifications."
- 4 *See Regulatory Notice 09-70* (FINRA Requests Comment on Proposed Consolidated FINRA Rules Governing Registration and Qualification Requirements). The proposed amendments discussed in this *Notice* would be included in proposed FINRA Rule 1230 (Registration Categories).
- 5 *See supra* note 4. In *Regulatory Notice 09-70*, FINRA proposed generally adopting the NYSE registration requirement for securities lending representatives and securities lending supervisors (Incorporated NYSE Rule 345.10), which requires the registration of securities lending representatives and their direct supervisors. Under NYSE rules, such persons are not subject to any training or examination requirements; however, these individuals are required to file a Form U4 and sign a "code of ethics" agreement.
- 6 A person who qualifies for the proposed exception based on their having held an eligible registration within the two years immediately prior to registering as an Operations Professional would be required to first re-activate such eligible registration prior to requesting Operations Professional registration.
- 7 NASD Rule 1120 (Continuing Education Requirements) is limited to registered persons who have *direct contact with customers* in the conduct of the firm's securities sales, trading and investment banking activities, any person registered as a research analyst pursuant to Rule 1050, and to the immediate supervisors of such persons. The proposed amendments would be included in the new FINRA rule governing continuing education, FINRA Rule 1250, which would be filed concurrently with this proposal.
- 8 *See supra* note 6.
- 9 This would include, for example, a person who takes and passes the Series 7 examination, or qualifies for a waiver of the requirement to take the examination, and registers in CRD as a General Securities Representative.

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ATTACHMENT A

Below is the text of the proposed rule change. Proposed new language is underlined.

* * * * *

Text of Proposed New FINRA Rule

* * * * *

1200. REGISTRATION AND QUALIFICATION

1230. Registration Categories

(a) Definition of Principal and Principal Registration Categories

(1) through (11) Reserved.

(b) Definition of Representative and Representative Registration Categories

(1) through (5) Reserved.

(6) Operations Professional

(A) Requirement

Each of the following persons shall be required to register with FINRA as an Operations Professional:

(i) Senior management with responsibility over the covered functions in paragraph (b)(6)(B) of this Rule;

(ii) Supervisors, managers or other persons responsible for approving or authorizing work in direct furtherance of the covered functions in paragraph (b)(6)(B) of this Rule, including work of other persons in the covered functions in paragraph (b)(6)(B) of this Rule; and

(iii) Persons with the authority or discretion to commit the member's capital in direct furtherance of the covered functions in paragraph (b)(6)(B) of this Rule or to commit the member to any contract or agreement (written or oral) in direct furtherance of the covered functions in paragraph (b)(6)(B) of this Rule.

(B) Covered Functions

- (i)** Development and approval of pricing models used for valuations;
- (ii)** Trade confirmation, account statements, settlement, margin;
- (iii)** Stock loan/securities lending;
- (iv)** Prime brokerage (services to other broker-dealers and financial institutions);
- (v)** Client on-boarding (customer account data and document maintenance);
- (vi)** Capturing of business requirements for sales and trading systems and any other systems related to the covered functions, and validation that these systems meet such business requirements;
- (vii)** With respect to the covered functions, defining and approving business security requirements and policies for information technology (including, but not limited to, systems and data);
- (viii)** Defining information entitlement policy in connection with the covered functions;
- (ix)** Financial Controller (including general ledger);
- (x)** Collection, maintenance, re-investment (i.e., sweeps) and disbursement of funds;
- (xi)** Bank, custody, depository and firm account management and reconciliation;
- (xii)** Segregation, possession and control, fail control, buy ins;
- (xiii)** Receipt and delivery of securities and funds, account transfers;
- (xiv)** Financial regulatory reporting; and
- (xv)** Posting entries to the books and records of a member in connection with the covered functions.

(C) Qualification Examination

Subject to the exception in paragraph (b)(6)(D) of this Rule, any person who is required to register as an Operations Professional shall pass the Operations Professional qualification examination before such registration may become effective.

(D) Exception

Any person who is registered with FINRA as an Investment Company Products/Variable Contracts Representative, General Securities Representative, United Kingdom Securities Representative or Canada Securities Representative, Registered Options Principal, General Securities Sales Supervisor, Compliance Officer, Supervisory Analyst, General Securities Principal – Sales Supervisor, General Securities Principal, Investment Company Products/Variable Products Principal, Financial and Operations Principal, Introducing Broker/Dealer Financial and Operations Principal, Municipal Fund Securities Limited Principal or Municipal Securities Principal, and any person who has been registered in one of these categories within the two years immediately prior to registering as an Operations Professional, shall be qualified to register as an Operations Professional without passing the Operations Professional qualification examination, provided that such registration has not been terminated or revoked pursuant to FINRA Rule 8310.

(E) Implementation

Any person who is required to register as an Operations Professional under this Rule as of [insert the effective date of the rule] shall register as an Operations Professional within the time period prescribed by FINRA for such persons. Any person who is not required to register as an Operations Professional under this Rule as of [insert the effective date of the rule] shall register as an Operations Professional prior to engaging in any activities that would require such registration.

(7) through (13) Reserved.

* * * * *

1250. Continuing Education Requirements

(a) Reserved.

(b) Firm Element

(1) Persons Subject to the Firm Element

The requirements of this subparagraph shall apply to any person registered with a member who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as an operations professional, any person registered as a research analyst or a supervisory analyst and the immediate supervisors of such persons (collectively, "covered registered persons"). "Customer" shall mean any natural person and any organization, other than another broker or dealer, executing securities transactions with or through or receiving investment banking services from a member.

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Trade Reporting

SEC Approves Amendments to Trade Reporting Requirements for Restricted Equity Securities and Revisions to the Definition of OTC Equity Security

Effective Date: June 28, 2010

Executive Summary

Effective June 28, 2010, firms must report transactions in restricted equity securities traded pursuant to SEC Rule 144A to the OTC Reporting Facility no later than 8 p.m. Eastern Time.¹ These reporting requirements replace the trade reporting obligations for restricted equity securities in FINRA's PORTAL rules (FINRA Rule 6630 Series).²

Additionally, FINRA is changing the definition of "OTC Equity Security," which will also be effective on June 28, 2010. The amendments align the term "OTC Equity Security" more closely with SEC rule terminology and improve consistency across the FINRA rulebook. The amendments also clarify the application of the OTC Reporting Facility reporting requirements to transactions reported on or through an exchange.

The text of the amendments is available at www.finra.org/rulefilings/2010-003.

Questions concerning this *Notice* should be directed to:

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

May 2010

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Systems
- Trading

Key Topics

- OTC Equity Securities
- OTC Reporting Facility
- PORTAL Rules
- Restricted Equity Securities
- Trade Reporting

Referenced Rules & Notices

- FINRA Rule 4560
- FINRA Rule 6420
- FINRA Rule 6610
- FINRA Rule 6622
- FINRA Rule 6630 Series
- FINRA Rule 7410
- SEC Rule 144A

Background & Discussion

On April 23, 2010, the SEC approved several amendments to the reporting provisions regarding the OTC Reporting Facility (ORF).³ The amendments add reporting requirements to the ORF rules regarding transactions in restricted equity securities traded pursuant to Rule 144A under the Securities Act of 1933⁴ (SEC Rule 144A) to replace the reporting requirements in the FINRA PORTAL rules (FINRA Rule 6630 Series) in light of the cessation of the PORTAL Market; revise the definition of “OTC Equity Security” in the FINRA trade reporting rules and improve consistency of the use of the term in the FINRA rulebook; and clarify the scope of the ORF rules with respect to transactions reported on or through an exchange.

Reporting Trades in Restricted Equity Securities

FINRA’s transaction reporting rules for restricted equity securities are currently tied to whether a security is designated for inclusion in the PORTAL Market (*i.e.*, is a “PORTAL security”).⁵ In September 2008, NASDAQ ceased the operation of the PORTAL Market,⁶ and on October 26, 2009, NASDAQ terminated the PORTAL security designation process and removed rules related to the PORTAL Market from its rulebook.⁷ Although securities previously designated as PORTAL securities remained subject to the reporting requirements in the PORTAL rules,⁸ the cessation of the designation of securities as PORTAL securities creates a gap in FINRA’s transaction reporting requirements for restricted equity securities that are traded pursuant to SEC Rule 144A.⁹ To address this gap, effective June 28, 2010, the PORTAL reporting rules are eliminated¹⁰ and the ORF rules include reporting requirements for all equity securities that are defined as “restricted securities” pursuant to Rule 144(a)(3) under the Securities Act of 1933¹¹ and that are traded pursuant to SEC Rule 144A, irrespective of whether they are designated as PORTAL securities. Beginning on that date, transactions in all restricted equity securities effected pursuant to SEC Rule 144A must be reported to the ORF no later than 8 p.m. Eastern Time. Transactions in restricted equity securities effected pursuant to SEC Rule 144A and executed between 8 p.m. and midnight must be reported the following business day (T+1) by 8 p.m.

Definition of “OTC Equity Security”

The amendments described above also change the definition of “OTC Equity Security” in Rule 6420 by deleting the outdated reference to securities that “qualify for real-time trade reporting.” Beginning June 28, 2010, the term is defined as any equity security that is not an “NMS stock” as defined by the SEC in Regulation NMS.¹² The amendments also eliminate the defined term “non-exchange-listed security” from Rule 6420.¹³ Because of these changes, any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan will be excluded from the definition of “OTC Equity Security” in Rule 6420. These changes result in the FINRA definitions being more closely aligned with current SEC rule terminology and more consistent across the FINRA rulebook.¹⁴

Transactions Reported On or Through an Exchange

FINRA also amended the ORF rules to explicitly address transactions in OTC Equity Securities that are executed on an exchange. FINRA's trade reporting rules historically have required that transactions be reported to FINRA only if they were executed "otherwise than on an exchange."¹⁵ The reporting rules for the FINRA/NASDAQ Trade Reporting Facility (TRF), the FINRA/NYSE TRF and the Alternative Display Facility all include an exception from the reporting obligations for transactions reported on or through an exchange and thus require the submission of trade reports to FINRA for transactions in NMS stocks only if the transaction is executed over the counter.¹⁶ The ORF rules, however, have not included a similar exception for transactions in otherwise eligible securities that are reported on or through an exchange.¹⁷ Consequently, FINRA amended Rules 6622, 6420(k) and 6610 to add an exception from the reporting requirements for transactions in OTC Equity Securities reported on or through an exchange.

Endnotes

- 1 Transactions in restricted equity securities effected pursuant to SEC Rule 144A and executed between 8 p.m. and midnight must be reported to the OTC Reporting Facility the following business day (T+1) by 8 p.m.
- 2 The amendments discussed in this *Notice* are limited in scope to restricted equity securities and do not affect the Trade Reporting and Compliance Engine Service (TRACE) or the reporting requirements with respect to any transaction involving debt securities.
- 3 See Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010) (Order Approving File No. SR-FINRA-2010-003).
- 4 17 CFR 230.144A.
- 5 FINRA created the PORTAL Market in 1990, at the same time the SEC adopted SEC Rule 144A, to serve as a system for quoting, trading and reporting trades in certain designated restricted securities that were eligible for resale under SEC Rule 144A (PORTAL securities). See Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990). As part of the separation of The Nasdaq Stock Market (NASDAQ) from FINRA, certain functionality relating to the PORTAL Market, including the qualification and designation of PORTAL securities, became part of NASDAQ's rules and were eliminated from the FINRA rules. See Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

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Endnotes continued

- 6 See Securities Exchange Act Release No. 58638 (September 24, 2008), 73 FR 57188 (October 1, 2008). In addition to NASDAQ ceasing operation of the PORTAL Market, the SEC also approved the deletion of the Depository Trust Company (DTC) requirement that an SEC Rule 144A security, other than investment-grade securities, be included in an "SRO Rule 144A System" in order to be eligible for DTC's deposit, book-entry delivery and other depository services. See Securities Exchange Act Release No. 59384 (February 11, 2009), 74 FR 7941 (February 20, 2009). The PORTAL Market was the only "SRO Rule 144A System." *Id.*
- 7 Securities Exchange Act Release No. 60991 (November 12, 2009), 74 FR 60006 (November 19, 2009).
- 8 Although, as of October 26, 2009, NASDAQ no longer accepted new applications for debt or equity securities seeking PORTAL designation, the termination of this function was not "intended to impact securities previously designated as PORTAL securities or alter any existing regulatory obligation applicable to such securities, including, but not limited to, any trade reporting obligation imposed by any self-regulatory organization." *Id.*
- 9 As noted above, the amendments discussed in this *Notice* are limited in scope to equity securities and do not affect TRACE or the reporting requirements with respect to any transactions in debt securities.
- 10 In addition to the reporting rules, the PORTAL rules also include FINRA Rule 6635, which specifies those FINRA rules that are and are not applicable to transactions and business activities relating to PORTAL securities. The amendments renumber Rule 6635 as FINRA Rule 6630 to maintain the status quo with respect to the application of FINRA rules to securities previously designated as PORTAL securities prior to October 26, 2009.
- 11 See 17 CFR 230.144(a)(3).
- 12 Regulation NMS defines "NMS stock" as "any NMS security other than an option." 17 CFR 242.600(b)(47). "NMS security" is defined as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." 17 CFR 242.600(b)(46).
- 13 FINRA Rule 6440 (Submission of SEA Rule 15c2-11 Information on Non-Exchange-Listed Securities) and NASD Rule 2320(f), which is often referred to as the Three Quote Rule, will continue to use the term "non-exchange-listed security." Because the amendments delete the term "non-exchange-listed security" from Rule 6420, FINRA added a definition of that term to FINRA Rule 6440 and NASD Rule 2320(f) that is identical to the definition as it appeared in FINRA Rule 6420. Consequently, there is no change in the application of either rule as a result of the amendments.

Endnotes continued

- 14 FINRA amended the definition of “OTC equity security” in Rule 7410 of the Order Audit Trail System (OATS) rules to conform to the new definition used in Rule 6420. The amendments will not result in any change to the scope of securities required to be reported to OATS. In addition, the amendments codify prior FINRA guidance that the OATS rules do not apply to orders for restricted equity securities. *See Regulatory Notice 06-70 n.2* (December 2006). The amendments also eliminate the separate definition of “OTC Equity Security” in FINRA Rule 4560 (Short-Interest Reporting) and clarify that the rule applies to all equity securities except restricted equity securities.
- 15 *See, e.g.*, FINRA Rule 6100, 6200 and 6300 Series.
- 16 *See* FINRA Rules 6282(i)(1)(C), 6380A(e)(1)(C), 6380B(e)(1)(C).
- 17 The ORF rules include an exception for transactions in foreign equity securities when the transaction is executed on and reported to a foreign securities exchange or the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country. *See* FINRA Rule 6622(g).

Election Notice

Board Election

Nominees for FINRA Board of Governors

Executive Summary

The annual meeting of FINRA firms will take place on or about Monday, August 2, 2010, to elect individuals to fill the seven Elected Governor seats on the FINRA Board of Governors (FINRA Board). There are three Small Firm Governor seats, one Mid-Size Firm Governor seat and three Large Firm Governor seats up for election.

A formal notice of the meeting, including the precise time and location, will be mailed on or about July 2, 2010.

The individuals nominated by the FINRA Board's Nominating Committee for election to the FINRA Board are listed in Attachment A of this *Notice*. A person who has not been so nominated for election may be included on the ballot for the election of governors by following the petition procedures further described in this *Election Notice*.

The Nominating Committee's nominees for the Appointed Governor seats on FINRA's Board were also recently appointed by the Board and are listed in Attachment B of this *Notice*.

Note: FINRA distributed this *Notice* electronically to the executive representative of each FINRA firm and it is posted online at www.finra.org/Notices/Election/050410. Executive representatives should circulate this *Notice* to their firms' branch managers.

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

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

May 4, 2010

Suggested Routing

- Executive Representatives
- Senior Management

Composition of the Board

At the close of the Transitional Period,¹ which is the three-year period following the consolidation of NASD and the member regulation, enforcement and arbitration functions of the New York Stock Exchange, the FINRA Board will consist of 22 members,² including:

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

Of the 22 Board members, Public Governors and the Floor Member Governor, the Independent Dealer/Insurance Affiliate Governor and the Investment Company Affiliate Governor (the “Appointed Governors”) are appointed by the FINRA Board from candidates recommended by the Nominating Committee.

The three Small Firm Governors, one Mid-Size Firm Governor and three Large Firm Governors (the “Elected Governors”) will be elected as governors at the first annual meeting of FINRA firms following the Transitional Period, which will take place on or about August 2, 2010.

To be eligible to serve, Large Firm Governors must be registered with Large Firms, Small Firm Governors must be registered with Small Firms and the Mid-Size Firm Governor must be registered with a Mid-Size Firm. In order for the Board to maintain compliance with the compositional requirements of the FINRA By-Laws, the seven elected Board members have a continuing obligation to satisfy the firm-size classification throughout the entire term for which the governor is elected. Pursuant to Article I of FINRA’s By-Laws, firm sizes are defined as follows:

- a **Large Firm** is defined as a firm that employs 500 or more registered persons;³
- a **Mid-Size Firm** is defined as a firm that employs at least 151 and no more than 499 registered persons;⁴ and
- a **Small Firm** is defined as a firm that employs at least one and no more than 150 registered persons.⁵

Terms and Term Limits

During the Transitional Period, governors were appointed or elected to serve until the close of the Transitional Period.⁶ As of the first annual meeting of members following the Transitional Period, the seats on the Board will be staggered into three classes.

The first class of governors (Appointed or Elected) shall hold office until the first succeeding annual meeting of FINRA firms, the second class of governors shall hold office until the second succeeding annual meeting and the third class of governors shall hold office until the third succeeding annual meeting, or until a successor is duly appointed or elected (as the case may be) and qualified, or until death, resignation, disqualification or removal.

The By-Laws specify that, with respect to the Elected Governors, the first class of governors shall include one Large Firm Governor and one Small Firm Governor; the second class of governors shall include one Large Firm Governor, one Mid-Size Firm Governor and one Small Firm Governor; and the third class of governors shall include one Large Firm Governor and one Small Firm Governor.⁷

- **First Class:** to be elected to a one-year term holding office until the next annual meeting following the 2010 annual meeting;
- **Second Class:** to be elected to a two-year term holding office until the second succeeding annual meeting following the 2010 annual meeting; and
- **Third Class:** to be elected to a three-year term holding office until the third succeeding annual meeting following the 2010 annual meeting.

At each subsequent annual meeting following the Transitional Period, governors shall be appointed or elected for a term of three years to replace those whose terms expire. Governors may not serve more than two consecutive terms. If a governor is elected or appointed to fill a vacancy of such a governor position for a term of less than one year, the governor may serve up to two consecutive terms following the expiration of the governor's initial term.

The By-Laws expressly provide that the term of office of a governor shall terminate immediately upon a determination by the Board, by a majority vote of the remaining governors, that the governor no longer satisfies the classification for which the governor was elected. Individuals seeking nomination for the Large, Small and Mid-Size Firm seats also have an obligation to satisfy the firm-size classification on the date the petition is circulated, the date the petition is certified by the Corporate Secretary and date of the annual meeting. Individuals who fail to meet this requirement will be disqualified from election.

FINRA Nominating Committee Nominees

The FINRA Nominating Committee has nominated the following seven individuals (see attached profiles) pursuant to Article VII, Section 9 of the FINRA By-Laws to serve on the FINRA Board. The elected individuals will serve for the specified terms, or until their successors are duly elected or qualified, or until death, resignation, disqualification or removal.⁸

Small Firm Candidates

- First Class: G. Donald Steel, President, Planned Investment Company, Inc.
- Second Class: Mari Buechner, President and Chief Executive Officer, Coordinated Capital Securities, Inc.
- Third Class: Lisa Roth, Chief Executive Officer, Keystone Capital Corporation

Mid-Size Firm Candidate

- Second Class: W. Dennis Ferguson, Executive Vice President and Director of Clearing, Sterne, Agee Financial Services, Inc.

Large Firm Candidates

- First Class: Richard F. Brueckner, Chief Executive Officer, Pershing LLC
- Second Class: Seth H. Waugh, Deutsche Bank Securities, Inc. and Chief Executive Officer, Deutsche Bank Americas
- Third Class: James D. Weddle, Managing Partner, Edward Jones

Petition Process for Additional Candidates

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

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

As of the close of business on Monday, May 3, 2010, the number of FINRA Small Firms, was 4,324; the number of Mid-Sized Firms was 214; and the number of Large Firms was 176.

Firms may only endorse a petitioner for the same firm size seat as their own and, in the case of petitions, solely in support of a single nominee. No firm may endorse more than one such nominee. Likewise, a firm that signs a petition in support of more than one nominee may not submit a petition in support of an individual nominee. In this election, there are three separate Small Firm and three separate Large Firm seats.

The petition must identify the seat for which the petitioner is seeking to be nominated. The petitioner must submit sufficient information to determine the person's status with respect to the category for which he or she is petitioning to be nominated. The petitioner must also provide information sufficient for the Corporate Secretary to determine that the petitions are duly executed by the executive representatives of the requisite number of applicable size firm members. Petitions must be submitted no later than Friday, June 18, 2010.

The names of persons obtaining the requisite number of valid petitions will be included on the appropriate proxy mailed to eligible firms in advance of the annual meeting.

Voting Eligibility

A proxy will be mailed, along with the notice of the annual meeting, to each eligible FINRA firm prior to the annual meeting.

Firms are eligible to vote for the nominees who are running for seats that are in the same size category as their own firm. Therefore, Small Firms and Large Firms may vote only for the candidates running for the seats reserved for their firm size, and Mid-Size Firms will likewise vote only for the Mid-Size Firm seat.

FINRA will verify the size of each firm on the day the proxies are mailed. Each firm eligible to vote will receive a proxy containing the nominees for their voting class.

Appointed Governor Seats on the Board

In addition to the nominees for the Small Firm, Mid-Size Firm and Large Firm seats, the FINRA Board has appointed the following individuals for the post-Transitional Period seats indicated below.

Floor Broker Representative

- ▶ First Class: John F.X. Dolan, Kellogg Specialist Group, LLC

Independent Dealer Representative

- ▶ Second Class: Mark Casady, LPL Financial

Investment Company Affiliate Representative

- ▶ Third Class: John J. Brennan, The Vanguard Group, Inc.

Public Governors

- ▶ First Class: Charles A. Bowsher, Former Comptroller General of the U.S.
- ▶ First Class: James E. Burton, Former CEO, World Gold Council
- ▶ First Class: Harvey J. Goldschmid, Columbia University Law School
- ▶ First Class: Kurt P. Stocker, Northwestern University
- ▶ Second Class: Ellyn L. Brown, Brown & Associates
- ▶ Second Class: Richard S. Pechter, DLJ Financial Services Group & DLJ Direct (Retired)
- ▶ Second Class: Joel Seligman, University of Rochester
- ▶ Third Class: William H. Heyman, The Travelers Companies, Inc.
- ▶ Third Class: Dr. Shirley Ann Jackson, Rensselaer Polytechnic Institute
- ▶ Third Class: John W. Schmidlin, JP Morgan Chase (Retired)
- ▶ Third Class: Gary H. Stern, Former President of the Federal Reserve Bank of Minneapolis

Endnotes

- 1 Pursuant to Article I (zz) of the FINRA By-Laws, the Transitional Period means the period commencing on the date of the Closing and ending on the third anniversary of the date of the Closing. The date of Closing was July 30, 2007.
- 2 See Article VII, Section 4 of the FINRA By-Laws.
- 3 See Article I (y) of the FINRA By-Laws.
- 4 See Article I (cc) of the FINRA By-Laws.
- 5 See Article I (ww) of the FINRA By-Laws.
- 6 The governors elected or appointed during the Transitional Period were elected or appointed to hold office, subject to certain qualifications, until the first annual meeting of FINRA firms following the Transitional Period. See Article XXII, Section 3 of the FINRA By-Laws.
- 7 With respect to the Appointed Governors, pursuant to Article VII, Sec. 5 of FINRA's By-Laws, each class will initially comprise as equivalent a number as possible of Appointed Governors who were members of the NYSE Group Committee during the Transitional Period or are successors to such governor positions, on the one hand, and Appointed Governors who were members of the NASD Group Committee during the Transitional Period or are successors to such governor positions, on the other hand, to the extent the Board determines such persons are to remain governors after the Transitional Period.
- 8 See Article XXII, Section 3 of the FINRA By-Laws.

Attachment A

Profiles of Nominating Committee Nominees for Elected Governor Seats

Small Firm Candidates

Mari J. Buechner is the president and chief executive officer of Coordinated Capital Securities, Inc. (CCS), a full-service broker-dealer and investment advisory firm located in Madison, Wisconsin, and has over 20 years of small firm industry experience. CCS has 90 independent contractor registered representatives and seven home office personnel. Ms. Buechner has developed and implemented a supervisory system designed to accommodate a small independent contractor firm. In 2008, Ms. Buechner was appointed as an at-large member of FINRA's Small Firm Advisory Board. She is a member of FINRA's Independent Dealer/Insurance Affiliate Committee, a past FINRA District 8 Committee member, a member of the FINRA District 8 Nominating Committee, a past member of FINRA Licensing and Registration Committee and volunteers her time to work on various FINRA member education programs. She is also a Board member of the Financial Services Institute. Ms. Buechner graduated from the University of Wisconsin-Madison in 1987 with a Bachelor of Science Degree in Finance and Marketing.

Lisa Roth is the Chief Executive Officer and majority owner of Keystone Capital Corporation, a FINRA member firm with its headquarters in San Diego, CA. In her capacity as CEO, Ms. Roth directs the strategic initiatives of the company and manages its mission-critical departments, including business development and regulatory affairs. Keystone has two distinct business units, servicing on one hand the investment needs of Gen-Y investors, and on the other an institutional marketplace, including public pensions, endowments, funds and other high net worth investors. Previously, following the acquisition of ComplianceMAX Financial Corporation, of which she was founder and CEO, Ms. Roth was the EVP Managing Director of National Regulatory Services, a regulatory compliance and technology company, providing compliance expertise and technology solutions to regulated firms in the financial and investment services sectors. Prior to that, Ms. Roth served in various executive capacities with Royal Alliance Associates, First Allied Securities and other brokerage and advisory firms. Ms. Roth serves as the Chairman of the Member Advocacy Committee and was Past-Chairman of the National Association of Independent Broker Dealers (NAIBD). As such, Ms. Roth supports the NAIBD's efforts to inform, educate and advocate on behalf of its members, which include approximately 300 small and independent broker-dealers. Additionally, Ms. Roth is an active participant in industry forums, including FINRA committees and advisory boards, other trade associations, industry and regulatory conferences, and ad hoc committees as necessary to promote a culture of continuous improvement for investment services firms and the securities industry in general. Ms. Roth's constructive approach to advocacy has resulted in enhanced awareness of small firm issues among regulators, legislators and industry professionals. Ms. Roth currently serves as Chairman of FINRA's Small Firm Advisory Board.

G. Donald Steel is the Chief Executive Officer and President of Planned Investment Company, Inc., a small Broker-Dealer and Registered Investment Advisor firm in Indianapolis, Indiana. Mr. Steel has been a Producing Manager since 1980 and the firm's President since 1987. Planned Investment Company conducts fund and variable annuity direct business and listed business clearing through Mesirow Financial, Inc. Mr. Steel was a member of the NASD District 8 Committee from 1990 to 1991 and was Chairman of that committee in 1992. He is a FINRA Arbitrator and is an ex-officio member of the FINRA Small Firm Advisory Board. Mr. Steel previously served on the Net Capital Task Force in 2005 and on the Small Firm Business Continuity Task Force from 2006 to 2007. Mr. Steel served for 30 years in the U.S. Navy both as an active and reserve Naval Flight Officer. He retired in 2002 as a Captain. Mr. Steel has been the Board Chairman of three United Way Agencies, including The Salvation Army. He chaired the building of the USS Indianapolis (CA-35) National Memorial, and was a National Vice President of the Navy League of the U.S. He is a past President of the Kiwanis Club of Indianapolis. Mr. Steel graduated with a Bachelor's degree in Soviet Studies and General Engineering in 1975 from the U.S. Naval Academy. He received his Naval Flight Officer Wings in 1977, and attended the Naval Justice School.

Mid-Size Firm Candidate

W. Dennis Ferguson is Executive Vice President, Director of Clearing for Sterne, Agee & Leach, Inc., as well as registered with Sterne Agee Financial Services, Inc. located in Boca Raton, Florida. Starting in the securities industry in 1970, he has worked in the clearing services arena since 1982. Service in the financial industry includes Securities and Financial Markets Association (SIFMA) as member of the Clearing Firms Committee and the Membership Committee, both of which he has previously chaired. From 1995 to 1996, he was President of the Florida Securities Dealers Association. Mr. Ferguson has previously served NASD as Chairman of the District 7 Committee and as a member of the Membership, Financial Responsibility and Uniform Practice Code Committees. In 2008, he completed a four-year term on the FINRA National Adjudicatory Council, the last two years as its Chairman. Mr. Ferguson graduated from Florida Southern College and did graduate work at Florida Atlantic University.

Large Firm Candidates

Richard F. Brueckner is Chairman and CEO of Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation (BNY). Mr. Brueckner is also a Senior Executive Vice President of BNY and a member of its Executive Committee. He joined BNY in May 2003 when it acquired Pershing from Credit Suisse First Boston (CSFB). Prior, he served as CEO of Pershing, and as a member of the CSFB Executive Board after CSFB acquired Donaldson, Lufkin & Jenrette (DLJ) Securities Corporation and Pershing in November 2000. Mr. Brueckner joined DLJ in 1978 and served as Treasurer of DLJ and CFO of Pershing, where he has held a variety of senior management positions in administration, finance, marketing and operations throughout his career. Prior to that, he was a member of the management group of the Investment Services Department of KPMG

Peat Marwick. Mr. Brueckner joined the NASD Board of Governors in January, 1998. He has previously served as Chairman of the NASD National Adjudicatory Council and as Chairman of the New York District Committee. He is on the Board of Directors of the Securities Industry and Financial Markets Association (SIFMA), and has served as SIFMA's Co-Treasurer, as Co-Chair of the Audit and Finance Committee, and is also a Trustee of SIFMA's Foundation for Investor Education. Mr. Brueckner is Chairman of the Board of Trustees of Muhlenberg College in Allentown, Pennsylvania. He graduated from Muhlenberg College with a Bachelor of Arts degree in Economics, and became a Certified Public Accountant in New York in 1973.

Seth Waugh joined Deutsche Bank in April 2000 as Regional Head of Global Markets and Equities and Vice Chairman of the Americas Executive Committee. Seth was appointed CEO of Corporate and Investment Banking in the Americas in 2001 and the following year was named CEO of Deutsche Bank Americas and Chairman of the Americas Executive Committee, a position he has held since May 2002. He was appointed Member of the Group Executive Committee effective April 1, 2009. Seth is Chairman of the Deutsche Bank Securities Inc. (DBSI) Board of Directors and serves as Chairman of the Board, CEO and President of several Deutsche Bank companies including Deutsche Bank Trust Company and Deutsche Bank Trust Corporation Americas. Before joining Deutsche Bank, Seth was CEO of Quantitative Financial Strategies (QFS) in Greenwich, CT. Prior to his role at QFS, Seth spent 11 years at Merrill Lynch in a variety of capacities in the Fixed Income Division, most recently as Senior Vice President and Co-Head of Global Debt Markets. Earlier in his career, Seth managed the Corporate Bond and International Trading desks at Salomon Brothers. Seth's industry positions have included board seats with the Securities Industry and Financial Markets Association and The Clearing House. In addition, he is the Deutsche Bank Americas representative to the Financial Services Forum, an organization composed of 20 CEOs from the largest U.S. financial institutions. He is also a member of the Executive Committee of the Partnership for New York City. Seth is the Chairman of the Board of Directors for Deutsche Bank Americas Foundation which administers the philanthropic activities of Deutsche Bank within the United States, Canada and Latin America. Seth's philanthropic endeavors also include positions on the boards of the YMCA of Greater New York, the Multiple Sclerosis Society of Greater New York, the Partnership for New York City, St. Vincent's Services of Brooklyn, the Local Initiatives Support Corporation, the Lawrenceville School in Lawrenceville, New Jersey and he is a member of the Winthrop University Hospital Board of Regents in Syosset, New York. A graduate of Amherst College, Seth earned dual Bachelor of Arts degrees in Economics and English.

James D. Weddle managing partner of Edward Jones, was earning his MBA at Washington University when he was hired in 1976 as a part-time intern in the firm's Research department. After completing his MBA, Weddle left Research to become a financial advisor in Connersville, Indiana. He opened the firm's 200th branch. In 1984, Weddle was named a principal in the firm and was invited back to the St. Louis headquarters where he assumed a series of responsibilities, initially in new Financial Advisor Training, then for one of the firm's largest areas, Mutual Fund Sales and Marketing. Weddle then led the implementation of a new sales management structure for the firm, taking responsibility for developing the firm's growth across the entire East Coast and for coordinating the efforts for all of the U.S. While he led the East Coast, the firm expanded from 250 offices to over 1,000. Weddle assumed responsibility for managing all of the firm's branch offices in late 1997. His responsibilities included not only the facilities themselves, but also financial advisors' compensation and financial advisor leadership development. Weddle has been a member of the firm's Management Committee since 1987 and in January 2006, he succeeded Douglas E. Hill as Edward Jones' fifth managing partner. A native of Illinois and a graduate of DePauw University in Greencastle, Indiana, Weddle also graduated from the University of Pennsylvania Wharton School's Securities Industry Institute in 1988. He served as a trustee of the institute from 1989 until 1993, and served on the Continuing Education Committee of the Securities Industry Association from 1994 through 1996. Weddle is on the Executive Committee for Webster University Board of Trustees; on the Executive Committee of The United Way of Greater St. Louis; a past board member of the Securities Industry & Financial Markets Association (SIFMA); a member of the Board of Commissioners for the St. Louis Science Center; a member of Washington University's Olin School of Business National Council; and a member of the University of Missouri–St. Louis Chancellor's Council.

Attachment B

Profiles of Appointed Governors

Floor Broker Representative

John F.X. Dolan is the former Chief Executive Officer of Kellogg Specialist Group and currently acts as a Senior Advisor. Prior to joining Kellogg, Mr. Dolan worked for Van der Moolen Specialists in various capacities from 2002 to 2005, and prior to that was a Senior Managing Director of Lyden, Dolan & Nick from 1988 to 2002. Currently, he is a member of the NYSE's Committee for Review. Mr. Dolan has also served as an Executive Floor Governor, Floor Governor and Floor Official, and has chaired the NYSE's new member orientation and continuing education programs. He also served on the Board of the Specialist Association. Mr. Dolan received a B.S. in Economics from the College of Holy Cross in 1983.

Independent Dealer Representative

Mark S. Casady is chairman of the board and chief executive officer of LPL Financial. He has been instrumental in leading the company to become a multi-faceted organization, which continues to support independent financial advisors while also providing investment services to banks and credit unions and clearing services to broker-dealers at leading financial services companies. Mr. Casady joined the firm in 2002. Before joining LPL Financial, he was managing director of the mutual fund group for Deutsche Asset Management, Americas—formerly Scudder Investments. He joined Scudder in 1994 and held roles as managing director, head of the global mutual fund group, and head of defined contribution services; he was also a member of the Scudder, Stevens, and Clark board of directors and management committee. Prior to Scudder, Mr. Casady held roles at Concord Financial Group as institutional sales manager and at Northern Trust as vice president of investments and head of global custody operations in its London office. He has also served on the executive committee of the Investment Company Institute board of governors, and he is a former chairman of the board of IRA and continues to serve on its board. In 2007, Mr. Casady was named Financial Executive of the Year by DePaul University College of Commerce. He was also named one of the top 50 financial professionals by Irish American magazine in 1999 and, in 2008, was inducted into the Redefining Investment Strategy Education “Hall of Fame” by the University of Dayton. Mr. Casady received his Bachelor of Science from Indiana University and his MBA from DePaul University. He is Series 7, 24, and 63 registered.

Investment Company Affiliate Representative

John J. Brennan is Chairman Emeritus and Senior Advisor of The Vanguard Group, Inc. Mr. Brennan joined Vanguard in July 1982. He was elected President in 1989, served as Chief Executive Officer from 1996 to 2008 and Chairman of the Board from 1998 to 2009. Mr. Brennan is Chairman of the Financial Accounting Foundation; a director of LPL Financial; a governor of the Financial Industry Regulatory Authority (FINRA); a director

of the United Way of Southeastern Pennsylvania; a trustee of the University of Notre Dame; a trustee of King Abdullah University of Science and Technology (KAUST); a past Chairman of the Investment Company Institute; and, a past governor of United Way of America. Mr. Brennan graduated from Dartmouth College and received a Master's degree in Business Administration from the Harvard Business School. He has received honorary degrees from Curry College and Drexel University.

Public Governors

Charles A. Bowsher is the former Comptroller General of the United States and head of the General Accounting Office (GAO). Mr. Bowsher was appointed to his 15-year term in 1981 by President Reagan. Prior to this appointment, Mr. Bowsher was associated with Arthur Andersen & Co. for 25 years, and also served as Assistant Secretary of the Navy for Financial Management. He served as Chairman of the Public Oversight Board and he is a trustee of the Center for Naval Analysis and the Concord Coalition, and serves on the advisory boards at several universities. He is the recipient of honorary doctorate degrees from five universities. Mr. Bowsher graduated from the University of Illinois and received an M.B.A. from the University of Chicago.

James E. Burton is the former Chief Executive Officer of World Gold Council in London, England, retiring in December 2008. Previously, he served as Chief Executive Officer of the California Public Employees Retirement System (CalPERS) from 1994 to 2002. Prior to joining CalPERS, Mr. Burton was Deputy State Controller, advising the State Controller on public pension, government borrowing and other state finance issues. He has also held various government positions, including Deputy Chief of Staff to Governor Jerry Brown. Mr. Burton is a past officer of the National Association of State Retirement Administrators and the Council of Institutional Investors. Mr. Burton holds a degree from the University of San Francisco.

Harvey J. Goldschmid is Dwight Professor of Law at Columbia Law School and senior counsel at Weil, Gotshal & Manges. He served as Commissioner with the U.S. Securities and Exchange Commission (SEC) from 2002 to 2005, and was Special Senior Advisor to SEC Chairman Arthur Levitt in 2000. From 1998 to 1999, Mr. Goldschmid served as General Counsel of the SEC. He has taught law at Columbia University since 1970, and has been the law school's Dwight Professor of Law since 1984. From 1980-1993, Mr. Goldschmid served as a Reporter for the American Law Institute's Corporate Governance Project. He served in 1997-98 as a consultant to both the Federal Trade Commission (FTC) and the SEC, and during this period was a member of the Legal Advisory Committee of the New York Stock Exchange. In 1995-96, he was a member of the FTC's Task Force on High Tech/Innovation Issues. In 2000-01, he served as Chair of the Nominating Committee, and in 1998, was Treasurer and a member of the Executive Committee of the Association of the Bar of the City of New York. Mr. Goldschmid received a J.D. from the Columbia Law School in 1965 and a B.A. from Columbia College in 1962.

Kurt P. Stocker is a visiting lecturer at Northwestern University's Medill School of Journalism, Integrated Marketing Communications program and partner in Story Trading, LLC. Prior to this, he was Associate Professor and Director of Graduate Public Relations and a principal of Stocker & Associates. Mr. Stocker formerly served as Chief Corporate Relations Officer for Continental Bank Corporation. Prior to joining Continental, he was Senior Vice President of Corporate Communications for United Airlines from 1985 to 1988. Mr. Stocker was Senior Vice President for the Chicago office of Hill and Knowlton, and Managing Director of the Denver office. He is currently a member of the NYSE Regulation Board of Directors, the Chairman of the Individual Investor Advisory Committee to the NYSE Board of Directors and was named to the SEC Investor Advisory Committee and the NYSE Commission on Corporate Governance. Mr. Stocker earned his B.S. degree in Business from Marietta College in Ohio.

Ellyn L. Brown is President of Brown & Associates. Ms. Brown became a member of the NYSE Board of Directors in April 2005. She currently is a member of the board of NYSE Euronext in addition to the NYSE Regulation Board. Ms. Brown also serves as a trustee of the Financial Accounting Foundation, the parent body of the Financial Accounting Standards Board (FASB) and the Government Accounting Standards Board (GASB), and Walter Investment Corp., a publicly traded home mortgage originator and servicer. Ms. Brown was Maryland's Securities Commissioner from 1987-1992. She is a former director of the North American Securities Administrators Association, the Certified Financial Planner Board of Standards, and the National Association of Personal Financial Advisers. Ms. Brown also served previously on the NASD Board. Prior to attending law school, Ms. Brown worked as a demographer and statistical analyst for several public and private entities. Ms. Brown holds a J.D. degree from the University of Maryland, an M.S. from The Johns Hopkins University, and an A.B. from Vassar College.

Richard S. Pechter is the former Chairman of Donaldson, Lufkin, & Jenrette's (DLJ) Financial Services Group, former chairman of DLJ Direct and a former member of the board of DLJ. Mr. Pechter spent 30 years with DLJ holding the positions of Treasurer, Chief Financial Officer, Chief Administrative Officer and Chief Executive of Pershing retiring in 2000. While at DLJ, Mr. Pechter was also a director of The Depository Trust Company and the National Securities Clearing Corporation and served as Vice Chairman of the Securities Industry Association. In 2006, Mr. Pechter retired after five years as a public high school and community college teacher. Mr. Pechter is a director of NYSE Regulation, Teach For America, Kids Corporation, The JED Foundation and The Pechter Foundation. He holds an M.B.A from Harvard Business School and a B.S. from Yale University.

Joel Seligman is the tenth president of the University of Rochester. Before becoming president of the University of Rochester in July of 2005, he served as Dean of the Washington University School of Law from 1999-2005 (and an Ethan A.H. Shepley University Professor), where he is credited with masterminding a strategic plan that helped raise the law school's national and international profile. He was also Dean and Samuel H. Fegtly Professor of Law of the University of Arizona College of Law from 1995-1999. He has previously served on the law faculty of the universities of Michigan, George Washington and Northeastern. Mr. Seligman served as Reporter for the National Conference of Commissioners on Uniform State Law, was Chair of the Securities and Exchange Commission Advisory Committee on Market Information, and has served as a member of the American Institute of Certified Public Accountants Professional Ethics Executive Committee. He is the author or co-author of 20 books and over 40 articles on legal issues related to securities and corporations. He is the co-author of the 12 volume treatise, *Securities Regulation*, co-written with the late Louis Loss, as well as *Fundamentals of Securities Regulation* and the casebook, *Securities Regulation*, which he co-wrote with John Coffee. His book, *The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance*, is widely regarded as the leading history of the Commission. He received his bachelor's degree magna cum laude from the University of California Los Angeles and his law degree cum laude from Harvard University School of Law.

William H. Heyman is Vice Chairman and Chief Investment Officer of The Travelers Companies, Inc. Until March 15, 2002, Mr. Heyman was Chairman of Citigroup Investments, a subsidiary of Citigroup that managed most of Citigroup's proprietary investments. His responsibilities included all public and private equity-related investments, real estate and alternative investments, as well as Citigroup's pension fund. He founded and was, until his departure, Chief Executive Officer of Tribeca Investments, a Citigroup subsidiary that conducts proprietary trading and investment activities including merger arbitrage and convertible hedging. He was a Senior Vice President of various Citigroup insurance subsidiaries, including Travelers, and served as a Citigroup representative on several boards. Prior to joining Citigroup in 1995, he was, successively, a managing director and head of the private investment department of Salomon Brothers; director of the Division of Market Regulation of the U.S. Securities and Exchange Commission in Washington, DC (1991-1993); and a managing director and head of the arbitrage department of Smith Barney. He began his career in the securities business in 1979, when he co-founded Mercury Securities, a broker-dealer specializing in merger arbitrage of which he was the Chief Operating Officer for nine years. Prior to that, he was a securities lawyer, principally with Cravath, Swaine & Moore. Mr. Heyman graduated *magna cum laude* from Princeton University, where he was elected to Phi Beta Kappa, and *cum laude* from Harvard Law School.

Dr. Shirley Ann Jackson has been the President of Rensselaer Polytechnic Institute since 1999. She was President of the American Association for the Advancement of Science (AAAS) in 2004-2005 and Chairman of the AAAS' Board in 2005-2006. Dr. Jackson was elected to the Board of Directors of the New York Stock Exchange, Inc. in November 2003, and currently serves as a Director of NYSE Euronext. She chairs the Board of NYSE Regulation. From 1995 to 1999, Dr. Jackson was Chairman of the U.S. Nuclear Regulatory Commission. Prior to that appointment, she was a Theoretical Physicist at the former AT&T Bell Laboratories and a professor at Rutgers University. Dr. Jackson is a member of the Council on Foreign Relations and serves as the University Vice-Chair of the Council on Competitiveness, and serves on the U.S. Comptroller General's Advisory Committee for the Government Accountability Office, and formerly served on the Advisory Council for the U.S. Department of Energy National Nuclear Security Administration. Dr. Jackson is a life member of the M.I.T. Corporation and is a Regent of the Smithsonian Institution. Dr. Jackson serves as a Director of a number of public corporations. Dr. Jackson holds a Ph.D. in Theoretical Physics and a B.S. in Physics from MIT.

John Schmidlin retired from JPMorgan Chase & Company in 2004. During his 35-year tenure there, Mr. Schmidlin held a number of positions, including, most recently, Chairman of the Technology Council and Member of the Executive committee in 2004; Managing Director and Chief Technology Officer of Enterprise Technology Services in 2003; Managing Director and Head of Infrastructure Delivery Model Initiative in 2001; Head of Technology and Operations for Private Banking and Investment Management 1996. Mr. Schmidlin is also a director of NYSE Regulation. Mr. Schmidlin received a bachelor's degree from St. John's University in 1969 and sits on the Board of Trustees for Harlem Academy.

Gary Stern is a former President of the Federal Reserve Bank of Minneapolis, a position he held from 1985 to September 2009. Mr. Stern began his tenure there as Senior Vice President and Director of Research in 1982. Prior to this position, he was a Senior Economist at A.G. Shilling & Company from 1978 to 1982, and was Manager of Fixed Income Research at Loeb Rhoades from 1977 to 1978. From 1970 to 1977, he worked for the Federal Reserve Bank of New York. Mr. Stern received a bachelor's degree in economics from Washington University in St. Louis in 1967, and a master's degree and Ph.D. in economics from Rice University in 1970 and 1972, respectively.

Information Notice

DTCC to Provide FINRA Access to Participant Position Reports

May 26, 2010

Executive Summary

FINRA and the Depository Trust & Clearing Corporation (DTCC) are establishing a program that will provide FINRA staff with routine and direct access to position reports and similar information that DTCC (and its subsidiaries and affiliates) provides to its participants. While FINRA currently has access to this information from its firms, FINRA believes direct access from DTCC will provide more timely information with greater efficiency.

Questions regarding this *Notice* should be directed to Anand Ramtahal, Senior Vice President, Risk Oversight & Operational Regulation, at (646) 315-8565 or anand.ramtahal@finra.org; or your firm's FINRA Regulatory Coordinator.

Discussion

FINRA and DTCC have agreed to a program that will provide FINRA staff with routine and direct access to position reports and similar information that DTCC (and its subsidiaries and affiliates) provides to its participants. Under the arrangement, FINRA staff may make specific requests for information regarding a firm that is both a DTCC participant and FINRA member firm. FINRA and DTCC are planning to develop an automated process for the exchange of this information.

While this information is currently available to FINRA directly from firms, the new arrangement will permit FINRA staff, during the course of an examination or investigation, or when otherwise seeking to verify the continued existence and maintenance of assets and for other purposes, to request such records directly from DTCC without the need to use the

May 26, 2010

Suggested Routing

- Compliance
- Continuing Education
- Legal
- Operations
- Systems
- Trading

Key Topic(s)

- Information Sharing Agreements

resources, staff or facilities of a firm. DTCC believes that the arrangement will benefit its participants by supporting their obligations to provide regulatory information to FINRA in a more efficient and cost-effective manner. DTCC and FINRA anticipate that the arrangement will help reduce overall reporting/examination burdens on firms/ participants. FINRA also believes that the arrangement will enhance its ability to act expeditiously in accessing information available from another self-regulatory organization.