

# Notices

## Regulatory Notices

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## Form U5

### Obligation to Provide Timely, Complete and Accurate Information on Form U5

#### Executive Summary

This *Notice* reminds firms of their obligation to provide timely, complete and accurate information on Form U5 (Uniform Termination Notice for Securities Industry Registration).<sup>1</sup>

Questions concerning this *Notice* should be directed to the FINRA Gateway Call Center at (301) 590-6500.

#### Background and Discussion

Under Article V, Section 3 of the FINRA By-Laws, firms are required to file Form U5 no later than 30 days after terminating an associated person's registration. In addition, firms must file an amended Form U5 when they learn of facts or circumstances that make a previously filed Form U5 inaccurate or incomplete.<sup>2</sup> Further, firms are required to provide the person whose registration has been terminated with a copy of any Form U5 (initial or amended) at the same time that it is filed with FINRA.

Form U5 requires an appropriate signatory of a firm to verify the accuracy and completeness of the information contained in it prior to filing with FINRA. It is imperative that firms file complete and accurate Forms U5 in a timely manner because the reported information is used by a number of constituencies for a variety of reasons. For instance, FINRA uses the information to help identify and sanction individuals who violate FINRA rules and applicable federal statutes and regulations. FINRA, other self-regulatory organizations and state regulatory and licensing authorities also use the information to make informed registration and licensing decisions. Firms use the information to help them make informed employment decisions. Further, investors use the Form U5 information that is displayed through BrokerCheck when considering whether to do business with a registered (or formerly registered) person.

September 2010

#### Notice Type

- Guidance

#### Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Registration
- Senior Management
- Training

#### Key Topic(s)

- Form U5

#### Referenced Rules & Notices

- NTM 04-09
- Article V, Section 2 of the FINRA By-Laws
- Article V, Section 3 of the FINRA By-Laws

FINRA notes that each question on Form U5 stands on its own, and firms should carefully read each question on the form and respond appropriately to each question. For example, when reporting information relating to the reason for termination, firms must separately consider and respond to both Section 3 of the form and any of the disclosure-related questions found in Section 7. FINRA emphasizes that reporting the reason for termination in Section 3 does not abrogate the requirement that a firm complete any of the questions in Section 7 appropriately, including, in particular, Questions 7B and 7F. ***In this regard, FINRA notes that, with respect to factual situations that would cause a reasonable person to answer affirmatively any disclosure question in Form U5, a firm may not parse through the questions in a manner that would allow the firm to avoid responding affirmatively to a question.*** FINRA further notes that:

- ▶ A firm must provide sufficient detail when responding to Form U5 questions such that a reasonable person may understand the circumstances that triggered the affirmative response. For example, for purposes of Section 3 on Form U5, it is not sufficient for a firm to report only that a person's registration was terminated because that person violated "firm policy." If a firm is obligated to report that a registered person was terminated because he or she violated a firm policy, the firm must identify the policy, provide sufficient facts and circumstances to enable the reader to understand what conduct was involved, and review other questions on the form to determine whether an affirmative response to any other question is required.
- ▶ A firm that is terminating a registered person for misconduct subject to disclosure specified in Question 7F is required to answer that question in the affirmative, irrespective of whether or not the firm is the entity making the allegations of misconduct. Question 7F asks whether the individual who is the subject of the Form U5 voluntarily resigned, or was discharged or permitted to resign, after allegations were made that accused the individual of certain types of misconduct. Question 7F does not specify or require that the terminating firm be the source of those allegations. For example, if an affiliate of a firm employing a registered person discharges the registered person after making allegations of fraud against that person and the firm thereafter discharges the person, the firm would need to provide an affirmative answer to the appropriate part of Question 7F and indicate that it was discharging the person after allegations of fraud had been made against him or her.
- ▶ A firm should err on the side of interpreting the term "investment-related" in an expansive manner in line with the scope of the term when reporting information on Form U5. The scope of the term pertains to securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, issuer, investment company, investment adviser, futures

sponsor, bank or savings association). Accordingly, a firm may be required to provide an affirmative answer to a question even if the matter is not securities-related. Furthermore, the type of conduct described in Form U5 questions need not always pertain to or involve a customer of the terminating firm in order to require an affirmative answer. Several questions ask about specific types of misconduct without regard to whether such misconduct involved a customer of the terminating firm. Therefore, the issue of whether the conduct involved a customer of the terminating firm is not necessarily determinative as to whether the conduct may require an affirmative answer to a Form U5 question.

FINRA notes that firms may be subject to administrative and civil penalties for failing to provide complete and accurate information on Form U5 in a timely manner.<sup>3</sup>

## Endnotes

1. See Article V, Section 3(a) of the FINRA By-Laws; *Notice to Members (NTM) 04-09* (SEC Announces Immediate Effectiveness of Amendments to Section 4 of Schedule A to the NASD By-Laws). Although this Notice focuses on Form U5, FINRA notes that firms also must provide timely, complete and accurate disclosure on Form U4 (Uniform Application for Securities Industry Registration or Transfer). See Article V, Section 2(c) of the FINRA By-Laws.
2. FINRA reminds firms that this obligation to file an amended Form U5 when it learns of facts or circumstances that make a previously filed Form U5 inaccurate or incomplete applies to those instances when a firm has reported that it has initiated an internal review in response to Question 7B. In such instances, FINRA expects a firm to file an amended Form U5 to report, at a minimum, the date the internal review was concluded and the findings of such review, and to respond to any other questions on the form as appropriate.
3. See, e.g., *DBCC v. Nichols*, Complaint No. C01950004, 1996 NASD Discip. LEXIS 30 at \*30 (NASD NBCC Nov. 13, 1996); see also *NTM 04-09*, which reminds firms, among other things, that they may be assessed late fees for failure to timely file accurate and complete Forms U5.

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## Arbitration Hearings

### Non-Party Witness' Attorney May Attend Hearing While Witness Is Testifying

Effective Date: October 14, 2010

#### Executive Summary

Effective October 14, 2010, a non-party witness' attorney may attend an arbitration hearing while the witness is testifying. Unless otherwise authorized by the arbitrators, the attorney's role will be limited to asserting recognized privileges, such as the attorney-client and work-product privileges, and the privilege against self-incrimination.<sup>1</sup> The amendments to the Customer and Industry Codes of Arbitration Procedure (Codes) apply to all hearings taking place on or after October 14, 2010. The text of the amendments is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- ▶ Richard W. Berry, Senior Vice President and Director of Case Administration and Regional Office Services, Dispute Resolution, at (212) 858-4307 or [richard.berry@finra.org](mailto:richard.berry@finra.org); or
- ▶ Margo A. Hassan, Assistant Chief Counsel, Dispute Resolution, at (212) 858-4481 or [margo.hassan@finra.org](mailto:margo.hassan@finra.org).

#### Background & Discussion

A non-party witness may testify at a hearing: 1) voluntarily; 2) pursuant to a subpoena;<sup>2</sup> or 3) in compliance with an arbitrator's order for an associated person to appear and give testimony.<sup>3</sup> For example, a customer claimant may not have named the broker who handled the customer's account as a respondent in a case, but the broker may be called to testify at the FINRA arbitration hearing. In such a case, if the broker wants to bring an attorney to the hearing, the Codes currently provide that the arbitrators will determine if the attorney may attend.<sup>4</sup>

September 2010

#### Notice Type

- ▶ Rule Amendment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives
- ▶ Senior Management

#### Key Topics

- ▶ Arbitration
- ▶ Attendance at Hearings
- ▶ Code of Arbitration Procedure
- ▶ Dispute Resolution

#### Referenced Rules & Notices

- ▶ FINRA Rule 12512
- ▶ FINRA Rule 12513
- ▶ FINRA Rule 12602
- ▶ FINRA Rule 13602
- ▶ FINRA Rule 13512
- ▶ FINRA Rule 13513

Generally, FINRA arbitrators permit non-party witnesses to bring their attorneys to the hearing while they are testifying. During the hearing, the attorney's participation usually involves the attorney making objections based on generally recognized privileges. To enhance the appearance of fairness in the arbitration process, however, FINRA is amending Rule 12602 of the Code of Arbitration Procedure for Customer Disputes and Rule 13602 of the Code of Arbitration Procedure for Industry Disputes to provide expressly that a non-party witness' attorney may attend a hearing while the witness is testifying. Unless otherwise authorized by the panel, the attorney's role will be limited to the assertion of recognized privileges, such as the attorney-client and work-product privileges, and the privilege against self-incrimination. The attorney must be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia or any commonwealth, territory or possession of the United States, unless state law prohibits such representation.

The amendments become effective on October 14, 2010, and apply to all hearings taking place on or after that date.

## Endnotes

- 1 Exchange Act Release No. 62521 (July 16, 2010). 75 Federal Register 42795 (July 22, 2010) (File No. SR-FINRA-2010-006).
- 2 Rules 12512 and 13512 (Subpoenas) provide that arbitrators have the authority to issue subpoenas for the production of documents or the appearance of witnesses. The rules permit a party to make a written motion requesting that an arbitrator issue a subpoena to a party or a non-party.
- 3 Rules 12513 and 13513 (Authority of Panel to Direct Appearances of Associated Person Witnesses and Production of Documents Without Subpoenas) provide that the panel may order the appearance of any employee or associated person of a FINRA member firm.
- 4 Rules 12602 and 13602 (Attendance at Hearings) provide that parties and their representatives are entitled to attend all hearings and that, absent persuasive reasons to the contrary, expert witnesses should also be permitted to attend. The panel determines who else may attend any or all hearings.

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## Attachment A

### Code of Arbitration Procedure for Customer Disputes And Code of Arbitration Procedure for Industry Disputes

#### Customer Code

##### 12602. Attendance at Hearings

- (a) The parties and their representatives are entitled to attend all hearings. Absent persuasive reasons to the contrary, expert witnesses should be permitted to attend all hearings.
- (b) An attorney for a non-party witness may attend a hearing while that non-party witness is testifying. Unless otherwise authorized by the panel, the attorney's role is limited to the assertion of recognized privileges, such as the attorney client and work product privileges, and the privilege against self-incrimination. The attorney must be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.
- (c) The panel will decide who else may attend any or all of the hearings.

#### Industry Code

##### 13602. Attendance at Hearings

- (a) The parties and their representatives are entitled to attend all hearings. Absent persuasive reasons to the contrary, expert witnesses should be permitted to attend all hearings.
- (b) An attorney for a non-party witness may attend a hearing while that non-party witness is testifying. Unless otherwise authorized by the panel, the attorney's role is limited to the assertion of recognized privileges, such as the attorney client and work product privileges, and the privilege against self-incrimination. The attorney must be in good standing and admitted to practice before the Supreme Court of the United States or the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States, unless state law prohibits such representation.
- (c) The panel will decide who else may attend any or all of the hearings.

\* \* \* \* \*

## Municipal Securities

### FINRA Reminds Firms of Their Sales Practice and Due Diligence Obligations When Selling Municipal Securities in the Secondary Market

#### Executive Summary

Brokers, dealers and municipal securities dealers (dealers) must fully understand the municipal securities they sell in order to meet their disclosure, suitability and pricing obligations under the rules of the Municipal Securities Rulemaking Board (MSRB) and federal securities laws. These obligations are not limited to firms involved in primary offerings. Dealers must also obtain, analyze and disclose all material facts about secondary market transactions that are known to the dealer, or that are reasonably accessible to the market through established industry sources.

Those sources include, among other things, official statements, continuing disclosures, trade data and other information made available through the MSRB's Electronic Municipal Market Access system (EMMA). Firms may also have a duty to obtain and disclose information that is not available through EMMA, if it is material and available through other public sources. The public availability of material information, through EMMA or otherwise, does not relieve a firm of its duty to disclose that information. Firms must also have reasonable grounds for determining that a recommendation is suitable based on information available from the issuer of the security or otherwise. Firms must use this information to determine the prevailing market price of a security as the basis for establishing a fair price in a transaction with a customer. To meet these requirements, firms must perform an independent analysis of the securities they sell, and may not rely solely on a security's credit rating.

September 2010

#### Notice Type

- Guidance

#### Suggested Routing

- Compliance
- Legal
- Municipal Securities
- Registered Representatives
- Senior Management

#### Key Topic(s)

- Credit Ratings
- Disclosure
- EMMA
- Municipal Securities
- Suitability
- Supervision

#### Referenced Rules & Notices

- Exchange Act Rule 15c2-12
- FINRA Regulatory Notice 09-35
- MSRB Rule G-15
- MSRB Rule G-17
- MSRB Rule G-19
- MSRB Rule G-27
- MSRB Rule G-30
- MSRB Rule G-32
- MSRB Notice 2004-3
- MSRB Notice 2005-01
- MSRB Notice 2007-17
- MSRB Notice 2009-41
- MSRB Notice 2009-42
- MSRB Interpretation of March 4, 1986
- MSRB Interpretation of June 12, 1995

Continuing disclosures made by issuers to the MSRB via EMMA are part of the information that dealers must obtain, disclose and consider in meeting their regulatory obligations. The Securities and Exchange Commission (SEC) has recently approved amendments to Securities Exchange Act Rule 15c2-12, governing continuing disclosures. Firms that sell municipal securities should review and, if necessary, update their procedures to reflect the amendments, which have a compliance date of December 1, 2010.

Questions concerning this *Notice* should be directed to FINRA's Member Regulation Fixed Income Group at (202) 728-8085 or (202) 728-8133.

For information about compliance with MSRB rules, including the recent amendments to Rule 15c2-12, contact FINRA at the numbers above, or the MSRB at (703) 797-6600.

## Background and Discussion

### MSRB Disclosure, Suitability and Pricing Rules

MSRB Rule G-17 provides that, in the conduct of its municipal securities activities, each dealer must deal fairly with all persons and may not engage in any deceptive, dishonest or unfair practice. The MSRB has interpreted its Rule G-17 to require a dealer, in connection with any transaction in municipal securities, to disclose to its customer, at or prior to the sale, all material facts about the transaction known by the dealer, as well as material facts about the security that are reasonably accessible to the market.<sup>1</sup> This includes the obligation to give customers a complete description of the security, including a description of the features that likely would be considered significant by a reasonable investor and facts that are material to assessing the potential risks of the investment.

Such disclosures must be made at the "time of trade," which the MSRB defines as at or before the point at which the investor and the dealer agree to make the trade. MSRB Rule G-17 applies to all sales of municipal securities, whether or not a transaction was recommended by a broker-dealer.<sup>2</sup> This means that municipal securities dealers must disclose all information required to be disclosed by the rule even if the trade is self-directed.<sup>3</sup>

MSRB Rule G-19 requires that a dealer that recommends a municipal securities transaction have reasonable grounds for believing that the recommendation is suitable for the customer based upon information available from the issuer of the security or otherwise and the facts disclosed by, or otherwise known about, the customer.<sup>4</sup>

MSRB Rule G-30 requires that dealers trade with customers at prices that are fair and reasonable, taking into consideration all relevant factors.<sup>5</sup> The MSRB has stated that the concept of a “fair and reasonable” price includes the concept that the price must “bear a reasonable relationship to the prevailing market price of the security.” The impetus for the MSRB’s Real-time Transaction Reporting System (RTRS), which was implemented in January 2005, was to allow market participants to monitor market price levels on a real-time basis and thus assist them in identifying changes in market prices that may have been caused by news or market events.<sup>6</sup> The MSRB now makes the transaction data reported to RTRS available to the public through EMMA.

In meeting these disclosure, suitability and pricing obligations, firms must take into account all material information that is known to the firm or that is available through “established industry sources,” including official statements, continuing disclosures, and trade data, much of which is now available through EMMA. Resources outside of EMMA may include press releases, research reports and other data provided by independent sources. Established industry sources can also include material event notices and other data filed with former nationally recognized municipal securities information repositories (NRMSIRs) before July 1, 2009.<sup>7</sup> Therefore, firms should review their policies and procedures for obtaining material information about the municipal securities they sell to make sure they are reasonably designed to access all material information that is available, whether through EMMA or other established industry sources. The MSRB has also noted that the fact that material information is publicly available through EMMA does not relieve a firm of its duty to specifically disclose it to the customer at the time of trade, or to consider it in determining the suitability of a security for a specific customer.<sup>8</sup> Importantly, the dealer may not simply direct the customer to EMMA to fulfill its time-of-trade disclosure obligations under MSRB Rule G-17.<sup>9</sup>

#### **Amendments to Rule 15c2-12 Concerning Continuing Disclosure**

Securities Exchange Act Rule 15c2-12 requires underwriters participating in municipal securities offerings that are subject to that rule<sup>10</sup> to receive, review, and distribute official statements of issuers of primary municipal securities offerings, and prohibits underwriters from purchasing or selling municipal securities covered by the rule unless they have first reasonably determined that the issuer or an obligated person<sup>11</sup> has contractually agreed to make certain continuing disclosures to the MSRB, including certain financial information and notice of certain events. The MSRB makes such disclosure public via EMMA.

Financial information to be disclosed under the rule consists of the following:

- annual financial information updating the financial information in the official statement;
- audited financial statements, if available and not included within the annual financial information; and
- notices of failure to provide such financial information on a timely basis.

Currently, the rule enumerates the following as notice events, if material:

- principal and interest payment delinquencies;
- non-payment related defaults;
- unscheduled draws on debt service reserves reflecting financial difficulties;
- unscheduled draws on credit enhancements reflecting financial difficulties;
- substitution of credit or liquidity providers or their failure to perform;
- adverse tax opinions or events affecting the tax-exempt status of the security;
- modifications to rights of security holders;
- bond calls;
- defeasances;
- release, substitution or sale of property securing repayment of the securities; and
- rating changes.

SEA Rule 15c2-12(c) also prohibits any dealer from recommending the purchase or sale of a municipal security unless it has procedures in place that provide reasonable assurance that it will receive prompt notice of any event notice reported pursuant to the rule. Firms should review any applicable continuing disclosures made available through EMMA and other established industry sources and take such disclosures into account in undertaking its suitability and pricing determinations.

On May 26, 2010, the SEC amended the rule's disclosure obligations, with a compliance date of December 1, 2010, to: (1) apply continuing disclosure requirements to new primary offerings of certain variable rate demand obligations; (2) add four new notice events;<sup>12</sup> (3) remove the materiality standard for certain notice events;<sup>13</sup> and (4) require that event notices be filed in a timely manner but no later than 10 business days after their occurrence. With respect to the tax status of the security, the rule has been broadened to require disclosure of adverse tax opinions, issuance by the IRS of proposed or final determinations of taxability and other material notices, and determinations or events affecting the tax status of the bonds (including a Notice of Proposed Issue). Firms that deal in municipal securities should familiarize themselves with these amendments, and, if necessary, modify their policies and procedures to incorporate this additional disclosure accordingly.

In addition, as FINRA noted in *Regulatory Notice 09-35*, if a firm discovers through its SEA Rule 15c2-12 procedures or otherwise that an issuer has failed to make filings required under its continuing disclosure agreements, the firm must take this information into consideration in meeting its disclosure obligations under MSRB Rule G-17 and in assessing the suitability of the issuer's securities under MSRB Rule G-19.

### **Credit Ratings**

In order to meet their obligations under MSRB Rules G-17 and G-19, firms must analyze and disclose to customers the risks associated with the securities they sell, including, but not limited to, the security's credit risk. A credit rating is a third-party opinion of the credit quality of a municipal security. While the MSRB generally considers credit ratings and rating changes to be material information for purposes of disclosure, suitability and pricing, they are only one factor to be considered, and dealers should not solely rely on credit ratings as a substitute for their own assessment of a security's credit risk.<sup>14</sup> Moreover, different agencies use different quantitative and qualitative criteria and methodologies to determine their rating opinions. Dealers should familiarize themselves with the rating systems used by rating agencies in order to understand and assess the relevance of a particular rating to the firm's overall assessment of the security.<sup>15</sup>

With respect to credit or liquidity enhanced securities, the MSRB has stated that material information includes the following, if known to the dealer or if reasonably available from established industry sources: (1) the credit rating of the issue or lack thereof; (2) the underlying credit rating or lack thereof, (3) the identity of any credit enhancer or liquidity provider; and (4) the credit rating of the credit provider and liquidity provider, including potential rating actions (*e.g.*, downgrade).<sup>16</sup> Additionally, material terms of the credit facility or liquidity facility should be disclosed (*e.g.*, any circumstances under which a standby bond purchase agreement would terminate without a mandatory tender).

### **Other Material Information**

In addition to a security's credit quality, firms must obtain, analyze and disclose other material information about a security, including but not limited to whether the security may be redeemed prior to maturity in-whole, in-part or in extraordinary circumstances,<sup>17</sup> whether the security has non-standard features that may affect price or yield calculations,<sup>18</sup> whether the security was issued with original issue discount or has other features that would affect its tax status,<sup>19</sup> and other key features likely to be considered significant by a reasonable investor. For example, for variable rate demand obligations, auction rate securities or other securities for which interest payments may fluctuate, firms should explain to customers the basis on which periodic interest rate resets are determined.<sup>20</sup> The MSRB has stated that firms should take particular care with respect to new products that may be introduced into the municipal securities market, existing products that may have complex structures that can differ materially from issue to issue, and outstanding securities that may trade infrequently, may be issued by less well-known issuers, or may have unusual features.<sup>21</sup>

### Supervision

Firms are reminded that MSRB Rule G-27 requires firms to supervise their municipal securities business, and to ensure that they have adequate policies and procedures in place for monitoring the effectiveness of their supervisory systems. Specifically, firms must:

- ▶ supervise the conduct of the municipal securities activities of the firm and associated persons to ensure compliance with all MSRB rules, the Exchange Act and the rules there under;
- ▶ have adequate written supervisory procedures; and
- ▶ implement supervisory controls to ensure that their supervisory procedures are adequate.

MSRB Rule G-27 requires that a firm's supervisory procedures provide for the regular and frequent review and approval by a designated principal of customer accounts introduced or carried by the dealer in which transactions in municipal securities are effected, with such review being designed to ensure that transactions are in accordance with all applicable rules and to detect and prevent irregularities and abuses. Although the rule does not establish a specific procedure for ensuring compliance with the requirement to provide disclosures to customers pursuant to MSRB Rule G-17, firms should consider including in their procedures for reviewing accounts and transactions specific processes for documenting or otherwise ascertaining that such disclosures have been made.

### Questions to Consider

Before selling any municipal security, dealers should make sure that they fully understand the security they are selling in order to make adequate disclosure to customers under MSRB Rule G-17, to ensure that recommendations are suitable under MSRB Rule G-19, and to ensure that they are fairly priced under MSRB Rule G-30. Among other things, dealers should ask and be able to answer the following questions:

- ▶ What are the security's key terms and features and structural characteristics, including but not limited to its issuer, source of funding (*e.g.*, general obligation or revenue bond), repayment priority, and scheduled repayment rate? Much of this information will be in the Official Statement, which for many municipal securities can be obtained by entering the CUSIP number in the MuniSearch box at [www.emma.msrb.org](http://www.emma.msrb.org). Be aware, however, data in the Official Statement may have been superseded by the issuer's on-going disclosures.
- ▶ Does information available through EMMA or other established industry sources indicate that an issuer is delinquent in its material event notice and other continuing disclosure filings? Delinquencies should be viewed as a red flag.

- What other public material information about the security or its issuer is available through established industry sources other than EMMA?
- What is the security's rating? Has the issuer recently been downgraded? Has the issuer filed any recent default or other event notices, or has any other information become available through established industry sources that might call into question whether the published rating has been revised to take such event into consideration?
- Is the security insured, or does it benefit from liquidity support, a letter of credit or is it otherwise supported by a third party? If so, check the credit rating of the insurer or other backing, and the security's underlying rating (without third party support). If supported by a third party, review the terms and conditions under which the third party support may terminate.
- How is it priced? Be aware that a municipal security can be priced above or below its par value for many reasons, including changes in the creditworthiness of the issuer and prevailing interest rates.
- How and when will interest on the security be paid? For example most municipal bonds pay semiannually, but zero coupon municipal bonds pay all interest at the time the bond matures. Variable rate bonds typically will pay interest more frequently, usually on a monthly basis in variable amounts.
- What is the security's tax status, under both state and federal laws? Is it subject to the Federal Alternate Minimum Tax? Is it fully taxable (e.g., Build America Bonds)?
- What are its call provisions? Call provisions allow the issuer to retire the security before it matures. How would a call affect expected future income?

## Endnotes

- 1 MSRB Rule G-17 applies to all transactions in municipal securities, including those in both the primary and secondary market. MSRB Rule G-32 specifically addresses delivery of the official statement in connection with primary offerings.
- 2 See MSRB Notice 2009-42 (July 14, 2009).
- 3 A dealer's specific investor protection obligations, including its disclosure, fair practice and suitability obligations under MSRB Rules G-17 and G-19, may be affected by the status of an institutional investor as a Sophisticated Municipal Market Professional (SMMP). See Rule G-17 Interpretation – Notice Regarding the Application of MSRB Rules to Transactions with Sophisticated Municipal Market Professionals (April 30, 2002)
- 4 See MSRB Notice 2009-42, supra n.2.
- 5 Rule G-18 requires that a dealer effecting an agency trade with a customer make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.
- 6 See MSRB Notice 2004-3 (January 26, 2004).
- 7 Since July 1, 2009, material event notices are required to be filed through EMMA, which has replaced Bloomberg Municipal Repository; DPC DATA Inc.; Interactive Data Pricing and Reference Data, Inc.; and Standard & Poor's Securities Evaluations, Inc. as the sole NRMSIR.
- 8 The MSRB has also stated that providing adequate disclosure does not relieve a firm of its suitability obligations. See MSRB Notice 2007-17 (March 30, 2007).
- 9 MSRB Rule G-32 does allow a dealer to satisfy its obligation to deliver an official statement to its customer during the primary offering disclosure period no later than the settlement of the transaction by advising the customer of how to obtain it on EMMA, unless the customer requests a paper copy. The delivery obligation under MSRB Rule G-32 is distinct from the duty to disclose material information under Rule G-17, which applies to all primary and secondary market transactions.
- 10 Certain limited offerings, variable rate demand obligations, and small issues are exempt from SEA Rule 15c2-12.
- 11 "Obligated person" is defined as "any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations of the municipal securities to be sold in the offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities)."
- 12 The new notice events are (1) tender offers, (2) bankruptcy, insolvency, receivership, or similar events, (3) consummation of mergers, consolidations, acquisitions, or asset sales, or entry into or termination of a definitive agreement related to do the same, if material, and (4) appointment of a successor or additional trustee or a change in the name of the trustee, if material.

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## Endnotes continued

- 13 The amendments removed the materiality standard and require notices for the following events: (1) principal and interest payment delinquencies with respect to the securities being offered ; (2) unscheduled draws on debt service reserves reflecting financial difficulties; (3) unscheduled draws on credit enhancements reflecting financial difficulties; (4) substitution of credit or liquidity providers, or their failure to perform; (5) defeasances; and (6) rating changes. The amendments retained the materiality standard for the following events: (1) non-payment related defaults; (2) modifications to rights of security holders; (3) bond calls; and (4) release, substitution, or sale of property securing repayment of the securities.
- 14 See MSRB Notice 2009-42, *supra* n.2. Ratings changes are reportable events under Rule 15c2-12.
- 15 Not all municipal securities are rated. While an absence of a credit rating is not, by itself, a determinant of low credit quality, it is a factor that dealers should consider, and may warrant additional due diligence of the security and its issuer by the dealer. In addition, MSRB Rule G-15 requires confirmation statements for customer trades in unrated municipal securities to disclose that the securities are not rated.
- 16 See MSRB Notice 2009-42. The SEC has approved the MSRB's proposal to require dealers to submit copies of credit enhancement and liquidity facility documents to EMMA pursuant to amended MSRB Rule G-34(c), which may increase the availability of such information to dealers. See Securities Exchange Act Release No. 62755, August 20, 2010 (File No. SR-MSRB-2010-02).
- 17 See Notice Concerning Disclosure of Call Information to Customers of Municipal Securities, MSRB Interpretation of March 4, 1986.
- 18 See Transactions in Municipal Securities With Non-Standard Features Affecting Price/Yield Calculations, MSRB Interpretation of June 12, 1995.
- 19 See MSRB Notice 2005-01 (January 5, 2005); MSRB Notice 2009-41 (July 10, 2009).
- 20 See MSRB Notice 2008-09 (February 19, 2008).
- 21 See MSRB Notice 2009-42, *supra* n.2.

## REG NMS-Principled Rules

### SEC Approves Amendments to Establish Regulation NMS-Principled Rules in Market for OTC Equity Securities

Effective Dates: FINRA Rules 6434, 6437 and 6450: February 11, 2011; FINRA Rule 6460 and NASD Rule 2320: May 9, 2011

#### Executive Summary

Effective February 11, 2011, and May 9, 2011, are new FINRA rules that extend certain Regulation NMS protections to quoting and trading of over-the-counter (OTC) Equity Securities.<sup>1</sup> For OTC Equity Securities, these new rules:

- set forth the permissible pricing increments for the display of quotations and acceptance of orders;
- require firms to avoid locking and crossing quotations within an inter-dealer quotation system;
- establish a cap on access fees imposed against a firm's published quotation; and
- require an OTC Market Maker, subject to certain exceptions, to display the full size of customer limit orders that improve the price of the market maker's displayed quotation or that represent more than a *de minimis* change in the size of the market maker's quote if at the best bid or offer (BBO).

The text of the amendments can be found in the FINRA Manual at [www.finra.org/finramanual](http://www.finra.org/finramanual).

Questions regarding this *Notice* should be directed to Racquel Russell, Assistant General Counsel, Office of General Counsel, at (202) 728-8363.

September 2010

#### Notice Type

- Rule Amendment

#### Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Technology
- Trading and Market Making

#### Key Topic(s)

- Access Fees
- Limit Order Display
- Locking and Crossing Quotations
- Minimum Pricing Increment
- OTC Equity Securities
- Quotations

#### Referenced Rules & Notices

- FINRA Rule 6240
- FINRA Rule 6434
- FINRA Rule 6437
- FINRA Rule 6450
- FINRA Rule 6460
- FINRA Rule 6540
- NASD Rule 2320
- SEA Regulation NMS

## Background and Discussion

FINRA is implementing new rules to extend certain SEC Regulation NMS protections to quoting and trading in OTC Equity Securities<sup>2</sup> (NMS-Principled Rules). The NMS-Principled Rules include rules:

- defining quotation pricing increments;
- prohibiting locked and crossed quotations;
- implementing a cap on access fees; and
- requiring the display of customer limit orders by OTC Market Makers.<sup>3</sup>

FINRA believes that applying these Regulation NMS principles to OTC Equity Securities will enhance market quality and investor protection in this market.

The rules addressing minimum pricing increments for OTC Equity Securities (Rule 6434), prohibiting locked and crossed quotations in OTC Equity Securities (Rule 6437) and restricting access fees imposed against a firm's published quotation in OTC Equity Securities (Rule 6450) will become effective on February 11, 2011. The rule requiring the display of customer limit orders in OTC Equity Securities (Rule 6460) will become effective on May 9, 2011.

## Restrictions on Sub-penny Quoting

FINRA Rule 6434 provides that, for OTC Equity Securities priced equal to or greater than \$1.00 per share, no firm shall display, rank or accept a bid or offer, an order or an indication of interest in any OTC Equity Security that is priced in an increment smaller than \$0.01. For OTC Equity Securities priced less than \$1.00 per share, Rule 6434 prohibits firms from displaying, ranking or accepting a bid or offer, an order or an indication of interest priced in an increment smaller than \$0.0001. However, in recognition of the smaller price points of OTC Equity Securities, where an order or indication of interest itself is priced less than \$0.0001, a firm may rank or accept (but not display) such order or indication of interest in an increment of \$0.00001 or greater.

## Locked and Crossed Markets

FINRA Rule 6437 requires firms to implement policies and procedures to reasonably avoid displaying, or engaging in a pattern or practice of displaying, locking or crossing quotations in any OTC Equity Security.

The rule defines a "crossing quotation" as "the display of a bid for an OTC Equity Security at a price that is higher than the displayed price of an offer for such OTC Equity Security in the same inter-dealer quotation system, or the display of an offer for an OTC Equity Security at a price that is lower than the displayed price of a bid for such OTC Equity Security in the same inter-dealer quotation system."<sup>4</sup>

The term “locking quotation” is defined as “the display of a bid for an OTC Equity Security at a price that equals the displayed price of an offer for such OTC Equity Security in the same inter-dealer quotation system, or the display of an offer for an OTC Equity Security at a price that equals the displayed price of a bid for such OTC Equity Security in the same inter-dealer quotation system.”<sup>5</sup>

### Access Fee Cap

FINRA Rule 6450 provides that a firm may not impose, nor permit to be imposed, non-subscriber access or post-transaction fees against its published quotation in any OTC Equity Security that exceed or accumulate to more than certain specified limits. Specifically, if a published quotation is priced equal to or greater than \$1.00, the access fee cap is \$0.003 per share, which is the same cap under SEC Regulation NMS. However, with respect to published quotations priced under \$1.00, the access fee cap for OTC Equity Securities is the lesser of: (i) 0.3% of the published quotation price on a per share basis, or (ii) 30% of the minimum pricing increment under Rule 6434 relevant to the display of the quotation on a per-share basis.

Consistent with Regulation NMS’s framework, FINRA’s new NMS-Principled Rules also make clear that market makers, as well as alternative trading systems (ATSs), are permitted to charge access fees within the parameters of the access fee cap. In addition, FINRA Rule 6540(c) previously required that an ATS or electronic communication network (ECN) reflect non-subscriber access or post-transaction fees in the ATS’s or ECN’s posted quote in the OTC Bulletin Board montage—but this requirement is being eliminated.

### Limit Order Display

FINRA Rule 6460 requires OTC Market Makers displaying a priced quotation in any OTC Equity Security in an inter-dealer quotation system to immediately<sup>6</sup> publish a bid or offer that reflects:

- the price and the full size of each customer limit order held by the OTC Market Maker that is at a price that would improve the bid or offer of such OTC Market Maker in such security; and
- the full size of each customer limit order held by the OTC Market Maker that:
  - is priced equal to the bid or offer of such OTC Market Maker for such security;
  - is priced equal to the BBO of the inter-dealer quotation system in which the OTC Market Maker is quoting; and
  - represents more than a *de minimis* change<sup>7</sup> in relation to the size associated with the OTC Market Maker’s bid or offer.

Rule 6460 also includes parallel exceptions currently in place in Regulation NMS's limit order display rule (Rule 604 of SEC Regulation NMS). Thus, the new rule excepts any customer limit order that is:

- executed upon receipt of the order;
- placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed;
- an odd-lot order;
- a block size order, unless a customer placing such order requests that the order be displayed;
- delivered immediately upon receipt to a national securities exchange or an ECN that widely disseminates such order and that complies with enumerated requirements with respect to that order;<sup>8</sup>
- delivered immediately upon receipt to another OTC Market Maker that complies with the requirements of this rule with respect to that order; or
- an all-or-none order.

Because FINRA Rule 6434 provides that firms may rank and accept (but not display) orders and indications of interest in an increment of \$0.000001 or greater where an order or indication of interest itself is priced less than \$0.0001, the limit order display rule likewise exempts from the display requirement any customer limit order that is priced less than \$0.0001 per share.

## Frequently Asked Questions

**Question 1:** FINRA Rule 6460 contains a *de minimis* standard applicable in situations where a customer limit order equals an OTC Market Maker's displayed price and that price is equal to the BBO. Will FINRA use the SEC's Regulation NMS Rule 604 interpretation of *de minimis* of 10 percent or less?

**Response:** *Yes. In connection with all of FINRA's NMS-Principled Rules, FINRA generally intends to adopt the same interpretive positions taken by the SEC in connection with the comparable provisions of Regulation NMS, unless explicitly noted otherwise. Thus, the size of a customer limit order is considered de minimis for purposes of Rule 6460 if it is less than or equal to 10 percent of the displayed size associated with an OTC Market Maker's bid or offer.*

**Question 2:** Must firms aggregate multiple, same-priced customer limit orders to determine whether the *de minimis* standard has been exceeded?

**Response:** *Yes. As is required by the SEC in connection with Regulation NMS's limit order display rule, firms must aggregate same-priced customer limit orders in OTC Equity Securities at the BBO in order to determine if the de minimis standard has been exceeded and the currently displayed quotation size updated.<sup>9</sup> The SEC specifically stated that all orders previously considered de minimis and not displayed must be added to the order under consideration for purposes of the de minimis calculation.<sup>10</sup> The same requirement shall apply under FINRA Rule 6460.*

**Question 3:** Rule 6460 generally requires OTC Market Makers to display the full size of any customer limit order that improves the price of the firm's quote if at the BBO. If the size of the customer limit order is less than the tier size requirements of Rule 6450 (Minimum Quotation Size Requirements for OTC Equity Securities), is the firm required to display the limit order?

**Response:** *No. If a firm receives a customer limit order in an OTC Equity Security at a price that improves such firm's displayed quotation, but for a size that is less than the tier size requirements of Rule 6450, the firm is not required to display the price and full size of such customer limit order.*

*For example, if an OTC Market Maker's quote is \$9.98 – \$10.00 (500x500) and the market maker receives a customer limit order to buy 200 shares at \$9.99, the market maker is not required to display the customer limit order because it is less than the minimum tier-size requirement for securities priced between \$1.01 and \$10.00 (500 shares) under Rule 6450. However, if the market maker receives additional customer limit orders to buy at \$9.99 that, together, equal 500 shares or greater, the market maker would be required to change its quotation to \$9.99 - \$10.00 and to reflect the aggregate size of such orders.*

**Question 4:** Rule 6460 generally requires OTC Market Makers to publish "immediately" customer limit orders. What is FINRA's definition of "immediately?"

**Response:** *As stated above, FINRA generally intends to adopt those interpretative positions taken by the SEC in connection with comparable requirements under Regulation NMS. The SEC has stated that, unless relying on one of the exceptions to the limit order display rule, specialists or OTC Market Makers must display customer limit orders as soon as is practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt.<sup>11</sup>*

**Question 5:** Under Regulation NMS, a “block size” with respect to an order means it is: (A) of at least 10,000 shares or (B) for a quantity of stock having a market value of at least \$200,000. Does this same definition apply to Rule 6460?

**Response:** *No. Rule 6460(d)(2) provides that “block size” with respect to an order means it is of at least 10,000 shares and has a market value of at least \$100,000, which also is consistent with the large order size exception under NASD IM-2110-2 (Trading Ahead of Customer Limit Order). As discussed in the Proposing Release,<sup>12</sup> because of the lower average trade prices (and corresponding higher average total share amount) of orders in OTC Equity Securities, FINRA believes that a 10,000 share standard alone would potentially exclude customer limit orders that should be displayed.*

**Question 6:** Rule 6460 provides an exception from the limit order display requirement for orders where the customer “expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer’s orders, that the order not be displayed.” What type of documentation does FINRA expect firms to maintain in connection with such customer requests?

**Response:** *As similarly stated by the SEC in connection with Regulation NMS’s limit order display rule, FINRA expects firms to discharge their responsibilities in such a manner as to allow adequate supervision of compliance with the customer’s request not to display the full size of a limit order or to display pursuant to discretionary authority provided by the customer, and does not believe it necessary to mandate a particular method of recordkeeping.<sup>13</sup> In addition, as stated in other contexts, FINRA believes that firms relying on this or any other exception should be able to proffer evidence of its eligibility for and compliance with the exception.*

*However, FINRA notes that standardized disclaimers or contractual language in new account agreements would not be deemed an individual request by a customer that its order or orders not be displayed.<sup>14</sup> In contrast, adequate evidence of a customer’s request that a firm not display a limit order may, for example, include an affirmative letter from (or contract with) the customer specifically providing that the firm refrain from displaying the full size of a single order or a class of orders, or a notation entered on an order ticket or in the firm’s order-management system made contemporaneously at the time of order receipt.*

**Question 7:** Must ECNs displaying a quotation on an inter-dealer quotation service comply with the limit order display rule?

**Response:** *No. FINRA Rule 6460 applies only to OTC Market Makers. However, we note that an exception exists for OTC Market Makers that deliver immediately a customer limit order to a national securities exchange or an ECN that widely disseminates such order and that complies with certain other requirements. Such requirements prescribe, among other things, that the ECN must provide to an inter-dealer quotation system the prices and sizes of the orders at the highest buy price and the lowest sell price for such security entered in, and widely disseminated by, the ECN.<sup>15</sup>*

**Question 8:** Rule 6437 requires a firm to implement policies and procedures that reasonably avoid displaying, or engaging in a pattern or practice of displaying, locking or crossing quotations in any OTC Equity Security. What is a firm's obligation if it is unable to access another firm's quote?

**Response:** *FINRA recognizes that a firm's quotation may, on occasion, inadvertently lock or cross another firm's quotation. Thus, similar to Rule 6240 (Prohibition from Locking or Crossing Quotations in NMS Stocks), FINRA expects firms' policies and procedures to require the quoting participant to make "reasonable efforts" to first contact or route an order to execute against the full displayed size of any quotation before locking and crossing that quotation.*

*For example, a firm may also include so-called "ship and post" procedures that require that it attempt to execute against a relevant displayed quotation while posting a quotation that could lock or cross such a quotation. In addition, firms' policies and procedures must be reasonably designed to enable the reconciliation of locked or crossed quotations, including requiring the firm to take reasonable action to resolve the locked or crossed market when such firm is responsible for displaying the locking or crossing quotation. If a firm has made reasonable attempts to access another firm's already-existing quotation but is unable to do so, such firm may then display its quotation, even if it would lock or cross the quotation of the other firm.*

**Question 9:** If a firm is holding a customer order that must be re-priced because of a corporate action (e.g., a stock dividend, split or reverse split), may the firm round the adjusted price to a permissible increment?

**Response:** *Yes. As similarly stated by SEC staff in connection with Regulation NMS's minimum pricing increment rule, FINRA Rule 6434 does not require a firm to cancel an order that was permissible when accepted, but for which the price must be adjusted due to a corporate action.<sup>16</sup> However, the firm would violate the rule by displaying or ranking the re-priced order at an increment not permitted by the rule.*

*The same principle applies to other types of orders that were permissible when accepted, but whose prices must be adjusted; e.g., an order accepted before the rule's effective date may be re-priced to conform to the requirements of the rule without canceling the order. Firms always must round down in the case of an order to buy, and up in the case of an order to sell.*

**Question 10:** If a firm receives a customer limit order priced in an increment that may be accepted but not displayed pursuant to Rule 6434, must the firm provide order protection to such un-displayed customer order?

**Response:** *Yes. While firms would not be required to display customer limit orders priced in an increment less than \$0.0001 (pursuant to Rule 6460), a firm's order protection obligations under IM-2110-2 (Trading Ahead of Customer Limit Order) would continue to apply.<sup>17</sup>*

## Endnotes

- 1 See Securities Exchange Act Release No. 62359 (June 22, 2010), 75 FR 37488 (June 29, 2010) (Order Approving File No. SR-FINRA-2009-054). In this order, the SEC also approved proposed changes to FINRA Rules 6430, 6431, 6432, 6433, 6435, 6440, and 6540. The changes to FINRA Rules 6430, 6431, 6432, 6433, 6435, 6440, and 6540 will become effective on February 11, 2011.
- 2 "OTC Equity Security" means any equity security that is not an "NMS stock" as that term is defined in Rule 600(b)(47) of Regulation NMS; provided, however, that the term OTC Equity Security shall not include any Restricted Equity Security. See FINRA Rule 6420(c). Rule 600(b)(47) of Regulation NMS defines "NMS stock" as "any NMS security other than an option." NMS security means "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." See Rule 600(b)(47) of Regulation NMS.
- 3 "OTC Market Maker" refers to a FINRA firm that holds itself out as a market maker by entering proprietary quotations or indications of interest for a particular OTC Equity Security in any inter-dealer quotation system, including any system that the SEC has qualified pursuant to Section 17B of the Exchange Act. A firm is an OTC Market Maker only in those OTC Equity Securities in which it displays market making interest via an inter-dealer quotation system. See FINRA Rule 6420.
- 4 See Rule 6437(b)(1).
- 5 See Rule 6437(b)(2).
- 6 See Frequently Asked Question # 4 above for a discussion of FINRA's expectations with regard to the timing of display of customer limit orders.
- 7 See Frequently Asked Question # 1 above for a discussion of the meaning of "*de minimis*."
- 8 The ECN must (1) provide to a national securities exchange, national securities association or inter-dealer quotation system the prices and sizes of the orders at the highest buy price and the lowest sell price for such security entered in, and widely disseminated by, the ECN; and (2) provide, to any broker or dealer, the ability to effect a transaction with a priced order widely disseminated by the ECN entered therein by an OTC market maker that is: (A) equivalent to the ability of any broker or dealer to effect a transaction with an OTC market maker pursuant to the rules of the applicable national securities exchange, national securities association or inter-dealer quotation system to which the ECN supplies such bids and offers; and (B) at the price of the highest priced buy order or lowest priced sell order, or better, for the lesser of the cumulative size of such priced orders entered therein by OTC market makers at such price, or the size of the execution sought by the broker or dealer, for such security.
- 9 See Securities Exchange Act Release No. 37619A (September 6, 1996); 61 FR 48290 (September 12, 1996) ("SEC Display Rule Adopting Release").
- 10 *Id.* at note 179.

Continued on next page.

## Endnotes continued

- 11 *See* SEC Display Rule Adopting Release. Also, as stated in *Notice to Members 99-99* in connection with the SEC's limit order display requirements, FINRA notes that any systematic delay in the display of customer limit orders, regardless of how long, would constitute a violation of FINRA's limit order display rule. However, there is no "bright line, absolute" standard governing the number of seconds an OTC Market Maker has to complete its choice of displaying, executing, or routing a customer limit order. In addition, a firm may operate an automated system that defaults to display customer limit orders within 30 seconds of receipt, so long as the firm makes every effort to display the limit orders as soon as possible manually or otherwise.
- 12 *See* Securities Exchange Act Release No. 60515 (August 17, 2009), 74 FR 43207 (August 26, 2009) ("Proposing Release").
- 13 *See* SEC Display Rule Adopting Release at note 186.
- 14 *See also* SEC Display Rule Adopting Release at 48304.
- 15 *See* Rule 6460(c)(1).
- 16 Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 612 (Minimum Pricing Increment) of Regulation NMS at Question #3.
- 17 For customer limit orders priced less than \$.00001, the minimum amount of price improvement required is the lesser of \$0.000001 or one-half (1/2) of the current inside spread. *See* NASD IM-2110-2(a).

## Single-Stock Circuit Breakers And Potentially Erroneous Trades

### Amendments to FINRA Rules on Trading Pauses Due to Extraordinary Market Volatility and Clearly Erroneous Transactions in Exchange-Listed Securities

Effective Dates: Amendments to Rule 11892 Became  
Effective September 10, 2010; Amendment to Rule 6121  
Became Effective September 14, 2010

#### Executive Summary

On September 14, 2010, FINRA's individual stock trading-pause (also called a single-stock circuit breaker) pilot was expanded to include securities in the Russell 1000® Index as well as a pilot list of exchange traded products (ETPs).<sup>1</sup>

On September 10, 2010, amendments to FINRA's clearly erroneous rules that refine and clarify the process for making clearly erroneous determinations for over-the-counter (OTC) transactions in exchange-listed securities, including events involving multiple stocks, became effective on a pilot basis. Both pilots are set to end on December 10, 2010.

The text of the amendments can be found in the *FINRA Manual* at [www.finra.org/finramanual](http://www.finra.org/finramanual).

Questions regarding this *Notice* should be directed to:

- FINRA Operations at (866) 776-0800; or
- Racquel Russell, Assistant General Counsel, Office of General Counsel, at (202) 728-8363.

September 2010

#### Notice Type

- Rule Amendment

#### Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Systems
- Trading and Market Making

#### Key Topic(s)

- Clearly Erroneous Transactions
- Quotations
- Trading Halts

#### Referenced Rules & Notices

- FINRA Rule 5260
- FINRA Rule 6121
- FINRA Rule 11892

## Background and Discussion

On September 10, 2010, the SEC approved amendments to FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) to expand the trading-pause pilot, originally adopted on June 10, 2010,<sup>2</sup> to include all stocks in the Russell 1000 Index and specified ETPs.<sup>3</sup> Consistent with the original pilot, the expanded pilot provides that whenever a primary listing market issues a trading pause in a security, FINRA will similarly halt OTC trading by FINRA member firms, including alternative trading systems and market makers. As was the case under the original pilot, FINRA will generally halt OTC trading until trading has resumed on the primary listing market.<sup>4</sup> FINRA reminds firms of their obligation to have policies and procedures in place that are reasonably designed to ensure that, among other things, they promptly cease effecting transactions during a trading halt as required by FINRA Rule 5260 (Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts).

The SEC also approved amendments to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) that include changes to clarify the process for reviewing potentially erroneous trades in exchange-listed securities.<sup>5</sup> The amendments are intended to, among other things, provide for uniform treatment of clearly erroneous reviews of: (1) multi-stock events involving 20 or more securities; and (2) transactions that trigger an individual stock trading pause by a primary listing market and subsequent transactions that occur before the trading halt is in effect for OTC trading.<sup>6</sup>

With respect to multi-stock events, the amended rule creates a new category—multi-stock event involving 20 or more securities—to address clearly erroneous reviews regarding executions in 20 or more securities that occur within a period of five minutes or less. Once a multi-stock event is triggered, FINRA will coordinate with the exchanges and nullify as clearly erroneous all transactions at prices equal to or greater than 30 percent away from the reference price in each affected security, consistent with the following chart (also set forth in Rule 11892 (b)(1)).

<b>Reference Price: Circumstance or Product</b>	<b>Normal Market Hours (9:30 a.m. to 4 p.m. Eastern Time) Numerical Guidelines (Subject Transaction's % Difference From Reference Price):</b>	<b>Outside Normal Market Hours Numerical Guidelines (Subject Transaction's % Difference From Reference Price):</b>
Greater than \$0.00 up to and including \$25.00	10%	20%
Greater than \$25.00 up to and including \$50.00	5%	10%
Greater than \$50.00	3%	6%
Multi-stock event—events involving five or more, but less than 20, securities whose executions occurred within a period of five minutes or less	10%	10%
Multi-stock event—events involving 20 or more securities whose executions occurred within a period of five minutes or less	30%, subject to the terms of paragraph (b)(2) <sup>7</sup>	30%, subject to the terms of paragraph (b)(2)
Leveraged ETF/ETN securities	Normal market hours numerical guidelines multiplied by the leverage multiplier (i.e., 2x)	Normal market hours numerical guidelines multiplied by the leverage multiplier (i.e., 2x)

The amended rule also provides that FINRA will use the Trading Pause Trigger Price in an individual stock<sup>8</sup> as the reference price for clearly erroneous execution reviews of: (i) the transaction that triggered a trading pause; and (ii) subsequent transactions that occur immediately after a transaction that triggered a trading pause, but before a trading halt is in effect for OTC trading, and will apply the guidelines provided in the above chart (other than the numerical guidelines applicable to multi-stock events).<sup>9</sup>

Both rule changes were proposed by FINRA in cooperation with the SEC and the exchanges in response to the market disruption of May 6, 2010, and are intended to address the impact of sudden price changes and provide additional parameters and transparency around reviews of potentially clearly erroneous transactions.

For more information on the individual stock trading-pause pilot, go to [www.finra.org](http://www.finra.org) to see FINRA rule filings FINRA-2010-025 and FINRA-2010-033, and *Regulatory Notice 10-30*. For more information on the amendments to FINRA Rule 11892, see FINRA rule filing FINRA-2010-032. As stated above, the amended rules will operate on a pilot basis. If the pilot is not extended or approved as permanent by December 10, 2010, the prior versions of the rules will be in effect on December 11, 2010.

## Endnotes

- 1 See Exhibit 3 of SR-FINRA-2010-033 for the pilot list of ETPs.
- 2 See Securities Exchange Act Release No. 62251 (June 10, 2010); 75 FR 34183 (June 16, 2010) (Order Approving SR-FINRA-2010-025).
- 3 See Securities Exchange Act Release No. 62883 (September 10, 2010); 75 FR 56608 (September 16, 2010) (Order Approving SR-FINRA-2010-033). On September 10, 2010, the SEC also approved similar rules by several exchanges to expand the single-stock circuit breaker pilot to Russell 1000 securities and certain ETPs.
- 4 When trading has resumed on the primary listing market at the end of the five-minute pause, OTC trading may resume immediately in that security. If a primary listing market extends the trading pause beyond the initial five-minute pause period and reopens the security at or before the end of 10 minutes, OTC trading may resume immediately at that time. In very limited circumstances, FINRA may permit the resumption of OTC trading prior to the resumption of trading on the primary listing market. See *Regulatory Notice 10-30*, Question #6.
- 5 See Securities Exchange Act Release No. 62885 (September 10, 2010); 75 FR 56641 (September 16, 2010) (Order Approving SR-FINRA-2010-032). On September 10, 2010, the SEC also approved similar rule changes filed by several exchanges.
- 6 FINRA also proposed changes to Rule 11892 that, among other things, reduce the ability of FINRA to deviate from the objective standards set forth in the rule.
- 7 During multi-stock events involving 20 or more securities, FINRA will determine the appropriate review period and may use a reference price other than the consolidated last sale in its review of potentially clearly erroneous executions. Decisions made by FINRA in consultation with the exchanges during multi-stock events involving 20 or more securities are not appealable. If a security that is part of a multi-stock event also is subject to a trading pause, the trading-pause review parameters will be applied.
- 8 The Trading Pause Trigger Price is the price calculated by the primary listing market over a rolling five-minute period and may differ from the execution price of the transaction that triggered a trading pause. For example, the Trading Pause Trigger Price for a stock may be calculated as \$15.00, so that any purchases at or below \$15.00 would trigger a trading pause. However, the trade that ultimately triggers a trading pause may be executed at a price lower than the Trading Pause Trigger Price (i.e., \$14.50 in this example). FINRA will use the Trading Pause Trigger Price calculated and communicated by the primary listing market as the Reference Price for calculating clearly erroneous executions, and *not* the execution price of a transaction that triggered a trading pause.
- 9 Trades that occur when a trading halt is in effect are in violation of FINRA Rule 5260 and will be deemed clearly erroneous.

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## Financial and Operational Surveillance

### New Alert-Reporting Criterion for Leverage in FOCUS Reports

#### Executive Summary

In its continued effort to effectively monitor the financial and operational condition of firms, FINRA is publishing the alert-reporting criteria for FOCUS Reports and adding a new criterion for leverage. The new leverage criterion will be implemented with the next scheduled quarterly FOCUS filing.

Questions concerning this *Notice* should be directed to:

- ▶ Ornella Bergeron, Managing Surveillance Director, Risk Oversight and Operational Regulation (ROOR), at (646) 315-8410
- ▶ Rosemarie Fanelli, Managing Surveillance Director, ROOR, at (646) 315-8452.

#### Background & Discussion

SEA Rule 17a-5(a) requires that every broker-dealer registered with the SEC file a periodic FOCUS Report (Part II or Part IIA of Form X-17A-5 Financial and Operational Combined Uniform Single Report) depending upon a firm's activities. These reports, which detail a firm's financial and operational conditions, are submitted electronically to FINRA and serve as the foundation for our financial and operational surveillance program. Our internal technology system compares FOCUS data to pre-established criteria to identify variances and discrepancies, and alerts staff to items that may require further review.

September 2010

#### Notice Type

- ▶ Guidance

#### Suggested Routing

- ▶ Finance
- ▶ Operations
- ▶ Regulatory Reporting

#### Key Topic(s)

- ▶ Financial and Operational Surveillance

#### Referenced Rules & Notices

- ▶ FINRA Rule 4120
- ▶ FINRA Rule 4521
- ▶ SEA Rule 15c3-1
- ▶ SEA Rule 17a-5

FINRA closely monitors the net capital position as well as the profitability of firms for early signs of potential problems. A pattern of sizeable losses provides a warning signal that if such losses were to continue unchecked, the firm could be approaching financial difficulty in the near future.

More detailed reporting may be required to provide a more complete picture of the condition of the firm. When deemed necessary, pursuant to FINRA Rule 4521, FINRA may require a single carrying or clearing firm or group of carrying or clearing firms to report certain financial and operational information weekly, or even daily, where FINRA deems such reports essential for the protection of investors and the public interest.

FINRA's alert-monitoring criteria is designed to more closely surveil those firms that carry customer accounts or self-clear transactions that may be experiencing financial or operational problems that warrant special monitoring. The criteria that historically have been used include:

1. Cumulative losses in two consecutive months equal to or in excess of 25 percent of current excess net capital.
2. Cumulative losses in three consecutive months equal to or in excess of 30 percent of current excess net capital.
3. Net capital ratio at or in excess of 1,000 percent or less than 5 percent of SEA Rule 15c3-3 aggregate debits.
4. Net capital of less than 150 percent of a firm's minimum net capital requirement.
5. Debt/equity ratio of 70 percent or greater for a period of 30 days or more.
6. Net capital of less than 25 percent of haircuts, excluding contractual commitment haircuts.
7. Restriction or reduction in business pursuant to FINRA Rule 4120.
8. Other internal or external factors as determined by the staff, including but not limited to, severe operational or books and records problems, cash flow problems and proprietary and/or customer concentrations.

FINRA is adding an additional criterion to the above list that is intended to measure leverage. The new leverage ratio will be computed by dividing total balance sheet assets, less U.S. Treasury and U.S. government agency inventory by total regulatory capital (the sum of stockholder's equity and subordinated debt). Any carrying or clearing firm whose ratio of such assets to regulatory capital exceeds 20 to one will be identified for further follow-up. If a firm meets this criterion, it should expect to be contacted by its Regulatory Coordinator with a request for more information, including a breakdown of the collateral between government-guaranteed and other securities collateralizing reverse repurchase and securities borrowed agreements.

Firms that continue to exceed the 20 to one ratio, after excluding government-guaranteed assets, will be subject to heightened monitoring. This monitoring may include, but not be limited to, a request for high, low and average monthly balances for certain balance sheet line items, weekly net capital and reserve formula computation estimates, as well as more detail on specific balance sheet line items.

FINRA intends to use the information obtained through this additional monitoring during the next year to determine whether it should implement rulemaking regarding leverage limits.

# Election Notice

## FINRA Small Firm Advisory Board Election

### Executive Summary

The purpose of this *Notice* is to inform FINRA Small Firm members<sup>1</sup> of the upcoming Small Firm Advisory Board (SFAB) election. One seat on the SFAB is up for election: the New York Region seat.

The SFAB provides guidance to FINRA staff, particularly regarding the potential impact of proposed regulatory initiatives on FINRA's small firms, and meets five times a year in Washington, DC, prior to each FINRA Board of Governors meeting. SFAB members are expected to attend SFAB meetings in person, and may be requested to attend certain regional, district and other FINRA meetings. Potential candidates should ensure that their other commitments will allow for their in-person attendance at all SFAB meetings.

Any eligible candidate wishing to have their name added to the ballot must submit the relevant information via a candidate profile form to the Corporate Secretary of FINRA no later than Friday, **October 1, 2010**. The candidate profile form is available online at [www.finra.org/notices/election/090310](http://www.finra.org/notices/election/090310) and as an attachment to this *Notice*.

On or about Friday, October 21, 2010, FINRA will mail the official *Election Notice* and ballots to the executive representatives of small firms in the New York Region to elect their regional representative on the SFAB. Voting will conclude in November 2010 and new members will take office in January 2011.

Questions regarding this *Notice* may be directed to:

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

September 3, 2010

### Suggested Routing

- Executive Representatives
- Senior Management

## Composition of the FINRA Small Firm Advisory Board

The SFAB comprises 10 members:

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

Additionally, the FINRA Board's Small Firm Governors<sup>2</sup> serve as ex-officio members of the SFAB.

The five regional members represent the following geographic regions:

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

As mentioned above, the New York Region seat on the SFAB is up for election.

## Candidate Eligibility

Any senior member of a Small Firm whose primary place of business and who's firm has its main office in the New York region (as indicated in FINRA records) is eligible to have his or her name placed on the SFAB ballot for that region. Senior members of firms include owners, FINOPs, chief executive officers, presidents, chief compliance officers, chief operating officers or individuals of comparable status. Eligible individuals must complete a candidate profile form<sup>3</sup> and submit it, through their firm's Executive Representative, to FINRA's Corporate Secretary. There may be only one candidate per firm on each ballot.

The Corporate Secretary of FINRA must receive SFAB candidate profiles for the upcoming election no later than Friday, October 1, 2010.

FINRA's Corporate Secretary will confirm the firm's status as a small firm and the candidate's eligibility, and include certified candidates on the ballot. Individuals have a continuing obligation to satisfy the firm-size requirement on the date the candidacy is certified by the Corporate Secretary and the date the ballots are mailed. Individuals who fail to meet this requirement will be disqualified from election.

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

## Voting Eligibility

FINRA small firms are eligible to vote for candidates running for the SFAB seat representing the region corresponding to the district to which they are assigned in the Central Registration Depository®. Only those firms eligible to vote for the New York Region seat will receive ballots. The size of each firm and the location of each firm's main office will be verified on the day the ballots are mailed.

Firms may vote for only one candidate listed on the ballot.

## Terms of SFAB Members

The successful candidate will be the individual who receives the most votes and will be elected to serve a three-year term.

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

Once an individual has completed a full three-year elected term on the SFAB, he or she is ineligible to run for reelection to the SFAB for another three years.<sup>4</sup>

## Endnotes

- 1 A Small Firm is defined as a member firm that employs at least one and no more than 150 registered persons. See Article I (ww) of the FINRA By-Laws.
- 2 A Small Firm Governor is defined as a member of the FINRA Board elected by Small Firm members. In order to be eligible to serve, a Small Firm Governor must be registered with a FINRA small firm and must be an Industry Governor. See Article I (xx) of the FINRA By-Laws.
- 3 The SFAB candidate profile form is available at [www.finra.org/notices/election/090310](http://www.finra.org/notices/election/090310) and as an attachment to this Notice.
- 4 The composition of the SFAB was revised in 2008, and in order to maintain continuity on the SFAB, three-year terms were phased in at that time. The individuals initially seated as the North Region and West Region SFAB Representatives were elected to two-year terms and the individuals initially seated as the Midwest and South SFAB Representatives were elected to one-year terms and therefore, were eligible for re-election. The incumbent New York region representative served a full three-year elected term on the SFAB and is ineligible to run for reelection to the SFAB for another three years.

### ATTACHMENT - Candidate Profile Form

An electronic version of this candidate profile form also is available at [www.finra.org/notices/election/090310](http://www.finra.org/notices/election/090310).

Name: \_\_\_\_\_ CRD#: \_\_\_\_\_  
*(as you would like it to appear on official correspondence)*

#### Current Registration

Firm Name \_\_\_\_\_ Firm #: \_\_\_\_\_  
FINRA District No.: \_\_\_\_\_ Number of Registered Representatives at Firm: \_\_\_\_\_  
Title/Primary Responsibility: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

#### Prior Registration *(List the most recent first. Feel free to include extra pages if necessary.)*

Firm: \_\_\_\_\_  
Title/Primary Responsibility: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Title/Primary Responsibility: \_\_\_\_\_

#### General Areas of Expertise

*(please check all that apply)*

- Compliance/Legal
- Corporate Finance
- Financial/Operational
- Institutional Sales
- Investment Advisory
- Retail Sales
- Trading/Market Making
- Other

#### Product Expertise

*(please check all that apply)*

- Corporate Bonds
- Direct Participation Programs
- Equity Securities
- Investment Company
- Municipal/Government Securities
- Options
- Variable Contracts Securities
- Other

#### Memberships/Positions Held in Trade or Business Organizations

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# Trade Reporting Notice

## Price Validation and Price-Override Protocol

### Executive Summary

FINRA is issuing this Notice to explain the price validation protocol of the FINRA trade reporting facilities and to set forth new guidance on the use of the price-override indicator in trade reports. Firms are required to make systems changes necessary to report in accordance with this guidance no later than November 16, 2010.

Questions regarding this *Notice* may be directed to:

- The Legal Section, Market Regulation, at (240) 386-5126;
- FINRA Operations, at (866) 776-0800; or
- Office of General Counsel, at (202) 728-8071.

### Discussion

The Alternative Display Facility (ADF) and Trade Reporting Facilities (TRFs) (collectively referred to herein as the “FINRA Facilities”) price validate OTC trades in NMS stocks by comparing the submitted price against price validation parameters established by FINRA, generally based on a price deviation against the national best bid or offer.<sup>1</sup>

After a trade report is submitted, the FINRA Facility validates the trade price against an initial set of price validation parameters. If the trade price falls outside the parameters, the trade report is rejected, and the reporting firm can resubmit the trade with a price-override indicator. By using the price-override indicator, the reporting firm is confirming that the price it originally entered is correct, even though it is away from the current market.<sup>2</sup> After the trade has been resubmitted with the price-override indicator, it is price validated a second time with significantly wider parameters. If the trade is correct but outside of this second set of parameters, it must be entered manually through ADF or TRF Operations.<sup>3</sup>

The price validation protocol is an important check in the trade reporting process. As noted above, rejection of a trade outside the price validation parameters requires that the reporting firm confirm that the reported price is, in fact, the correct price as agreed upon by the parties. This helps reduce the likelihood that erroneously reported trade prices are disseminated to the tape.

September 17, 2010

### Key Topic(s)

- Alternative Display Facility
- OTC Reporting Facility
- Price-Override
- Price Validation
- Trade Reporting
- Trade Reporting Facilities
- Trading Halts

### Referenced Rules & Notices

- FINRA Rule 2010
- FINRA Rule 6121
- FINRA Rule 6282
- FINRA Rule 6380A
- FINRA Rule 6380B
- Regulatory Notice 10-30

Proper trade reporting has become increasingly important because of the single-stock trading pause pilot.<sup>4</sup> Specifically, a firm that reports a trade with an incorrect price could trigger a trading pause in certain stocks, and trading in the stock may be unnecessarily halted, which is inconsistent with the intent and purpose of the trading pause rules. To reduce the potential for unnecessary trading halts in stocks that are eligible for the single-stock circuit breaker pilot, FINRA continues to review and make certain adjustments to the price validation parameters as necessary for these securities.

Firms must not report trades in a manner designed to circumvent this important system and operational protocol; *e.g.*, by programming their systems to automatically append the price-override indicator to their trade reports. The price-override indicator should be appended to a trade report only after the trade has been rejected by a FINRA Facility. Any firm that has programmed its systems to append the price-override indicator to its trade reports prior to rejection of the trade must make the technological changes necessary to cease this practice as soon as possible, and no later than November 16, 2010 (60 days from the date of this *Notice*).

While the single-stock circuit breaker pilot applies only to certain NMS stocks, the price validation protocol applies to reports of OTC trades in all equity securities, including OTC Equity Securities submitted to the OTC Reporting Facility (ORF). Therefore, firms must comply with the guidance set forth in this *Notice* when reporting to the ORF as well.

After November 16, 2010, a pattern and practice of reporting trades with the price-override indicator not in accordance with the established protocol and this guidance may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010.

## Endnotes

- 1 A different set of parameters is applied to trades reported with a trade modifier that indicates that the price is away from the current market; *e.g.*, a modifier that indicates that the trade qualifies for an exception or exemption under Regulation NMS.
- 2 If the firm realizes the trade price was reported in error, then it can re-report the trade with the correct price.
- 3 To the extent this process (*i.e.*, rejection of the trade by the FINRA Facility and resubmission of that trade by the reporting firm) results in a late reported trade, FINRA will take this into account when enforcing the rules on timely trade reporting.
- 4 See FINRA Rule 6121 and *Regulatory Notice 10-30* (June 2010).

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# Information Notice

## August 2010 Supplement to the Security Futures Risk Disclosure Statement

Effective Date: October 7, 2010

FINRA has released the August 2010 Supplement (Supplement) to the October 2002 Security Futures Risk Disclosure Statement (Statement).<sup>1</sup> The Statement contains general disclosures on the characteristics and risks of security futures. The Supplement adds new disclosure to accommodate proposed changes by OneChicago, LLC to list a class of security futures for which adjustments will be made for ordinary dividends. The Supplement should be read in conjunction with the current Statement, both of which are available at [www.finra.org/issues/securityfutures](http://www.finra.org/issues/securityfutures).

FINRA Rule 2370(b)(11)(A) requires broker-dealers to deliver the current Statement to each customer at or prior to the time the customer's account is approved for trading security futures. Thereafter, each new or revised Statement shall be distributed to every customer having an account approved for such trading or, in the alternative, shall be distributed not later than the time a confirmation of a transaction is delivered to each customer who enters into a security futures transaction. The rule requires FINRA to advise firms when revisions to the Statement are made.

To comply with the requirements of FINRA Rule 2370(b)(11)(A), firms may distribute the Supplement in various ways, including, but not limited to, one of the following:

1. conducting a mass mailing of the Supplement to all of its customers approved to trade security futures who have already received the Statement; or
2. distributing the Supplement to a customer who has already received the Statement not later than the time a confirmation of a transaction is delivered to each customer that enters into a security futures transaction.

September 7, 2010

### Suggested Routing

- Compliance
- Institutional
- Legal
- Senior Management
- Trading

### Key Topic(s)

- Security Futures
- Security Futures Risk Disclosure Statement

### Referenced Rules & Notices

- FINRA Rule 2370
- NTM 98-3

## Endnotes

FINRA reminds firms that they may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the Statement and Supplement, provided the firm adheres to the standards contained in the May 1996 and October 1995 Securities Exchange Commission Releases,<sup>2</sup> and as discussed in *Notice to Members 98-3* ([www.finra.org/notices/ntm/98-3](http://www.finra.org/notices/ntm/98-3)). Firms may also transmit the Statement and Supplement to customers who have consented to electronic delivery through the use of a hyperlink.

The effective date for the August 2010 Supplement is October 7, 2010.

Questions regarding this *Notice* may be directed to Matthew E. Vitek, Counsel, Office of General Counsel, at (202) 728-8156.

## Endnotes

- 1 See Securities Exchange Act Release No. 62787 (August 27, 2010), 75 FR 53998 (September 2, 2010) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2010-045).
- 2 See Securities Act Release No. 7288 (May 9, 1996) 61 FR 24644 (May 15, 1996) and Securities Act Release No. 7233 (October 6, 1995) 60 FR 53458 (October 13, 1995).