

# Notices

## Regulatory Notices

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## Election Notice

- 08/05/11** FINRA Announces Nominees for Open Seats on the National Adjudicatory Council

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## Testing and Continuing Education

### Changes to Fees for Cancelling or Rescheduling a Qualification Examination or Regulatory Element Continuing Education Session

Effective Date: September 1, 2011

#### Executive Summary

FINRA has filed for immediate effectiveness amendments to Section 4 of Schedule A to the FINRA By-Laws to establish a fee for individuals who cancel or reschedule a qualification examination or Regulatory Element Continuing Education (Regulatory Element) session three to 10 business days prior to the appointment date.<sup>1</sup> The changes are effective September 1, 2011.

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

Questions concerning this *Notice* should be directed to Jeanne Hartman, Director of Operations, Testing and Continuing Education, at (240) 386-6348.

#### Background & Discussion

As part of the registration process, securities professionals must pass a qualification examination to demonstrate competence in the areas in which they will work. In addition, such individuals must complete the appropriate Regulatory Element program subsequent to their initial qualification and registration with FINRA, as set forth in NASD Rule 1120.<sup>2</sup> FINRA currently administers examinations and Regulatory Element programs via computer at testing centers operated by vendors under contract with FINRA.

To request and schedule an appointment for a qualification examination, a firm must file a Form U4 (Uniform Application for Securities Industry Registration or Transfer) through the Central Registration Depository (Web CRD®).<sup>3</sup> After the request is processed, an enrollment window opens on Web CRD. For Regulatory Element programs, an enrollment window automatically

#### August 2011

##### Notice Type

- ▶ Rule Amendment

##### Suggested Routing

- ▶ Compliance
- ▶ Continuing Education
- ▶ Legal
- ▶ Registered Representatives
- ▶ Registration
- ▶ Senior Management

##### Key Topics

- ▶ Continuing Education
- ▶ Qualification Examination Fees
- ▶ Regulatory Element Fees
- ▶ Testing

##### Referenced Rules & Notices

- ▶ FINRA Rule 1250
- ▶ NASD Rule 1120
- ▶ Regulatory Notice 11-33
- ▶ Section 4 of Schedule A to the By-Laws

opens for registered persons in covered registration categories for the requisite program on the second anniversary of their initial securities registration and every three years thereafter. Once an individual or an individual's firm receives the enrollment notification for an examination or Regulatory Element session, the individual may then contact a FINRA authorized testing center to schedule an appointment.

After an individual schedules an examination or Regulatory Element session, he or she may cancel or reschedule the appointment by contacting the testing center. Currently, FINRA does not impose a fee for cancelling or rescheduling an appointment by noon two business days before the scheduled session. However, FINRA charges a cancellation fee equal to the examination or Regulatory Element session fee if this deadline is not met, if an individual does not appear for an appointment, or if an individual arrives so late for an appointment that the examination or Regulatory Element session cannot begin without disrupting the testing center's schedule.<sup>4</sup>

Beginning September 1, 2011, FINRA will implement a fee for individuals who cancel or reschedule a qualification examination or Regulatory Element session within three to 10 business days of a scheduled appointment date.<sup>5</sup> The amount of the fee will be one-half of the fee of the examination or Regulatory Element session being cancelled or rescheduled, and it will be assessed for any examination or Regulatory Element session that is cancelled or rescheduled on or after September 1, 2011.<sup>6</sup>

## Endnotes

1. See Securities Exchange Act Release No. 64961 (July 26, 2011), 76 FR 45883 (August 1, 2011) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2011-026). The amendments also add a reference to the fee for individuals who fail to timely appear for a scheduled Regulatory Element session or who cancel or reschedule such a session within two business days prior to the appointment date.
2. The SEC recently approved the adoption of NASD Rule 1120 (Continuing Education Requirements) as FINRA Rule 1250 (Continuing Education Requirements) in the consolidated FINRA rulebook with certain changes. See Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of SR-FINRA-2011-013). FINRA Rule 1250 becomes effective on October 17, 2011. See [Regulatory Notice 11-33](#) (July 2011).
3. Individuals who are not employed or associated with a FINRA member must file a Form U10 (Uniform Examination Request for Non-FINRA Candidates) with FINRA to schedule an examination.
4. Further information about the cancellation policy is available on [FINRA's website](#).
5. This fee will be assessed for the qualification examinations set forth in Section 4(c) of Schedule A to the FINRA By-Laws and all Regulatory Element programs. In addition, depending on the terms of agreement, the fee also may apply for those qualification examinations that FINRA delivers for other entities (e.g., the North American Securities Administrators Association, the National Futures Association, the Federal Deposit Insurance Corporation).
6. The fee must be paid at the time the examination or Regulatory Element session is cancelled or rescheduled. In those circumstances where the fee is not paid in a timely manner, FINRA instead will assess a fee equal to the examination or Regulatory Element session fee if the individual does not appear for the scheduled appointment. Information on cancelling or rescheduling an appointment is available on [FINRA's website](#).

## Attachment A

Below is the text of the amendments. New language is underlined; deletions are in brackets.

\*\*\*\*\*

### SCHEDULE A TO THE BY-LAWS OF THE CORPORATION

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#### Section 4 – Fees

(a) and (b) No change.

(c) The following fees shall be assessed to each individual who registers to take an examination as described below. These fees are in addition to the registration fee described in paragraph (b) and any other fees that the owner of an examination that FINRA administers may assess.

Series 4	Registered Options Principal	\$90
Series 6	Investment Company Products/Variable Contracts Representative	\$85
Series 7	General Securities Representative	\$265
Series 9	General Securities Sales Supervisor — Options Module	\$70
Series 10	General Securities Sales Supervisor — General Module	\$110
Series 11	Assistant Representative — Order Processing	\$70
Series 14	Compliance Official	\$320
Series 16	Supervisory Analyst	\$210
Series 17	Limited Registered Representative	\$70
Series 22	Direct Participation Programs Representative	\$85
Series 23	General Securities Principal Sales Supervisor Module	\$85
Series 24	General Securities Principal	\$105
Series 26	Investment Company Products/Variable Contracts Principal	\$85
Series 27	Financial and Operations Principal	\$105
Series 28	Introducing Broker-Dealer Financial and Operations Principal	\$85
Series 37	Canada Module of S7 (Options Required)	\$160
Series 38	Canada Module of S7 (No Options Required)	\$160
Series 39	Direct Participation Programs Principal	\$80

Series 42	Registered Options Representative	\$65
Series 51	Municipal Fund Securities Limited Principal	\$85
Series 52	Municipal Securities Representative	\$95
Series 53	Municipal Securities Principal	\$95
Series 55	Limited Representative — Equity Trader	\$95
Series 62	Corporate Securities Limited Representative	\$80
Series 72	Government Securities Representative	\$95
Series 79	Investment Banking Qualification Examination	\$265
Series 82	Limited Representative — Private Securities Offering	\$80
Series 86	Research Analyst — Analysis	\$160
Series 87	Research Analyst — Regulatory	\$115

(1) No change.

(2) There shall be a service charge of \$15.00 in addition to those fees specified above for any examination taken in a foreign test center located outside the territorial limits of the United States.

[(2)3] There shall be a service charge equal to the examination or Regulatory Element session fee assessed to each individual who, having made an appointment for a specific time and place for computer-based administration of an examination listed above or Regulatory Element session, fails to timely appear for such appointment [examination] or [timely] cancels or reschedules such appointment within two business days prior to the appointment date.

[(3) There shall be a service charge fee of \$15.00 in addition to those fees specified above for any examination taken in a foreign test center located outside the territorial limits of the United States.]

(4) There shall be a service charge equal to one-half of the examination or Regulatory Element session fee assessed to each individual who, having made an appointment for a specific time and place for computer-based administration of an examination listed above or Regulatory Element session, cancels or reschedules such appointment three to 10 business days prior to the appointment date.

(d) through (h) No change.

\* \* \* \* \*

## Trading Halts Due To Extraordinary Market Volatility

### Trading Pause Rule Expanded to All NMS Stocks

Effective Date: August 8, 2011

#### Executive Summary

Beginning August 8, 2011, the trading pause pilot rule—currently applicable only to securities included in the S&P 500® Index, the Russell 1000® Index and a list of selected exchange-traded products (ETPs)—will be expanded to include all National Market System (NMS) stocks.

The text of the rule amendments can be found in the online [FINRA Manual](#).

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.

#### Background and Discussion

On June 23, 2011, the SEC approved amendments to FINRA Rule 6121 (Trading Halts Due to Extraordinary Market Volatility) (the trading pause pilot rule), along with similar amendments by other self-regulatory organizations (SROs), to expand the scope of the trading pause pilot rules to all NMS stocks.<sup>1</sup> Under the current trading pause pilot rule, which applies only to the securities included in the S&P 500 Index and the Russell 1000 Index, along with a list of selected ETPs, the primary market will halt or pause the trading in a stock if the price of the security has declined 10 percent or more within a rolling five-minute period.<sup>2</sup> Pursuant to Rule 6121, FINRA also will halt over-the-counter trading in that stock for the duration of the pause.<sup>3</sup>

#### July 2011

##### Notice Type

- ▶ Rule Amendment

##### Suggested Routing

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

##### Key Topics

- ▶ Single-Stock Circuit Breaker
- ▶ Trading Halts
- ▶ Trading Pause

##### Referenced Rules & Notices

- ▶ FINRA Rule 6121
- ▶ Regulatory Notice 10-30
- ▶ Regulatory Notice 10-43

Effective August 8, 2011, the expanded pilot will cover all remaining NMS stocks and will require a threshold move of 30 percent (or more) to trigger a trading pause for these securities where they are priced at least \$1.00,<sup>4</sup> and a threshold move of 50 percent (or more) where such securities are priced less than \$1.00.

This expansion of the trading pause pilot applies the trading pause protections against excessive volatility to a wider group of securities, and also permits further review and assessment of the operation of the trading pauses, including whether alternative measures are appropriate.<sup>5</sup>

For more information, please see FINRA's [rule change](#) and Regulatory Notices [10-43](#) and [10-30](#).

## Endnotes

1. See Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (Order Approving SR-FINRA-2011-023).
2. The 10 percent threshold will continue to apply to the securities currently included in the pilot (*i.e.*, the securities in the S&P 500 Index, the Russell 1000 Index and the list of selected ETPs).
3. See Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (Order Approving File No. SR-FINRA-2010-025).
4. The price of a security will be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.
5. On April 5, 2011, FINRA (along with other SROs) filed a proposed NMS Plan to create a market-wide limit up-limit down mechanism to address extraordinary market volatility in NMS stocks. As proposed, the limit up-limit down mechanism would replace the existing trading pause pilot. See Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

## Financial Responsibility

### Application of the SEC's Financial Responsibility Rules in Response to the Downgrade of U. S. Long-Term Credit Rating by Standard & Poor's

#### Executive Summary

This *Notice* is being issued in response to the downgrade of the United States long-term credit rating by Standard & Poor's, issued on August 5, 2011, and provides guidance to firms on the application of the Securities and Exchange Commission's (SEC) Net Capital and Customer Protection Rules to United States Treasury securities and other securities issued, or guaranteed as to principal and interest, by the United States or any of its governmental agencies.

Questions concerning this *Notice* may be directed to your firm's Regulatory Coordinator.

#### Background & Discussion

Following the action taken by Standard & Poor's on August 5, 2011, reducing the long-term credit rating of the United States, FINRA has received inquiries from several member firms regarding the impact of this ratings action to the application of the SEC's Net Capital and Customer Protection rules.

Under SEA Rule 15c3-1, the credit rating assigned to United States Treasury securities or other securities issued, or guaranteed as to principal *or* interest, by the United States or any of its governmental agencies (government securities), by any credit ratings agency, is not a factor in determining the net capital treatment for such securities. FINRA staff has confirmed with the staff of the SEC that this ratings action by Standard & Poor's does not alter the net capital treatment of these government securities under SEA Rule 15c3-1(c)(2)(vi)(A).

In addition, SEC staff has confirmed that the ratings action by Standard & Poor's does not affect the definition of "qualified security" under SEA Rule 15c3-3(a)(6). Broker-dealers may continue to use securities issued, or securities whose principal *and* interest is guaranteed, by the United States to meet their deposit requirement under SEA Rule 15c3-3(e)(1).

August 2011

#### Notice Type

- ▶ Guidance

#### Suggested Routing

- ▶ Compliance
- ▶ Finance
- ▶ Legal
- ▶ Operations
- ▶ Regulatory Reporting
- ▶ Senior Management

#### Key Topics

- ▶ Customer Protection
- ▶ Financial Responsibility
- ▶ Net Capital

#### Referenced Rules

- ▶ SEA Rule 15c3-1
- ▶ SEA Rule 15c3-3

## Social Media Websites and the Use of Personal Devices for Business Communications

### Guidance on Social Networking Websites and Business Communications

#### Executive Summary

In January 2010, FINRA issued [Regulatory Notice 10-06](#), providing guidance on the application of FINRA rules governing communications with the public to social media sites and reminding firms of the recordkeeping, suitability, supervision and content requirements for such communications. Since its publication, firms have raised additional questions regarding the application of the rules. This *Notice* responds to these questions by providing further clarification concerning application of the rules to new technologies. It is not intended to alter the principles or the guidance provided in [Regulatory Notice 10-06](#).

Questions concerning this *Notice* may be directed to:

- ▶ Joseph E. Price, Senior Vice President, Advertising Regulation/Corporate Financing, at (240) 386-4623;
- ▶ Thomas A. Pappas, Vice President, Advertising Regulation, at (240) 386-4553; or
- ▶ Amy Sochard, Director, Advertising Regulation, at (240) 386-4508.

#### August 2011

##### Notice type:

- ▶ Guidance

##### Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representative
- ▶ Senior Management

##### Key Topics

- ▶ Communications With the Public
- ▶ Personal Electronic Devices
- ▶ Recordkeeping
- ▶ Social Networking Websites
- ▶ Supervision

##### Referenced Rules & Notices

- ▶ NASD Rule 2210
- ▶ NASD Rule 2211
- ▶ NASD Rule 3010
- ▶ FINRA Rule 4511
- ▶ NTM 05-48
- ▶ Regulatory Notice 08-77
- ▶ Regulatory Notice 10-06
- ▶ Regulatory Notice 11-14
- ▶ SEA Rule 17a-3
- ▶ SEA Rule 17a-4

## Background

### 1. Recordkeeping

The obligations of a firm to keep records of communications made through social media depend on whether the content of the communication constitutes a business communication. Rule 17a-4(b) under the Securities Exchange Act of 1934 (SEA) requires broker-dealers to preserve certain records for a period of not less than three years, the first two in an easily accessible place.<sup>1</sup> Among these records, pursuant to SEA Rule 17a-4(b)(4), are “[o]riginals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public.”<sup>2</sup> The SEC has stated that the content of an electronic communication determines whether it must be preserved.<sup>3</sup>

### 2. Supervision

NASD Rule 3010 requires each firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable federal securities laws and FINRA rules. As part of this responsibility, a registered principal must review prior to use any social media site that an associated person intends to employ for a business purpose. The registered principal may approve use of the site for a business purpose only if the registered principal has determined that the associated person can and will comply with all applicable FINRA rules, the federal securities laws, including recordkeeping requirements, and any additional requirements established by the firm.

The registered principal must review an associated person’s proposed social media site in the form in which it will be “launched.” Some firms require a registered principal to review the first posting by an associated person on an interactive forum within the site. This approach can help to ensure that the registered principal will be reviewing not only the initial communication, but the social media site itself in its completed design.

FINRA considers unscripted participation in an interactive electronic forum to come within the definition of “public appearance” under NASD Rule 2210. Public appearances do not require prior approval by a registered principal. Firms may adopt risk-based supervisory procedures utilizing post-use review, including sampling and lexicon-based search methodologies, of unscripted participation in an interactive electronic forum. The procedures a firm adopts must be reasonably designed to ensure that interactive electronic communications do not violate FINRA or SEC rules, including the content requirements of NASD Rule 2210, such as the prohibition on misleading statements or claims and the requirement that communications be fair and balanced. A static posting is deemed an “advertisement” under NASD Rule 2210 and therefore requires a registered principal to approve the posting prior to use.<sup>4</sup>

### 3. Links to Third-Party Sites

Firms may not establish a link to any third-party site that the firm knows or has reason to know contains false or misleading content. A firm should not include a link on its website if there are any red flags that indicate the linked site contains false or misleading content. Additionally, a firm is responsible under NASD Rule 2210 for content on a linked third-party site if the firm has adopted or has become entangled with its content. For example, a firm may be deemed to have “adopted” third-party content if it indicates on its site that it endorses the content on the third-party site. A firm could be deemed to have become “entangled” with a third-party site if, for example, it participates in the development of the content on the third-party site.

### 4. Data Feeds

Firms must adopt procedures to manage data feeds into their own websites. FINRA is aware of situations in which firms have received data feeds that were inaccurate. Firms must be familiar with the proficiency of the vendor of the data and its ability to provide data that is accurate as of the time it is presented on the firm’s website. Firms also must understand the criteria followed by vendors in gathering or calculating the types of data that the firm intends to feed into its website, in order to determine whether the vendor is performing this function in a reasonable manner.<sup>5</sup> Firms also should regularly review aspects of these data feeds for any red flags that indicate that the data may not be accurate, and should promptly take necessary measures to correct any inaccurate data.

## Questions & Answers

### Recordkeeping

- Q1:** Does determining whether a communication is subject to the recordkeeping requirements of SEA Rule 17a-4(b)(4) depend on whether an associated person uses a personal device or technology to make the communication?
- A1:** SEA Rule 17a-4(b)(4) requires a firm to retain records of communications that relate to its “business as such.” Whether a particular communication is related to the business of the firm depends upon the facts and circumstances. This analysis does not depend upon the type of device or technology used to transmit the communication, nor does it depend upon whether it is a firm-issued or personal device of the individual; rather, the content of the communication is determinative. For instance, the requirement would apply if the electronic communication was received or sent by an associated person through a third-party’s platform or system. A firm’s policies and procedures must include training and education of its associated persons regarding the differences between business and non-business communications and the measures required to ensure that any business communication made by associated persons is retained, retrievable and supervised.

- Q2:** When an associated person posts autobiographical information, such as place of employment or job responsibilities, does this information constitute a business communication?
- A2:** As discussed in question 1 above, firms must develop policies and procedures that include training regarding the difference between business and non-business communications to enable appropriate compliance. In certain contexts, such as sending a resume to a potential employer, the communication could be viewed as not relevant to the business of the firm. In other contexts, such as posting a list of products or services offered by the firm, the communication likely will be viewed as a business communication.
- Q3:** May a firm or associated person sponsor a social media site or use a communication device that includes technology which automatically erases or deletes the content?
- A3:** No. Technology that automatically erases or deletes the content of an electronic communication would preclude the ability of the firm to retain the communications in compliance with their obligations under SEA Rule 17a-4. Accordingly, firms and associated persons may not sponsor such sites or use such devices.
- Q4:** Do the recordkeeping requirements apply to third-party posts to a firm or an associated person's social media sites if the firm or the individual has not adopted or become entangled with the post?
- A4:** *Regulatory Notice 10-06* addresses the application of NASD Rule 2210 to third-party posts on a social media site established by a firm or its associated persons. Unless the firm or its associated persons have adopted or become entangled with the post, FINRA generally does not treat third-party posts as the firm's or its associated persons' communications under the rule. The recordkeeping requirements, however, require retention of the records of all communications received by a firm or its associated persons relating to its business as such.
- Q5:** Do the recordkeeping requirements differ for static and interactive communications?
- A5:** They do not—the recordkeeping requirements are governed by the content of the communication. As noted above, the FINRA *supervision* requirements differ for static and interactive communications.

## Supervision

**Q6: Can interactive content become static?**

**A6:** Yes. For example, interactive content could be copied or forwarded and posted in a static forum, such as a blog or static area of a Web page, in a manner that renders it static content. It then would constitute an advertisement under NASD Rule 2210, requiring prior approval by a registered principal of the firm.

**Q7: What measures should a firm adopt to monitor compliance with its social media policies?**

**A7:** A firm must conduct appropriate training and education concerning its policies, including those relating to social media. Firms must follow up on “red flags” that may indicate that an associated person is not complying with firm policies. Some firms require each associated person to certify on an annual or more frequent basis that the associated person is acting in a manner consistent with such policies. When feasible, some firms also have chosen to randomly spot check websites to help them monitor compliance with firm policies.

**Q8: Must material changes to static content posted by a firm or its associated persons on a social media site that contains business communications receive prior approval by a registered principal?**

**A8:** NASD Rule 2210(1)(b) requires a registered principal to approve each advertisement and item of sales literature before the earlier of its use or filing with FINRA’s Advertising Regulation Department. NASD Rule 2210(c)(8) excludes from the filing requirements any advertisement or sales literature that previously had been filed and that is to be used “without material change.” Firms are expected to adopt procedures requiring prior registered principal approval of any advertisement or sales literature that has been materially changed, even if it had been previously approved in an earlier version. For example, changes in the description of the advantages of investing in the advertised product or of its risks would typically require registered principal prior approval. Since static content posted by a firm or its associated persons on a social media site that contains business communications is considered to be an advertisement, these procedures must apply to such static content.

## Third-Party Posts, Third-Party Links and Websites

**Q9:** If a third party posts a business-related communication, such as a question about a security, on an associated person's personal social media site, may the associated person respond to the communication?

**A9:** Yes, provided that the response does not violate the firm's policies concerning participation on a personal social media site. If a firm has a policy that associated persons may not use a personal social media site for business purposes, then a substantive response by the associated person would violate this policy.<sup>6</sup> Some firms permit a non-substantive response, and pre-approve statements that their associated persons may make to respond to such posts and that direct the third party to other firm-approved communication media, such as the firm's email system.

**Q10:** To what extent is a firm responsible for any third-party website that the firm or its associated person "co-brands"?

**A10:** Under NASD Rule 2210, a firm that co-brands any part of a third-party site, such as by placing the firm's logo prominently on the site, is responsible for the content of the entire site. Under these circumstances, FINRA considers the firm to have adopted the content on that site. A firm is responsible under NASD Rule 2210 for content on a linked third-party site if the firm has adopted or become entangled with its content. [\*Regulatory Notice 10-06\*](#) describes the "adoption" and "entanglement" theories as they apply to third-party posts on a firm's social media sites. FINRA considers a firm to have adopted content in a third-party post if the firm or its personnel explicitly or implicitly endorse or approve the post.

**Q11:** When is a firm *not* responsible for the content on a third-party site to which it links?

**A11:** A firm may establish a link to the site of an independent third party without assuming responsibility for the content of that site under NASD Rule 2210 if:

- ▶ the firm does not "adopt" or become "entangled" with the content of the third-party site; and
- ▶ the firm does not know or have reason to know that the site contains false or misleading information.

**Q12:** If firm policy requires deletion of inappropriate third-party content, will the firm be considered to have adopted any third-party posts that are not deleted?

**A12:** No. The fact that the firm has a policy of routinely blocking or deleting certain types of content in order to ensure the content is appropriate would not mean that the firm had adopted the content of the posts left on the site. For example, most firms using social media sites block or screen offensive material. Such a policy would not indicate that the firm has adopted the remaining third-party content.

**Q13: Does NASD Rule 2210 require firms to approve or maintain records of statistical information that the firm has regularly updated on its website?**

**A13:** NASD Rule 2210(b)(1) requires that a registered principal approve each advertisement and item of sales literature prior to use or filing with FINRA's Advertising Regulation Department. NASD Rule 2210(b)(2) requires firms to maintain all advertisements and sales literature, including the names of the persons who prepared them or approved their use, for a period beginning on the date of first use and ending three years from the date of last use.

Statistical information that is posted on a firm's website would be considered an "advertisement" subject to the approval and recordkeeping requirements of NASD Rules 2210(b)(1) and (2). However, some firms establish templates for the presentation of this data, and subject these templates to those provisions. The data that is fed into the website in accordance with such a template would not be subject to the requirements of NASD Rules 2210(b)(1) and (2). The firm must have procedures reasonably designed to ensure that the data can be verified to ensure that it is timely and accurate, and that the firm can promptly correct data that is erroneous when posted or becomes inaccurate over time.

## Accessing Social Media Sites From Personal Devices

**Q14: May associated persons use personal communication devices and other equipment, such as a smart phone or tablet computer, to access firm business applications and perform business activity if the firm employs technology that enables the firm to keep records and supervise the activity?**

**A14:** Yes. Firms may permit their associated persons to use any personal communication device, whether it is owned by the associated person or the firm, for business communications. FINRA recognizes that the development of new technologies can facilitate the ability of associated persons to perform their responsibilities and, in the case of registered representatives, to serve their clients. Of course, the firm must be able to retain, retrieve and supervise business communications regardless of whether they are conducted from a device owned by the firm or by the associated person.

In order to ensure that the business communications are readily retrievable without necessitating the capture of personal communications made on the same device, firms should have the ability to separate business and personal communications, such as by requiring that the associated persons use a separately identifiable application on the device for their business communications. If possible, this application should provide a secure portal into the firm's own communication system, particularly if confidential customer information may be shared. If the firm has the ability to separate business and personal communications, and has adequate electronic communications policies and procedures regarding usage, then the firm is not required to supervise the personal emails made on these devices. Of course, firms also are free to treat all communications made through the personal communication device as business communications.

## Endnotes

1. SEA Rule 17a-4(f) permits broker-dealers to maintain and preserve these records on “micrographic media” or by means of “electronic storage media,” as defined in the rule and subject to a number of conditions.
2. See also NASD Rule 2210(b)(2) (requiring the retention of all advertisements, sales literature and independently prepared reprints), NASD Rule 2211(b)(2) (requiring the retention of institutional sales material) and NASD Rule 3010(d)(3) (requiring the retention of correspondence of registered representatives).
3. See Reporting Requirements for Brokers or Dealers under the Securities Exchange Act of 1934, SEC Rel. No. 34-38245 (Feb. 5, 1997).
4. FINRA has filed with the SEC a proposed rule change that would replace most of the NASD and NYSE rules governing communications with the public with a series of new FINRA rules. See SR-FINRA-2011-035. Among other changes, the term “advertisement” would be subsumed within a new communication category, “retail communication.”
5. Cf., [Regulatory Notice 08-77](#) (Dec. 2008) (Customer Account Statements) (discussion of “data vendors”). See also [Notice to Members \(NTM\) 05-48](#) (July 2005) (Members’ Responsibilities When Outsourcing Activities to Third-Party Service Providers); [Regulatory Notice 11-14](#) (March 2011) (FINRA Requests Comment on Proposed New FINRA Rule 3190 to Clarify the Scope of a Firm’s Obligations and Supervisory Responsibilities for Functions or Activities Outsourced to a Third-Party Service Provider).
6. Of course, if the firm permits business-related communications on a personal social media site, then the firm must supervise that site for compliance with applicable rules and the federal securities laws.

## Trade Reporting

### SEC Approves Amendments Clarifying Certain Exceptions Under Trade Reporting Rules and Adopting Notice Requirement for Transactions That Are Part of an Unregistered Secondary Distribution

Effective Date: November 1, 2011

#### Executive Summary

The SEC approved amendments to FINRA rules clarifying that, for purposes of the exception from the trade reporting requirements for transactions that are part of a distribution of securities, “distribution” has the meaning set forth under SEC Regulation M. Effective November 1, 2011, firms that rely on the exception for transactions that are part of an “unregistered secondary distribution” must provide FINRA notice and information relating to the transactions, as described herein.

The SEC also approved amendments clarifying that transfers of securities for the purpose of creating or redeeming instruments such as American Depositary Receipts and exchange-traded funds are expressly excluded from the trade reporting requirements.

The text of the amendments can be found at [www.finra.org/rulefilings/2011-027](http://www.finra.org/rulefilings/2011-027).

Questions regarding this *Notice* may be directed to:

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

#### August 2011

##### Type of Notice

- ▶ Rule Amendment

##### Suggested Routing

- ▶ Compliance
- ▶ Executive Representatives
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading
- ▶ Training

##### Key Topics

- ▶ Alternative Display Facility
- ▶ American Depositary Receipts
- ▶ Distributions
- ▶ Exchange-Traded Funds
- ▶ NMS Stocks
- ▶ OTC Equity Securities
- ▶ OTC Reporting Facility
- ▶ Trade Reporting
- ▶ Trade Reporting Facilities

##### Referenced Rules & Notices

- ▶ FINRA Rule 5190
- ▶ FINRA Rule 6282
- ▶ FINRA Rule 6380A
- ▶ FINRA Rule 6380B
- ▶ FINRA Rule 6622
- ▶ NTM 07-25
- ▶ Schedule A to the FINRA By-Laws
- ▶ SEC Regulation M

## Background and Discussion

Under FINRA trade reporting rules, firms are required to report OTC equity transactions<sup>1</sup> to FINRA unless they fall within an express exception. As a general matter, when firms report OTC trades, FINRA facilitates the public dissemination of the trade information and/or assesses regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws (Section 3)<sup>2</sup> and the Trading Activity Fee (TAF).<sup>3</sup>

Certain transactions and transfers are not reported to FINRA at all (*e.g.*, trades executed and reported through an exchange and transfers made pursuant to an asset purchase agreement that has been approved by a bankruptcy court), while other transactions must be reported to FINRA for regulatory transaction fee assessment purposes only (*e.g.*, away from the market sales and transfers in connection with certain corporate control transactions).<sup>4</sup> Firms must have policies and procedures and internal controls in place, including, as necessary, consultation with their counsel, to determine whether a transaction qualifies for an exception under the rules.

On August 3, 2011, the SEC approved a rule change relating to certain exceptions to the trade reporting requirements.<sup>5</sup> As described more fully below, the amendments:

- 1) clarify the exception for transactions that are part of a distribution of securities and impose a new notice requirement relating to unregistered secondary distributions, and
- 2) expressly exclude transfers of equity securities for the purpose of creating or redeeming instruments such as American Depositary Receipts (ADRs) and exchange-traded funds (ETFs).

### *Transactions that are part of a securities distribution*

FINRA rules contain an exception from the trade reporting requirements for transactions that are effected in connection with a distribution of securities, specifically:

transactions that are part of a primary distribution by an issuer or of a registered secondary distribution (other than “shelf distributions”) or of an unregistered secondary distribution.<sup>6</sup>

Thus, transactions that are part of a distribution (other than a secondary shelf distribution) are not reported to FINRA or publicly disseminated, and they are not assessed regulatory transaction fees under Section 3 or the TAF.

The amendments clarify that for purposes of this trade reporting exception, “distribution” has the meaning set forth under SEC Regulation M.<sup>7</sup> A “distribution” is defined under Rule 100 of Regulation M as “an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.”<sup>8</sup>

Firms are reminded that under FINRA rules, large block trades (even those at a significant discount from the current market price) must be reported to FINRA for tape dissemination purposes and are assessed regulatory transaction fees under Section 3 and the TAF. The amendments clarify that the trade reporting exception does not apply to block trades, unless they otherwise meet the definition of “distribution” under Regulation M.

***Notice requirement for transactions that are part of an “unregistered secondary distribution”***

Pursuant to new Supplementary Material in Rules 6282, 6380A, 6380B and 6622, firms that would otherwise have the trade reporting obligation under FINRA rules<sup>9</sup> must provide notice to FINRA that they are relying on the exception for transactions that are part of an “unregistered secondary distribution.” The firm also must provide the following information to FINRA for each transaction that is part of the unregistered secondary distribution and not reported:

- ▶ security name and symbol;
- ▶ execution date;
- ▶ execution time;
- ▶ number of shares;
- ▶ trade price; and
- ▶ FINRA member firms that are parties to the trade.<sup>10</sup>

Firms are required to provide such notice and information no later than three business days following trade date. If the trade executions will occur over multiple days, then initial notice and available information must be provided no later than three business days following the first trade date and final notice and information must be provided no later than three business days following the last trade date.

Such notice and information should be provided on the Regulation M Trading Notification Form. An updated version of the form is available as an attachment to this Notice, and will be available as of November 1, 2011, at [www.finra.org/RegM](http://www.finra.org/RegM), and should be submitted to FINRA’s Market Regulation Department via:

- ▶ email to [secondaryofferings@finra.org](mailto:secondaryofferings@finra.org);
- ▶ fax to (301) 339-7403; or
- ▶ a third-party vendor (e.g., Dealogic, Ipreo).<sup>11</sup>

Firms also may obtain a version of the Regulation M Trading Notification Form that can be completed and submitted electronically by [emailing a request](#) to FINRA.

FINRA is combining the form of notice required under the trade reporting rules with the form of notice required under Rule 5190<sup>12</sup> to streamline firms' reporting obligations since, if a firm is relying on this trade reporting exception, applicable notice requirements under Rule 5190 also must be satisfied. However, firms are reminded that the notice requirement under the trade reporting rules is separate and distinct from the notice requirements under Rule 5190. Accordingly, providing notice under the trade reporting rules does not relieve a firm of any additional notification obligations it may have under Rule 5190 (and vice versa), nor does it impact the timing of any notice required under Rule 5190. Firms must comply with the requirement under Rule 5190 to submit the Regulation M Trading Notification Form no later than the close of business the next business day following pricing of the distribution, irrespective of the fact that firms have until three days after trade date to provide notice and information under the trade reporting rules.<sup>13</sup>

The new Supplementary Material also requires that the firm retain records sufficient to document the basis for relying on this trade reporting exception, including, but not limited to, the basis for determining that the transactions are part of a distribution, as defined under Regulation M. Firms must be able to demonstrate that the "magnitude of the offering" and "special selling efforts" criteria under Regulation M have been satisfied. The mere assertion that the order was large sized or a block or that execution of the order was "worked" by a firm will not by itself be sufficient.

#### ***Transfers of equity securities to create or redeem instruments such as ADRs and ETFs***

The amendments expressly exclude from the trade reporting requirements any transfer of equity securities for the sole purpose of creating or redeeming an instrument, such as an ADR or ETF, that evidences ownership of or otherwise tracks the underlying securities transferred. Such transfers are not considered OTC transactions for purposes of the trade reporting rules and thus are not reportable events.

The amendments codify current guidance and practice in this area. For example, FINRA has previously stated that the conversion of foreign ordinary shares into ADRs (or vice versa) at a bank depository is not a trade reportable event.<sup>14</sup> Similarly, when a financial institution or "authorized participant" deposits with an ETF a basket of securities (or other assets) and receives the ETF creation unit in return, these are not trade reportable events.

FINRA notes that the exception applies irrespective of whether a firm is acting as agent, principal or riskless principal in the creation process. For example, an authorized participant, as riskless principal on behalf of a customer, transfers securities to an ETF and in return receives ETF creation units. The transfer of the shares and receipt of ETF creation units by the authorized participant are not reportable events. Similarly, the subsequent "flip" of the ETF creation units from the authorized participant to its customer also is not reportable.

Firms are reminded, however, that purchases and sales of the securities that are to be transferred for the purpose of creating or redeeming instruments such as ADRs and ETFs, and subsequent purchases and sales of the instruments themselves in the secondary market, are OTC transactions and must be reported to FINRA in accordance with the trade reporting rules.<sup>15</sup> Additionally, purchases and sales of the underlying securities in order to track the performance of an instrument such as an ADR or ETF, without actually creating the instrument, must be reported.

## Endnotes

1. Specifically, OTC equity transactions are transactions effected otherwise than on an exchange in: (1) NMS stocks, as defined in SEC Rule 600(b) of Regulation NMS, which are reported through the Alternative Display Facility (ADF) or a Trade Reporting Facility (TRF); and (2) OTC equity securities, as defined in FINRA Rule 6420 (i.e., non-NMS stocks), which are reported through the OTC Reporting Facility (ORF).
2. Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership in accordance with Section 3.
3. The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, market regulation activities, financial monitoring and policymaking, rulemaking and enforcement activities. Among others, the TAF is assessed for the sale of all exchange registered securities wherever executed and OTC equity securities. See FINRA By-Laws, Schedule A, § 1(b)(2).
4. See Rules 6282(i), 6380A(e), 6380B(e) and 6622(e).
5. See Securities Exchange Act Release No. 65025 (August 3, 2011), 76 FR 48937 (August 9, 2011) (Order Approving SR-FINRA-2011-027).
6. See Rules 6282(i)(1)(A), 6380A(e)(1)(A), 6380B(e)(1)(A) and 6622(e)(1)(A).
7. 17 CFR 242.100–105.
8. 17 CFR 242.100.
9. In transactions between member firms, the “executing party,” as defined by rule, is required to report the trade. In transactions between a member firm and a non-member firm or customer, the member firm is required to report. See Rules 6282(b), 6380A(b), 6380B(b) and 6622(b).
10. Firms must identify FINRA member firms that are the contra parties to the trade; they are not required to identify customers.

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11. FINRA notes that this is a notice requirement only—and not a trade reporting requirement. Accordingly, these transactions are not reported to a FINRA trade reporting facility (*i.e.*, the ADF, a TRF or the ORF), nor is any of the information disseminated to the public. In addition, these transactions are not assessed regulatory transaction fees under Section 3 or the TAF.  
  
FINRA further notes that firms are required to submit notice and information under the trade reporting rules only to FINRA. A firm would not be required to submit such information as part of any Regulation M-related submission pursuant to the rules of another self-regulatory organization.
12. Rule 5190 imposes certain notice requirements on member firms participating in distributions of listed and unlisted securities and is designed to ensure that FINRA receives pertinent distribution-related information from firms in a timely fashion to facilitate its Regulation M compliance program.
13. In other words, firms cannot delay submission of the Regulation M Trading Notification Form in order to provide trade information, as required under the trade reporting rules, and argue that “such later notification is necessary under specific circumstances,” as provided for under Rule 5190.
14. See [NTM 07-25](#) (May 2007).
15. For example, firms are required by rule to include the date and time of execution in all trade reports submitted to FINRA; the date and time of execution are the date and time when the parties have agreed to all essential terms of the transaction, including trade price and number of shares.

# Regulation M—Trading Notification Form

Attention: FINRA Market Regulation Department; FINRA ADF Operations; NASDAQ MarketWatch Department

## Please provide the following information

Original notification:  yes  no

Does the original notification include unregistered secondary distribution transaction reports?  yes  no

Amended notification:  yes  no

Does the amended notification include unregistered secondary distribution transaction reports?  yes  no

1. Issuer name and symbol: \_\_\_\_\_

### 2. Symbol(s) of covered securities

(subject and reference securities, as defined under SEC Regulation M Rule 100): \_\_\_\_\_

Pursuant to FINRA Rule 5190(c)(1)(B), FINRA Rule 5190(d)(2), FINRA Rule 6275(f)(2), and/or NASDAQ Rule 4619(e)(5), the following information regarding the pricing of a distribution of securities is provided. Additionally, for the distribution participants and/or affiliated purchasers identified below, to the extent that they are market makers, rescission of excused withdrawal status or passive market making status is requested:

3. Type of security offered: \_\_\_\_\_

4. Number of shares offered: \_\_\_\_\_

5. Offering price: \_\_\_\_\_

6. Last sale before distribution: \_\_\_\_\_

7. Pricing basis: \_\_\_\_\_

(e.g., last sale, discount to last sale, negotiated, at the market, etc.)

8. Pricing date: \_\_\_\_\_

9. SEC effective date and time: \_\_\_\_\_ (date) \_\_\_\_\_ (time)

10. Trade date: \_\_\_\_\_

11. Restricted period:  1 day  5 day  not applicable : \_\_\_\_\_ (commencement date)  
\_\_\_\_\_ (end date)

### 12. Distribution participants and/or affiliated purchasers:

Member Firm	MPID(s)
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____

Pursuant to FINRA Rule 5190(d)(1), the following information regarding the basis for determining the applicability of the “actively traded” securities exception under SEC Regulation M Rule 101 is provided:

UAR (for a security listed on the NASDAQ Stock Exchange). Date of UAR: \_\_\_\_\_

The following:

1. The ADTV, as defined under SEC Regulation M Rule 100: \_\_\_\_\_

The source of this information: \_\_\_\_\_

2. The public float value, as defined under SEC Regulation M Rule 100: \_\_\_\_\_

The source of this information: \_\_\_\_\_

Other: \_\_\_\_\_

Pursuant to FINRA Rule 5190(e)(2), NASDAQ Rule 4614(d)(1) and/or NASDAQ Rule 4624(c), the following information regarding the specified activity, on the date shown, is provided:

<b>Activity</b>	<b>Date(s) of Activity</b>	<b>Aggregate # of Shares</b>
<input type="checkbox"/> Engaged in a syndicate covering transaction:	_____	_____
<input type="checkbox"/> Imposition of penalty bid:	_____	_____
<input type="checkbox"/> Stabilizing bid:	_____	_____

Pursuant to FINRA Rules 6282, 6380A, 6380B and 6622, the following information relating to transactions that are part of an unregistered secondary distribution and that have not been trade reported, is provided:

Security Name	Symbol	Execution Date	Execution Time	Number of Shares	Execution Price	Buying Member Firm	Selling Member Firm

**Submitted by**

Firm name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Contact (if different from above): \_\_\_\_\_

Telephone number: \_\_\_\_\_ Fax number: \_\_\_\_\_

Email address: \_\_\_\_\_

*Pursuant to the requirements of the aforementioned rules, completed forms may be faxed to FINRA Market Regulation at (301) 339-7403, FINRA ADF Operations at (240) 386-6225 and NASDAQ MarketWatch at (301) 978-8511. For other submission methods, see [www.finra.org/RegM](http://www.finra.org/RegM).*

# Election Notice

## NAC Election

### FINRA Announces Nominees for Open Seats on the National Adjudicatory Council

#### Executive Summary

The purpose of this *Election Notice* is to announce FINRA's nominees for two open seats on the National Adjudicatory Council (NAC) to be filled by one Large Firm Member and one Small Firm Member.

FINRA's Nominating and Governance Committee nominated the following individuals: Jill W. Ostergaard for the Large Firm NAC seat and David M. Sobel for the Small Firm NAC seat.

Eligible individuals who were not nominated may petition to have their name included on a ballot for a contested election by following the procedure in this *Notice*.

**Note:** This Notice was distributed electronically to the executive representative of each FINRA member firm and it is posted on FINRA's website at [www.finra.org/Notices/Election/080511](http://www.finra.org/Notices/Election/080511). 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
- ▶ Marc Menchel, Executive Vice President and Regulatory General Counsel, at (202) 728-8410.

#### Background

The NAC is appointed by the FINRA Board of Governors to review all disciplinary decisions issued by FINRA hearing panels and presides over disciplinary matters that have been appealed to or called for review by the NAC. The NAC also reviews statutory disqualification matters and considers appeals of membership proceedings and exemption requests.

**August 5, 2011**

#### Suggested Routing

- ▶ Executive Representatives
- ▶ Senior Management

## Composition of the NAC

The NAC comprises 14 members—seven industry members and seven non-industry members. The seven industry members of the NAC include two Small Firm, one Mid-Size Firm, two Large Firm and two At-Large Industry Members. Of the seven Non-Industry NAC Members, at least three are Public Members.

The Nominating and Governance Committee identifies candidates for all NAC seats, including the five industry member seats that are based on firm size.

## Vacancies and Terms

The terms of one Large Firm Member and one Small Firm Member expire at the end of 2011 and will be filled with a like member. Each nominee would serve a three-year term beginning in January 2012.

## Nominees and Nomination Process

FINRA's Nominating and Governance Committee has nominated the following individuals to fill the vacant Large Firm and Small Firm NAC Member seats:

### **Nominee for Large Firm NAC Member**

- ▶ **Jill W. Ostergaard**—Managing Director and Chief Compliance Officer, Morgan Stanley & Co. Incorporated

### **Nominee for Small Firm NAC Member**

- ▶ **David M. Sobel**—Executive Vice President, General Counsel and Chief Compliance Officer of Abel/Noser Corp.

Profiles of the FINRA nominees are included in Attachment A.

Pursuant to Article VI, Section 6.2 of the FINRA Regulation By-Laws, a person who has not been nominated may be included on a ballot for an election to fill the open NAC seats if:

- ▶ Within 45 days of the date of this *Election Notice*, such person presents to the Secretary of FINRA, in the case of petitions solely in support of such person, petitions in support of his or her nomination duly executed by three percent of the members entitled to vote (based on firm size classification) for such nominee's election or, in the case of petitions in support of more than one person, petitions in support of the nominations of such persons duly executed by ten percent of the members entitled to vote (based on firm size classification) for such nominees' election; and

- ▶ The Secretary certifies that the petitions are duly executed by the executive representatives of the requisite number of members entitled to vote for such nominee's/nominees' election, and the person(s) satisfies/satisfy the classification (Large Firm, Mid-Size Firm or Small Firm) of the NAC seat to be filled, based on such information provided by the person(s) as is reasonably necessary to make the certification.

Firms may only endorse a petition candidate for an open seat that corresponds to the firm's size classification. No firm may endorse more than one such candidate.

Individuals interested in petitioning to become candidates must complete a candidate profile form (Attachment B) and submit it to FINRA's Corporate Secretary. Upon receipt of a candidate profile form, the Corporate Secretary will forward the interested individual a list of firms eligible to endorse a candidate for that seat (based on firm size classification).

Individuals submitting petitions must provide information sufficient for the Corporate Secretary to determine that the petitions are duly executed by the executive representatives of the requisite number of large or small firms by **Monday, September 19, 2011**.

The number of FINRA large firms as of the close of business on August 4, 2011, was 174, and the number of FINRA small firms as of the close of business on August 4, 2011, was 4,164. The requisite number of large firm endorsements required to meet the above-referenced threshold is 6, and the requisite number of small firm endorsements required to meet the above-referenced threshold is 125 for petitions in support of the nomination of a single person. Please note that, if a petition slate includes individuals from different firm size categories, the signatures of 10 percent of each respective class size are required.

## Voting Eligibility

In the case of a contested election, firms are eligible to cast one vote for an industry candidate who is running for a seat that is in the same size category as their own firm. Therefore, large firms may vote for a Large Firm NAC candidate and small firms may vote for a Small Firm NAC candidate.

The size classification of each FINRA member firm will be verified on the day the ballots are mailed. All eligible large and small firms will receive a ballot containing the candidates for the vacant Large Firm or Small Firm NAC seat.

## Firm Contact Information

Firms are reminded to accurately maintain their executive representative's name and email address, as well as their firm's main postal address in FINRA's records. This will ensure that important mailings, such as election information, are properly directed. A firm's failure to keep this information accurate may jeopardize the firm's ability to participate in elections.<sup>1</sup>

To update an executive representative's name, mailing address and email address, firms may access the FINRA Contact System, via the Firm Gateway, at <https://firms.finra.org/fcs>. For assistance with updating information, please contact the FINRA Office of the Corporate Secretary at (202) 728-8949.

## Endnote

1. Pursuant to NASD Rule 1160, firms must update their contact information promptly, but in any event not later than 30 days following any change in such information, as well as review and, if necessary, update the information within 17 business days after the end of each calendar year. Additionally, firms must comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff. See NASD Rule 1160 and FINRA [Regulatory Notice 07-42](#) (September 2007).

## Attachment A – Profiles of FINRA’s Nominees to the NAC

### Nominee for Large Firm NAC Member

#### **Jill W. Ostergaard**

Jill W. Ostergaard is a managing director and chief compliance officer for Morgan Stanley & Co. Incorporated, covering all of the firm’s institutional businesses in the United States, Canada and Latin America.

Ms. Ostergaard is a member of SIFMA’s Compliance and Regulatory Policy Committee (formerly Self-Regulatory and Supervisory Practices Committee) and served as co-chair from 2006 through 2008; she also was a member of the working group that drafted the *Whitepaper on the Role of Compliance*. Ms. Ostergaard is a member of FINRA’s Compliance Advisory Committee and previously served on the Electronic Communications Task Force. She has spoken on a variety of topics, including market structure, institutional trading, detecting and preventing fraud, supervisory control rules, new products, gifts and entertainment, best execution and trading desk supervision.

Prior to joining Morgan Stanley in 1998, Ms. Ostergaard was vice president and counsel providing legal coverage to the sales and trading desks for the Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation. She started her career as an attorney with the SEC’s Division of Market Regulation and studied the then-potential effects of decimalization on the U.S. securities markets for Commissioner Steven M.H. Wallman. Ms. Ostergaard graduated *cum laude* from Hope College and received her J.D. from Loyola University of Chicago.

### Nominee for Small Firm NAC Member

#### **David M. Sobel, Esq.**

David M. Sobel, Esq. is currently executive vice president, general counsel and chief compliance officer of Abel/Noser Corp., a FINRA/NYSE member broker-dealer. He was previously a partner at The Goldstein Law Group, P.C., where he concentrated in the areas of broker-dealer compliance/regulation, securities litigation, including arbitration and mediation, and disciplinary/enforcement matters at the SEC, NYSE, AMEX and FINRA. Mr. Sobel was a floor member of the New York Stock Exchange from 1982 through 1991 as a floor broker for both H.A. Brandt & Co. and First Options of Chicago, and he was president of his own NYSE member firm, Ampro Securities, Inc. After leaving the NYSE floor, he was a senior equity trader/market maker for Trimark Securities.

Mr. Sobel has a Master of Science degree from Brooklyn College and a law degree from Pace Law School, where he was an editor of the *International Law Review* and recipient of the Dean’s Award. He has served as a FINRA arbitrator, on FINRA’s District 10 Committee and on FINRA’s Small Firm Advisory Board. He has also served on the Board of Directors of the National Society of Compliance Professionals and as chairman of the board of the NAIBD.

Mr. Sobel has been quoted in or interviewed by: *Compliance Reporter*, *WSJ.com*, *Complanet*, *Trader's Magazine*, *Wall Street Letter*, *BD Week*, *Op/Risk and Compliance Magazine*, *Institutional Investor News* and *Dow Jones Newswire*, and is a frequent speaker at securities conferences for SIFMA, NSCP, NRS, NAIBD, FMW and Strategy Institute. Recent conference topics include Managing Risk at Small BD; Internal Audits; Supervisory Responsibility, Financial Responsibility, Fraud Prevention in Portfolio Management, Social Networking, Foundations of Compliance, Best Practices and Forensic Compliance.

He is admitted to practice before the Supreme Courts of New York and Connecticut, the U.S. District Courts for the Southern and Eastern Districts of New York and the Second Circuit Court of Appeals. He is a member of the New York County Lawyers Association, the New York State Bar Association and the American Bar Association.

## ATTACHMENT B - NAC Election Candidate Profile Form

An electronic version of this form also is available at [www.finra.org/notices/election/080511](http://www.finra.org/notices/election/080511).

Indicate the position for which you wish to be considered:  Large Firm NAC Member OR  Small Firm NAC Member

### Current Registration

Name: \_\_\_\_\_ CRD #: \_\_\_\_\_

Firm Name: \_\_\_\_\_ 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: \_\_\_\_\_

<b>General Areas of Expertise</b> <i>(please check all that apply)</i>	<input type="checkbox"/> Compliance/Legal <input type="checkbox"/> Corporate Finance <input type="checkbox"/> Financial/Operational <input type="checkbox"/> Institutional Sales <input type="checkbox"/> Investment Advisory <input type="checkbox"/> Retail Sales <input type="checkbox"/> Trading/Market Making <input type="checkbox"/> Other	<b>Product Expertise</b> <i>(please check all that apply)</i>	<input type="checkbox"/> Corporate Bonds <input type="checkbox"/> Direct Participation Programs <input type="checkbox"/> Equity Securities <input type="checkbox"/> Investment Company <input type="checkbox"/> Municipal/Government Securities <input type="checkbox"/> Options <input type="checkbox"/> Variable Contracts Securities <input type="checkbox"/> Other
---------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

### Memberships/Positions in Trade or Business Organizations

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### Past FINRA or NASD Experience and Dates of Service *(please check all that apply)*

Committee Member (identify committee): \_\_\_\_\_ Approx. Dates: \_\_\_\_\_

Arbitrator \_\_\_\_\_ Approx. Dates: \_\_\_\_\_

Mediator \_\_\_\_\_ Approx. Dates: \_\_\_\_\_

Expert Witness (arbitrations, disciplinary proceedings) \_\_\_\_\_ Approx. Dates: \_\_\_\_\_

Other: \_\_\_\_\_ Approx. Dates: \_\_\_\_\_

### Educational Background

School: \_\_\_\_\_ Degree: \_\_\_\_\_

School: \_\_\_\_\_ Degree: \_\_\_\_\_

Return the completed form to Marcia Asquith via fax at (202) 728-8075 or email at [CorporateSecretary@finra.org](mailto:CorporateSecretary@finra.org).