

# Notices

## Regulatory Notices

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## Brokerage and Individual Retirement Account Fees

### FINRA Provides Guidance on Disclosure of Fees in Communications Concerning Retail Brokerage Accounts and Individual Retirement Accounts

#### Executive Summary

FINRA is issuing this *Notice* to provide guidance to firms on communications with the public concerning the fees associated with retail brokerage accounts and individual retirement accounts (IRA).

Questions concerning this *Notice* should be directed to:

- ▶ Thomas A. Pappas, Vice President, Advertising Regulation, at (240) 386-4553; or
- ▶ Amy C. Sochard, Director, Advertising Regulation, at (240) 386-4508.

#### Background and Discussion

Many broker-dealers offer retail brokerage accounts and IRAs, including rollover services for investors who wish to transfer funds from existing qualified retirement plans. Firms frequently advertise features of their accounts in retail communications, including websites and social media, radio and television commercials, and print advertisements and brochures.

Broker-dealers' marketing campaigns often emphasize that fees are not charged in connection with their retail brokerage accounts and IRAs. Nevertheless, while certain types of fees may not be charged, others will be. For example, accounts offered by broker-dealers may be subject to fees for opening, maintaining or closing accounts. In addition, investment products will have their own associated costs such as brokerage commissions, management fees and other product-level expenses. Further, retail brokerage accounts and IRAs may also be subject to additional fees for ancillary services provided by the broker-dealer.

#### July 2013

##### Notice Type

- ▶ Guidance

##### Suggested Routing

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

##### Key Topics

- ▶ Communications With the Public
- ▶ Individual Retirement Accounts

##### Referenced Rules & Notices

- ▶ FINRA Rule 2210

FINRA recognizes broker-dealers offer what they view as economical alternatives to give investors flexibility in the type of accounts available to them. FINRA is concerned, however, that some broker-dealers' communications that discuss fees may not be fair and balanced, and could be misleading. This *Notice* provides guidance to firms on communications with the public that include statements or claims regarding fees.

### **“Free” or “No Fee” Claims**

FINRA has observed overly broad language in sales material of broker-dealer firms that implies there are no fees charged to investors who have accounts with the firms. In other instances, specific fees that are not charged are highlighted and separated from disclosure regarding other fees that may be charged. This kind of sales material may mislead investors regarding the cost of opening, maintaining or closing an account.

Because closing and maintaining accounts typically involve some cost to investors, either associated with the account itself, the underlying investments or the services of the broker-dealer, it would generally be inconsistent with FINRA Rule 2210's requirements to claim or imply that accounts are “free.” For example, referring to an IRA account as a “free IRA” or “no-fee IRA” where costs exist would fail to comply with Rule 2210's prohibition of false, exaggerated, unwarranted, promissory or misleading statements or claims.

FINRA Rule 2210 requires that broker-dealers' communications are fair and balanced and do not omit material information that would cause them to be misleading. Rule 2210 also requires that communications provide a sound basis for evaluating the facts with respect to any product or service. Accordingly, claims regarding fees must be accompanied by clear disclosure of the types of fees that may be charged. For example, if an account offered by a broker-dealer involves account maintenance and closing fees, fees associated with the ownership of investments in the account or brokerage service fees, a stand-alone claim such as “Start investing for less with no account opening fees” would not comply with the rule. The claim could be compliant, however, if it explained other fees that applied. For example, the following modified claim may be fair and balanced: “Start investing for less with no account opening fee. Other account fees, fund expenses, brokerage commissions and service fees may apply.”

Some firms have published communications that feature prominent claims regarding an account's fee structure with only a footnote to disclose information about other fees that may apply. This type of presentation does not comply with FINRA Rule 2210(d)(1)(C), which provides that information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.

A headline statement to the effect that a firm does not charge annual maintenance fees should include an explanation in close proximity to the headline of the conditions associated with the offer and the other fees that would apply. For example, communications could discuss the lack of an annual account maintenance fee as follows:

“There is no annual maintenance fee if you keep a minimum balance of \$5,000 in the account. Account opening and closing fees may apply depending on the amount invested and the timing of the account closure. There may be costs associated with the investments in the account such as loads, expenses or brokerage commissions. Fees for optional services may also apply. [Click here](#) for a full explanation of our fees.”

In this example, the hyperlink provided in the text “Click here” would take the reader to comprehensive fee disclosure.

## Trade Reporting and Compliance Engine (TRACE)

### FINRA Announces Modifications Regarding Historic TRACE Data

Effective Date: July 22, 2013

#### Executive Summary

Effective July 22, 2013, FINRA will make available information on historic transactions in agency pass-through mortgage-backed securities (MBS) and Small Business Administration-backed asset-backed securities (SBA-Backed ABS) traded in specified pool transactions (collectively, Specified Pool Transactions) and SBA-Backed ABS traded to be announced (TBA).<sup>1</sup> The information that will be provided per transaction in Historic TRACE Data for ABS transactions is set forth in Attachment A to this *Notice*.<sup>2</sup>

Questions concerning this *Notice* should be directed to:

- ▶ Ola Persson, Vice President, Transparency Services, at (212) 858-4796;
- ▶ Colin Phillips, Associate Director, Transparency Services, at (212) 858-4336; or
- ▶ Kathryn Moore, Associate General Counsel, Office of General Counsel, at (202) 974-2974.

#### Background & Discussion

FINRA currently provides access to historic transaction-level data (Historic TRACE Data) pursuant to FINRA Rule 7730(d). FINRA makes Historic TRACE Data available for a class of securities at the time the class becomes subject to real-time dissemination under FINRA Rule 6750. The available Historic TRACE Data includes all transactions that have been reported to TRACE in the class, provided the transaction data is at least 18 months old.

#### July 2013

##### Notice Type

- ▶ Guidance

##### Suggested Routing

- ▶ Fixed Income
- ▶ Research
- ▶ Trading

##### Key Topics

- ▶ Agency Pass-Through Mortgage-Backed Securities
- ▶ Fees
- ▶ Historic ABS Data Set
- ▶ Historic TRACE Data
- ▶ SBA-Backed ABS
- ▶ Specified Pool Transactions
- ▶ To Be Announced (TBA) Transactions

##### Referenced Rules & Notices

- ▶ FINRA Rule 6710
- ▶ FINRA Rule 7730
- ▶ Regulatory Notice 12-56
- ▶ Regulatory Notice 12-26
- ▶ Regulatory Notice 10-55
- ▶ Regulatory Notice 10-14

Historic TRACE Data includes data from certain asset-backed securities transactions (Historic ABS Data Set). Currently, the Historic ABS Data Set includes transaction data for agency pass-through MBS traded in TBA transactions. Those transactions became eligible for inclusion in Historic TRACE Data on November 12, 2012, contemporaneously with the real-time dissemination of such transactions.<sup>3</sup> The Historic ABS Data Set will expand to include Specified Pool Transactions and SBA-Backed ABS TBA transactions effective July 22, 2013, when real-time dissemination of such transactions begins.<sup>4</sup>

Historic TRACE Data includes more information per transaction than FINRA disseminates in real-time TRACE market data.<sup>5</sup> The data elements and fields that FINRA currently includes in Historic TRACE Data for each transaction are set forth in Attachment A to [Regulatory Notice 10-14](#).

Attachment A to this *Notice* sets forth the minor modifications to these data elements and fields for transactions in the Historic ABS Data Set due to the special characteristics of asset-backed securities.<sup>6</sup> Among other changes, FINRA will include fields for factor and pool number(s) and omit the field for yield. The pool number and the CUSIP will be included in the per transaction information for transactions in the Historic ABS Data Set, including for Specified Pool Transactions as such transactions are added to the Historic ABS Data Set. While confidentiality concerns prevent real-time dissemination of such data fields for Specified Pool Transactions, the 18-month aging requirement sufficiently reduces those concerns to allow access to those fields in the Historic ABS Data Set.

## Endnotes

1. The terms agency pass-through mortgage-backed security, specified pool transaction, SBA-Backed ABS and to be announced (TBA) are defined in FINRA Rule 6710(v), FINRA Rule 6710(x), FINRA Rule 6710(bb), and FINRA Rule 6710(u), respectively.
2. The terms Historic TRACE Data and Historic ABS Data Set are defined in FINRA Rule 7730(f)(4) and FINRA Rule 7730(d), respectively.
3. TBA transactions in agency pass-through MBS, like all asset-backed securities, have been reported to TRACE since May 16, 2011. *See* Securities Exchange Act Release No. 66829 (April 18, 2012), 77 FR 24748 (April 25, 2012) (Order Granting Approval of Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded TBA, File No. SR-FINRA-2012-020) and [Regulatory Notice 12-26](#).
4. *See* Securities Exchange Act Release No. 68084 (October 23, 2012), 77 FR 65436 (October 26, 2012) (Order Granting Approval of Proposed Rule Change Relating to Post-Trade Transparency for Agency Pass-Through Mortgage-Backed Securities Traded in Specified Pool Transactions and SBA-Backed Asset-Backed Securities Transactions, File No. SR-FINRA- 2012-042) and [Regulatory Notice 12-56](#).
5. For example, Historic TRACE Data includes actual trade volumes, rather than capped volume amounts, which are disseminated as part of real-time TRACE data. Historic TRACE Data, however, does not include MPID information.
6. *See* Attachment A. In [Regulatory Notice 10-14](#), FINRA indicated that it would notify firms and other data users of any changes to the per transaction information it would provide in Historic TRACE Data.

## Attachment A

### Historic TRACE Data

As previously published in Attachment A of [Regulatory Notice 10-14](#), Historic TRACE Data includes the following transaction-level information:\*

- ▶ bond identifier (FINRA symbol and CUSIP number);
- ▶ date/time: execution time for current day's transactions, and execution date and time for reports for as/of trades and reversals;
- ▶ price;
- ▶ yield;
- ▶ quantity (as reported and not subject to caps);
- ▶ indicators: when issued; commission; as/of; buy or sell; contra-party (dealer or customer); automatic give up (AGU); special price;
- ▶ buyer commission and seller commission;
- ▶ buyer capacity (principal or agency) and seller capacity (principal or agency);
- ▶ security type;
- ▶ dissemination flag; and
- ▶ other fields for trade status, days to settlement, additional modifiers or indicators regarding other conditions of sale or relating to reporting, and administrative messages, such as Message Sequence Number.

The Historic ABS Data Set will include the following additional data elements and fields:\*\*

- ▶ factor; and
- ▶ pool number.

"Yield" will *not be* provided in the Historic ABS Data Set. (In addition, "yield direction" will not be provided as a field.)

\* Additional information about the fields and data elements available in Historic TRACE Data for the Historic Corporate Bond and Historic Agency Data Sets is located at "Historic TRACE Data: Enhanced Historical Time and Sales – Trade Record File Layout (Corporate Bond and Agency Debt Securities)" in the [Technical Specifications](#).

\*\* Additional information about the fields and data elements available for the Historic ABS Data Set is located at "Historic TRACE Data: Enhanced Historical Time and Sales – ABS Trade Record File Layout" in the [Technical Specifications](#).

# Election Notice

## Notice of Annual Meeting of FINRA Firms and Proxy

### Executive Summary

FINRA will conduct its annual meeting of firms on Tuesday, August 6, 2013, at 10 a.m. Eastern Time in the FINRA Visitors Center, 1735 K Street, NW, in Washington, D.C. The purpose of the meeting is to elect individuals to fill one small firm seat and one large firm seat on the FINRA Board of Governors (FINRA Board).

It is important that all firms be represented by proxy or in person at the annual meeting. Firms are urged to vote using one of the methods described below. In order for a mailed proxy to be considered valid, the executive representative of the firm eligible to vote in the election for that category of governorship must sign it.

Firms that are members of FINRA as of the close of business on Wednesday, July 3, 2013 (the annual meeting record date) will be eligible to vote.

**Note: This *Notice* was mailed and sent electronically to the executive representative of each FINRA member firm. It is also posted on FINRA's website at [www.finra.org/notices/election/070513](http://www.finra.org/notices/election/070513).**

Questions regarding this *Notice* may be directed to:

- ▶ Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949; or
- ▶ Jennifer Piorko Mitchell, Assistant Corporate Secretary, at (202) 728-8949.

**July 5, 2013**

### Suggested Routing

- ▶ Executive Representatives
- ▶ Senior Management

## Election of Governors

There are two seats on the FINRA Board to be filled at the upcoming annual meeting: one Small Firm Governor and one Large Firm Governor. To be eligible to serve, Large Firm Governors must be registered with large firms and Small Firm Governors must be registered with small firms. Pursuant to Article I of FINRA's By-Laws, firm sizes are defined as follows:

- ▶ a small firm employs at least one and no more than 150 registered persons;<sup>1</sup>
- ▶ a large firm employs 500 or more registered persons.<sup>2</sup>

In order for the Board to maintain compliance with the compositional requirements of the FINRA By-Laws, the elected Board members have a continuing obligation to satisfy the firm-size classification throughout the entire term for which the governor is elected.

## Term of Office

Governors are appointed or elected to three-year terms. Governors may not serve more than two consecutive terms. If a governor is elected or appointed to fill a vacancy for a term of less than one year, the governor may serve up to two consecutive terms following the expiration of the governor's initial term.

The By-Laws expressly provide that the term of office of a governor shall terminate immediately upon a determination by the Board, by a majority vote of the remaining governors, that the governor no longer satisfies the classification for which the governor was elected and the governor's continued service would violate the compositional requirements of the Board set forth in the FINRA By-Laws.

## Candidates

Below is the list of the FINRA Nominating Committee nominee for the Large Firm Governor seat and the nominees by petition for the Small Firm Governor seats who, as provided in Article VII, Section 10 of the FINRA By-Laws, (i) presented the requisite number of petitions in support of their nomination, and (ii) have been certified by the Corporate Secretary of FINRA as satisfying the classification of the governorship to be filled:

### Large Firm Governor Candidates

#### FINRA Nominating Committee Nominee

- ▶ James D. Weddle, Managing Partner, Edward Jones

#### Nominees by Petition

- ▶ None

## Small Firm Governor Candidates

### Nominees by Petition<sup>3</sup>

- ▶ Jed Bandes, President, Mutual Trust Company of America Securities
- ▶ Robert Keenan, Chief Executive Officer, St. Bernard Financial Services, Inc.
- ▶ David Sobel, Executive Vice President, General Counsel and Chief Compliance Officer, Abel/Noser Corp.

Attachment A includes the profiles of the Small Firm Governor candidates; Attachment B, the Large Firm Governor candidate.

## Voting Eligibility

Firms registered with FINRA as of the close of business on Wednesday, July 3, 2013, are eligible to vote for the nominees running for seats that are in the same size category as their own firm and will receive a proxy card listing only the relevant candidates running for the seats reserved for their firm size.

A proxy was mailed to the executive representative of each eligible small and large firm containing the candidates for its voting class along with a copy of this *Notice*.

## Voting Methods

Firms will be able to submit a proxy by any lawful means, including using any of the following methods:

- ▶ telephone;
- ▶ U.S. mail; or
- ▶ Internet.

Alternatively, firms may attend the annual meeting and vote in person. The proxy mailed to each eligible firm contains detailed instructions on the proxy submission procedures.

As mentioned above, it is important that all firms be represented at the annual meeting. Following receipt of this *Notice* and proxy, executive representatives of firms may receive telephone reminders during the election period. This will ensure that FINRA receives sufficient proxies to satisfy the annual meeting quorum requirements, as well as to ensure broad participation in the election by all firms that are eligible to vote. For purposes of the election of each category of governors, a quorum must be met in each applicable firm-size category.

## Revocation of Proxies

If you have given a revocable proxy pursuant to a proxy card distributed by FINRA or otherwise in the manner described herein, you may nonetheless revoke your proxy by attending the annual meeting and voting in person. In addition, you may revoke any such proxy you give at any time before the annual meeting by delivering to FINRA's Corporate Secretary a written statement revoking it or by duly delivering another proxy at a later time. Your attendance at the annual meeting will not in and of itself constitute a revocation of your proxy.

## Voting Instructions

The named proxies shall vote as instructed by the FINRA firm. In the absence of a direction with respect to the election, any duly delivered proxy will not be counted in determining the outcome of the election, but will be counted in determining the presence of a quorum at the annual meeting. In their discretion, the named proxies will be authorized to vote upon all such other matters as may properly come before the annual meeting or any adjournment or postponement thereof.

## Endnotes

1. See Article I (ww) of the FINRA By-Laws.
2. See Article I (y) of the FINRA By-Laws.
3. With respect to the Small Firm Governor seat, the Nominating Committee did not nominate a candidate for election in 2013. Instead, all candidates qualified by obtaining the requisite number of petitions.

## Attachment A: Profiles of Small Firm Candidates

### Jed Bandes

Jed Bandes is an owner and producer and has served on the FINRA Board of Governors for the past three (3) years. While serving on the board his philosophy has been to protect and promote the interests of small B/D owners. As a producer and owner he consistently voted against anything that would interfere, impede, slow down or hurt the business of small B/D owners in any way, shape or form.

Jed has dealt with the unique challenges that confront small broker dealers and producers on a daily basis for over 30 years and knows every nuance of the industry. He has a series 24, 7, 28, 79, 53, 99, 4 and also a CFPTM, CHfC, CLU. Jed earned a degree in Finance from FSU.

### Robert Keenan

Robert Keenan is the Chief Executive Officer of St. Bernard Financial Services, Inc., a firm he founded in 1994 on a kitchen table with a used computer and borrowed software. He holds the Series 7, 24, 28, 53, 63, and 65 licenses. He also is the Chief Compliance Officer, the Financial Operations Principal, the Municipal Principal, the Sales Manager, head of IT, and a top ten producer of his firm.

He believes there are several items he can advocate to the Board:

1. An instruction book to guide small firms on meeting the rules, essentially a small firm Best Practices Manual. This would include a detailed review of how other firms are meeting the rules and ways to adopt that to a firm's policies and procedures. Templates on FINRA's website are not quite enough. FINRA should provide examples on how to write AML policies, retain emails, conduct branch inspections, etc. The OCC does that for banks, CFTC does that for Commodity Dealers. FINRA would be well served to do that for us.
2. The best way to make rule changes is to calmly explain to the non-industry Governors how the rules and rule changes affect firms, both small and large. More can be accomplished with reasonable dialogue than with shouting.
3. The need for Tiered Regulation—regulations tailored to loosen the rules that don't apply to small firms. One rule book for all firms is overkill and costs small firms time and money. He's not talking a new rule book per se, but a rule book for small firms that doesn't include rules that only apply to large firms. The PCAOB audit is #1 on the list.

Keenan's background includes over 35 years of senior management and sales positions. He started in the securities industry with IDS/American Express. He holds a Bachelor of Science in Business Administration from the University of Arkansas and a Master of Business Administration from the University of Central Arkansas. He has served a term on FINRA's District Committee and has been a Hearing Officer on several FINRA disciplinary hearings.

St. Bernard supervises 53 registered reps in 10 states. A breakdown of transactions of the firm would be 40 percent retail mutual fund and variable annuity sales, 25 percent retail fee-based asset management, 15 percent retail stock and bond sales, 12 percent institutional bond sales and 8 percent retail insurance sales.

He asks for your vote.

### **David M. Sobel**

David M. Sobel is 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 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 Intern'l Law Review and recipient of the Dean's Award. Since 1998 he has served as a FINRA arbitrator; a 2nd term member of FINRA's District 10 Committee; the Board of Directors of the National Society of Compliance Professionals (NSCP), 2013 Chairman of FINRA's Small Firm Advisory Board and Past Chairman of the Board of the National Association of Independent Broker Dealers (NAIBD).

Mr. Sobel has been quoted in and/or interviewed by: Compliance Reporter, WSJ.com, Complinet, Trader's Magazine, Wall Street Letter, BD Week, Op/Risk and Compliance Magazine, Institutional Investor News, Dow Jones Newswire and is a frequent speaker at securities conferences for FINRA, NSCP, NRS, NAIBD, FMW and Strategy Institute. Recent Conference topics include: Enterprise Risk Management; Internal Audits; Supervisory Responsibility, Financial Responsibility, Fraud Prevention in Portfolio Management, Social Media, 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 NY County Lawyers Ass'n, the NY State Bar Ass'n and the American Bar Ass'n.

## Attachment B: Profile of Large Firm Governor Nominee

### James D. Weddle

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