

Ms. Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1500

June 5, 2009

## **Comments - FINRA Regulatory Notice 09-22: Rule 3210**

Dear Ms. Asquith:

UBS Securities LLC ("UBS-S") appreciates the opportunity to comment on FINRA Regulatory Notice 09-22, regarding Associated Persons and their Personal Securities Transactions. We recognize that combining NYSE Rule 407 and NASD Rule 3050 would streamline the SRO rules governing personal securities transactions and is a worthy undertaking that would ultimately promote more effective oversight. However, for the reasons set forth below, certain aspects of the current proposal would result in undue burden on member firms.

### **COMMENTS**

#### **I. Prior Written Consent Requirement**

Rule 3210 would apply to any account in which securities transactions can be effected and in which the person has a "personal financial interest." The Supplementary Material .03 exempts transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, as amended, from the duplicate statements and confirmations requirement. However, the proposed rule appears to require employees to obtain written consent for these accounts and for the employer member to approve them. If an employer firm is not required to receive confirmations and statements for those accounts mentioned in The Supplemental Material, it is not clear what purpose account disclosure and consent for these accounts would serve.

UBS-S recommends that accounts limited to transactions identified in The Supplemental Material .03 be specifically excluded from all provisions of the proposed rule.

#### **II. Obligation to Request Duplicate Confirmations and Account Statements – International accounts - Accounts Held at Non-Member Firms**

Rule 3210 would apply to accounts at other FINRA members (executing members), as well as accounts at non-FINRA member broker-dealers, which would include securities accounts with a U.S. or foreign entity whose activities bring it within the definition of the terms "broker" or "dealer" under

the Securities Exchange Act of 1934, as amended, even if such entity is not required to register as a broker or dealer under the Exchange Act. Under the proposed rule, if an employer member does not receive duplicate account statements and confirmations in a timely manner, it would be required to revoke its consent and notify the executing member or other financial institution. The employer member would also be required to obtain proof from the executing member that the account had been closed.

There is no obligation for a foreign non-member broker-dealer to comply with FINRA rules. As a result, obtaining duplicate account statements and confirmations may be difficult, if not impossible. Even in circumstances where an employee maintains accounts at foreign non-member broker-dealers has made good faith efforts to have the foreign non-member broker-dealer send the statements and confirmations directly to the employer member, the foreign non-member broker-dealer may choose not to honor that request. Thus, any failure to ensure prompt delivery of duplicate account statements and confirmations to the employer member rests with the foreign non-member broker-dealer, not the employee. Requiring closure of foreign non-member broker-dealer accounts where duplicate confirms are not received directly from the foreign non-member broker-dealer is, thus, not appropriate. UBS-S, like many of its peers, employs foreign nationals in the United States for long or short, fixed or open periods of residency and this requirement would impose undue hardship on the employees.

Accordingly, UBS-S recommends that the proposed rule contain an exception permitting the employer member to obtain account statements and confirmations directly from their employee where they maintain accounts with foreign non-member broker-dealers.

### **III. Notification by the Associated Person**

The proposed rule also requires that if a person who becomes associated with a FINRA member has an account at another financial institution prior to his or her association with the employer member, he or she would have fifteen business days to obtain the employer member's consent for maintaining the account, as well as to provide written notice to the executing member or other financial institution. The associated person also would be required to instruct the executing member or other financial institution to provide duplicate account statements and confirmations to the employer member as of the date of his or her association with the employer firm. The rule appears to limit the notification requirement to the employee, not the employer member. This would make it burdensome for the employer member to develop and implement procedures designed to verify that notification was in fact sent by the employee to the executing firm.

UBS-S recommends that the requirement be amended to permit the employer firm to provide notification to the executing member.

### **IV. Revocation of Employer Member's Consent**

As currently drafted, the proposed rule states:

"if an employer member does not receive the duplicate account statements and confirmations required pursuant to the rule in a timely manner, the employer member must revoke its consent to maintain the account and notify the executing member or other financial institution in writing of the revocation. The employer member would be required to obtain promptly records from the executing member that the account was closed."

UBS-S recommends that the last sentence of this provision be excised from the proposal. UBS-S has no means to force an executing member to send the required letter or close the account.

We thank you for the opportunity to comment on FINRA's proposal regarding personal securities transactions. If you have any questions or require further detail, please contact the undersigned at (203) 719-7138.

Sincerely,

UBS Securities LLC



Frederic L. Greenbaum  
Executive Director