

Compliance
101 Montgomery Street San Francisco CA 94104
(415) 636 7000

June 5, 2009

BY EMAIL TO: pubcom@finra.org

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 20006-1506

**RE: FINRA Regulatory Notice 09-22
Personal Securities Transactions**

Dear Ms. Asquith:

Charles Schwab & Co., Inc. ("Schwab") appreciates the opportunity to comment on proposed new FINRA Rule 3210, Personal Securities Transactions for or by Associated Persons. Schwab shares FINRA's belief that sound supervisory practices require that a member firm monitor personal securities transactions that are effected outside the firm by or for its associated persons. Schwab also supports FINRA's proposal to eliminate the NASD Rule 3050 requirement that the executing member use reasonable diligence to determine that the execution of the transaction will not adversely affect the interests of the employer member. However, Schwab believes that Proposed Rule 3210 represents a significant departure from NASD Rule 3050 and proffers a number of new, complex and restrictive requirements that are unnecessarily prescriptive.

Proposed Rule 3210 – General Observations

Personal Financial Interest - FINRA introduces the term "personal financial interest" and notes in the Regulatory Notice that "...as a general matter, "personal financial interest" would extend to a spouse's account." While Schwab agrees that such accounts should be monitored, Schwab is concerned that by extending the strict requirements of proposed Rule 3210 to the accounts of the spouse of an associated person, the associated person, employer member and executing member may lack the ability and standing to apply the strict requirements of Proposed Rule 3210. This may be particularly true when such accounts are maintained at a non-member financial institution. Schwab is concerned that efforts to apply the strict requirements of Proposed Rule 3210 in such circumstances could result in disputes, complaints and legal actions between associated persons, their spouse, members firms and other financial institutions.

Further, Schwab believes that the presumption of a personal financial interest be rebuttable and that the requirements of the Proposed Rule not apply when the employer member establishes, via documentation or information, that such a presumption is not accurate or true.

Discretionary Accounts - Schwab notes that NASD Rule 3050 applies to transactions and accounts "...over which such associated person has discretionary authority..." and that FINRA appears to have removed such accounts and/or transactions from consideration in Proposed Rule 3210. FINRA indicates in footnote nine of Regulatory Notice 09-22 that such transactions/accounts would be considered outside securities activities, subject to proposed FINRA Rule 3110(b)(3). While Schwab applauds FINRA for acknowledging and attempting to limit regulatory duplication, Schwab believes Proposed Rule 3210 should apply to accounts in which an associated person has discretionary authority or in which the associated person has the authority to place security orders (e.g. trust accounts, power of attorney relationships, etc.). Schwab believes the express obligations of the associated person, employer member and executing member in Proposed Rule 3210 would facilitate the effective supervision of such outside securities accounts and, therefore, securities activities.

Exemptions - Schwab notes that NASD Rule 3050(f), expressly exempts from NASD Rule 3050(a)-(e) "...accounts which are limited to transactions..." in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940. While Schwab notes that proposed Supplementary Material .03 removes the requirement to obtain duplicate statements and confirmations for such securities or accounts that are limited to transactions in such securities, it appears that associated persons, executing members and employer members would still be required to apply all other requirements of Proposed Rule 3210.

Consistent with NASD Rule 3050(f) and the regulatory rationale inherent in proposed Supplementary .03, Schwab requests that *accounts* limited to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940 be exempt from all requirements of Proposed Rule 3210.

Proposed Rule 3210(a)

Schwab notes that Proposed Rule 3210(a) requires that "...the employer member must instruct the associated person to have the executing member provide duplicate statement and confirmations to the employer member" and does not contemplate the employer member directly making the request to the executing member. Schwab notes that NASD Rule 3050 expressly permits the employer member to request duplicate copies of confirmations and statements and requires the executing member to transmit such copies upon the request of the employer member. Schwab believes the approach articulated in NASD Rule 3050, which has been codified in member firm procedures and systems, to

be a meaningful and successful approach, particularly for large firms with centralized units responsible for addressing and applying the rule. Schwab believes permitting employer member firms to request duplicate statements and confirmations would:

- Promote efficiency as multiple steps could be accomplished in one communication with the executing member, namely 1) notification of an associated person's personal financial interest, 2) instruction to transmit duplicate statement and confirmations and 3) approval.
- Remove confusion, ambiguity and errors in communications between employer members, executing members and associated persons.
- Permit employer members to effectively track and monitor requests for duplicate confirmations and statements
- Leverage existing procedures and systems.

Schwab recommends that, consistent with NASD Rule 3050, Proposed Rule 3210(a) permit the employer member to instruct the executing member to provide duplicate statements or confirmations.

Schwab also suggests that Proposed Rule 3210 permit the employer member to obtain:

- Duplicate statements and confirmations via alternative methods if the executing member or non-member financial institution does not or cannot provide duplicate statements and confirmations directly to the employer member; and
- Electronic trade and account data essentially similar to the information available via accounts statements and confirmations in lieu of obtaining duplicate statements and confirmations.

Supplementary Material .01 Account Opened Prior to Association With Employer Member

Proposed Supplementary Material .01 would require an associated person, within 15 days business days of becoming associated, to obtain the employer member's consent to maintain the account, notify the executing member of his or her association and instruct the executing member to provide duplicate statement and confirmations as of the date of his or her association with the member. Due to the challenges and constraints of the new employment process, particularly in large firms, Schwab believes that 15 business days is an insufficient period to fulfill such obligations and requests that FINRA consider extending the period to 45 calendar days. Schwab believes the requirement in proposed Supplementary Material .01 that the employer be provided with duplicate statements and confirmations "as of" the date of the associated person's employment would allow employer member firms to appropriately supervise such accounts from the date of employment.

Supplementary Material .04 Failure to Receive Duplicate Account Statements and Confirmations

Schwab notes that Supplementary Material .04 requires that:

If an employer member does not receive the duplicate account statements and confirmations required pursuant to this Rule in a timely manner, the employer member shall revoke its consent to maintain the account, and shall so notify the executing member or other financial institution in writing. The employer member shall promptly obtain records from the executing member that the account was closed.

Schwab is concerned that FINRA may not be cognizant of the nature and extent of accounts in which “securities transactions can be effected” and assumes statements are generated on a monthly or frequent periodic basis. Schwab believes the inflexibility of the Proposed Rule makes this requirement unrealistic, particularly when applied to the accounts of the spouse of an associated person and accounts maintained at non-member financial institutions. Accounts in which “securities transactions can be effected,” particularly when maintained with other financial institutions, may only produce statements or confirmations when activity occurs, may maintain positions that cannot be delivered, transferred or sold and may include accounts associated with employer benefit/financial plans (e.g. stock purchase plans, stock option plans, incentive compensation plans, etc...). Employer member firm requests to close such accounts due to a subjective determination that duplicate statements and confirmations have not been received in a timely manner may be irresponsible and unwarranted, may be impossible for the executing member and non-member financial institution to effect and may result in adverse financial consequences for the associated person or family member. It would be unrealistic to believe that such accounts can simply be closed upon the revocation of the employer member’s consent or the instruction of the employer member. In such circumstances it may not be possible for the employer member to “promptly” obtain records that the account was closed.

Schwab understands the underlying rationale for the requirement and recommends that FINRA consider a more principles based approach to achieving the underlying goal. Such a principles based approach might require member firms to have procedures in place that track the receipt of statements and confirmations and have a system of associated person notification and executing member contact and follow-up that can be documented when statements or confirmations have not been received in a timely manner.

Ms. Marcia E. Asquith

June 5, 2009

Page 5 of 5

Schwab appreciates the opportunity to provide comments and thanks FINRA for its consideration of the points we have raised in this letter. Please feel free to contact me at (415) 636-3540 to discuss them in more detail.

Sincerely,

A handwritten signature in cursive script, reading "Bari Havlik".

Bari Havlik
SVP and Chief Compliance Officer
Charles Schwab & Co., Inc.