

Notice to Members

OCTOBER 2005

SUGGESTED ROUTING

Continuing Education
Legal & Compliance
Registration
Senior Management

KEY TOPICS

Continuing Education
Firm Element

GUIDANCE

Continuing Education

Securities Industry/Regulatory Council on
Continuing Education Issues Firm Element Advisory

Executive Summary

The Securities Industry/Regulatory Council on Continuing Education (Council) has issued the annual Firm Element Advisory, a guide for firms to use when developing their continuing education Firm Element training plans. The Council suggests that firms use the Firm Element Advisory as part of the Firm Element Needs Analysis to help identify relevant training topics for all covered persons, including supervisors. Such topics may include ethics and training for supervisors. Among the subjects you should consider for inclusion in Firm Element training are new rules and regulations, such as supervisory control amendments, major regulatory examination findings, ethics and professional conduct, and any new products or services the firm plans to offer.

All of the training resources found in the Firm Element Advisory may be found on the CE Council Web site at www.securitiescep.com, where there are also two additional Firm Element resources. The first is the Firm Element Organizer, an easy-to-use software application that enables a search of an extensive database of training resources related to specific investment products or services. The second resource comprises CDs with scenarios taken from the Regulatory Element Supervisor (S201) and General (S101) programs. Log on to the Council Web site for descriptions of the available scenarios.

Questions/Further Information

Questions concerning this *Notice* may be directed to Joseph McDonald, Associate Director, Testing and Continuing Education, at (240) 386-5065.

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The Securities Industry Continuing Education Program

www.securitiescep.com

Securities Industry Continuing Education Program

Firm Element Advisory

Each year the Securities Industry/Regulatory Council on Continuing Education (the Council) publishes the Firm Element Advisory to identify current regulatory and sales practice issues for possible inclusion in Firm Element training plans. This year's topics have been taken from a review of industry regulatory and self-regulatory organizations (SRO) publications and announcements of significant events issued since the last Firm Element Advisory of October 2004. Also included among the topics are several rule proposals that have been filed with but not approved by the Securities and Exchange Commission.

The Council suggests that firms use the Firm Element Advisory as an aid in developing their Firm Element Needs Analysis to identify training topics that are relevant to the firm. Such topics may include ethics and training for supervisors. Among the subjects that you should consider for inclusion in Firm Element training are new rules or regulations, such as supervisory control amendments, major regulatory examination findings, such as those relating to mutual fund sales practices; ethics and professional conduct; and any new products or services the firm plans to offer. The need to address these topics may vary, depending upon your firm's line(s) of business and SRO membership.

The Council provides a convenient way for firms to access the training resources listed next to each topic in the Firm Element Advisory via its website, www.securitiescep.com. By using the Search function on the site and entering the referenced document, it is possible to review the content on the Continuing Education website.

In addition to the Firm Element Advisory material, there are two additional resources that can assist with developing Firm Element training plans. The first is the Firm Element Organizer, available at www.securitiescep.com/TOC/Firm_Element. This is an easy-to-use software application that enables the search of an extensive database of regulatory resources related to specific investment products or services. The results of a search can then be edited into a document that may assist in developing a Firm Element training plan. A tutorial on the website demonstrates how to use the Firm Element Organizer. The second Firm

Element resource is the Regulatory Element Scenario Library, available at www.securitiescep.com>CEP Training Material. The Scenario Library is composed of materials that were taken from the Regulatory Element Supervisor (S201) and General (S101) programs that have fulfilled their three-year life cycle in those programs. These materials are available on CDs and may be suitable for Firm Element training.

The Council is currently undertaking a new initiative using the materials from the Scenario Library called netCEP. NetCEP will leverage the value of the existing Scenario Library materials with the technological advantage of Web-based learning and delivery. The materials, which are currently available on CDs, will be offered as Internet-based training, providing on-demand access to content for both individuals and firms of all sizes.

Using netCEP, registered persons seeking general Regulatory Element training or preparatory materials may select and view as many scenarios from the General (S101), Investment Company Products/Variable Contracts Representatives (S106), and Supervisor (S201) Programs as desired. Firms will have access to the materials for training, to use as Firm Element Continuing Education content, or as compliance resources. Firms may allow registered persons to choose the materials they wish to view, or administrators may use the Learning and Content Management System to assign specific materials to individuals or groups, track completion of assignments, and generate reports as needed. Customization can be arranged to have firm-specific content added at the beginning of, or following, the materials. NetCEP is expected to be available in the fourth quarter of 2005.

For more information, log on to www.securitiescep.com, or call Joe McDonald, Associate Director, NASD Testing & Continuing Education, at (240) 386-5065; or Roni Meikle, Director, Continuing Education, New York Stock Exchange, (212) 656-2156.

Alternative Investments

New Products

An increasing number of complex products are being introduced to the market in response to the demand for higher returns or yield. Some of these products have unique features that may not be understood by investors or registered persons. Others raise concerns about suitability and potential conflicts of interest. In promoting and selling such products, firms should take a proactive approach to reviewing and improving their procedures for developing and vetting new products. At a minimum, those procedures should include clear, specific and practical guidelines for determining what constitutes a new product, ensure that the right questions are asked and answered before a new product is offered for sale, and, when appropriate, provide for post-approval follow-up and review, particularly for products that are complex or are approved only for limited distribution. See *NASD NTM (NTM) 05-26: NASD Recommends Best Practices for Reviewing New Products* (April 2005). See *NYSE Rule 401(Business Conduct); Rule 405 (Diligence as to Accounts) and NYSE Information Memo 05-11, Customer Account Sweeps into Bank*. See also *NYSE regulatory information bulletin "Hedge Fund Investing: Is It a Suitable Investment for You"* at www.nyse.com information for individual investors. See also *NASD NTM 03-71: NASD Reminds Members of Obligations When Selling Non-Conventional Investments* (November 2003); *NASD NTM 03-07: NASD Reminds Members of Obligations When Selling Hedge Funds* (February 2003); *NASD NTM 05-50: Member Responsibilities for Supervising Sales of Unregistered Equity Indexed Annuities* (August 2005).

Non-Managed Fee-Based Account Programs (NMFBA Programs)

On June 22, 2005, the SEC approved new NYSE Rule 405A (Non-Managed Fee-Based Account Programs – Disclosure and Monitoring). Rule 405A is effective immediately, however, the Exchange will allow 90 days from the approval date (September 22, 2005) for the membership to fully adopt and establish the procedural and systems changes required by the Rule. Note, however, that during this period, the membership is in no way relieved of its existing and ongoing obligations to monitor, review, and supervise NMFBA Programs pursuant to all other applicable NYSE rules including Rules 342 (Offices-Approval, Supervision and Control) and 405 (Diligence as to Accounts).

Rule 405A(1) requires that each customer, prior to the opening of an account in a NMFBA Program, be provided with a disclosure document describing the types of NMFBA Programs available to such client. The document shall disclose, for each such Program type, sufficient information for the customer to make a reasonably informed determination as to whether the program is appropriate to suit his or her anticipated needs. Specifically, such disclosures must include, at a minimum: a description of the services provided, eligible assets, fees charged, an explanation of how costs will be computed and/or the provision of cost estimates based on hypothetical portfolios, any conditions or restrictions imposed, and a summary of the program's advantages and disadvantages.

In addition to compliance with the prescribed requirements of Rule 405A, NMFBA Programs are subject to all applicable NYSE Rules including those relating to the supervision of registered representatives. Members and member organizations are advised to take note of registered representatives who seem to have a disproportionate number of customers in NMFBA Programs, as this may increase the likelihood that such Programs may be inappropriate for a number of such customers. Registered representatives should also be monitored for improper behavior in connection with NMFBA Programs, such as temporarily transferring assets into a fee-based account on, or shortly before, the day a percentage-based fee is assessed. See *NYSE Information Memo 05-51, Non-Managed Fee-Based Account Programs (Rule 405A)*.

NASD previously set forth in an *NTM* similar member obligations regarding fee-based accounts. Before opening a fee-based account for a customer, members must have reasonable grounds to believe that such an account is appropriate for that particular customer. To that end, members must make reasonable efforts to obtain information about the customer's financial status, investment objectives, trading history, size of portfolio, nature of securities held and account diversification. With that and any other relevant information in hand, members should then consider whether the type of account is appropriate in light of the services provided, the projected cost to the customer, alternative fee structures that are available, and the customer's fee structure preferences. In addition, members must disclose to the customer all material components of the fee-based program, including the fee schedule, services provided and the fact that the program may cost more than paying for the services separately.

Members must also implement supervisory procedures to require a periodic review of fee-based accounts to determine whether they remain appropriate for their respective customers. As part of that review, members should consider whether reasonable assumptions about market conditions upon which the member based its initial determination of appropriateness have changed, as well as any changes in customer objectives or financial circumstances. Finally, members should review their sales literature, marketing material and other correspondence related to fee-based programs to ensure the information is balanced and not misleading and should include in training materials guidelines regarding the establishment of fee-based accounts. See *NASD NTM 03-68: NASD Reminds Members That Fee-Based Compensation Programs Must Be Appropriate* (November 2003).

Investments of Liquefied Home Equity

The rapid increase in home prices over the past several years, in combination with refinancing activity by homeowners, has lead to increasing investment activity by homeowners with equity from their homes. Members and their associated persons should be aware that recommending liquefying home equity to purchase securities may not be suitable for many investors and should perform a careful analysis to determine whether liquefying home equity is a suitable strategy for an investor. In addition, members should ensure that all communications with the public addressing a strategy of liquefying home equity are fair and balanced, and accurately depict the risks of investing with liquefied home equity. Finally, members should consider whether to employ heightened scrutiny of accounts that they know, or have reason to know, are funded with liquefied home equity. See *NASD NTM 04-89: NASD Alerts Members to Concerns When Recommending or Facilitating Investments of Liquefied Home Equity* (December 2004).

Tenants-In-Common/Rule 1031 Exchanges

In general, sales of tenants-in-common (TIC) interests in real property in connection with an exchange of real property pursuant to Section 1031 of Internal Revenue Code constitute securities for purposes of the federal securities laws and NASD and NYSE rules. Members and their associated persons are reminded that when offering to customers TIC interests, they must comply with all applicable NASD and NYSE rules, including those addressing suitability, due diligence, splitting commissions with unregistered individuals or firms, supervision and recordkeeping.

In addition, members relying on private offering exemptions from the registration requirements of the Securities Act of 1933 (Securities Act) must ensure that their manner of offering TIC interests complies with all applicable requirements, including the prohibition on general solicitation. See *NASD NTM 05-18: NASD Issues Guidance on Section 1031 Tax-Deferred Exchanges of Real Property for Certain Tenants-in-Common Interests in Real Property Offerings* (March 2005).

Anti-Money Laundering

Independent Testing

Anti-money laundering (AML) continues to be an evolving topic, as regulators adopt new rules and regulations to carry out the mandates of the USA PATRIOT Act. NASD Rule 3011 and NYSE Rule 445 require that NASD and NYSE members establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. In particular, the rules require, among other things, that members' AML programs provide for independent testing.

NASD and the NYSE filed with the Securities and Exchange Commission (SEC or Commission) proposed rule changes to amend NASD Rule 3011 and NYSE Rule 445, and to adopt interpretive and supplementary material to these Rules. The proposed amendments would require each member to conduct independent testing of its anti-money laundering program on an annual (calendar-year) basis, with the exception of certain types of firms, which would be allowed to test every two years (on a calendar-year basis). The proposed interpretive and supplementary material includes requirements for the persons who may conduct such tests. NASD's proposal also requires members to review and update, if necessary, the accuracy of the member's anti-money laundering compliance person information on a quarterly basis. See *SEC Release No. 34-51935; Notice of Filing of Proposed Rule Change Relating to Amendments to NASD Rule 3011 and the Adoption of New Related Interpretive Material (June 29, 2005)*; *SEC Release No. 34-51934; Notice of Filing of Proposed Rule Change to Amend NYSE Rule 445 (June 29, 2005)*.

Broker-Dealer Customer Identification Program Rule

On April 29, 2003, the SEC and the Department of the Treasury jointly adopted the broker-dealer customer identification program (CIP) Rule. The CIP Rule requires broker-dealers to implement customer identification programs that include procedures for: (1) verifying the identities of customers; (2) maintaining records of the verification process; (3) comparing customers with lists of known or suspected terrorists or terrorist organizations; and (4) providing customers with notice that information is being collected to verify their identities. See *31 C.F.R. 103.122*.

The CIP Rule permits broker-dealers to rely on certain other financial institutions to undertake the required elements with respect to shared customers. On February 10, 2005, in a letter to the Securities Industry Association (SIA), the SEC Division of Market Regulation (Division) extended the no-action relief granted in its February 12, 2004 letter (2004 No-Action Letter) regarding the ability of broker-dealers to rely on investment advisers to perform customer identification procedures, consistent with the CIP Rule. In its letter, the Division staff states that it will not recommend enforcement action to the Commission under Rule 17a-8 under the Exchange Act if a broker-dealer relies on an investment adviser to perform customer identification procedures, prior to such investment adviser becoming subject to an AML program rule, provided the other requirements in paragraph (b)(6) of the CIP Rule are met, namely that

(1) such reliance is reasonable under the circumstances; (2) the investment adviser is regulated by a Federal functional regulator; and (3) the investment adviser enters into a contract requiring it to certify annually to the broker-dealer that it has implemented an anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the broker-dealer's customer identification program. The 2004 No-Action Letter would have expired on February 12, 2005. The relief provided in the 2004 No-Action Letter and extended by the February 10, 2005 letter will be withdrawn on the earlier of (1) the date upon which an AML program rule for investment advisers becomes effective, or (2) July 12, 2006. See *SEC Division of Market Regulation: No-Action Letter to the Securities Industry Association, Feb.10, 2005*. See also *NASD's AML Web page at www.nasd.com/aml; and the SEC's Spotlight On: Anti-Money Laundering Rules at www.sec.gov/spotlight/moneylaundering.htm. See also NYSE Information Memo 03-32, *Customer Identification Programs for Broker-Dealers (July 14, 2003)* ([www.nyse.com>regulation>information memos](http://www.nyse.com/regulation/information%20memos)).*

Bond Sales

Mark-Ups

NASD is proposing to adopt a second interpretation to Rule 2440, to provide additional mark-up guidance for transactions in debt securities except municipal securities.

Under NASD Rule 2440, (Fair Prices and Commissions) a member is required to sell securities to a customer at a fair price. When a member acts in a principal capacity, the dealer marks up or marks down a security. IM-2440 (Mark-Up Policy) provides guidance on mark-ups and fair pricing of securities transactions with customers. Both Rule 2440 and IM-2440 apply to transactions in debt securities, and IM-2440 provides that mark-ups for transactions in common stock are customarily higher than those for bond transactions of the same size.

A key step in determining whether a mark-up (mark-down) is fair and reasonable is correctly identifying the prevailing market price of the security, which is the basis from which the mark-up (mark-down) is calculated. The proposed interpretation addresses two fundamental issues in debt securities transactions: (1) how does a dealer correctly identify the prevailing market price of a debt security; and (2) what is a "similar" security and when may it be considered in determining the prevailing market price. See *SEC Release No. 34-51338, Notice of Filing of Proposed Rule Change to Adopt an Additional Mark-up Policy for Transactions in Debt Securities Except Municipal Securities (March 9, 2005)*.

Communications

Email Communications

SROs have taken seriously failures by members to maintain and preserve all required internal communications, and have recently settled actions against members for, among other things, failure to maintain email communications. Members are required to comply with record keeping requirements regarding external and internal communications to ensure that communications will be available and accessible to regulators during the course of examinations and investigations. Firms must maintain, preserve and produce on a timely basis all communications upon request of regulators, including SRO staff. In particular, when implementing new technology, firms must address maintenance, retrieval and production issues, especially in light of the increasing volume of data. See *NYSE Disciplinary Actions 05-62 dated May 19, 2005, 05-23 dated January 23, 2005; 05-01 dated January 5, 2005; and 04-190 dated December 15, 2004. See also NYSE Disciplinary Actions 04-128, dated August 2, 2004 and 02-227, 02-226, 02-225, 02-224 and 02-223, all dated November 15, 2002, regarding email retention. See also NYSE-SR-2005-17 Exemptions from pre-use review and requirements for institutional sales material. See also NASD's "Guide to the Internet for Registered Representatives" Web page at www.nasd.com/internetguide; (NASD Disciplinary Action No. CE2050012 (in August 2005 Report); NASD Disciplinary Action No. C11050015) (in July 2005 Report); NASD Disciplinary Action No. CE4050005) (in July 2005 Report); and NASD Disciplinary Action No. C11050004 (in April 2005 Report).*

The NYSE has formed an electronic communications task force, which includes NASD and industry representatives to analyze and address evolving technology and applications for firms in light of current SRO/SEC rule requirements.

Correspondence

NASD currently defines correspondence to include any written letter or electronic mail message distributed by a member to (1) one or more of its existing retail customers, and (2) fewer than 25 prospective retail customers within any 30-calendar-day period. The definition of correspondence is significant because firms generally are not required to have a registered principal approve correspondence prior to use or file correspondence with the NASD Advertising Regulation Department, and because some of the specific content standards applicable to other types of communications with the public do not apply to correspondence. NASD is proposing to amend Rule 2211 to require that a registered principal approve, prior to use, any correspondence that is sent to 25 or more existing retail customers within a 30-calendar-day period. See *NASD NTM 05-27: NASD Requests Comment on Proposal to Require Principal Pre-Use Approval of Member Correspondence to 25 or More Existing Retail Customers within a 30-Calendar-Day Period* (April 2005). See *NYSE Rule 342.17 (Review of Communications with the Public)* and *NYSE Rule 472 (Communications with the Public)*.

Continuing Education

Elimination of Exemptions

In 2004, the SEC approved amendments to SRO rules on continuing education eliminating all exemptions from the Regulatory Element Program. Registered persons who had been eligible for “grandfathered” and/or “graduated” exemptions are now required to participate in the Regulatory Element Continuing Education Program. The rule changes became effective April 4, 2005. The re-entry phase for formerly exempted registered persons will occur over a three-year period. Each registered person’s re-entry into the Program will be determined by using the registered person’s “base date,” which is usually the person’s initial registration date. See *NASD NTM 04-78: SEC Approves Amendments to Rule 1120 to Eliminate Exemptions from the Continuing Education Regulatory Element Requirements* (October 2004); *NASD NTM 05-20: NASD Announces Effective Date of April 4, 2005 for Amendments to Rule 1120 to Eliminate Exemptions from the Continuing Education Regulatory Element Requirements* (March 2005). See also *NYSE Information Memo 04-55, Amendments to Rule 345A That Rescind All Exemptions from Participation in Continuing Education Regulatory Element Programs* and *Information Memo 05-20, Reminder—Amendments to Rule 345A Rescinding all Exemptions from Participation in Continuing Education Regulatory Element Programs Become effective on April 4, 2005*. See also *MSRB Notice 2004-34, Amendment Approved to Remove Exemptions from Regulatory Element of Continuing Education Program*.

Ethics

The CE Council introduced an ethics module as part of the Regulatory Element of the Continuing Education Program in early 2005. Firms should consider addressing ethical issues in their own Firm Element training. Such individual programs can tailor general concepts to the values, policies, culture, organization and business model of the particular firm, and allow senior management to participate in the ethics program, thereby modeling and articulating the firm’s commitment to high ethical standards in daily business conduct.

Ethics programs should do more than explain industry rules and firm policies. They should provide a context for regulatory requirements by addressing the importance of upholding the firm’s values (e.g., integrity, trustworthiness), what *constitutes* the “right” thing, and the spirit—not only the letter—of the law. They should also help employees develop a greater awareness of ethics issues and a stronger ability to make ethical decisions, including dealing with organizational influences on such decision-making. Such programs should be based on the firm’s code of ethics (if any), its supervisory procedures, mechanisms for reporting observed misconduct, and other policies that bear on the conduct of its employees—and they should be realistic.

An effective ethics curriculum could include cases illustrating ethical situations, approaches to resolving such dilemmas and strategies and resources for dealing with organizational influences, such as focusing on long-term success instead of short-term expediency, using confidential help lines. Rather than providing ethical content in isolation, firms may have employees apply ethical principles to realistic fact patterns, demonstrated in stories of people who have made the wrong ethical decisions and those who have had the courage to make the right choices, and consider the consequences of ethical decisions for customers, employees, the firm and the industry (especially with regard to investor confidence and integrity of the firm). Firms should bear in mind that experience often varies dramatically among employees of the same firm, or between supervisors and staff, and that the training needs may differ across the firm.

There are a variety of methods to deliver engaging ethics training, including the provision of instruction in person, such as utilizing outside experts, train-the-trainer methodologies, in-house personnel and electronic means. Group interaction is particularly useful in ethics training. Instead of merely providing reading material or lectures, firms should attempt to engage employees by providing an opportunity (whether online, in small discussion groups or both) by which employees can express their views and hear the views of their colleagues.

Fingerprinting

Members should review and, as necessary, update their fingerprinting procedures to help ensure that fingerprints submitted to the Federal Bureau of Investigation (FBI) as part of the hiring process belong to the employee being hired by the member. Members' internal procedures addressing the fingerprinting of prospective employees as required under Section 17(f)(2) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 17f-2 thereunder should attempt to ensure that the person being fingerprinted is the same as the person who is seeking employment with the member. NASD suggests a number of best practices to members that elect to fingerprint prospective employees in-house and those that rely on third parties in an off-site location to collect fingerprints and to verify the identity of the person being fingerprinted. See *NASD NTM 05-39: NASD Suggests Best Practices for Fingerprinting Procedures* (May 2005). See *NYSE Rule 345.11 (Investigation Records)*, *NYSE Information Memo 03-11 (Fingerprint Processing and FBI Identification Records)* and *NYSE Information Memo 04-53 (Termination of Fingerprinting Processing Services)*.

Hedge Funds

Hedge funds pool investors' money and invest those funds in financial instruments in an effort to make a positive return. Many hedge funds seek to profit in all kinds of markets by pursuing leveraging and other speculative investment practices that may increase the risk of investment loss. Neither hedge funds nor advisers to hedge funds are currently required to register with the SEC. However, in December 2004, the SEC adopted a new rule and rule amendments under the Investment Advisers Act of 1940 (Advisers Act) that require advisers to certain hedge funds to register with the SEC. The rule and rule amendments are designed to provide the protections afforded by the Advisers Act to investors in hedge funds, and to enhance the SEC's ability to protect the securities markets. The rule became effective February 10, 2005. Advisers that will be required to register under the new rule and rule amendments must do so by February 1, 2006. See *SEC Release No. IA-2333; Registration Under the Advisers Act of Certain Hedge Fund Advisers (December 2, 2004)*.

Investment Adviser Registration Requirements for Broker-Dealers

The SEC adopted Rule 202(a)(11)-1 under the Advisers Act addressing the application of the Act to broker-dealers offering certain types of brokerage programs. Under the rule, a broker-dealer providing advice that is solely incidental to its brokerage services is excepted from the Advisers Act if it charges an asset-based or fixed fee, rather than a commission, mark-up or mark-down, for its services, provided it makes certain disclosures about the nature of its services. The rule states that exercising investment discretion is not "solely incidental to" (1) the business of a broker or dealer within the meaning of the Advisers Act, or (2) brokerage services within the meaning of the rule. The rule also states that a broker or dealer provides investment advice that is not solely incidental to the conduct of its business as a broker or dealer or to its brokerage services if the broker or dealer charges a separate fee or separately contracts for advisory services.

In addition, the rule states that when a broker-dealer provides advice as part of a financial plan or in connection with providing planning services, a broker-dealer provides advice that is not solely incidental if it (1) holds itself out to the public as a financial planner or as providing financial planning services, (2) delivers to its customer a financial plan, or (3) represents to the customer that the advice is provided as part of a financial plan or financial planning services. Finally, under the rule, broker-dealers are not subject to the Advisers Act solely because they offer full-service brokerage and discount brokerage services (including electronic brokerage) for reduced commission rates. The rule became effective April 15, 2005. See *SEC Release No. 34-51523; Certain Brokers Deemed not to be Investment Advisers (April 12, 2005)*.

Internal/Supervisory Controls and CEO Certification

On June 17, 2004, the SEC approved amendments to NYSE Rules 342, 401, 408 and 410 to strengthen the supervisory procedures and internal controls of members and member organizations. The SEC also approved rule changes (Supervisory Control Amendments) by NASD that both create and amend certain rules and interpretive materials to address a member's supervisory and supervisory control procedures. The NYSE and NASD rule changes became effective January 31, 2005. The amendments prescribe general standards with respect to internal and supervisory controls including the regulatory systems and procedures and their purpose regarding supervision and control, business conduct, discretionary accounts and records of orders. See NYSE Information Memo 04-38, Amendments to Rules 342, 401, 408 and 410 Relating to Supervision and Internal Controls (July 26, 2004). See *NASD NTM 04-71: SEC Approves New Rules and Rule Amendments Concerning Supervision and Supervisory Controls* (October 2004).

NASD and NYSE issued guidance in January 2005 to assist firms in their compliance with the new rules. NASD issued additional guidelines in April 2005 for complying with NASD Rule 3012(a)(1), which requires a member to designate one or more principals who will establish, maintain, and enforce a system of supervisory control policies and procedures that tests and verifies that a member's supervisory procedures are reasonably designed to comply with applicable securities laws and regulations, and with applicable NASD rules, and to amend those supervisory procedures when the testing and verification demonstrate a need to do so. See *NASD NTM 05-08: Guidance Regarding the Application of the Supervisory Control Amendments to Members' Securities Activities, Including Members' Institutional Securities Activities* (January 2005); *NASD NTM 05-29: Guidance Regarding Rule 3012(a)(1) Requirement to Test and Verify a Member's Supervisory Policies and Procedures* (April 2005); *Transcript of December 16, 2004, 2004 Supervisory Control Telephone Workshop*; see generally *NASD Web page at www.nasd.com/SupervisoryControl*. See NYSE Information Memo 05-07, *Joint NYSE/NASD Memo regarding "Internal Controls" Amendments*.

The SEC also approved new NASD Rule 3013 and accompanying interpretive material that requires members to (1) designate a chief compliance officer (CCO) and (2) have the chief executive officer (CEO) or equivalent officer certify annually that the member has in place processes to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules, and federal securities laws and regulations. Members had to designate and identify to NASD on Schedule A of Form BD a principal to serve as CCO by December 1, 2004. The CEO certification must be executed within one year of December 1, 2004 and annually thereafter. The NYSE has proposed similar requirements to be filed as part of the annual report. See *NASD NTM 04-7: SEC Approves New Chief Executive Officer Compliance Certification and Chief Compliance Officer Designation Requirements* (November 2004). See NYSE File No. SR-NYSE-2004-64.

Municipal Securities

Municipal Fund Securities

Municipal fund securities, including 529 College Savings Plans, are municipal securities regulated by the MSRB. Municipal fund securities also represent investments in pools of securities, such as securities issued by registered investment companies. Therefore, sales materials for municipal fund securities must comply with the advertising rules of the MSRB, and if the sales material also refers to the underlying investment companies, the material must comply with the advertising rules of the SEC and NASD, including NASD Rule 2210. Principals supervising the sale of municipal fund securities must be appropriately registered and hold either a Series 51 (Municipal Fund Securities Limited Principal) (and either the Series 24 or Series 26) or Series 53 (Municipal Securities Principal) registration. For more information, see the section on Municipal Fund Securities on the MSRB Web site at www.msrb.org/msrb1/mfs/default.asp. See also *NASD NTM 03-17: Sales Material for Municipal Fund Securities* (March 2003); and *NASD Issues Investor Alert on 529 College Savings Plans, September 13, 2004* at www.nasd.com/pr/091305 regarding expenses and tax incentives associated with investments in 529 College Savings Plans.

On May 24, 2005, the SEC approved amendments to Rule G-21, on advertising, establishing specific requirements with respect to advertisements by brokers, dealers and municipal securities dealers relating to municipal fund securities. The amendments include specific requirements regarding the calculation and display of performance data for municipal fund securities in a manner consistent with Rule 482 under the Securities Act that regulates mutual fund performance advertisements. The amendments also include general disclosure requirements regarding municipal fund securities that are similar in most respects to the disclosures required for mutual fund advertisements under Rule 482. Finally, the amendments incorporate certain prior interpretations relating to municipal fund securities. See *MSRB Notice 2005-31; SEC Approves Amendments to Rule G-21 Relating to Advertisements of Municipal Fund Securities* (May 27, 2005).

All advertisements of municipal fund securities submitted or caused to be submitted for publication by a dealer on or after September 1, 2005 must comply with these new provisions of Rule G-21, except for the provisions relating to calculation and presentation of performance data, which must be complied with on and after December 1, 2005. In addition, the SEC recently approved amendments to Rule G-21 that will require municipal fund securities performance advertisements either to disclose performance that is current as of the most recent month-end, or to indicate where such performance may be found.

Disclosure of Original Issue Discount Bonds

The MSRB published an interpretive notice reminding brokers, dealers and municipal securities dealers of their affirmative disclosure obligations when effecting transactions with customers in original issue discount bonds. An original issue discount bond, or O.I.D. bond, is a bond that was sold at the time of issue at a price that was below the par value of the bond.

The original issue discount is the amount by which the par value of the bond exceeded its public offering price at the time of its original issuance. The original issue discount is amortized over the life of the security and, on a municipal security, is generally treated as tax-exempt interest. When the investor sells the security before maturity, any profit realized on such sale is calculated (for tax purposes) on the adjusted book value, which is calculated for each year the security is outstanding by adding the accretion value to the original offering price. The amount of the accretion value (and the existence and total amount of original issue discount) is determined in accordance with the provisions of the Internal Revenue Code and the rules and regulations of the Internal Revenue Service.

The MSRB believes that the fact that a security bears an original issue discount is material information (since it may affect the tax treatment of the security); therefore, this fact should be disclosed to a customer prior to or at the time of trade. Absent adequate disclosure of a security's original issue discount status, an investor might not be aware that all or a portion of the component of his or her investment return represented by accretion of the discount is tax-exempt, and therefore might sell the securities at an inappropriately low price (i.e., at a price not reflecting the tax-exempt portion of the discount) or pay capital gains tax on the accreted discount amount. Without appropriate disclosure, an investor also might not be aware of how his or her transaction price compares to the initial public offering price of the security. Appropriate disclosure of a security's original issue discount feature should assist customers in computing the market discount or premium on their transaction. See *MSRB Notice 2005-01, Interpretive Reminder Notice Regarding Rule G-17, on Disclosure of Material Facts—Disclosure of Original Issue Discount Bonds*.

Broker-Dealer Payments to Non-Affiliated Persons Soliciting Municipal Securities

On August 17, 2005, the SEC approved substantial amendments to MSRB Rule G-38 relating to the solicitation of municipal securities business under Rule G-38. As amended, Rule G-38 prohibits a broker-dealer or a municipal securities dealer (dealer) from paying persons who are not affiliated with the dealer for soliciting municipal securities business on its behalf. In addition, new MSRB Form G-38t has been created and certain related amendments have been made to MSRB Rule G-37, on political contributions and prohibitions on municipal securities business, and MSRB Rule G-8 on recordkeeping. The amendments became effective August 29, 2005.

Former Rule G-38, which permitted outside consultants to solicit municipal securities business on behalf of dealers, was replaced in its entirety by new Rule G-38. New Rule G-38 prohibits a dealer from making any direct or indirect payment to any person who is not an affiliated person of the dealer for a solicitation of municipal securities business on behalf of the dealer. An "affiliated person" of a dealer is defined as any partner, director, officer, employee or registered person of the dealer or of an affiliated company. An affiliated company of a dealer is an entity that controls, is controlled by, or is under common control with the dealer and whose activities on behalf of the dealer are not limited solely to the solicitation of municipal securities business. Solicitation is defined as a direct or indirect communication with an issuer of municipal securities for the purpose of obtaining or retaining municipal securities business. Rule G-37 was amended to reflect that those associated persons who solicit municipal securities business and thereby are municipal finance professionals include affiliated persons under Rule G-38.

The MSRB has incorporated a transitional period permitting certain payments to consultants. A dealer is permitted to make payments to non-affiliated persons (consultants) for solicitations of municipal securities business if such payments were made with respect solely to solicitation activities undertaken by such persons on or prior to August 29, 2005, provided certain conditions are met. In particular, the dealer must disclose each item of municipal securities business for which a transitional payment remains pending and the amount of such pending payment on Form G-38t submitted to the MSRB for the third quarter of 2005 and on each subsequent quarterly Form G-38t submission until such payment is finally made.

Rule G-8 regarding recordkeeping was amended to require the retention of certain records, and Rule G-37 and related forms were amended to delete references to Rule G-38 and the reporting of consultant information. See *SEC Rel. No. 34-52278 (August 17, 2005); MSRB Notice 2005-044, SEC Approves Amendments to Rule G-38 Relating to Solicitation of Municipal Securities Business*.

Mutual Funds

The following types of mutual fund transactions are under increased scrutiny from all regulators.

Sales of Class B and C Mutual Fund Shares

NASD settled three actions against members and fined them more than \$21 million for improper sales of Class B and Class C shares of mutual funds. These cases are part of a larger, ongoing investigation into mutual fund sales practices.

These cases involve recommendations and sales of Class B and Class C shares of mutual funds. In all three cases, the firms made recommendations and sales of mutual funds to their customers without considering or adequately disclosing, on a consistent basis, that an equal investment in Class A shares would generally have been more economically advantageous for their customers by providing a higher overall rate of return. The firms also had inadequate supervisory and compliance policies and procedures relating to these mutual fund sales.

In particular, NASD found that the firms did not consistently consider that large investments in Class A shares of mutual funds entitle customers to breakpoint discounts on sales charges, generally beginning at the \$50,000 investment level, which are not available for investments in other share classes. Investors may be entitled to breakpoints based on the amount of a single mutual fund purchase; the total amount of multiple purchases in the same family of funds; and/or the total amount of mutual fund investments held, at the time of the new purchase, by members of the customer's "household"—typically, accounts of close family members.

Unlike Class A shares, Class B shares are not subject to a front-end sales charge, but are subject to contingent deferred sales charges (CDSCs) if the shareholder redeems his or her shares within a defined period of time, generally six years. Class B and Class C shares are also subject to higher ongoing fees than Class A shares for as long as they are held. Even though investors do not pay a front-end sales charge for Class B or Class C shares, the potential CDSCs and the higher ongoing fees significantly affect the return on mutual fund investments, particularly at higher dollar levels. See *NASD News Release, "NASD Fines Citigroup Global markets, American Express and Chase Investment Services More than \$21 Million for Improper Sales of Class B and C Shares of Mutual Funds"* (March 23, 2005).

Regulation National Market System (NMS)

The SEC adopted rules under Regulation NMS and two amendments to the joint industry plans for disseminating market information. In addition to redesignating the national market system rules previously adopted under Section 11A of the Exchange Act, Regulation NMS includes new substantive rules that are designed to modernize and strengthen the regulatory structure of the U.S. equity markets.

First, the “Order Protection Rule” requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception. To be protected, a quotation must be immediately and automatically accessible.

Second, the “Access Rule” requires fair and non-discriminatory access to quotations, establishes a limit on access fees to harmonize the pricing of quotations across different trading centers, and requires each national securities exchange and national securities association to adopt, maintain and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross automated quotations.

Third, the “Sub-Penny Rule” prohibits market participants from accepting, ranking or displaying orders, quotations or indications of interest in a pricing increment smaller than a penny, except for orders, quotations or indications of interest that are priced at less than \$1 per share.

Finally, the “Market Data Rules” and related Plan amendments update the requirements for consolidating, distributing, and displaying market information, as well as amend the joint industry plans for disseminating market information that modify the formulas for allocating plan revenues (Allocation Amendment) and broaden participation in plan governance (Governance Amendment). Regulation NMS became effective August 29, 2005. The compliance dates for the rules under Regulation NMS vary as follows. The Order Protection Rule and Access Rule will be phased-in; the first phase-in date is June 29, 2006 and the second phase-in date is August 31, 2006. The compliance date for the Sub-Penny Rule is January 31, 2006. The compliance date for the Allocation Amendment is September 1, 2006. All other compliance dates coincide with the effective date of Regulation NMS. See *SEC Release No. 34-51808, Regulation NMS (June 9, 2005)*.

The NYSE has proposed to establish a Hybrid Market, which is pending review by the SEC. Assuming regulatory approvals, the NYSE will introduce the Hybrid Market in phases beginning in fourth quarter 2005, continuing into full rollout in third quarter 2006.

Research Analyst

New Qualification Requirements for Research Analysts

NASD Rule 1050 and NYSE Rule 344 have been amended to provide an exemption from the research analyst qualification requirements for certain research analysts employed by member foreign affiliates in jurisdictions that NASD and the NYSE have determined to have acceptable qualification standards and research analyst conflict of interest rules. Currently, the exemption is available to research analysts in the following jurisdictions: the United Kingdom, China, Hong Kong, Singapore, Thailand, Malaysia and Japan. Eligibility for the exemption is conditioned on several factors, including imposition of NASD Rule 2711 and NYSE Rule 472 on foreign affiliates and their research analysts in those instances where the research analyst contributes to the preparation of a member's research report. The amendment became effective on April 1, 2005. See *NASD NTM 05-24: NASD Announces Exemption from the Research Analyst Qualification Requirements for Certain Employees Who Contribute to Member Research Reports* (April 2005). See *NYSE Information Memo 05-23 Foreign Research Analyst Exemption*.

The NASD and NYSE have amended NASD Rule 1050 and NYSE Rule 344 to provide an exemption from the analysis portion of the Research Analyst Qualification Examination (Series 86) for certain applicants who prepare only "technical research reports" and have passed Levels I and II of the Chartered Market Technician (CMT) Certification Examination administered by the Market Technicians Association (MTA). See *NASD NTM 05-14: NASD Announces Exemption from the Analyst Portion of the Research Analyst Qualification Examination for Certain Applicants Who Prepare Only "Technical Research Reports"* (February 2005). See *NYSE Information Memo 05-09, Rule 344-Research Analyst Qualification Examination ("Series 86/87") for Technical Research Analysts and Information Memo 05-16, Rule 344-Research Analyst Qualification Examination (Series 86/87) for Technical Research Analysts*. See *SEC Release No. 34-51240* (February 23, 2005).

The SEC has approved a new NASD rule that requires supervisors of equity research analysts to pass either the Series 87 or the NYSE Series 16 Supervisory Analyst qualification examination. This new rule augments the existing requirement that supervisors of research analysts must be registered as a General Securities Principal. Qualification requirements for supervisors must have been satisfied by August 2, 2005. See *NASD NTM 04-81: SEC Approves New NASD Qualification Requirements for Supervisors of Research Analysts* (November 2004).

Road Shows

The SEC has approved amendments to NASD Rule 2711 (Research Analysts and Research Reports) and NYSE Rule 472 (Communications to the Public) to further insulate research analysts from the potential influences of the investment banking department. The amendments prohibit (1) a research analyst from participating in a road show related to an investment banking services transaction and from engaging in any communication with a current or prospective customer in the presence of investment banking department personnel or company management about an investment banking services transaction and (2) investment banking department personnel from directing a research analyst to engage in sales and marketing efforts and other communications with a customer about an investment banking services transaction. The rule change expressly permits analysts to educate investors and internal personnel about an investment banking services transaction, provided such communications are "fair, balanced and not misleading."

The new rule became effective June 6, 2005. See *NASD NTM 05-34: SEC Approves Amendments to Rule 2711 to Prohibit Research Analysts from Participating in a Road Show and from Communicating with Customers in the Presence of Investment Banking Personnel or Company Management About an Investment Banking Services Transaction* (May 2005). See *NYSE Information Memo 05-34, Prohibition on Research Analyst Participation in Road Shows*.

Sales Practices

Penny Stocks

The SEC amended the definition of "penny stock" as well as the requirements for providing certain information to penny stock customers. The amendments are designed to address market changes, evolving communications technology and legislative developments. The amendments became effective on September 12, 2005. See *SEC Release No. 34-51983, Amendments to the Penny Stock Rules* (July 7, 2005).

Directed Brokerage Practices

On December 20, 2004, the SEC approved amendments to NASD Rule 2830(k), which governs NASD members' execution of investment company portfolio transactions. The amended rule augments existing proscriptions on directed brokerage practices by prohibiting a member from selling the shares of, or acting as an underwriter for, any investment company if the member knows or has reason to know that the investment company or its investment adviser or underwriter have directed brokerage arrangements in place that are intended to promote the sale of investment company securities. The amendments also eliminated an existing provision in the rule that permitted a member, subject to

certain conditions, to sell or underwrite the shares of an investment company that follows a policy of considering fund sales in determining whether to send portfolio transactions to a broker-dealer. The rule change became effective February 14, 2005. See *NASD NTM 05-04: SEC Approves Amendments to NASD Rule 2830(k) to Strengthen Prohibitions on Investment Company Directed Brokerage Arrangements* (January 2005).

Sales Contests

NASD currently restricts the payment and acceptance of non-cash compensation in connection with the sale of direct participation programs (DPPs), variable insurance contracts, investment company securities, and public offerings of real estate investment trusts (REITs) and other securities. NASD also prohibits internal non-cash sales contests in connection with the sale of variable insurance contracts or investment company securities unless they meet certain criteria, including that such contests are based on principles of total production and equal weighting. NASD has proposed to expand the prohibitions of non-cash compensation to the sale and distribution of any security or type of security, rather than just those enumerated above. NASD also has proposed to prohibit all product-specific cash and non-cash sales contests as defined by the proposed rule. See *NASD NTM 05-40: NASD Requests Comment on Proposal to Prohibit All Product-Specific Sales Contests and to Apply Non-Cash Compensation Rules to Sales of All Securities* (May 2005).

Structured Products

NASD staff is concerned that members may not be fulfilling their sales practice obligations when selling these instruments, especially to retail customers. NASD provides guidance to members concerning their obligations when selling structured products, including the requirements to: (1) provide balanced disclosure in promotional efforts; (2) ascertain accounts eligible to purchase structured products; (3) deal fairly with customers with regard to derivative products; (4) perform a reasonable-basis suitability determination; (5) perform a customer-specific suitability determination; (6) supervise and maintain a supervisory control system; and (7) train associated persons. See *NASD NTM 05-59: NASD Provides Guidance Concerning the Sale of Structured Products* (September 2005).

Short Sales: Reg SHO

In July 2004, the SEC adopted new Regulation SHO under the Exchange Act to provide a new regulatory framework governing short selling of securities. Among other things, Regulation SHO (1) requires broker-dealers to mark sales in all equity securities "long," "short," or "short exempt"; (2) includes a temporary rule that establishes procedures for the SEC to suspend temporarily the operation of the current "tick" test and any short sale price test of any exchange or national securities association, for specified securities; (3) requires short sellers in all equity securities to locate securities to borrow before selling; and (4) imposes additional delivery requirements on broker-dealers for securities in which a substantial number of failures to deliver have occurred. Together with the Regulation SHO adopting release, the SEC issued an order (Pilot Order) establishing a one-year pilot suspending the provisions of Rule 10a-1(a) under the Exchange Act and any short sale price test of any exchange or national securities association for short sales of certain securities for specified periods of time. The SEC also adopted amendments to remove the shelf offering exception, and issued interpretive guidance concerning sham transactions designed to evade Regulation M. For additional information, see *the Short Sales section of the SEC's Web site at www.sec.gov/spotlight/shortsales.htm, and in particular, the Q&A developed by the Division of Market Regulation at www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm. See also CBOE Regulatory Circulars RG05-020 and RG05-046.*

The SEC Division of Market Regulation also issued two No-Action Letters granting relief from the order-marking requirements under the Regulation SHO Pilot in certain circumstances. In this regard, the NYSE and NASDAQ have established a "masking" process, as described in the SEC's No-Action Letter (*Division of Market Regulation: No-Action Letter to the Securities Industry Association, April 15, 2005*). See also NASD NTM 05-33; *Short Sales in Pilot Securities and Order-Marking Requirements under SEC Regulation SHO* (April 2004). In addition, members and member organizations using their own proprietary or vendor order management systems are responsible for making appropriate system changes to ensure proper handling of pilot securities.

To aid members and member organizations in complying with Regulation SHO and the Pilot Order, the NYSE and NASDAQ have posted on their Web sites their respective lists of pilot securities, as established by the Pilot Order. The NYSE has worked with the SEC in obtaining a procedure to grant specialist organizations no-action relief from the close out requirements of Rule 203(b)(3) of Regulation SHO. Also, the NYSE has enhanced its Exchange Filing Platform (EFP) system to add a new EFP contact in the membership profile information for Regulation SHO.

Finally, with respect to NASD Order Audit Trail System (OATS) requirements and NYSE books and records requirements, members and member organizations also may mark their OATS report consistent with the SEC's order-marking relief. See *NASD NTM 04-93: Issues Relating to the SEC's Adoption of Regulation SHO* (December 2004). See also *NYSE Information Memo 04-54, Adoption of New Provisions Affecting the Regulation of Short Sales*, *Information Memo 04-64, SEC Postpones Short Sale Pilot Program*, *the Exchange Proposes to Amend its Short Sale Rules (440B & 440C) and Other Regulation SHO Implementation Issues*, *Information Memo 05-27, Amendments to NYSE 440F and 440G to Include Short-Exempt Sales on Reports of Short Interest* (i.e., *Form SS20 & 121*), *Information Memo 05-30, The Exchange Publishes List of Pilot Securities Pursuant to Regulation SHO and Provides Guidance on the Regulation*, *Information Memo 05-33, Reg SHO Pilot – Considerations Relating to Selling Securities Short on the Floor of the Exchange* and *Member Education Bulletin 2005-07 Procedures for Entry and Transmission of Short Exempt CAP-DI Orders*.

Supervision

Annual Compliance Meetings

On April 25, 2005, the SEC approved amendments to NASD Rule 3010(a)(7) to require that registered principals, in addition to registered representatives, attend an annual compliance meeting. The SEC also approved amendments to NASD Rules 3010(a), 3010(a)(3), and 3010(b)(1) to clarify that the scope of these rules specifically extends to registered representatives, registered principals, and other associated persons. The amendments became effective July 25, 2005. See *NASD NTM 05-44: SEC Approves Amendments Relating to Annual Compliance Meetings* (June 2005).

Mutual Fund/Variable Annuity Sales Practice and Supervision

Disclosures made in connection with retail sales of investment company shares (mutual funds) and variable annuities have raised ongoing regulatory concerns, particularly with respect to the recently prohibited practice of directed brokerage, as well as issues involving revenue sharing and suitability. The NYSE has released an information memo clarifying requirements for disclosures and sales practices and remind my members and member organizations and associated persons of their disclosure obligations under existing NYSE and/or SEC rules. See *NYSE Information Memo 05-54, Disclosures and Sales Practices Concerning Mutual Funds and Variable Annuities*.

Customer Complaints

On April 13, 2005, the SEC approved new NYSE Rule 401(A) (Customer Complaints) regarding acknowledgements and responses to customer complaints, as well as corresponding amendment to NYSE Rule 476A (Imposition of Fines for Minor Violations(s) of Rules) to allow the Exchange to sanction members' and member organizations' less serious violations of Rule 401A. NYSE Rule 351 (Reporting Requirements) specifies certain occurrences, incidents, and period information that the Member must report to the Exchange. Rule 351(d) requires members and member organizations to report to the Exchange statistical information regarding specified verbal and written customer complaints. Exchange examiners reviewing compliance with Rule 351(d) discovered instances in which member organizations failed to acknowledge or respond to customer complaints. New Rule 401A makes acknowledging and responding to customer complaints mandatory.

Taping Rule

On May 5, 2005, the SEC approved amendments to NASD Rule 3010(b)(2) (Taping Rule). The amendments require firms that are seeking an exemption from the Rule to submit their exemption requests to NASD within 30 days of receiving notice from NASD or obtaining actual knowledge that they are subject to the provisions of the Rule. The amendments also clarify that firms that trigger application of the Taping Rule for the first time can elect to either avail themselves of the one-time "opt out provision" or seek an exemption from the Rule, but they may not seek both options. The amendments became effective August 1, 2005. See *NASD NTM 05-46: SEC Approves Amendments Relating to Taping Rule "Opt Out" and Exemption Provisions* (July 2005).

Trade Reporting

Trade Reporting and Compliance Engine (TRACE)

NASD implemented amendments to Rule 6250 requiring the immediate or delayed dissemination of information on TRACE transactions in two stages (hereinafter, Stage One and Stage Two). The amendments were approved by the SEC on September 3, 2004 and are described in detail in SR-NASD-2004-094, *NASD NTM 04-65* (September 2004), and *NASD NTM 05-02* (January 2005). The implementation dates of Stage One and Stage Two were October 1, 2004 and February 7, 2005, respectively. With the implementation of Stage Two, all transactions in TRACE-eligible securities are publicly disseminated on an immediate or a delayed basis, except transactions in TRACE-eligible securities that are issued pursuant to Section 4(2) of the Securities Act and are purchased or sold pursuant to Rule 144A under the Securities Act. On July 1, 2005, the period to report a transaction in a TRACE-eligible security was reduced to 15 minutes. TRACE data is available free of charge to investors at www.nasdbondinfo.com.

Municipal Securities Real-Time Transaction Reporting

On January 31, 2005, the MSRB began requiring brokers, dealers and municipal securities dealers to report transactions in municipal securities within 15 minutes of execution. The MSRB then makes this “real-time” pricing information available to the marketplace. The Bond Market Association, which represents fixed-income brokers and dealers, posts the MSRB data free of charge on www.investinginbonds.com. Through a searchable database at this website, investors can view municipal bonds by state, credit rating or maturity.

The MSRB published a notice to brokers, dealers and municipal securities dealers reminding them of the need to report municipal securities transactions accurately and to minimize the submission of modifications and cancellations to the Real-Time Transaction Reporting System (RTRS). Each transaction initially should be reported correctly to RTRS. Thereafter, only changes necessary to achieve accurate and complete transaction reporting should be submitted to RTRS. Changes should be rare since properly reported transactions should not need to be corrected. See *MSRB Notice 2005-13, Reminder Regarding Modification and Cancellation of Transaction Reports: Rule G-14*. The MSRB also published a notice reminding dealers of trade reporting procedures with respect to “step outs” and other inter-dealer deliveries that are not the result of inter-dealer transactions. See *MSRB Notice 2005-22, Notice of Comparison of Inter-Dealer Deliveries that Do Not Represent Inter-Dealer Transactions—“Step Out” Deliveries: Rules G-12(f) and G-14*. In addition, the MSRB amended Rule G-34, on CUSIP numbers and new issue requirements, to facilitate real-time transaction reporting of new issue municipal securities. See *MSRB Notice 2005-03, Amendments Approved to Rule G-34 to Facilitate Real-Time Transaction Reporting*.

The MSRB has devoted a section of its Web site (www.msrb.org) to information pertaining to transaction reporting.

To Obtain More Information

For more information about publications, contact the SROs at these addresses:

Self-Regulatory Organization	Address and Phone Number	Online Address
American Stock Exchange	American Stock Exchange Marketing Department 86 Trinity Place New York, NY 10006 (800) THE-AMEX	www.amex.com www.amextrader.com
Chicago Board Options Exchange	Chicago Board Options Exchange 400 S. LaSalle Street Chicago, IL 60605 (877) THE-CBOE Email: help@cboe.com	www.cboe.com
Municipal Securities Rulemaking Board	MSRB Publications Department 1900 Duke Street, Suite 600 Alexandria, VA 22314 (703) 797-6600	www.msrb.org
NASD	NASD MediaSource P.O. Box 9403 Gaithersburg, MD 20898-9403 (240) 386-4200	www.nasd.com
New York Stock Exchange	New York Stock Exchange Publications Department 11 Wall Street, 18th Floor New York, NY 10005 (212) 656-5273 or (212) 656-2089	www.nyse.com
Philadelphia Stock Exchange	Philadelphia Stock Exchange Marketing Department 1900 Market Street Philadelphia, PA 19103 (800) THE PHLX or (215) 496-5158	www.phlx.com