

Election Notice

FINRA Notice of Contested Election and Ballots for Small Firm NAC Member Seat

Executive Summary

The purpose of this *Election Notice* is to notify small firms of a contested election for the open National Adjudicatory Council (NAC) Small Firm seat and to distribute to eligible FINRA small firms the ballots to vote for a Small Firm NAC Member. The vacant Mid-Sized Firm NAC Member seat was not contested.

Small firms are urged to vote in this election. In order for a ballot to be considered valid, it must be signed by the executive representative of the small firm eligible to vote in the election. Small firms that are members of FINRA as of the close of business on September 17, 2009, will be eligible to vote.

Ballots must be returned by October 19, 2009.

Note: This *Notice* was distributed electronically to the executive representative of each FINRA member firm and it is posted on FINRA's Web site at www.finra.org/notices/election/091809.

Questions regarding this *Election Notice* may be directed to:

- Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949; or
- Marc Menchel, Executive Vice President and Regulatory General Counsel, at (202) 728-8410.

September 18, 2009

Suggested Routing

- Executive Representatives
- Senior Management

Background

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

Composition of the NAC

On November 6, 2008, the SEC approved a rule change to amend FINRA Regulation's By-Laws to restructure the industry representation on the NAC. Pursuant to these changes, the regionally based approach to appointing industry members to the NAC was replaced by a process that is based on firm size and is similar to the FINRA Board approach. Under the amended FINRA Regulation By-Laws, the seven industry members of the NAC shall include two Small Firm, one Mid-Size Firm, two Large Firm and two At-Large Industry NAC Members. The other members of the NAC are seven non-industry members, three of whom are public.

These changes to the composition of the NAC are being phased in over three years, as the terms of the existing industry members expire.

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

Candidates for Small Firm NAC Member

In June 2009, FINRA's Nominating and Governance Committee nominated the following individual to fill the upcoming small firm vacancy on the NAC:

- ▶ **Thomas "Terry" Wallace** – President/CEO Johnston, Lemon & Co. Incorporated

One candidate successfully petitioned to have his name added to the ballot as an additional Small Firm NAC Member candidate:¹

- ▶ **Stephen A. Kohn** – President and CEO, Stephen A. Kohn & Associates, Ltd.

Profiles of each of the Small Firm NAC candidates are included in Attachment A.

Uncontested Nominee for Mid-Sized Firm NAC Member

The Nominating and Governance Committee also nominated John Muschalek, Managing Director of the Clearing Services Division of First Southwest Company as FINRA's nominee for the vacant Mid-Sized Firm NAC Member seat. The Mid-Size Firm seat was not successfully contested, and Mr. Muschalek will begin his term upon appointment by the FINRA Board.²

Mr. Muschalek's profile is included in Attachment B.

Term of Office

In general, each NAC member holds office for a term of three years. Terms of office commence and expire on a staggered, annual basis. The Small Firm NAC Member will be appointed to a three-year term beginning January 1, 2010. The Mid-Size Firm NAC Member will be appointed to complete the term of the NAC member who resigned, which is scheduled to end in December 2010.

Voting Eligibility

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

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

Firm Contact Information

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

Pursuant to NASD Rule 1160, firms must update their contact information promptly, but in any event not later than 30 days following any change in such information, as well as review and, if necessary, update the information within 17 business days after the end of each calendar year. Additionally, firms must comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.³

To update an executive representative's name and email address, firms may access the FINRA Contact System, located on FINRA's Web site at www.finra.org/fcs. To update postal address information, firms must file a Form BD Amendment via the Web CRD system. For assistance updating information via either of these systems, please contact the FINRA Call Center at (301) 590-6500.

Voting Methods

Small firms will be able to submit ballots by U.S. mail. The ballot sent to eligible small firms contains detailed instructions on the submission procedures.

As mentioned above, it is important that all eligible firms vote.

Endnotes

- 1 Pursuant to Section 6.2 of the FINRA Regulation By-Laws, a person who has not been nominated by the Nominating and Governance Committee may be included on a ballot if he or she is eligible to hold an open seat, and obtains the requisite number of petitions in support of his or her nomination from members entitled to vote (based on firm size classification) for such nominee's election.
- 2 Pursuant to Sec. 6.4 of the FINRA Regulation By-Laws, if the Nominating and Governance Committee proposes a candidate for nomination and no additional candidate successfully petitions pursuant to Section 6.2, the Nominating and Governance Committee shall nominate its candidate to the FINRA Board for appointment.
- 3 See NASD Rule 1160 and *Regulatory Notice 07-42 (September 2007)*.

Attachment A

Profiles of Candidates for Small Firm NAC Member Seat

Petition Candidate for Small Firm NAC Member Seat

Stephen A. Kohn
President and CEO
Stephen A. Kohn & Associates, Ltd.

Stephen Kohn is the President and CEO of Stephen A. Kohn & Associates, Ltd., a Colorado based, full service, and independent FINRA member firm founded in 1996. He came into the financial services industry in 1984 as a municipal bond salesman. Ultimately, he rose to become a branch manager of the largest OTC brokerage in the country. His experience has been with a number of small and large firms.

Mr. Kohn is a member of the Independent Broker-Dealer Association (IBDA). He is also a Member of the Securities Industry Professional Association (SIPA) and a FINRA Arbitrator.

Mr. Kohn graduated from C.W. Post College in 1964 with a Bachelor of Arts degree. He has served in the U.S. Coast Guard Reserve.

FINRA Nominee for Small Firm NAC Member Seat

Thomas “Terry” Wallace
President/CEO
Johnston Lemon & Co. Incorporated

Thomas T. Wallace is the President and CEO of Johnston, Lemon & Co. Incorporated, a Washington, DC-based, NYSE member firm founded in 1920. The early part of Mr. Wallace’s career was spent as a retail broker concentrating on clients within the Washington, DC, metropolitan area. He later progressed to Branch Office Manager then to Sales Manager and eventually President & CEO.

Mr. Wallace has served on many committees within the securities industry, for both FINRA, formerly known as NASD, and SIFMA, formerly known as SIA. Mr. Wallace served for four years on the FINRA Small Firm Advisory Board and three years on the FINRA District 9 Committee. He is currently serving on the FINRA District 9 Nominating Committee and maintains his status as a hearing officer for District 9. Mr. Wallace currently serves on the SIFMA Small Firms Advisory Board, and has done so for approximate 10 years.

Mr. Wallace graduated from the University of Maryland in 1967 with a bachelor of science degree in business administration. Upon graduation he immediately began active duty in the United States Army.

Attachment B

Profile of FINRA Nominee for Mid-Size Firm NAC Member Seat

FINRA Nominee for Mid-Sized Firm NAC Member

John Muschalek
Managing Director, Clearing Services Division
First Southwest Company

John Muschalek is Managing Director and head of First Southwest Company's Correspondent Clearing and Securities Lending divisions. He joined First Southwest Company in February 1992. He has also served as the firm's Chief Financial Officer and Financial and Operations Principal. Mr. Muschalek serves on the firm's Risk and Operations Management Committees. Before joining First Southwest Company, he served as the firm's auditor while working with the worldwide accounting firm KPMG Peat Marwick.

Mr. Muschalek represents the firm on numerous industry committees and civic boards. He is a member of the FINRA Financial Responsibility Committee (national committee) and completed a term (2003 – 2005, Chairman 2005) on the FINRA District Committee (District 6). Other FINRA Committees that Mr. Muschalek serves on include the Uniform Practice Code Committee, FINRA Consultative Committee and the District 6 Nominating Committee. Mr. Muschalek also serves on the Securities Industry and Financial Markets Association (SIFMA) Operations Red Group Roundtable (national committee – 2006 Chairman) and the SIFMA Clearing Firms Committee (Vice Chair 2009). He is also a frequent speaker at local and national industry conferences. Additionally, Mr. Muschalek has served five years on the Board of Directors and three years as the Vice Chairman of the Executive Committee of the Wilkinson Center, a Dallas-based charity.

Mr. Muschalek maintains FINRA Series 7, 24, 27 and 63 licenses. He is also a Certified Public Accountant and member of the American Institute of CPAs and the Texas Society of CPAs. He earned a bachelor of science degree in business administration, majoring in accounting, from Texas A&M University in 1988.