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Page 1 of * 174

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No.* SR - 2015 - * 029
Amendment No. (req. for Amendments *)

Filing by Financial Industry Regulatory Authority

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * ☑ Amendment * ☐ Withdrawal ☐

Section 19(b)(2) * ☑ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule
- ☐ 19b-4(f)(1)
- ☐ 19b-4(f)(2)
- ☐ 19b-4(f)(3)
- ☐ 19b-4(f)(4)
- ☐ 19b-4(f)(5)
- ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐ Section 806(e)(2) * ☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐ Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Adam Last Name * Arkel

Title * Associate General Counsel

E-mail * adam.arkel@finra.org

Telephone * (202) 728-6961 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 07/31/2015

By Patrice Gliniecki

(Name *)

(Title *)

Senior Vice President and Deputy General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Patrice Gliniecki,

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO] -xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA"),[1] Financial Industry Regulatory Authority, Inc. ("FINRA") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the consolidated FINRA rulebook and to delete NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02.

The text of the proposed rule change is attached as Exhibit 5.

(b) Upon Commission approval and implementation by FINRA of the proposed rule change, the corresponding NASD rules, Incorporated NYSE rules and NYSE Rule Interpretations, or sections thereof, will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on February 11, 2009, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

If the Commission approves the proposed rule change, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The implementation date will be no later than 365 days following Commission approval.

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[1] 15 U.S.C. 78s(b)(1).

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[2] FINRA is proposing to adopt a new, consolidated rule addressing accounts opened or established by associated persons of members at firms other than the firm with which they are associated. FINRA proposes to adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook and to delete NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02.[3]

Sound supervisory practices require that a member firm monitor personal accounts opened or established outside of the firm by its associated persons. Proposed FINRA Rule 3210 combines and streamlines longstanding provisions of the NASD and NYSE rules that address this area and would, in combination with FINRA's new FINRA Rule 3110(d) governing securities transactions review and investigation,[4] help facilitate effective oversight of the

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2 The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

3 For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

4 New FINRA Rule 3110(d) (Transaction Review and Investigation) sets forth requirements for supervisory procedures for members to comply with the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA") (Pub. L. No. 100-704, 102 Stat. 4677). The Commission has approved FINRA Rule 3110(d) as part of FINRA's

specified trading activities of associated persons of member firms. FINRA sought comment on the proposal in a Regulatory Notice (the "Notice").[5] FINRA has revised the proposed rule as published in the Notice in response to comments.[6]

A. Background: NASD Rule 3050 and NYSE Rules 407 and 407A

NASD Rule 3050 and NYSE Rules 407 and 407A are longstanding rules that address specified accounts opened or established by associated persons of members at firms other than the firm with which they are associated.

NASD Rule 3050 (designated in its original form as Section 28 of the Rules of Fair Practice) was adopted to address this issue by providing a means by which members would be informed of the extent and nature of transactions effected by their employees or other associated persons,[7] so that members, in their own interest and in the interest of their customers, might

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new consolidated supervision rules, which became effective on December 1, 2014. See Securities Exchange Act Release No. 71179 (December 23, 2013), 78 FR 79542 (December 30, 2013) (Order Granting Approval of Proposed Rule Change; File No. SR-FINRA-2013-025) ("Supervisory Rules Filing"); see also Regulatory Notice 14-10 (March 2014) (Consolidated Supervision Rules). Paragraph (d)(1) of the rule requires that a member's supervisory procedures must include a process for the review of securities transactions that is reasonably designed to identify trades that may violate the provisions of the Act, its regulations, or FINRA rules prohibiting insider trading and manipulative and deceptive devices that are effected for the accounts specified under paragraphs (d)(1)(A) through (d)(1)(D) of the rule.

5 See Regulatory Notice 09-22 (April 2009) (Personal Securities Transactions).

6 Comments are discussed in Item 5 of this filing. As discussed further in Item 5, commenters expressed concern that Rule 3210 as proposed in the Notice would be burdensome or difficult to implement and that the rule should, informed by the approach of current NASD Rule 3050, be revised to permit firms flexibility to craft appropriate supervisory policies and procedures taking into account their business model and the risk profile of their activities.

7 The terms "person associated with a member" and "associated person of a member" include, among others, registered representatives. See paragraph (rr) of Article I of the FINRA By-Laws.

weigh the effect, if any, of such transactions handled outside their firms.[8] The rule imposes specified obligations on member firms and associated persons.[9] In short:

- *Obligations of Member Firms*: NASD Rule 3050(a) requires that a member (called an "executing member") who knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another member (called an "employer member"), or for any account over which the associated person has discretionary authority, must use reasonable diligence to determine that the execution of the transaction will not adversely affect the interests of the employer member. NASD Rule 3050(b) requires that, where an executing member knows that a person associated with an employer member has or will have a financial interest in, or discretionary authority over, any existing or proposed account carried by the executing member, the executing member must:

  (1) notify the employer member in writing, prior to the execution of a transaction for the account, of the executing member's intention to open or maintain that account;

  (2) upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to the account; and

  (3) notify the person associated with the employer member of the executing

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8 See Securities Exchange Act Release No. 4924 (August 21, 1953).

9 FINRA historically has noted that the purpose of the rule (originally designated Article III, Section 28 of the Rules of Fair Practice) is to "help member firms discharge their supervisory responsibility over the securities activities conducted in their associated persons' personal securities accounts." Securities Exchange Act Release No. 23754 (October 28, 1986), 51 FR 40546 (November 7, 1986) (Proposed Rule Change; File No. SR-NASD-86-29).

member's intention to provide the notice and information required by (1) and (2).

- *Obligations of Associated Persons*: NASD Rules 3050(c) and Rule 3050(d), in combination, address associated persons, whether they open securities accounts or place securities orders through a member firm other than their employer or whether they do so through other types of financial services firms that are not FINRA members.[10] Specifically:

  (1) NASD Rule 3050(c) requires that a person associated with a member, prior to opening an account or placing an initial order for the purchase or sale of securities with another member, must notify both the employer member and the executing member, in writing, of his or her association with the other member. The rule provides that if the account was established prior to the person's association with the employer member, the person must notify both members in writing promptly after becoming associated;

  (2) NASD Rule 3050(d) provides that if the associated person opens a securities account or places an order for the purchase or sale of securities with a broker-dealer that is registered pursuant to SEA Section 15(b)(11) (a notice-registered broker-dealer), a domestic or foreign investment adviser, bank, or other financial institution (that is, firms that are not FINRA members), then he or she must: (i) notify his or her employer member in writing, prior to the execution of any initial transactions, of the intention to open the account or place the order; and (ii) upon written request by the employer member, request in writing and assure that the

[10] NASD Rule 3050(e) provides that Rules 3050(c) and (d) apply only to accounts or orders in which an associated person has a financial interest or with respect to which the associated person has discretionary authority.

notice-registered broker-dealer, investment adviser, bank, or other financial institution provides the employer member with duplicate copies of confirmations, statements, or other information concerning the account or order. NASD Rule 3050(d) provides that if an account subject to Rule 3050(d) was established prior to the person's association with the member, the person must comply with the rule promptly after becoming associated;

(3) NASD Rule 3050(f) provides that the requirements of Rule 3050 do not apply to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, or to accounts which are limited to transactions in such securities.

NYSE Rule 407, similar in purpose to FINRA Rule 3050, addresses transactions by and for employees of member firms[11] as follows:

- NYSE Rule 407(a) is similar to NASD Rule 3050(b), except that Rule 407(a) imposes a requirement to obtain the prior written consent of the employer member.[12] Specifically, the rule requires that no member or member organization may, without the prior written consent of the employer, open a securities or commodities account or execute any transaction in which a member or employee associated with another

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11 See note 9 supra. The NYSE noted that Rule 407 imposes obligations as to specified personal accounts of employees and associated persons and that one of the rule's purposes, among other things, is to help deter and detect violations of applicable federal securities laws and regulations. See NYSE Information Memo 09-50 (October 30, 2009) (Supervision of Trading in Proprietary, Employee and Employee-Related Securities and Commodities Accounts).

12 The term "employer member" is defined within the context of the NASD rule, not the NYSE rule. For purposes of discussing NYSE Rule 407, in this filing the term "employer member" is used interchangeably with "employer" for convenience.

member or member organization is directly or indirectly interested. The rule requires that duplicate confirmations and account statements be sent promptly to the employer.

- NYSE Rule 407(b) is similar to NASD Rules 3050(c) and (d), except that, like NYSE Rule 407(a), it also sets forth a prior written consent requirement. The rule requires that no member associated with a member or member organization may establish or maintain any securities or commodities account[13] or enter into any securities transaction with respect to which such person has any financial interest or the power, directly or indirectly, to make investment decisions, at another member or member organization, or a domestic or foreign non-member broker-dealer, investment adviser, bank, other financial institution,[14] or otherwise without the prior written consent of another person designated by the member or member organization to sign such consents and review such accounts. The rule requires that persons having accounts or effecting transactions as covered by the rule must arrange for duplicate confirmations and statements (or their equivalents) to be sent to a person designated by the member or member organization to review such accounts and transactions. The rule further requires that all such accounts and transactions must periodically be reviewed by the member or member organization employer.[15]

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13 NYSE Rule 407.11 states that the term "securities or commodities accounts" as used in Rule 407(b) includes, but is not limited to, limited or general partnership interests in investment partnerships.

14 NYSE Rule 407.13 states that, for purposes of the rule, the term "other financial institution" includes, but is not limited to, insurance companies, trust companies, credit unions and investment companies.

15 NYSE Rule 407.11 requires that members and member organizations must develop and maintain written procedures for reviewing such accounts and transactions and must

- NYSE Rule 407.12 provides that the rule's requirement to send duplicate confirmations and statements does not apply to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, or to accounts which are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of duplicate confirmations and statements of such accounts. As such, the provision is similar to the corresponding provisions under NASD Rule 3050(f), except that Rule 3050(f) wholly excepts the specified transactions and accounts from the scope of Rule 3050.

In addition, NYSE Rule 407A (Disclosure of All Member Accounts) requires members (i.e., natural persons approved by the New York Stock Exchange (the "Exchange") and designated by a member organization to effect transactions on the floor of the Exchange or any facility thereof) to promptly report to the Exchange any securities account, including an error account, in which the member has, directly or indirectly, any financial interest or the power to make investment decisions. Such accounts include any account at a member or non-member broker-dealer, investment adviser, bank or other financial institution. NYSE Rule 407A also requires a member having such an account to notify the financial institution that carries or services the account that it is a NYSE member. In addition, the rule requires that members report to the Exchange when any such securities account is closed.

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assure that their associated persons are not improperly recommending or marketing such securities or products to others through members or member organizations.

NYSE Rule 407A was adopted in 2001 as part of a series of initiatives designed to strengthen the regulation of activities of NYSE floor brokers.[16] This rule expands the obligations placed upon members under Rule 407 by requiring disclosure to the Exchange. These reporting requirements were designed to provide the NYSE with current information about where floor members carry securities accounts and to enhance its ability to investigate quickly the trading of securities by such members.

NYSE Rule Interpretation 407/01 addresses the process for determining whether the account of a spouse of an associated person should be subject to NYSE Rule 407.

NYSE Rule Interpretation 407/02 provides that NYSE Rule 407(b) applies when an associated person is also a majority stockholder of a non-public corporation that wishes to open a discretionary margin account at another member.

B. Proposed FINRA Rule 3210

Proposed FINRA Rule 3210, consistent with the longstanding purposes of NASD Rule 3050 and NYSE Rule 407,[17] is designed to enable members to monitor the personal accounts of their associated persons opened or established outside of the member firm. The new rule, in

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16 The Commission noted that these initiatives would aid the NYSE in fulfilling some of the undertakings included in the NYSE's 1999 settlement with the SEC regarding failure to enforce compliance with SEA Section 11(a) and SEA Rule 11a-1 and NYSE Rules 90, 95 and 111 with respect to activity of floor brokers. As noted by the Commission, broadly, those provisions were aimed at preventing NYSE floor broker members from exploiting their advantageous position on the NYSE floor for personal gain to the detriment of the investing public. See In the Matter of New York Stock Exchange, Inc., Securities Exchange Act Release No. 41574 (June 29, 1999), Administrative Proceeding File No. 3-9925; Securities Exchange Act Release No. 42381 (February 3, 2000), 65 FR 6673 (February 10, 2000) (Notice of Filing of Proposed Rule Change; File No. SR-NYSE-99-25); Securities Exchange Act Release No. 44769 (September 6, 2001), 66 FR 47710 (September 13, 2001) (Order Granting Approval to Proposed Rule Change; File No. SR-NYSE-99-25).

17 See note 9 and note 11 supra.

combination with new FINRA Rule 3110, takes the approach that a member is responsible for supervising its associated persons' trading activities.[18] The rule begins by setting forth a requirement that an associated person must obtain the prior written consent of his or her employer when opening a specified account at another member or other financial institution. Specifically, proposed FINRA Rule 3210(a) provides that no person associated with a member ("employer member") shall, without the prior written consent of the member, open or otherwise establish at a member other than the employer member ("executing member"), or at any other financial institution,[19] any account in which securities transactions can be effected[20] and in which the associated person has a beneficial interest.[21] Proposed FINRA Rule 3210.02 provides that,

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18 See Supervisory Rules Filing and note 4 supra. In this connection, as discussed further in Item 3(a)C below, FINRA is deleting the provision under NASD Rule 3050(a) as to the obligation of the executing member to use reasonable diligence with respect to the specified transactions.

19 Based on NYSE Rule 407.13 and NASD Rule 3050(d), proposed FINRA Rule 3210.05 provides that, for the purposes of the rule, the terms "other financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to SEA Section 15(b)(11), domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

20 In the interest of helping facilitate supervision of securities transactions under new FINRA Rule 3110(d)(1), FINRA is specifying "any account in which securities transactions can be effected" so as to be clear that the proposed rule's scope includes any account, regardless of type, where securities transactions can take place as specified under the rule.

21 As proposed in the Notice, the rule would have specified accounts in which the associated person has a "personal financial interest." Commenters suggested that this language was unclear. See Item 5.B of this filing. FINRA is proposing the term "beneficial interest" because that term is an established and well-understood standard. See, e.g., FINRA Rule 5130(i)(1), which defines "beneficial interest" to mean, in part, any economic interest, such as the right to share in gains or losses. FINRA believes that the proposed term is consistent with the purpose of NYSE Rule 407, which in part addresses transactions in which the associated person is "directly or indirectly interested" (NYSE Rule 407(a)) or with respect to which the associated person "has any financial

for purposes of the rule, the associated person shall be deemed to have a beneficial interest in any account that is held by: (a) the spouse of the associated person; (b) a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person; (c) any other related individual over whose account the associated person has control; or (d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes.[22] The types of accounts specified pursuant to proposed FINRA Rule 3210.02 are designed to align with "covered accounts" as defined pursuant to new FINRA Rule 3110(d)(4)(A) for purposes of the transaction review and investigation provisions pursuant to Rule 3110(d)(1).[23] Further, FINRA believes the proposed language is consistent with the broad approach of NASD Rule 3050 and NYSE Rule 407 as historically understood to facilitate the monitoring of associated persons' personal and related accounts.[24] FINRA notes that the

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interest" (NYSE Rule 407(b)) and with NASD Rules 3050(b) through (d), which in part address accounts or transactions in which the associated person has a "financial interest." Further, the proposed term would align the rule with "beneficial interest" as specified under new FINRA Rule 3110(d)(1)(B), which, for purposes of the transaction review and investigation provisions set forth under new FINRA Rule 3110(d)(1), specifies in part accounts "in which a person associated with the member has a beneficial interest." See note 4 supra.

22 Some commenters expressed concerns as to addressing spouse accounts in the proposed rule. FINRA notes that spouse accounts have long been addressed under NYSE Rule Interpretation 407/01. See Item 5.B of this filing.

23 See note 4 supra.

24 For example, with respect to the approach of the current rules, as noted earlier, NYSE Rule Interpretation 407/01 addresses spouse accounts. In the context of amendments to NASD Rule 3050 (then designated Article III, Section 28 of the Rules of Fair Practice) adopted in 1983 that extended the rule to include accounts over which the associated person exercises discretion, FINRA noted its intent to enable the rule's scope to reach accounts of relatives of associated persons where the associated person places the orders. See Securities Exchange Act Release No. 19347 (December 16, 1982), 47 FR 58416

proposed new language eliminates the language in the current rules that references accounts or transactions where the associated person has "the power, directly or indirectly, to make investment decisions," as set forth in NYSE Rule 407(b), and accounts where the associated person has "discretionary authority," as set forth in NASD Rule 3050(b).[25]

Similar to the current rules, the new rule places notification obligations on associated persons with respect to the executing member or other financial institution. Specifically, proposed FINRA Rule 3210(b) is based in large part on NASD Rules 3050(c) and 3050(d) and provides that any associated person, prior to opening or otherwise establishing an account subject to the rule, must notify in writing the executing member, or other financial institution, of his or her association with the employer member.

Also similar to the current rules, the new rule specifies obligations for executing

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(December 30, 1982) (Proposed Rule Change; File No. SR-NASD-82-25); Securities Exchange Act Release No. 19550 (February 28, 1983), 48 FR 9413 (March 4, 1983) (Order Approving Proposed Rule Change; File No. SR-NASD-82-25). FINRA believes that because the proposed rule specifies, in language that aligns with new FINRA Rule 3110(d)(4)(A), the types of personal relationships that would be within the scope of "beneficial interest," the rule's precise parameters should be more clear.

25 FINRA believes that this will serve to more clearly demarcate the respective scope of the new rule vis-à-vis current NASD Rule 3040, which addresses the obligations of associated persons and members in connection with private securities transactions. NASD Rule 3040(e)(1) defines private securities transactions to include, in part, "any securities transaction outside the regular course or scope of an associated person's employment with a member" and excludes from the rule's specified notification requirements, among other things, transactions subject to the notification requirements of NASD Rule 3050. FINRA believes that, to the extent associated persons make investment decisions or have discretionary authority in contexts that involve private securities transactions within the scope of NASD Rule 3040, as opposed to accounts in which they have a beneficial interest as specified by the new rule, such transactions are properly addressed by the requirements set forth in Rule 3040 and other FINRA rules as applicable. FINRA believes that this approach is consistent, as noted earlier, with the historical approach of NASD Rule 3050 and NYSE Rule 407 that is intended to facilitate monitoring of associated persons' personal and related accounts.

members. Specifically, proposed FINRA Rule 3210(c) is based in large part on NASD Rule 3050(b)(2) and provides that an executing member must, upon written request by the employer member, transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to the rule.[26]

Similar to current provisions in NASD Rules 3050(c) and 3050(d), the proposed rule makes allowance for accounts opened by an associated person prior to his or her association with the employer member. Specifically, proposed FINRA Rule 3210.01 provides that, if the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within 30 calendar days of becoming so associated, must obtain the written consent of the employer member to maintain the account and must notify in writing the executing member or other financial institution of his or her association with the employer member.[27]

Similar to the current rules, the new rule makes allowance for specified information that executing members need not transmit to employer members. Specifically, proposed FINRA

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[26] As published in the Notice, the proposed rule would have *required* the employer member to instruct the associated person to have the executing member provide the specified duplicate account statements and confirmations to the employer member. As discussed further in Item 5.A of this filing, commenters expressed concern that the rule as proposed in the Notice would burden members with collecting the specified information without regard to whether such collection is warranted by the member's business model and risk profile. In response to commenter suggestion, FINRA has revised the proposed rule so that the specified information is provided upon written request by the employer member, which is consistent with the approach of current NASD Rule 3050 and which FINRA believes permits members flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities.

[27] As published in the Notice, the proposed rule would have specified 15 business days. In response to comment, the proposed rule as revised specifies 30 calendar days so as to reduce burdens on member firms and their associated persons. See Item 5.C of this filing.

Rule 3210.03 is based in large part on NYSE Rule 407.12 and NASD Rule 3050(f) and provides that the requirement (pursuant to paragraph (c) of Rule 3210) that the executing member provide the employer member, upon the employer member's written request, with duplicate account confirmations and statements, or the transactional data contained therein, shall not be applicable to transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D-12,[28] qualified tuition programs pursuant to Section 529 of the Internal Revenue Code and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts.[29]

Proposed FINRA Rule 3210.04 is new and provides that, with respect to an account subject to the rule at a financial institution other than a member, the employer member must consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an

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28 MSRB Rule D-12 defines municipal fund security to mean "a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940."

29 The approach to the referenced types of transactions reflects a longstanding intention under the NASD and NYSE rule that members not be burdened with information collection for transactions that pose limited risk from the standpoint of the rule's supervisory purposes. See, e.g., Securities Exchange Act Release No. 19347 (December 16, 1982), 47 FR 58416 (December 30, 1982) (Proposed Rule Change; File No. SR-NASD-82-25). As discussed further in Item 5.E of this filing, the proposed requirement is largely as published in the Notice. In response to commenter suggestion, FINRA has added municipal fund securities as defined under MSRB Rule D-12 and Section 529 plans to the transactions set forth under the rule. FINRA is adding these transactions because FINRA believes these types of products are reasonably classed with the types of transactions specified under the current rule in posing limited risk from the standpoint of the rule's supervisory purposes.

associated person to open or maintain such account.[30] FINRA believes that the proposed requirement serves a valid regulatory purpose in view of the employer member's responsibility for supervising its associated persons' trading activities.

C. Deleted Requirements

Proposed FINRA Rule 3210 deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407 that are rendered outdated by the new rule or are otherwise addressed elsewhere by FINRA rules.

- The proposed rule eliminates NASD Rule 3050(a)'s 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." FINRA proposes to delete this requirement because FINRA believes that it is appropriate for the new rule, in combination with new FINRA Rule 3110,[31] to take the approach that the employer member is responsible for supervising its associated persons' trading activities.[32]
- FINRA proposes to delete the account review requirements set forth in NYSE Rule 407(b) and the requirements for written procedures set forth in NYSE Rule 407.11 because these issues are addressed by the proposed rule in combination with FINRA's

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30 As published in the Notice, the proposed rule would have *required* the associated person to provide an instruction to the non-member financial institution to provide the specified information to the employer member. As discussed further in Item 5.A of this filing, FINRA believes that the requirement as revised permits members flexibility to craft appropriate supervisory policies and procedures in determining whether to provide written consent as to the specified accounts at non-member financial institutions.

31 See Supervisory Rules Filing.

32 FINRA notes that, notwithstanding this approach, the rule retains the longstanding duty of the executing member to assist the employer member by providing the specified information upon request.

new supervisory rules, in particular new FINRA Rule 3110(d), which sets forth the new supervisory framework for securities transactions review and investigation.[33]

- As noted earlier, NYSE Rule 407A was intended to address activities of NYSE floor brokers. FINRA proposes to delete NYSE Rule 407A in its entirety from the Transitional Rulebook because proposed FINRA Rule 3210 requires disclosure at the member firm level of the same types of information that Rule 407A requires with respect to the NYSE as to floor brokers. FINRA believes it is more appropriate to require member firms to obtain the required information and to supervise the accounts of their associated persons for improper trading, rather than requiring that such information be sent directly to FINRA. Moreover, as noted above, these reporting requirements were designed to provide the NYSE with current information about where floor members carry securities accounts and to enhance its ability to investigate quickly the trading of securities by such members.
- FINRA proposes to delete NYSE Rule Interpretation 407/01 because it would be superseded by proposed FINRA Rule 3210.02, which as noted earlier expressly provides, among other things, that an associated person is deemed to have a beneficial interest in any account that is held by the spouse of the associated person.
- FINRA proposes to delete NYSE Rule Interpretation 407/02 because it is rendered redundant by new FINRA Rule 3210(a), the scope of which by its terms reaches accounts as specified by the rule in which the associated person has a beneficial interest.

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33 See note 4 supra and Supervisory Rules Filing.

- FINRA proposes to delete language referring to accounts or transactions where the associated person has "the power, directly or indirectly, to make investment decisions," as set forth in NYSE Rule 407(b), and accounts where the associated person has "discretionary authority," as set forth in NASD Rule 3050(b). As discussed above, FINRA believes that, to the extent associated persons make investment decisions or have discretionary authority in contexts that involve private securities transactions within the scope of NASD Rule 3040, as opposed to accounts in which they have a beneficial interest, such transactions are properly addressed by the requirements set forth in Rule 3040 and other FINRA rules as applicable.[34]

As noted in Item 2 of this filing, if the Commission approves the proposed rule change, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval. The implementation date will be no later than 365 days following Commission approval.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[35] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change will help to protect investors and the public interest by streamlining and reorganizing existing rules that promote effective oversight of

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34 See note 25 supra.

35 15 U.S.C. 78o-3(b)(6).

accounts opened or established by associated persons of members at firms other than the firm with which they are associated. By setting forth the requirements pursuant to which associated persons will seek the prior written consent of the employer member to open or otherwise establish accounts as specified under the rule, and pursuant to which the specified information will be transmitted to the employer member upon the employer member's request, the proposed rule will facilitate the supervision of the trading activities of associated persons within the framework of FINRA's new supervisory rules as approved by the Commission and help members to ensure that such activities, engaged in at executing members or other financial institutions, do not violate provisions of the Act, its regulations, or FINRA rules, thereby helping to ensure orderly markets.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Commenters expressed concern that the proposed rule change, as originally published in Regulatory Notice 09-22, would have been burdensome to implement and would have resulted in employer members being required to request information of executing members and non-member financial institutions bearing little or no relationship to the scope and nature of the employer member's activities. In response to commenter suggestion, FINRA revised the proposed rule so as to permit members discretion, consistent with their supervisory obligations under new FINRA Rule 3110(d), to request the specified information of executing members and non-member financial institutions, thereby permitting members reasonable flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities. The proposed rule change as revised is thereby consistent with the

approach of current NASD Rule 3050, which commenter suggestion supported. FINRA believes that because the proposed rule change, as revised, is consistent with current requirements and longstanding practice, it will not impose additional burdens on members.

The proposed rule change permits members to implement supervisory procedures that align with their business models, without diminishing members' supervisory obligations with respect to the activities of their associated persons. FINRA believes that this proposed approach imposes less cost on members without reducing investor protections. In addition, the proposed rule change deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407 that are rendered outdated by the proposed new rule or are otherwise addressed elsewhere by other FINRA rules, which further minimizes the potential compliance burden on members in light of the objectives of the proposed rule change. FINRA recognizes that providing such flexibility to members may require increased monitoring of members' compliance with this rule as part of FINRA's examination program.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in Regulatory Notice 09-22 (April 2009). A copy of the Notice is attached as Exhibit 2a. Thirty-three commenters responded to the Notice, and a list of the commenters is attached as Exhibit 2b.[36] Copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

A. Core Proposed Rule Requirements: Obligation to Provide Duplicate Account Statements and Confirmations

As published in the Notice, proposed FINRA Rule 3210(a) in part would have required

[36] All references to commenters under this Item are to the commenters as listed in Exhibit 2b.

an employer member, as a condition to giving prior written consent for opening or establishing an account pursuant to the rule, to instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member. Paragraph (b) set forth requirements pertaining to the associated person's obligation to notify the executing member or other financial institution in writing of his or her association with the employer member. Paragraph (c) of the rule would have provided in part that the executing member must promptly obtain and implement an instruction from the associated person directing that duplicate account statements and confirmations be provided to the employer member. (With respect to accounts opened at a financial institution other than a member, proposed FINRA Rule 3210.02 as published in the Notice would have required the associated person to provide the instruction to the financial institution.)

Commenters generally expressed concern that, as published in the Notice, the requirements of proposed Rules 3210(a), (b) and (c) and 3210.02, singly or in combination, are unnecessary for regulatory purposes, are burdensome or difficult for firms to implement, or the rule should be designed to permit members the discretion to determine whether, based on their business model and the risk profile of their activities, they need to require duplicate account statements and confirmations to carry out their supervisory responsibilities.[37] Some of these commenters suggested that involving the associated person in the process of requesting the required data vis-à-vis the executing member creates supervisory risks.[38] A number suggested that it is better practice and more efficient to have the employer member obtain the required data

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[37] ACLI, CAI, Channel Capital, Charles Schwab, Farmers Financial, FSI, GWFS, Hillard, IBSI, ICI, MWA, NAIBD, National Planning, NMIS, NSCP, PFSI, PSI, Quasar, SIFMA, State Farm, SunTrust, Sykes, UBS, WFA and Witthaut.

[38] National Planning, PSI, SIFMA and UBS.

directly from the executing member or non-member institution.[39] A few of the commenters raised concerns about potential difficulties in obtaining the required information from non-members (including foreign non-members).[40] Many questioned the supervisory and regulatory value of requiring firms to collect data pertaining to associated person accounts and transactions bearing little or no relationship to the scope and nature of their firms' activities.[41] Some suggested that current NASD Rule 3050 generally permits members to exercise such discretion and that retaining the approach of the NASD rule would be conducive to more efficient use of regulatory or supervisory resources.[42]

In response, FINRA agrees that the proposal as published in the Notice raises issues with respect to the efficient use and conservation of regulatory and supervisory resources, as well as to implementation. FINRA has revised proposed FINRA Rule 3210, consistent with NASD Rule 3050, to provide that an executing member must, *upon written request by an employer member*, transmit the duplicate copies of confirmations and statements, or the transactional data contained therein.[43] With respect to accounts at a financial institution other than a member, FINRA has revised the rule to provide that the employer member must consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the institution in determining whether to

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39 Charles Schwab, FSI, NMIS, SIFMA and UBS.

40 Charles Schwab, SIFMA and UBS.

41 ACLI, CAI, Farmers Financial, GWFS, Hillard, ICI, MWA, National Planning, Quasar, State Farm, SunTrust, Sykes and Witthaut.

42 CAI, Charles Schwab, Farmers Financial, FSI, National Planning, PFSI and SunTrust.

43 See proposed FINRA Rule 3210(c).

provide its written consent to an associated person to open or maintain an account subject to the rule.[44] FINRA believes that this approach, based in large part on the longstanding approach of NASD Rule 3050, should provide members reasonable flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities. FINRA reminds members that, in permitting such flexibility, the rule in no way lessens members' supervisory obligations under FINRA rules with respect to the activities of their associated persons.[45]

B. Personal Financial Interest of the Associated Person

As published in the Notice, the accounts covered by proposed FINRA Rule 3210 would have reached in part those in which the associated person has a "personal financial interest." The Notice stated that "personal financial interest" would as a general matter extend to a spouse's account. Commenters expressed concern as to the scope and meaning of the term "personal financial interest" and requested that FINRA further define the term, limit its scope, or otherwise provide more specific guidance.[46] Several commenters suggested generally that it would be more effective for the rule to speak to accounts with respect to which the associated person exercises control or authority, rather than having a "personal financial interest."[47]

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44 See proposed FINRA Rule 3210.04.

45 See note 4 supra and Supervisory Rules Filing.

46 CAI, Charles Schwab, Farmers Financial, IBSI, ICI, NAIBD, NMIS, NPB, NSCP and SIFMA.

47 Charles Schwab, Farmers Financial, FSI, NMIS and SIFMA.

In response, FINRA is proposing a standard that is consistent with the purpose of NASD Rule 3050 and NYSE Rule 407[48] while also aligning more clearly with new FINRA Rule 3110(d). Specifically, FINRA has revised the proposed rule to extend to specified accounts in which the associated person has a *beneficial interest*. As discussed earlier, FINRA believes the term "beneficial interest" is appropriate because that term is an established and well-understood standard[49] and is consistent with the terms "directly or indirectly interested," as used in NYSE Rule 407(a), "has any financial interest," as used in NYSE Rule 407(b), and accounts or transactions in which the associated person has a "financial interest," as applicable under NASD Rules 3050(b) through (d). Further, the proposed term would align the rule with "beneficial interest" as specified under new FINRA Rule 3110(d)(1)(B), which, for purposes of the transaction review and investigation provisions set forth under new FINRA Rule 3110(d)(1), specifies in part accounts "in which a person associated with the member has a beneficial interest."[50] In addition, FINRA is proposing, as Supplementary Material .02 to the rule, to provide that the associated person shall be deemed to have a beneficial interest in any account that is held by: (a) the spouse of the associated person; (b) a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person; (c) any other related individual over whose account the associated person has control; or (d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes. As noted earlier, this proposed language is designed to align with "covered

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48 See note 9 and note 11 supra.

49 FINRA Rule 5130(i)(1) defines "beneficial interest" to mean, in part, any economic interest, such as the right to share in gains or losses. See note 21 supra.

50 See note 4 supra.

accounts" as defined pursuant to new FINRA Rule 3110(d)(4)(A) for purposes of the transaction review and investigation provisions pursuant to Rule 3110(d)(1).[51]

C. Accounts Opened Prior To Association With the Employer Member

As published in the Notice, proposed FINRA Rule 3210.01 would have required that if the associated person's account was opened or otherwise established prior to his or her association with the employer member, the associated person would be required to obtain the employer member's written consent to maintain the account within 15 business days of becoming so associated. Commenters suggested that the 15-business-day requirement is too short or restrictive and that the rule should require "prompt" notification by the associated person, as under current NASD Rule 3050, or permit a longer specified period.[52] One commenter believed that the rule should not cover previously opened accounts at all.[53]

In response, FINRA notes that it serves a valid regulatory purpose that the proposed rule should extend to accounts opened prior to the associated person's association with the employer member, given that the associated person would have the ability to effect transactions in such accounts. FINRA believes that it is reasonable, from the standpoint of reducing burdens on member firms and their associated persons, to permit a longer amount of time for notification with respect to already-opened accounts and has accordingly revised the rule to permit 30

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51 See proposed FINRA Rule 3210.02. Some commenters questioned whether it is legally viable for the proposed rule to reach spouse accounts. See Charles Schwab and NPB. In response, FINRA notes that spouse accounts have long been addressed under NYSE Rule Interpretation 407/01. Further, FINRA notes that the rule addresses such accounts as a supervisory matter under FINRA rules for purposes of investor protection and market integrity. See also note 4 supra and new FINRA Rule 3110(d).

52 ACLI, CAI, Charles Schwab, FSI, National Planning, NMIS, NSCP, SIFMA and WFA.

53 Fischer.

calendar days.[54]

D. Revocation of Consent To Maintain the Account

As published in the Notice, proposed FINRA Rule 3210.04 would have created a new requirement providing that if the employer member does not receive the associated person's duplicate statements and confirmations in a timely manner, the employer member would be required to revoke its consent to maintaining the account and would be required to so notify the executing member or other financial institution in writing. The rule would have required the employer member to promptly obtain records from the executing member that the account was closed.

Commenters generally expressed concern that the proposed requirement is burdensome, poses various difficulties as to implementation, or that FINRA should provide guidance as to how accounts should be closed pursuant to the rule.[55] In response, FINRA has reconsidered the proposed requirement and agrees that it is not necessary, from the standpoint of the rule's regulatory purpose, to prescribe how employer members should respond to the delayed receipt, or non-receipt, of duplicate copies of confirmations, statements or the transactional data contained therein. First, FINRA believes that if an employer member determines, pursuant to the rule, to request such information and does not receive it in a timely fashion, then as a matter of sound supervisory practice the employer member should have in place policies and procedures to address the issue.[56] Second, FINRA notes that the proposed rule as revised requires executing

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54 See proposed FINRA Rule 3210.01.

55 CAI, Charles Schwab, FSI, ICI, J.A. Glynn, National Planning, NSCP, Pagemill, SIFMA, UBS and WFA.

56 FINRA notes that, with respect to accounts at non-member financial institutions, the proposed rule as revised provides that the employer must consider the extent to which it

members, upon written request by an employer member, to transmit the duplicate copies of confirmations and statements, or the transactional data contained therein.[57] Finally, FINRA takes note that many commenters requested that FINRA Rule 3210 be designed to permit firms flexibility based upon their business model and the risk profile of their activities.[58] As such, FINRA believes it is appropriate that employer members determine for themselves what would constitute timely receipt of the information required pursuant to the rule, provided such determination is reasonable within the context of their overall supervisory obligations. Accordingly, FINRA has deleted the requirement from the proposed rule as revised.

E. Transactions and Accounts Not Subject to Transmission Requirement

As published in the Notice, proposed FINRA Rule 3210.03 would have provided that the requirement to provide to the employer member duplicate account statements and confirmations is not applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements and confirmations.

Commenters suggested that, because they believe the referenced types of transactions and accounts pose little in the way of supervisory risk, they should be exempted from the proposed

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will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an associated person to open or maintain such an account.

57 See proposed FINRA Rule 3210(c).

58 See, e.g., Item 5.A of this filing.

rule's requirements altogether, similar to the provisions under current NASD Rule 3050(f), or that the proposed rule should expand and update types of transactions and accounts that would be exempted from the rule.[59]

FINRA appreciates members' concern that the new rule should adhere closely to the current NASD requirement. However, FINRA believes that the proposed approach, similar to that reflected in NYSE Rule 407.12, serves a valid regulatory and supervisory purpose, specifically, that the associated person must obtain the employer member's prior written consent with respect to the referenced transactions and accounts, in the manner and to the extent required by the proposed rule. Accordingly, FINRA is proposing FINRA Rule 3210.03 largely as published in the Notice. Some commenters made specific suggestions as to the types of transactions and accounts that should be excluded from the requirement that the executing member provide duplicate account confirmations and statements to the employer member upon the employer member's written request.[60] In response, FINRA has added municipal fund securities as defined under MSRB Rule D-12 and qualified Section 529 plans to the referenced types of transactions, as FINRA believes that, of the suggestions proffered, these are similar to the types of transactions specified under current NASD Rule 3050(f) and NYSE Rule 407.12 in posing limited risk from the standpoint of the rule's supervisory purposes. Accordingly, proposed FINRA Rule 3210.03 as revised provides that the requirement (pursuant to paragraph (c) of the proposed rule) that the executing member provide the employer member, upon the

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59 ACLI, CAI, Charles Schwab, FSI, Hillard, National Planning, NMIS, NPB, Pacific Select, SIFMA and UBS.

60 Four commenters specifically suggested qualified Section 529 plans under the Internal Revenue Code. See CAI, FSI, NMIS and SIFMA. One suggested all municipal fund securities. See FSI. One suggested in addition ETFs and registered insurance products. See CAI.

employer member's written request, with duplicate account confirmations and statements, or the transactional data contained therein, shall not be applicable to transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D-12, qualified tuition programs pursuant to Section 529 of the Internal Revenue Code and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts.

F. Information Gathering, Processes and Controls

The Notice requested comment on the methodologies that members employ to obtain information pursuant to NASD Rule 3050 and NYSE Rule 407 and the processes and controls that members implement upon receipt of the required information.

Commenters suggested the rule should not impose requirements as to the methodologies that members must use (e.g., receiving the information electronically versus in hard copy) or otherwise limit flexibility as to receiving and handling the information.[61] One commenter suggested FINRA should encourage firms to use a consistent electronic format in transmitting the information.[62] One suggested the proposed rule should state that the information can be received in electronic format.[63] One requested that FINRA specify in the rule a retention period for information received pursuant to the rule.[64]

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61 FSI, H & L Equities, ICI, Investors Security, NAIBD, NPB, NSCP, Pagemill, PSI and Taurus.

62 Pacific Select.

63 FSI.

64 H & L Equities.

In response to comments, FINRA has determined not to specify in the proposed rule any particular methodology. To this end, FINRA has revised proposed FINRA Rule 3210(c) to provide for transmission of "duplicate copies of confirmations and statements, or the transactional data contained therein." FINRA does not propose to specify in the rule a particular retention period because such concerns are adequately addressed elsewhere under SEA Rule 17a-4 and FINRA Rule 4511 as appropriate.

G. Implementation Period

Several commenters suggested that FINRA should permit an extended period for implementation of the proposed rule once approved.[65] In response, in establishing an implementation date, FINRA will take into account that firms would need to modify their compliance systems to reflect the new rule's requirements. As stated earlier in this filing, FINRA will announce such implementation date in a Regulatory Notice.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[66]

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

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65 ACLI, CAI, FSI and SIFMA.

66 15 U.S.C. 78s(b)(2).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 2a. Regulatory Notice 09-22 (April 2009).

Exhibit 2b. Comments received in response to Regulatory Notice 09-22 (April 2009).

Exhibit 2c. Copies of the comment letters received in response to Regulatory Notice 09-22 (April 2009).

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2015-029)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change to Adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on , Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook and to delete NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02.

The text of the proposed rule change is available on FINRA's website at http://www.finra.org, at the principal office of FINRA and at the Commission's Public Reference Room.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[3] FINRA is proposing to adopt a new, consolidated rule addressing accounts opened or established by associated persons of members at firms other than the firm with which they are associated. FINRA proposes to adopt FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions) in the Consolidated FINRA Rulebook and to delete NASD Rule 3050, Incorporated NYSE Rules 407 and 407A and Incorporated NYSE Rule Interpretations 407/01 and 407/02.[4]

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3 The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see Information Notice, March 12, 2008 (Rulebook Consolidation Process).

4 For convenience, the Incorporated NYSE Rules are referred to as the "NYSE Rules."

Sound supervisory practices require that a member firm monitor personal accounts opened or established outside of the firm by its associated persons. Proposed FINRA Rule 3210 combines and streamlines longstanding provisions of the NASD and NYSE rules that address this area and would, in combination with FINRA's new FINRA Rule 3110(d) governing securities transactions review and investigation,[5] help facilitate effective oversight of the specified trading activities of associated persons of member firms. FINRA sought comment on the proposal in a Regulatory Notice (the "Notice").[6] FINRA has revised the proposed rule as published in the Notice in response to comments.[7]

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5 New FINRA Rule 3110(d) (Transaction Review and Investigation) sets forth requirements for supervisory procedures for members to comply with the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA") (Pub. L. No. 100-704, 102 Stat. 4677). The Commission has approved FINRA Rule 3110(d) as part of FINRA's new consolidated supervision rules, which became effective on December 1, 2014. See Securities Exchange Act Release No. 71179 (December 23, 2013), 78 FR 79542 (December 30, 2013) (Order Granting Approval of Proposed Rule Change; File No. SR-FINRA-2013-025) ("Supervisory Rules Filing"); see also Regulatory Notice 14-10 (March 2014) (Consolidated Supervision Rules). Paragraph (d)(1) of the rule requires that a member's supervisory procedures must include a process for the review of securities transactions that is reasonably designed to identify trades that may violate the provisions of the Act, its regulations, or FINRA rules prohibiting insider trading and manipulative and deceptive devices that are effected for the accounts specified under paragraphs (d)(1)(A) through (d)(1)(D) of the rule.

6 See Regulatory Notice 09-22 (April 2009) (Personal Securities Transactions).

7 Comments are discussed in Item II.C of this filing. As discussed further in Item II.C, commenters expressed concern that Rule 3210 as proposed in the Notice would be burdensome or difficult to implement and that the rule should, informed by the approach of current NASD Rule 3050, be revised to permit firms flexibility to craft appropriate supervisory policies and procedures taking into account their business model and the risk profile of their activities.

(A) Background: NASD Rule 3050 and NYSE Rules 407 and 407A

NASD Rule 3050 and NYSE Rules 407 and 407A are longstanding rules that address specified accounts opened or established by associated persons of members at firms other than the firm with which they are associated.

NASD Rule 3050 (designated in its original form as Section 28 of the Rules of Fair Practice) was adopted to address this issue by providing a means by which members would be informed of the extent and nature of transactions effected by their employees or other associated persons,[8] so that members, in their own interest and in the interest of their customers, might weigh the effect, if any, of such transactions handled outside their firms.[9] The rule imposes specified obligations on member firms and associated persons.[10] In short:

- Obligations of Member Firms: NASD Rule 3050(a) requires that a member (called an "executing member") who knowingly executes a transaction for the purchase or sale of a security for the account of a person associated with another member (called an "employer member"), or for any account over which the associated person has discretionary authority, must use reasonable diligence to determine that the execution of the transaction will not adversely

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8 The terms "person associated with a member" and "associated person of a member" include, among others, registered representatives. See paragraph (rr) of Article I of the FINRA By-Laws.

9 See Securities Exchange Act Release No. 4924 (August 21, 1953).

10 FINRA historically has noted that the purpose of the rule (originally designated Article III, Section 28 of the Rules of Fair Practice) is to "help member firms discharge their supervisory responsibility over the securities activities conducted in their associated persons' personal securities accounts." Securities Exchange Act Release No. 23754 (October 28, 1986), 51 FR 40546 (November 7, 1986) (Proposed Rule Change; File No. SR-NASD-86-29).

affect the interests of the employer member. NASD Rule 3050(b) requires that, where an executing member knows that a person associated with an employer member has or will have a financial interest in, or discretionary authority over, any existing or proposed account carried by the executing member, the executing member must:

(1) notify the employer member in writing, prior to the execution of a transaction for the account, of the executing member's intention to open or maintain that account;

(2) upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to the account; and

(3) notify the person associated with the employer member of the executing member's intention to provide the notice and information required by (1) and (2).

- Obligations of Associated Persons: NASD Rules 3050(c) and Rule 3050(d), in combination, address associated persons, whether they open securities accounts or place securities orders through a member firm other than their employer or whether they do so through other types of financial services firms that are not FINRA members.[11] Specifically:

  (1) NASD Rule 3050(c) requires that a person associated with a member, prior to opening an account or placing an initial order for the purchase or

[11] NASD Rule 3050(e) provides that Rules 3050(c) and (d) apply only to accounts or orders in which an associated person has a financial interest or with respect to which the associated person has discretionary authority.

sale of securities with another member, must notify both the employer member and the executing member, in writing, of his or her association with the other member. The rule provides that if the account was established prior to the person's association with the employer member, the person must notify both members in writing promptly after becoming associated;

(2) NASD Rule 3050(d) provides that if the associated person opens a securities account or places an order for the purchase or sale of securities with a broker-dealer that is registered pursuant to SEA Section 15(b)(11) (a notice-registered broker-dealer), a domestic or foreign investment adviser, bank, or other financial institution (that is, firms that are not FINRA members), then he or she must: (i) notify his or her employer member in writing, prior to the execution of any initial transactions, of the intention to open the account or place the order; and (ii) upon written request by the employer member, request in writing and assure that the notice-registered broker-dealer, investment adviser, bank, or other financial institution provides the employer member with duplicate copies of confirmations, statements, or other information concerning the account or order. NASD Rule 3050(d) provides that if an account subject to Rule 3050(d) was established prior to the person's association with the member, the person must comply with the rule promptly after becoming associated;

(3) NASD Rule 3050(f) provides that the requirements of Rule 3050 do not apply to transactions in unit investment trusts and variable contracts or

redeemable securities of companies registered under the Investment Company Act of 1940, or to accounts which are limited to transactions in such securities.

NYSE Rule 407, similar in purpose to FINRA Rule 3050, addresses transactions by and for employees of member firms[12] as follows:

- NYSE Rule 407(a) is similar to NASD Rule 3050(b), except that Rule 407(a) imposes a requirement to obtain the prior written consent of the employer member.[13] Specifically, the rule requires that no member or member organization may, without the prior written consent of the employer, open a securities or commodities account or execute any transaction in which a member or employee associated with another member or member organization is directly or indirectly interested. The rule requires that duplicate confirmations and account statements be sent promptly to the employer.
- NYSE Rule 407(b) is similar to NASD Rules 3050(c) and (d), except that, like NYSE Rule 407(a), it also sets forth a prior written consent requirement. The rule requires that no member associated with a member or member

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12 See note 10 supra. The NYSE noted that Rule 407 imposes obligations as to specified personal accounts of employees and associated persons and that one of the rule's purposes, among other things, is to help deter and detect violations of applicable federal securities laws and regulations. See NYSE Information Memo 09-50 (October 30, 2009) (Supervision of Trading in Proprietary, Employee and Employee-Related Securities and Commodities Accounts).

13 The term "employer member" is defined within the context of the NASD rule, not the NYSE rule. For purposes of discussing NYSE Rule 407, in this filing the term "employer member" is used interchangeably with "employer" for convenience.

organization may establish or maintain any securities or commodities account[14] or enter into any securities transaction with respect to which such person has any financial interest or the power, directly or indirectly, to make investment decisions, at another member or member organization, or a domestic or foreign non-member broker-dealer, investment adviser, bank, other financial institution,[15] or otherwise without the prior written consent of another person designated by the member or member organization to sign such consents and review such accounts. The rule requires that persons having accounts or effecting transactions as covered by the rule must arrange for duplicate confirmations and statements (or their equivalents) to be sent to a person designated by the member or member organization to review such accounts and transactions. The rule further requires that all such accounts and transactions must periodically be reviewed by the member or member organization employer.[16]

- NYSE Rule 407.12 provides that the rule's requirement to send duplicate confirmations and statements does not apply to transactions in unit investment

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14 NYSE Rule 407.11 states that the term "securities or commodities accounts" as used in Rule 407(b) includes, but is not limited to, limited or general partnership interests in investment partnerships.

15 NYSE Rule 407.13 states that, for purposes of the rule, the term "other financial institution" includes, but is not limited to, insurance companies, trust companies, credit unions and investment companies.

16 NYSE Rule 407.11 requires that members and member organizations must develop and maintain written procedures for reviewing such accounts and transactions and must assure that their associated persons are not improperly recommending or marketing such securities or products to others through members or member organizations.

> trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, or to accounts which are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of duplicate confirmations and statements of such accounts. As such, the provision is similar to the corresponding provisions under NASD Rule 3050(f), except that Rule 3050(f) wholly excepts the specified transactions and accounts from the scope of Rule 3050.

In addition, NYSE Rule 407A (Disclosure of All Member Accounts) requires members (i.e., natural persons approved by the New York Stock Exchange (the "Exchange") and designated by a member organization to effect transactions on the floor of the Exchange or any facility thereof) to promptly report to the Exchange any securities account, including an error account, in which the member has, directly or indirectly, any financial interest or the power to make investment decisions. Such accounts include any account at a member or non-member broker-dealer, investment adviser, bank or other financial institution. NYSE Rule 407A also requires a member having such an account to notify the financial institution that carries or services the account that it is a NYSE member. In addition, the rule requires that members report to the Exchange when any such securities account is closed.

NYSE Rule 407A was adopted in 2001 as part of a series of initiatives designed to strengthen the regulation of activities of NYSE floor brokers.[17] This rule expands the

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[17] The Commission noted that these initiatives would aid the NYSE in fulfilling some of the undertakings included in the NYSE's 1999 settlement with the SEC regarding failure to enforce compliance with SEA Section 11(a) and SEA Rule

obligations placed upon members under Rule 407 by requiring disclosure to the Exchange. These reporting requirements were designed to provide the NYSE with current information about where floor members carry securities accounts and to enhance its ability to investigate quickly the trading of securities by such members.

NYSE Rule Interpretation 407/01 addresses the process for determining whether the account of a spouse of an associated person should be subject to NYSE Rule 407.

NYSE Rule Interpretation 407/02 provides that NYSE Rule 407(b) applies when an associated person is also a majority stockholder of a non-public corporation that wishes to open a discretionary margin account at another member.

(B) Proposed FINRA Rule 3210

Proposed FINRA Rule 3210, consistent with the longstanding purposes of NASD Rule 3050 and NYSE Rule 407,[18] is designed to enable members to monitor the personal accounts of their associated persons opened or established outside of the member firm. The new rule, in combination with new FINRA Rule 3110, takes the approach that a member is responsible for supervising its associated persons' trading activities.[19] The

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11a-1 and NYSE Rules 90, 95 and 111 with respect to activity of floor brokers. As noted by the Commission, broadly, those provisions were aimed at preventing NYSE floor broker members from exploiting their advantageous position on the NYSE floor for personal gain to the detriment of the investing public. See In the Matter of New York Stock Exchange, Inc., Securities Exchange Act Release No. 41574 (June 29, 1999), Administrative Proceeding File No. 3-9925; Securities Exchange Act Release No. 42381 (February 3, 2000), 65 FR 6673 (February 10, 2000) (Notice of Filing of Proposed Rule Change; File No. SR-NYSE-99-25); Securities Exchange Act Release No. 44769 (September 6, 2001), 66 FR 47710 (September 13, 2001) (Order Granting Approval to Proposed Rule Change; File No. SR-NYSE-99-25).

18 See note 10 and note 12 supra.

19 See Supervisory Rules Filing and note 5 supra. In this connection, as discussed further in Item II.A.1(C) below, FINRA is deleting the provision under NASD

rule begins by setting forth a requirement that an associated person must obtain the prior written consent of his or her employer when opening a specified account at another member or other financial institution. Specifically, proposed FINRA Rule 3210(a) provides that no person associated with a member ("employer member") shall, without the prior written consent of the member, open or otherwise establish at a member other than the employer member ("executing member"), or at any other financial institution,[20] any account in which securities transactions can be effected[21] and in which the associated person has a beneficial interest.[22] Proposed FINRA Rule 3210.02 provides that, for

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Rule 3050(a) as to the obligation of the executing member to use reasonable diligence with respect to the specified transactions.

20 Based on NYSE Rule 407.13 and NASD Rule 3050(d), proposed FINRA Rule 3210.05 provides that, for the purposes of the rule, the terms "other financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to SEA Section 15(b)(11), domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

21 In the interest of helping facilitate supervision of securities transactions under new FINRA Rule 3110(d)(1), FINRA is specifying "any account in which securities transactions can be effected" so as to be clear that the proposed rule's scope includes any account, regardless of type, where securities transactions can take place as specified under the rule.

22 As proposed in the Notice, the rule would have specified accounts in which the associated person has a "personal financial interest." Commenters suggested that this language was unclear. See Item II.C.2 of this filing. FINRA is proposing the term "beneficial interest" because that term is an established and well-understood standard. See, e.g., FINRA Rule 5130(i)(1), which defines "beneficial interest" to mean, in part, any economic interest, such as the right to share in gains or losses. FINRA believes that the proposed term is consistent with the purpose of NYSE Rule 407, which in part addresses transactions in which the associated person is "directly or indirectly interested" (NYSE Rule 407(a)) or with respect to which the associated person "has any financial interest" (NYSE Rule 407(b)) and with NASD Rules 3050(b) through (d), which in part address accounts or transactions in which the associated person has a "financial interest." Further, the proposed term would align the rule with "beneficial interest" as specified under new

purposes of the rule, the associated person shall be deemed to have a beneficial interest in any account that is held by: (a) the spouse of the associated person; (b) a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person; (c) any other related individual over whose account the associated person has control; or (d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes.[23] The types of accounts specified pursuant to proposed FINRA Rule 3210.02 are designed to align with "covered accounts" as defined pursuant to new FINRA Rule 3110(d)(4)(A) for purposes of the transaction review and investigation provisions pursuant to Rule 3110(d)(1).[24] Further, FINRA believes the proposed language is consistent with the broad approach of NASD Rule 3050 and NYSE Rule 407 as historically understood to facilitate the monitoring of associated persons' personal and related accounts.[25] FINRA notes that the proposed new

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FINRA Rule 3110(d)(1)(B), which, for purposes of the transaction review and investigation provisions set forth under new FINRA Rule 3110(d)(1), specifies in part accounts "in which a person associated with the member has a beneficial interest." See note 5 supra.

23 Some commenters expressed concerns as to addressing spouse accounts in the proposed rule. FINRA notes that spouse accounts have long been addressed under NYSE Rule Interpretation 407/01. See Item II.C.2 of this filing.

24 See note 5 supra.

25 For example, with respect to the approach of the current rules, as noted earlier, NYSE Rule Interpretation 407/01 addresses spouse accounts. In the context of amendments to NASD Rule 3050 (then designated Article III, Section 28 of the Rules of Fair Practice) adopted in 1983 that extended the rule to include accounts over which the associated person exercises discretion, FINRA noted its intent to enable the rule's scope to reach accounts of relatives of associated persons where the associated person places the orders. See Securities Exchange Act Release No. 19347 (December 16, 1982), 47 FR 58416 (December 30, 1982) (Proposed Rule

language eliminates the language in the current rules that references accounts or transactions where the associated person has "the power, directly or indirectly, to make investment decisions," as set forth in NYSE Rule 407(b), and accounts where the associated person has "discretionary authority," as set forth in NASD Rule 3050(b).[26]

Similar to the current rules, the new rule places notification obligations on associated persons with respect to the executing member or other financial institution. Specifically, proposed FINRA Rule 3210(b) is based in large part on NASD Rules 3050(c) and 3050(d) and provides that any associated person, prior to opening or otherwise establishing an account subject to the rule, must notify in writing the executing member, or other financial institution, of his or her association with the employer member.

Change; File No. SR-NASD-82-25); Securities Exchange Act Release No. 19550 (February 28, 1983), 48 FR 9413 (March 4, 1983) (Order Approving Proposed Rule Change; File No. SR-NASD-82-25). FINRA believes that because the proposed rule specifies, in language that aligns with new FINRA Rule 3110(d)(4)(A), the types of personal relationships that would be within the scope of "beneficial interest," the rule's precise parameters should be more clear.

[26] FINRA believes that this will serve to more clearly demarcate the respective scope of the new rule vis-à-vis current NASD Rule 3040, which addresses the obligations of associated persons and members in connection with private securities transactions. NASD Rule 3040(e)(1) defines private securities transactions to include, in part, "any securities transaction outside the regular course or scope of an associated person's employment with a member" and excludes from the rule's specified notification requirements, among other things, transactions subject to the notification requirements of NASD Rule 3050. FINRA believes that, to the extent associated persons make investment decisions or have discretionary authority in contexts that involve private securities transactions within the scope of NASD Rule 3040, as opposed to accounts in which they have a beneficial interest as specified by the new rule, such transactions are properly addressed by the requirements set forth in Rule 3040 and other FINRA rules as applicable. FINRA believes that this approach is consistent, as noted earlier, with the historical approach of NASD Rule 3050 and NYSE Rule 407 that is intended to facilitate monitoring of associated persons' personal and related accounts.

Also similar to the current rules, the new rule specifies obligations for executing members. Specifically, proposed FINRA Rule 3210(c) is based in large part on NASD Rule 3050(b)(2) and provides that an executing member must, upon written request by the employer member, transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to the rule.[27]

Similar to current provisions in NASD Rules 3050(c) and 3050(d), the proposed rule makes allowance for accounts opened by an associated person prior to his or her association with the employer member. Specifically, proposed FINRA Rule 3210.01 provides that, if the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within 30 calendar days of becoming so associated, must obtain the written consent of the employer member to maintain the account and must notify in writing the executing member or other financial institution of his or her association with the employer member.[28]

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27 As published in the Notice, the proposed rule would have required the employer member to instruct the associated person to have the executing member provide the specified duplicate account statements and confirmations to the employer member. As discussed further in Item II.C.1 of this filing, commenters expressed concern that the rule as proposed in the Notice would burden members with collecting the specified information without regard to whether such collection is warranted by the member's business model and risk profile. In response to commenter suggestion, FINRA has revised the proposed rule so that the specified information is provided upon written request by the employer member, which is consistent with the approach of current NASD Rule 3050 and which FINRA believes permits members flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities.

28 As published in the Notice, the proposed rule would have specified 15 business days. In response to comment, the proposed rule as revised specifies 30 calendar days so as to reduce burdens on member firms and their associated persons. See Item II.C.3 of this filing.

Similar to the current rules, the new rule makes allowance for specified information that executing members need not transmit to employer members. Specifically, proposed FINRA Rule 3210.03 is based in large part on NYSE Rule 407.12 and NASD Rule 3050(f) and provides that the requirement (pursuant to paragraph (c) of Rule 3210) that the executing member provide the employer member, upon the employer member's written request, with duplicate account confirmations and statements, or the transactional data contained therein, shall not be applicable to transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D-12,[29] qualified tuition programs pursuant to Section 529 of the Internal Revenue Code and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts.[30]

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29 MSRB Rule D-12 defines municipal fund security to mean "a municipal security issued by an issuer that, but for the application of Section 2(b) of the Investment Company Act of 1940, would constitute an investment company within the meaning of Section 3 of the Investment Company Act of 1940."

30 The approach to the referenced types of transactions reflects a longstanding intention under the NASD and NYSE rule that members not be burdened with information collection for transactions that pose limited risk from the standpoint of the rule's supervisory purposes. See, e.g., Securities Exchange Act Release No. 19347 (December 16, 1982), 47 FR 58416 (December 30, 1982) (Proposed Rule Change; File No. SR-NASD-82-25). As discussed further in Item II.C.5 of this filing, the proposed requirement is largely as published in the Notice. In response to commenter suggestion, FINRA has added municipal fund securities as defined under MSRB Rule D-12 and Section 529 plans to the transactions set forth under the rule. FINRA is adding these transactions because FINRA believes these types of products are reasonably classed with the types of transactions specified under the current rule in posing limited risk from the standpoint of the rule's supervisory purposes.

Proposed FINRA Rule 3210.04 is new and provides that, with respect to an account subject to the rule at a financial institution other than a member, the employer member must consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an associated person to open or maintain such account.[31] FINRA believes that the proposed requirement serves a valid regulatory purpose in view of the employer member's responsibility for supervising its associated persons' trading activities.

(C) Deleted Requirements

Proposed FINRA Rule 3210 deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407 that are rendered outdated by the new rule or are otherwise addressed elsewhere by FINRA rules.

- The proposed rule eliminates NASD Rule 3050(a)'s 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." FINRA proposes to delete this requirement because FINRA believes that it is appropriate for the new rule, in combination with new

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31 As published in the Notice, the proposed rule would have required the associated person to provide an instruction to the non-member financial institution to provide the specified information to the employer member. As discussed further in Item II.C.1 of this filing, FINRA believes that the requirement as revised permits members flexibility to craft appropriate supervisory policies and procedures in determining whether to provide written consent as to the specified accounts at non-member financial institutions.

FINRA Rule 3110,[32] to take the approach that the employer member is responsible for supervising its associated persons' trading activities.[33]

- FINRA proposes to delete the account review requirements set forth in NYSE Rule 407(b) and the requirements for written procedures set forth in NYSE Rule 407.11 because these issues are addressed by the proposed rule in combination with FINRA's new supervisory rules, in particular new FINRA Rule 3110(d), which sets forth the new supervisory framework for securities transactions review and investigation.[34]
- As noted earlier, NYSE Rule 407A was intended to address activities of NYSE floor brokers. FINRA proposes to delete NYSE Rule 407A in its entirety from the Transitional Rulebook because proposed FINRA Rule 3210 requires disclosure at the member firm level of the same types of information that Rule 407A requires with respect to the NYSE as to floor brokers. FINRA believes it is more appropriate to require member firms to obtain the required information and to supervise the accounts of their associated persons for improper trading, rather than requiring that such information be sent directly to FINRA. Moreover, as noted above, these reporting requirements were designed to provide the NYSE with current information about where floor members carry securities accounts and to enhance its ability to investigate

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32 See Supervisory Rules Filing.

33 FINRA notes that, notwithstanding this approach, the rule retains the longstanding duty of the executing member to assist the employer member by providing the specified information upon request.

34 See note 5 supra and Supervisory Rules Filing.

quickly the trading of securities by such members.

- FINRA proposes to delete NYSE Rule Interpretation 407/01 because it would be superseded by proposed FINRA Rule 3210.02, which as noted earlier expressly provides, among other things, that an associated person is deemed to have a beneficial interest in any account that is held by the spouse of the associated person.
- FINRA proposes to delete NYSE Rule Interpretation 407/02 because it is rendered redundant by new FINRA Rule 3210(a), the scope of which by its terms reaches accounts as specified by the rule in which the associated person has a beneficial interest.
- FINRA proposes to delete language referring to accounts or transactions where the associated person has "the power, directly or indirectly, to make investment decisions," as set forth in NYSE Rule 407(b), and accounts where the associated person has "discretionary authority," as set forth in NASD Rule 3050(b). As discussed above, FINRA believes that, to the extent associated persons make investment decisions or have discretionary authority in contexts that involve private securities transactions within the scope of NASD Rule 3040, as opposed to accounts in which they have a beneficial interest, such transactions are properly addressed by the requirements set forth in Rule 3040 and other FINRA rules as applicable.[35]

If the Commission approves the proposed rule change, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published

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35 See note 26 supra.

no later than 90 days following Commission approval. The implementation date will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[36] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will further the purposes of the Act because, as part of the FINRA rulebook consolidation process, the proposed rule change will help to protect investors and the public interest by streamlining and reorganizing existing rules that promote effective oversight of accounts opened or established by associated persons of members at firms other than the firm with which they are associated. By setting forth the requirements pursuant to which associated persons will seek the prior written consent of the employer member to open or otherwise establish accounts as specified under the rule, and pursuant to which the specified information will be transmitted to the employer member upon the employer member's request, the proposed rule will facilitate the supervision of the trading activities of associated persons within the framework of FINRA's new supervisory rules as approved by the Commission and help members to ensure that such activities, engaged in at executing members or other financial institutions, do not violate provisions of the Act, its regulations, or FINRA rules, thereby helping to ensure orderly markets.

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[36] 15 U.S.C. 78o-3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Commenters expressed concern that the proposed rule change, as originally published in Regulatory Notice 09-22, would have been burdensome to implement and would have resulted in employer members being required to request information of executing members and non-member financial institutions bearing little or no relationship to the scope and nature of the employer member's activities. In response to commenter suggestion, FINRA revised the proposed rule so as to permit members discretion, consistent with their supervisory obligations under new FINRA Rule 3110(d), to request the specified information of executing members and non-member financial institutions, thereby permitting members reasonable flexibility to craft appropriate supervisory policies and procedures according to their business model and the risk profile of their activities. The proposed rule change as revised is thereby consistent with the approach of current NASD Rule 3050, which commenter suggestion supported. FINRA believes that because the proposed rule change, as revised, is consistent with current requirements and longstanding practice, it will not impose additional burdens on members.

The proposed rule change permits members to implement supervisory procedures that align with their business models, without diminishing members' supervisory obligations with respect to the activities of their associated persons. FINRA believes that this proposed approach imposes less cost on members without reducing investor protections. In addition, the proposed rule change deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407 that are rendered outdated by the proposed new

rule or are otherwise addressed elsewhere by other FINRA rules, which further minimizes the potential compliance burden on members in light of the objectives of the proposed rule change. FINRA recognizes that providing such flexibility to members may require increased monitoring of members' compliance with this rule as part of FINRA's examination program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in Regulatory Notice 09-22 (April 2009). A copy of the Notice is attached as Exhibit 2a. Thirty-three commenters responded to the Notice, and a list of the commenters is attached as Exhibit 2b.[37] Copies of the comment letters received in response to the Notice are attached as Exhibit 2c.

1. Core Proposed Rule Requirements: Obligation to Provide Duplicate Account Statements and Confirmations

As published in the Notice, proposed FINRA Rule 3210(a) in part would have required an employer member, as a condition to giving prior written consent for opening or establishing an account pursuant to the rule, to instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member. Paragraph (b) set forth requirements pertaining to the associated person's obligation to notify the executing member or other financial institution in writing of his or her association with the employer member. Paragraph (c) of the rule would have provided in part that the executing member must promptly obtain and implement an instruction from the associated person directing that duplicate account

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37 All references to commenters under this Item are to the commenters as listed in Exhibit 2b.

statements and confirmations be provided to the employer member. (With respect to accounts opened at a financial institution other than a member, proposed FINRA Rule 3210.02 as published in the Notice would have required the associated person to provide the instruction to the financial institution.)

Commenters generally expressed concern that, as published in the Notice, the requirements of proposed Rules 3210(a), (b) and (c) and 3210.02, singly or in combination, are unnecessary for regulatory purposes, are burdensome or difficult for firms to implement, or the rule should be designed to permit members the discretion to determine whether, based on their business model and the risk profile of their activities, they need to require duplicate account statements and confirmations to carry out their supervisory responsibilities.[38] Some of these commenters suggested that involving the associated person in the process of requesting the required data vis-à-vis the executing member creates supervisory risks.[39] A number suggested that it is better practice and more efficient to have the employer member obtain the required data directly from the executing member or non-member institution.[40] A few of the commenters raised concerns about potential difficulties in obtaining the required information from non-members (including foreign non-members).[41] Many questioned the supervisory and regulatory value of requiring firms to collect data pertaining to associated person

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38 ACLI, CAI, Channel Capital, Charles Schwab, Farmers Financial, FSI, GWFS, Hillard, IBSI, ICI, MWA, NAIBD, National Planning, NMIS, NSCP, PFSI, PSI, Quasar, SIFMA, State Farm, SunTrust, Sykes, UBS, WFA and Witthaut.

39 National Planning, PSI, SIFMA and UBS.

40 Charles Schwab, FSI, NMIS, SIFMA and UBS.

41 Charles Schwab, SIFMA and UBS.

accounts and transactions bearing little or no relationship to the scope and nature of their firms' activities.[42] Some suggested that current NASD Rule 3050 generally permits members to exercise such discretion and that retaining the approach of the NASD rule would be conducive to more efficient use of regulatory or supervisory resources.[43]

In response, FINRA agrees that the proposal as published in the Notice raises issues with respect to the efficient use and conservation of regulatory and supervisory resources, as well as to implementation. FINRA has revised proposed FINRA Rule 3210, consistent with NASD Rule 3050, to provide that an executing member must, upon written request by an employer member, transmit the duplicate copies of confirmations and statements, or the transactional data contained therein.[44] With respect to accounts at a financial institution other than a member, FINRA has revised the rule to provide that the employer member must consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the institution in determining whether to provide its written consent to an associated person to open or maintain an account subject to the rule.[45] FINRA believes that this approach, based in large part on the longstanding approach of NASD Rule 3050, should provide members reasonable flexibility to craft appropriate supervisory policies and procedures according to their business model and

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42 ACLI, CAI, Farmers Financial, GWFS, Hillard, ICI, MWA, National Planning, Quasar, State Farm, SunTrust, Sykes and Witthaut.

43 CAI, Charles Schwab, Farmers Financial, FSI, National Planning, PFSI and SunTrust.

44 See proposed FINRA Rule 3210(c).

45 See proposed FINRA Rule 3210.04.

the risk profile of their activities. FINRA reminds members that, in permitting such flexibility, the rule in no way lessens members' supervisory obligations under FINRA rules with respect to the activities of their associated persons.[46]

2. Personal Financial Interest of the Associated Person

As published in the Notice, the accounts covered by proposed FINRA Rule 3210 would have reached in part those in which the associated person has a "personal financial interest." The Notice stated that "personal financial interest" would as a general matter extend to a spouse's account. Commenters expressed concern as to the scope and meaning of the term "personal financial interest" and requested that FINRA further define the term, limit its scope, or otherwise provide more specific guidance.[47] Several commenters suggested generally that it would be more effective for the rule to speak to accounts with respect to which the associated person exercises control or authority, rather than having a "personal financial interest."[48]

In response, FINRA is proposing a standard that is consistent with the purpose of NASD Rule 3050 and NYSE Rule 407[49] while also aligning more clearly with new FINRA Rule 3110(d). Specifically, FINRA has revised the proposed rule to extend to specified accounts in which the associated person has a beneficial interest. As discussed earlier, FINRA believes the term "beneficial interest" is appropriate because that term is

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46 See note 5 supra and Supervisory Rules Filing.

47 CAI, Charles Schwab, Farmers Financial, IBSI, ICI, NAIBD, NMIS, NPB, NSCP and SIFMA.

48 Charles Schwab, Farmers Financial, FSI, NMIS and SIFMA.

49 See note 10 and note 12 supra.

an established and well-understood standard[50] and is consistent with the terms "directly or indirectly interested," as used in NYSE Rule 407(a), "has any financial interest," as used in NYSE Rule 407(b), and accounts or transactions in which the associated person has a "financial interest," as applicable under NASD Rules 3050(b) through (d). Further, the proposed term would align the rule with "beneficial interest" as specified under new FINRA Rule 3110(d)(1)(B), which, for purposes of the transaction review and investigation provisions set forth under new FINRA Rule 3110(d)(1), specifies in part accounts "in which a person associated with the member has a beneficial interest."[51] In addition, FINRA is proposing, as Supplementary Material .02 to the rule, to provide that the associated person shall be deemed to have a beneficial interest in any account that is held by: (a) the spouse of the associated person; (b) a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person; (c) any other related individual over whose account the associated person has control; or (d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes. As noted earlier, this proposed language is designed to align with "covered accounts" as defined pursuant to new FINRA Rule 3110(d)(4)(A) for purposes of the transaction review and investigation provisions pursuant to Rule 3110(d)(1).[52]

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50 FINRA Rule 5130(i)(1) defines "beneficial interest" to mean, in part, any economic interest, such as the right to share in gains or losses. See note 22 supra.

51 See note 5 supra.

52 See proposed FINRA Rule 3210.02. Some commenters questioned whether it is legally viable for the proposed rule to reach spouse accounts. See Charles Schwab and NPB. In response, FINRA notes that spouse accounts have long

3. Accounts Opened Prior To Association With the Employer Member

As published in the Notice, proposed FINRA Rule 3210.01 would have required that if the associated person's account was opened or otherwise established prior to his or her association with the employer member, the associated person would be required to obtain the employer member's written consent to maintain the account within 15 business days of becoming so associated. Commenters suggested that the 15-business-day requirement is too short or restrictive and that the rule should require "prompt" notification by the associated person, as under current NASD Rule 3050, or permit a longer specified period.[53] One commenter believed that the rule should not cover previously opened accounts at all.[54]

In response, FINRA notes that it serves a valid regulatory purpose that the proposed rule should extend to accounts opened prior to the associated person's association with the employer member, given that the associated person would have the ability to effect transactions in such accounts. FINRA believes that it is reasonable, from the standpoint of reducing burdens on member firms and their associated persons, to permit a longer amount of time for notification with respect to already-opened accounts and has accordingly revised the rule to permit 30 calendar days.[55]

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been addressed under NYSE Rule Interpretation 407/01. Further, FINRA notes that the rule addresses such accounts as a supervisory matter under FINRA rules for purposes of investor protection and market integrity. See also note 5 supra and new FINRA Rule 3110(d).

53 ACLI, CAI, Charles Schwab, FSI, National Planning, NMIS, NSCP, SIFMA and WFA.

54 Fischer.

55 See proposed FINRA Rule 3210.01.

4. Revocation of Consent To Maintain the Account

As published in the Notice, proposed FINRA Rule 3210.04 would have created a new requirement providing that if the employer member does not receive the associated person's duplicate statements and confirmations in a timely manner, the employer member would be required to revoke its consent to maintaining the account and would be required to so notify the executing member or other financial institution in writing. The rule would have required the employer member to promptly obtain records from the executing member that the account was closed.

Commenters generally expressed concern that the proposed requirement is burdensome, poses various difficulties as to implementation, or that FINRA should provide guidance as to how accounts should be closed pursuant to the rule.[56] In response, FINRA has reconsidered the proposed requirement and agrees that it is not necessary, from the standpoint of the rule's regulatory purpose, to prescribe how employer members should respond to the delayed receipt, or non-receipt, of duplicate copies of confirmations, statements or the transactional data contained therein. First, FINRA believes that if an employer member determines, pursuant to the rule, to request such information and does not receive it in a timely fashion, then as a matter of sound supervisory practice the employer member should have in place policies and procedures to address the issue.[57] Second, FINRA notes that the proposed rule as revised requires

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56 CAI, Charles Schwab, FSI, ICI, J.A. Glynn, National Planning, NSCP, Pagemill, SIFMA, UBS and WFA.

57 FINRA notes that, with respect to accounts at non-member financial institutions, the proposed rule as revised provides that the employer must consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly

executing members, upon written request by an employer member, to transmit the duplicate copies of confirmations and statements, or the transactional data contained therein.[58] Finally, FINRA takes note that many commenters requested that FINRA Rule 3210 be designed to permit firms flexibility based upon their business model and the risk profile of their activities.[59] As such, FINRA believes it is appropriate that employer members determine for themselves what would constitute timely receipt of the information required pursuant to the rule, provided such determination is reasonable within the context of their overall supervisory obligations. Accordingly, FINRA has deleted the requirement from the proposed rule as revised.

5. Transactions and Accounts Not Subject to Transmission Requirement

As published in the Notice, proposed FINRA Rule 3210.03 would have provided that the requirement to provide to the employer member duplicate account statements and confirmations is not applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements and confirmations.

Commenters suggested that, because they believe the referenced types of transactions and accounts pose little in the way of supervisory risk, they should be

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from the non-member financial institution in determining whether to provide its written consent to an associated person to open or maintain such an account.

58 See proposed FINRA Rule 3210(c).

59 See, e.g., Item II.C.1 of this filing.

exempted from the proposed rule's requirements altogether, similar to the provisions under current NASD Rule 3050(f), or that the proposed rule should expand and update types of transactions and accounts that would be exempted from the rule.[60]

FINRA appreciates members' concern that the new rule should adhere closely to the current NASD requirement. However, FINRA believes that the proposed approach, similar to that reflected in NYSE Rule 407.12, serves a valid regulatory and supervisory purpose, specifically, that the associated person must obtain the employer member's prior written consent with respect to the referenced transactions and accounts, in the manner and to the extent required by the proposed rule. Accordingly, FINRA is proposing FINRA Rule 3210.03 largely as published in the Notice. Some commenters made specific suggestions as to the types of transactions and accounts that should be excluded from the requirement that the executing member provide duplicate account confirmations and statements to the employer member upon the employer member's written request.[61] In response, FINRA has added municipal fund securities as defined under MSRB Rule D-12 and qualified Section 529 plans to the referenced types of transactions, as FINRA believes that, of the suggestions proffered, these are similar to the types of transactions specified under current NASD Rule 3050(f) and NYSE Rule 407.12 in posing limited risk from the standpoint of the rule's supervisory purposes. Accordingly, proposed FINRA Rule 3210.03 as revised provides that the requirement (pursuant to paragraph (c)

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60 ACLI, CAI, Charles Schwab, FSI, Hillard, National Planning, NMIS, NPB, Pacific Select, SIFMA and UBS.

61 Four commenters specifically suggested qualified Section 529 plans under the Internal Revenue Code. See CAI, FSI, NMIS and SIFMA. One suggested all municipal fund securities. See FSI. One suggested in addition ETFs and registered insurance products. See CAI.

of the proposed rule) that the executing member provide the employer member, upon the employer member's written request, with duplicate account confirmations and statements, or the transactional data contained therein, shall not be applicable to transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D-12, qualified tuition programs pursuant to Section 529 of the Internal Revenue Code and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts.

6. Information Gathering, Processes and Controls

The Notice requested comment on the methodologies that members employ to obtain information pursuant to NASD Rule 3050 and NYSE Rule 407 and the processes and controls that members implement upon receipt of the required information.

Commenters suggested the rule should not impose requirements as to the methodologies that members must use (e.g., receiving the information electronically versus in hard copy) or otherwise limit flexibility as to receiving and handling the information.[62] One commenter suggested FINRA should encourage firms to use a consistent electronic format in transmitting the information.[63] One suggested the proposed rule should state that the information can be received in electronic format.[64] One requested that FINRA specify in the rule a retention period for information received

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62 FSI, H & L Equities, ICI, Investors Security, NAIBD, NPB, NSCP, Pagemill, PSI and Taurus.

63 Pacific Select.

64 FSI.

pursuant to the rule.[65]

In response to comments, FINRA has determined not to specify in the proposed rule any particular methodology. To this end, FINRA has revised proposed FINRA Rule 3210(c) to provide for transmission of "duplicate copies of confirmations and statements, or the transactional data contained therein." FINRA does not propose to specify in the rule a particular retention period because such concerns are adequately addressed elsewhere under SEA Rule 17a-4 and FINRA Rule 4511 as appropriate.

7. Implementation Period

Several commenters suggested that FINRA should permit an extended period for implementation of the proposed rule once approved.[66] In response, in establishing an implementation date, FINRA will take into account that firms would need to modify their compliance systems to reflect the new rule's requirements. As stated earlier in this filing, FINRA will announce such implementation date in a Regulatory Notice.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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65 H & L Equities.

66 ACLI, CAI, FSI and SIFMA.

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2015-029 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2015-029. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule

change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2015-029 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Robert W. Errett
Deputy Secretary

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[67] 17 CFR 200.30-3(a)(12).

Regulatory Notice 09-22

Personal Securities Transactions

FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Personal Securities Transactions for or by Associated Persons

Comment Period Expires: June 5, 2009

Executive Summary

As part of the process to develop a new consolidated rulebook (the Consolidated FINRA Rulebook),[1] FINRA is requesting comment on proposed new FINRA Rule 3210 (Personal Securities Transactions for or by Associated Persons). The proposed rule, which combines and streamlines certain provisions of NASD Rule 3050 and Incorporated NYSE Rule 407[2] in addition to adopting additional requirements, would promote more effective oversight of the personal trading activities of associated persons of member firms.[3]

This *Notice* also requests comment on how firms currently obtain information pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable, and the processes and controls currently implemented upon receipt of such information.

The text of the proposed rule is set forth in Attachment A.

Questions regarding this *Notice* should be directed to Adam H. Arkel, Assistant General Counsel, Office of General Counsel, at (202) 728-6961.

April 2009

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Personal Securities Transactions of Associated Persons
- Supervision

Referenced Rules & Notices

- NASD Rule 3040
- NASD Rule 3050
- NYSE Rule 407
- NYSE Rule Interpretation 407/01
- NYSE Rule 407A
- Regulatory Notice 08-24

Action Requested

FINRA encourages all interested parties to comment on the proposed rules. Comments must be received by June 5, 2009.

Member firms and other interested parties can submit their comments using the following methods:

- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

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

To help FINRA process and review comments more efficiently, persons should only use one method to comment on the proposal.

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this Notice will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.[4]

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.[5]

Background and Discussion

Sound supervisory practices require that a member firm monitor personal securities transactions that are effected outside of the firm by or for its associated persons.[6] Currently, NASD Rule 3050 and NYSE Rule 407 address this subject matter. Proposed FINRA Rule 3210 combines and streamlines certain provisions of the NASD and NYSE rules and adopts additional requirements designed to promote more effective oversight of the personal trading activities of associated persons.

Prior Written Consent Requirement

Based in large part on NYSE Rule 407, proposed FINRA Rule 3210(a) prohibits any associated person, without the prior written consent of his or her employer (referred to as the employer member) from opening or otherwise establishing at another member firm (referred to as the executing member), or at any other financial institution,[7] any account in which securities transactions can be effected[8] and in which such associated person has a personal financial interest.[9] (FINRA notes that, as a general matter, "personal financial interest" would extend to a spouse's account.) The proposed rule further adds a new requirement that, as a condition to granting prior written consent, the employer member must instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member.[10] In addition, as discussed below, the proposed rule obligates the executing member to carry out the associated person's instructions.

Notification by the Associated Person

Proposed FINRA Rule 3210(b) requires that any associated person, prior to opening or otherwise establishing an account pursuant to the rule, must notify in writing the executing member, or other financial institution, of his or her association with the employer member. This requirement is based in part on the associated person's notification obligations under NASD Rules 3050(c) and (d). The proposed rule adds the requirement that the associated person must state in the notice provided to the executing member or other financial institution that he or she has a personal financial interest in the account.

Obligations of the Executing Member

Based in large part on NYSE Rule 407(a), proposed FINRA Rule 3210(c) requires that, when an executing member has actual notice that an associated person of an employer member has a personal financial interest in any account opened or otherwise established at the executing member, the executing member must not execute any securities transactions in that account unless it has obtained the employer member's prior written consent. In addition, the proposed rule provides that the executing member must promptly obtain and implement an instruction from the associated person[11] directing that duplicate account statements and confirmations be provided to the employer member.[12]

Revocation of Employer Member's Consent

Proposed FINRA Rule 3210.04 sets forth a new requirement that, 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.

Accounts Opened Prior to Association With an Employer Member

The proposed rule, similar to current provisions in NASD Rules 3050(c) and (d), makes allowance for accounts opened by an associated person prior to his or her association with the employer member. Specifically, proposed FINRA Rule 3210.01 provides that if the account was opened or otherwise established prior to association with the employer member, the associated person would be required, within fifteen business days of becoming associated, to obtain the employer member's consent to maintain the account and to notify in writing the executing member or other financial institution of his or her association with the employer member and personal financial interest. In addition, the proposed rule provides that the associated person must instruct the executing member or other financial institution to provide to the employer member duplicate account statements and confirmations as of the date of his or her association with the employer member.

Deleted Requirements

Proposed FINRA Rule 3210 deletes a number of requirements in NASD Rule 3050 and NYSE Rule 407 that would be rendered outdated by the new rule or otherwise addressed elsewhere by new FINRA rules.

- The proposed rule eliminates NASD Rule 3050(a)'s 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. FINRA believes that this requirement would no longer be needed in light of the approach taken by the proposed rule (*i.e.*, the employer member is responsible for supervising its associated persons' activities).
- The supervisory requirements of NYSE Rule 407 (*i.e.*, the account review requirements as set forth in NYSE Rule 407(b) and requirements for written procedures as set forth in NYSE Rule 407.11) would be eliminated because these issues are adequately addressed, in combination, by the proposed rule and the new consolidated supervisory rules proposed for inclusion in the Consolidated FINRA Rulebook.[13]

- NYSE Rule 407A (which addresses member reporting of securities accounts to the NYSE) would be deleted in its entirety from the Transitional Rulebook because the proposed rule requires disclosure at the member firm level of the same types of information that Rule 407A requires with respect to the NYSE. FINRA believes it is more appropriate to require member firms to obtain such information from their associated persons and to supervise such accounts for improper trading, rather than requiring such information be sent directly to FINRA.

Request for Comment

FINRA requests comment on proposed FINRA Rule 3210 during the comment period as set forth above. Among other matters that commenters may wish to address, FINRA is particularly interested in the following questions:

- What methodologies do firms currently employ to obtain information pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable? Do firms collect account activity information (confirmations and statements) electronically, in hard copy or both? Should the proposed rule address such information-gathering methodologies and, if so, how?
- What processes and controls do firms currently implement upon receipt of the information required under NASD Rule 3050 or NYSE Rule 407, as applicable?

Endnotes

1 The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice, March 12, 2008* (Rulebook Consolidation Process).

2 For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

3 The proposed rule replaces NASD Rule 3050 and corresponding provisions in NYSE Rule 407 (together with its associated Rule Interpretation 407/01). NYSE Rule 407A would also be deleted in its entirety from the Transitional Rulebook.

4 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See NASD Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.

5 Section 19 of the Securities Exchange Act of 1934 (SEA or Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. *See* SEA Section 19 and rules thereunder.

6 The terms "person associated with a member" and "associated person of a member" are defined in paragraph (rr) of Article I of the FINRA By-Laws.

7 Based on NASD Rule 3050(d) and NYSE Rule 407.13, proposed FINRA Rule 3210.05 defines the terms "other financial institution" and "financial institution other than a member" to include, without limitation, any broker-dealer that is registered pursuant to Section 15(b)(11) of the Exchange Act, domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

8 FINRA notes that NYSE Rule 407 covers by its terms securities and commodities accounts. In contrast, NASD Rule 3050 generally addresses transactions in securities and the opening of accounts. For purposes of the proposed rule, FINRA does not believe that it is necessary to incorporate express reference to commodities accounts. Further, FINRA believes that specifying "any account in which securities transactions can be effected," in place of the terms currently used in the NYSE and NASD rules, would set a clarifying standard that accords with the purpose of the proposed rule.

9 Generally, NYSE Rule 407 addresses transactions in which the associated person is "directly or indirectly interested" (NYSE Rule 407(a)) or with respect to which the associated person "has any financial interest or the power, directly or indirectly, to make investment decisions" (NYSE Rule 407(b)). In contrast, NASD Rules 3050(b) through (d) generally address accounts and/or transactions in which the associated person has a "financial interest" or over which he or she has "discretionary authority." For purposes of the proposed rule, FINRA believes that specifying accounts in which the associated person has a "personal financial interest" sets an effective standard that also helps to distinguish transactions subject to this new rule from outside securities activities subject to proposed FINRA Rule 3110(b)(3) (currently, NASD Rule 3040) as set forth in *Regulatory Notice 08-24* (May 2008) (Supervision and Supervisory Controls). In this regard, to limit regulatory duplication, FINRA intends to amend proposed FINRA Rule 3110(b)(3) to exclude generally transactions effected in accounts in which the associated person alone has a personal financial interest (such transactions would be subject to proposed FINRA Rule 3210).

10 Based on NYSE Rule 407.12 and NASD Rule 3050(f), proposed FINRA Rule 3210.03 states that the requirement to provide to the employer member duplicate account statements and confirmations would not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements and confirmations.

11 Note that if the account is opened or otherwise established at a financial institution other than a member firm, proposed FINRA Rule 3210.02 provides that, for purposes of proposed FINRA Rule 3210(c), it would be the obligation of the associated person to instruct the institution to provide the duplicate account statements and confirmations to the employer member.

12 Currently, NASD Rule 3050(b) requires the executing member to transmit duplicate confirmations and statements upon request by the employer member. FINRA believes that, from the standpoint of sound supervisory practice, providing the duplicates should not be dependent upon receipt of such a request.

13 *See Regulatory Notice 08-24* (May 2008) (Supervision and Supervisory Controls).

ATTACHMENT A

Below is the text of proposed FINRA Rule 3210.

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3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

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3200. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

3210. Personal Securities Transactions for or by Associated Persons

(a) No person associated with a member shall, without the prior written consent of the member ("employer member"), open or otherwise establish at a member other than the employer member ("executing member"), or at any other financial institution, any account in which securities transactions can be effected and in which such associated person has a personal financial interest. As a condition to such prior written consent, the employer member must instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member.

(b) Any associated person, prior to opening or otherwise establishing an account pursuant to paragraph (a) of this Rule, shall notify in writing the executing member, or other financial institution, of his or her association with the employer member and shall state in such notice that he or she has a personal financial interest in the account.

(c) When an executing member has actual notice that an associated person of an employer member has a personal financial interest in any account opened or otherwise established at the executing member, such executing member shall not execute any securities transactions in that account unless it has obtained the employer member's prior written consent. In addition, such executing member shall promptly obtain and implement an instruction from the associated person directing that duplicate account statements and confirmations be provided to the employer member.

• • • Supplementary Material: ----------

.01 Account Opened Prior to Association With Employer Member. — For the purposes of paragraphs (a) and (b) of this Rule, if the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within fifteen business days of becoming so associated, shall obtain the written consent of the employer member to maintain the account and shall notify in writing the executing member or other financial institution of his or her association with the employer member and personal financial interest. The associated person shall instruct the executing member or other financial institution to provide to the employer member duplicate account statements and confirmations as of the date of his or her association with the employer member.

.02 Account at Financial Institution Other Than a Member. — For the purposes of paragraph (c) of this Rule, with respect to any account opened or otherwise established at a financial institution other than a member, it shall be the obligation of the associated person to instruct the financial institution to provide duplicate account statements and confirmations to the employer member.

.03 Duplicate Account Statements and Confirmations. — The requirement to provide to the employer member duplicate account statements and confirmations shall not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements and confirmations.

.04 Failure to Receive Duplicate Account Statements and Confirmations. — 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.

.05 Other Financial Institution. — For the purposes of this Rule, the terms "other financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to Section 15(b)(11) of the Exchange Act, domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

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EXHIBIT 2b

Alphabetical List of Written Comments

1. Letter from Amal Aly, Securities Industry and Financial Markets Association ("SIFMA") (June 8, 2009)

2. Letter from David E. Axtell, State Farm VP Management Corp. ("State Farm") (June 4, 2009)

3. Email from Phyllis J. Beck, H & L Equities, LLC ("H & L Equities") (June 4, 2009)

4. Letter from Dennis P. Beirne, People's Securities, Inc. ("PSI") (June 4, 2009)

5. Letter from Dale E. Brown, Financial Services Institute ("FSI") (June 5, 2009)

6. Letter from Beverly A. Byrne, GWFS Equities, Inc. ("GWFS") (June 5, 2009)

7. Email from Roger Dickerson, Pagemill Partners ("Pagemill") (May 27, 2009)

8. Email from Charles E. Dodson, J.A. Glynn & Co. ("J.A. Glynn") (May 28, 2009)

9. Letter from Dorothy M. Donohue, Investment Company Institute ("ICI") (June 4, 2009)

10. Letter from S. Kendrick Dunn, Pacific Select Distributors, Inc. ("Pacific Select") (June 5, 2009)

11. Email from Karen Z. Fischer ("Fischer") (May 28, 2009)

12. Letter from Pam Fritz, MWA Financial Services, Inc. ("MWA") (June 3, 2009)

13. Letter from Frederic L. Greenbaum, UBS Securities LLC ("UBS") (June 5, 2009)

14. Letter from Bari Havlik, Charles Schwab & Co., Inc. ("Charles Schwab") (June 5, 2009)

15. Letter from Susan Hechtlinger, SunTrust Investment Services, Inc. ("SunTrust") (June 5, 2009)

16. Email from Bob Hillard ("Hillard") (May 28, 2009)

17. Letter from Joan Hinchman, The National Society of Compliance Professionals, Inc. ("NSCP") (June 5, 2009)

18. Letter from Brent E. Hippert, Channel Capital Group LLC ("Channel Capital") (May 27, 2009)

19. Email from Michele R. Huneycutt, Investors Security Company, Inc. ("Investors Security") (May 6, 2009)

20. Letter from Clifford Kirsch and Susan Krawczyk, Sutherland Asbill & Brennan LLP on behalf of Committee of Annuity Insurers ("CAI") (June 5, 2009)

21. Email from Steve Klein, Farmers Financial Solutions, LLC ("Farmers Financial") (June 5, 2009)

22. Email from Laura Lang, IBSI ("IBSI") (April 27, 2009)

23. Letter from James Livingston, National Planning Holdings, Inc. ("National Planning") (May 29, 2009)

24. Letter from Ronald C. Long, Wells Fargo Advisors, LLC ("WFA") (June 4, 2009)

25. Email from Neal E. Nakagiri, NPB Financial Group, LLC ("NPB") (April 30, 2009)

26. Letter from Daniel C. Rome, Taurus Compliance Consulting, LLC ("Taurus") (June 5, 2009)

27. Letter from Lisa Roth, National Association of Independent Brokers-Dealers, Inc. ("NAIBD") (June 4, 2009)

28. Letter from James Schoenike, Quasar Distributors, LLC ("Quasar") (May 29, 2009)

29. Email from William R. Sykes, Sykes Financial Services LLC ("Sykes") (April 23, 2009)

30. Letter from John S. Watts, PFS Investments Inc. ("PFSI") (June 5, 2009)

31. Letter from Carl B. Wilkerson, American Council of Life Insurers ("ACLI") (June 5, 2009)

32. Letter from Jeffrey B. Williams, Northwestern Mutual Investment Services, LLC ("NMIS") (June 5, 2009)

33. Email from Markus Witthaut ("Witthaut") (April 23, 2009)

EXHIBIT 2c

June 8, 2009

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

Re: FINRA Regulatory Notice 09-22: Personal Securities Transactions for and by Associated Persons

Dear Ms. Asquith:

The Securities Industry and Financial Markets Association ("SIFMA")[1] appreciates the opportunity to comment on the above-referenced FINRA Regulatory Notice, which proposes to combine certain provisions of NASD Rule 3050 and Incorporated NYSE Rule 407, in addition to adopting new requirements in connection with personal trading activities of associated persons of member firms.

SIFMA commends and supports FINRA's efforts to consolidate, streamline and enhance existing FINRA and Incorporated NYSE rules governing personal trading activities of associated persons. Indeed, many firms already have in place sound supervisory systems that monitor employee trading, including those effected outside of the firm. Based on members' experience, however, SIFMA believes that certain aspects of the rule proposal require reconsideration and modification. Specifically, and as detailed below, SIFMA recommends that FINRA amend the proposal to:

- incorporate the notion of "control" within the scope of the rule and provide additional clarity with respect to the term "personal financial interest;"
- permit employer firms to obtain duplicate confirmations and statements or their equivalents (e.g. electronic data) directly from executing firms on behalf of

[1] SIFMA brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

associated persons, or directly from clients for accounts held at non-member firms (such as record keepers or transfer agents);

- expand the timeframe in connection with accounts opened before association from 15 days to 30 calendar days;
- provide an implementation period of 180 days from adoption of the new rules; and
- sponsor a centralized electronic database available to member firms that contains relevant contact information for both employer and executing member firms.

These modifications, we believe, would promote greater certainty regarding the accounts to which the rule applies, facilitate implementation of the new requirements, and alleviate many of the practical difficulties associated with the current proposal without detracting from the rule's overarching policy goals.

I. Scope of the Rule

Based in large part on NYSE Rule 407, proposed FINRA Rule 3210(a) prohibits any associated person from opening or maintaining an outside account "in which securities transactions are effected" and in which the associated person has a "personal financial interest," without the prior written consent of the employer member firm. The proposed rule further adds that the employer member must instruct the associated person to have the executing member or other financial institution provide duplicate account statements and confirmations to the employer member as a condition to granting consent. Proposed Supplementary Material .01 similarly requires newly associated persons, within fifteen business days of becoming associated, to obtain the employer's consent regarding previously opened accounts and to communicate association to the executing firm, together with instructions regarding duplicate account information for covered accounts. Notably, the rule does not define the term "personal financial interest," although FINRA does state in the Notice that it construes spousal accounts generally to fall under the definition.

As a threshold matter, SIFMA believes that the proposed rule's core objectives would be better served if FINRA provides additional guidance as to the scope of the rule, and in particular the term "personal financial interest" in order to more sharply focus on those types of accounts that pose the greatest risk. To that end, SIFMA respectfully recommends that FINRA modify the rule proposal in the following manner.

First, we strongly urge FINRA to incorporate the concept of "control" within the rule so that it would extend to accounts over which the associated person has investment discretion or can exercise direct control (i.e., pursuant to formal trading authorization or fiduciary position such as trustee). Conversely, to the extent an associated person does *not* exercise control over the outside account, that account would be excluded from the rule, notwithstanding the personal financial interest analysis to follow below.

Second, and equally critical, we believe that FINRA should provide greater clarity with respect to the term "personal financial interest" so as to avoid potentially inconsistent

interpretations. In that regard, we recommend that FINRA modify the rule to state that associated persons are deemed to have a *presumptive* personal financial interest in the following types of accounts:

- any account in the name of the associated person, either individually or jointly with another person;
- any account in the name of the associated person's spouse or domestic partner;
- any account of the associated person's minor children; and
- any account of any other immediate family member who resides in the same household as the associated person and is financially dependent on the associated person.

The presumption of a "personal financial interest" would be rebuttable, however, if the employer member firm reasonably concludes, after considering the facts and circumstances, that the associated person has no ability to direct the transactions in the account.[2] Thus, with respect to the aforementioned accounts, including spousal accounts, there would be a rebuttable presumption that the associated person had a personal financial interest in these accounts, unless the employer firm made a determination to the contrary. Inclusion of a rebuttable presumption standard, in conjunction with the other proposed revisions, we believe, would enhance consistency and facilitate more effective risk-based oversight of the personal trading activities of associated persons for possible insider trading violations and other manipulative and deceptive practices.

Finally, we note that Supplementary Material .03 properly excludes certain types of accounts and transactions from the rule's duplicate account statement and confirmation requirement. We ask FINRA to exempt these accounts from the scope of the rule altogether since employees have no ability to engage in insider trading or other manipulative practices through those accounts.[3]

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[2] SIFMA's recommendation is consistent with the Investment Company Act rules provisions governing review of accounts in which persons have "beneficial ownership" wherein " *the presumption of such beneficial ownership may be rebutted* . . . ." See Investment Company Act Rule 17j-1(d)(1)(i)(A) and Exchange Act Rule 16a-1(a)(2) (emphasis added). Similarly, current NYSE Interpretation 407/.01 governing spousal account states that a spousal account is not covered by the rule if "it has been proven to the satisfaction of the member firm that the account is *completely independent*" of the associated person (e.g. pre-nuptial or post-nuptial agreements).

[3] FINRA Rule 3210.03 states that the requirement to provide to the employer member duplicate account statements and confirmations shall not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements and confirmations. In addition to the types of accounts, SIFMA respectfully requests that FINRA also consider carving out of the rule other types of accounts that have similar characteristics, such 529 Plans.

II. Obligation to Request Duplicate Confirmations and Account Statements

As noted above, FINRA adds several new requirements in both the rule text and Supplementary Materials that obligate associated persons (both currently employed and newly associated) to instruct the outside executing firm or financial institution to send duplicate account statements and confirmations to the employer. While SIFMA fully supports a requirement that employers receive account transaction information, we believe that resting the responsibility with the associated person to arrange for the duplicate documentation is unnecessarily restrictive, and indeed could be counterproductive to timely procurement and review of account activity.

Rather, SIFMA respectfully suggests that employers should have the ability to request duplicate confirmations and statements *or their equivalents* (e.g. electronic data) directly from outside firms. Today, many employer member firms have centralized systems and procedures that provide significant control over outside personal trading activities of their employees. In an effort to improve the efficiency, timeliness, and accuracy of these processes, some firms have built protocols around the collection of information whereby the employer firm communicates directly with executing firm to request transaction information for covered accounts via automated electronic feeds. By placing the obligation on the associated person and requiring that information to be transmitted in the form of confirmations and statements, the proposal could needlessly compromise or delay existing processes.

On the other hand, if the employer were permitted to undertake that responsibility on behalf of the employee, the approval and review process could be streamlined considerably. The employer could contemporaneously notify the executing member or other financial institution that: (i) the associated person has a personal financial interest in certain accounts and identify such accounts;[4] (ii) it approves those accounts; and (iii) it requests transaction data for those accounts in the form of its choosing (e.g. duplicate account statements and confirmations, electronic data feeds, etc.). SIFMA believes that the same principles should apply to cases where an associated person would newly be deemed to have a "personal financial interest" in an account of a related person.

Rather than bifurcate the approval, account identification and document request process, SIFMA's recommended approach therefore would enable both employer and executing firms to build upon already existing systems to create more streamlined approval, tracking and surveillance processes. Accordingly, SIFMA respectfully requests that FINRA amend sections (a), (b) and (c) of the proposed rule, together with Supplementary Materials sections .01 and .02, to include SIFMA's recommended alternatives with respect to the obligation to request account transaction information and the form in which the employer may receive that information from the executing broker.

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[4] Member firms would still have to rely on the associated persons in the first instance to identify those accounts in which the associated person has a financial interest.

In addition to the forgoing, SIFMA also believes that flexibility is warranted with respect to accounts held at non-member firms (such as record keepers or transfer agents). Today, because member firms cannot compel non-member firms to provide statements, and because such firms may not have the capacity or the desire to provide statements to anyone other than their customers, employing firms typically obtain statements directly from the associated person or customer. SIFMA therefore respectfully requests that FINRA modify the rule proposal in order to allow employer members to obtain the statement directly from the associated person or customer, as is the common practice today. We recognize, of course, that it would be incumbent on the associated person to ensure that such statements are provided in a timely manner.

III. Accounts Opened Prior to Association - Supplementary Material .01

SIFMA also believes that additional time will be needed beyond the proposed 15 days within Supplemental Material .01 for employer firms and their newly associated persons to complete the account approval and documentation request process. For larger or more complex organizations in particular, the proposed time frame is unduly short and would present significant challenges. For example, the new hire process consists of several moving parts, with many tasks to be completed quickly by the associated person upon hire, such as health and retirement benefits enrollment, registration-related issues, and IT access. At a large firm, it may take several days for an employee to obtain access to relevant firm systems, followed by another week for the employee to receive an electronic notice to disclose account information since firm systems generate information on a rolling basis. After that, it may take another week for the executing firm to identify, process, and provide documentation to the employer. SIFMA therefore suggests that 30 calendar days is a more reasonable time frame, as it would reduce burdens to firms without creating compliance risk.[5]

IV. Revocation of Employer Member's Consent and Account Closure

The proposed rule sets forth a new requirement for the employer member to revoke its consent if it does not receive duplicate statements and confirmations in a timely manner, and to obtain promptly records from the executing member that the account was closed. SIFMA appreciates the underlying rationale for this requirement, but believes, however, that the closure requirement is potentially problematic because of possible harsh adverse consequences to the customer and practical implementation challenges, particularly for accounts with non-member firms. As an alternative, SIFMA recommends that FINRA consider a more principles based approach to achieving the intended purpose. Such a

[5] SIFMA's proposed 30-day time frame is predicated upon our recommendation that FINRA grant the relief requested in section II above, which would facilitate and streamline the information flow between the employer member and executing firm. Should FINRA decline SIFMA's request, we believe additional time would be needed beyond 30 days.

principles-based approach might allow for the executing firm either to retain the account and cease trading, or to transfer the account to the employer where feasible.[6]

At a minimum, SIFMA recommends FINRA amend the rule to require the *executing broke*r to notify the employer member firm of account closure (or transfer, as recommended above), instead of obligating the employer member to "obtain records" from the executing member evidencing account closure following revocation of consent. This approach, we believe, is more efficient and reduces needless administrative costs associated with "following up" by the employer member with the executing firm.

V. Obligations of Executing Members

The proposed rule requires that when an executing member has "actual notice" of an associated person's personal financial interest in an account, the executing member must not execute any securities transactions in that account unless it has obtained the employer member's prior written consent. Since the rule proposal requires the associated person to identify accounts in which he or she has a personal financial interest, we respectfully request that FINRA amend the language contained within Proposed Rule 3210(c) to state that the actual notice referenced in that provision means "actual notice by the associated person or employer," as requested above.

VI. Reasonable Implementation Period

To allow for adequate time for implementation and testing of the new requirements, SIFMA respectfully requests an extended implementation period of no less than 180 days from adoption of the new rules. Firms will need a significant amount of time to change their forms, online applications and processes to comply with the rule proposal, particularly if the definition of "personal financial interest" is expanded. Moreover, it would appear that some non-member firms that function as a record-keeper do not have the operational capability to send statements to two different addresses and would not be able to do so without significant system enhancements (to the extent they elect to make such changes).

VII. Consistency with MSRB Rule G-28 and NYSE Rule 407

SIFMA applauds FINRA's continued efforts and diligence in combing common FINRA and Incorporated NYSE rules in the creation of the single rulebook. We note, however, that unless NYSE revokes or adopts corresponding amendments to Rule 407 within in its stand-alone rulebook, dual member firms will continue be subjected to differing standards, thus undermining the overarching objectives of regulatory consolidation. Similarly, MSRB Rule G-28 also contains requirements governing

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[6] For certain accounts that hold common stock, stock options and other forms of stock ownership, account transfer or closure of the account might not be viable alternatives. Typically, the positions are acquired from a former employer and are subject to vesting or restrictions on transfer that would deem the positions worthless if the employee or spouse were required to surrender any rights to them.

employee transactions, which are inconsistent with FINRA's proposed rule. We therefore urge FINRA to work with NYSE and MSRB in developing a uniform standard for the industry.

VIII. Centralized FINRA Contact Information Database to Help Support and Implement Rule Change

In addition to the forgoing, and to help facilitate efficient implementation of the new requirements, SIFMA recommends that FINRA consider sponsoring a centralized database that contains relevant contact information for both employer and executing member firms. The information could be viewable on-line and available in the electronic feed (e.g. WebCRD) to member firms. Member firms could subscribe to the website and, of course, would be responsible for keeping their contact information current.

Employer member contact information could include the names and contact information for the persons to whom confirms and statements should be sent within the employer members, as well as instructions for delivery. Also, with respect to executing member firms, similar contact information would be available, together with instructions on how to request a freeze on an account (if statements are not received by the employer member) and account closure should the employer member deny or revoke consent. Such centralized contact information would significantly reduce instances of delay or improper revocations due to misdirected communications or other mishaps. It will also likely assist FINRA in its regulatory oversight of the process.

* * *

SIFMA appreciates the opportunity to provide comments on FINRA's proposal regarding personal securities transactions. If you have any questions or require further information, please contact the undersigned at (212) 313-1268.

Sincerely,

Amal Aly
Managing Director and
Associate General Counsel

State Farm VP Management Corp.

Home Office, Bloomington, Illinois 61710

Corporate Headquarters
One State Farm Plaza
Bloomington, Illinois 61710-0001

June 4, 2009

VIA ELECTRONIC MAIL

Marcia E. Asquith
Office of the Corporate Secretary
Financial Industry Regulatory Authority
1735 K Street, NW
Washington, D.C. 20006-1500

Re: Regulatory Notice 09-22: Request for Comments on Proposed Consolidated FINRA Rule Governing Personal Securities Transactions for or by Associated Persons

Dear Ms. Asquith:

State Farm VP Management Corp. ("SFVPMC") appreciates the opportunity to provide comments to FINRA on the above referenced FINRA notice concerning proposed consolidated FINRA rules governing personal securities transactions for or by associated persons. SFVPMC is a member of the State Farm Group of companies, which also includes the nation's largest automobile insurer and the nation's largest insurer of homes. With regard to securities products, SFVPMC's registered representatives sell only mutual funds and college savings plans, and service variable products issued by affiliated and unaffiliated insurance companies.

State Farm Mutual Automobile Insurance Company and its insurance subsidiaries currently engage over 17,000 exclusive, independent contractor insurance agents to sell property, casualty, life, health and other insurance products across the United States and Canada. Over 10,000 of these agents are also registered representatives of SFVPMC, along with several thousand licensed agent staff and SFVPMC personnel, all of which are associated persons that would be subject to this rule proposal.While SFVPMC fully supports FINRA's efforts to develop a consolidated rulebook that streamlines existing rules, we respectfully ask that certain provisions of Proposed Rule 3210 be reconsidered and modified by including an exemption for limited broker/dealers to address the concern outlined below.

The requirement that an employer member must instruct an associated person to have the executing member provide duplicates of account statements and confirmations to the employer member would be burdensome and would fail to provide investor protection with respect to limited purpose broker dealers.

Under proposed rule 3210, SFVPMC would potentially be required to obtain duplicate account statements and confirmations for more than 15,000 associated persons. The purpose of receiving the account statements and confirmations is to monitor the personal securities transactions of associated

persons to determine if there are any transactions that may adversely impact the interests of SFVPMC. [1] Because SFVPMC is a limited broker dealer in that it only distributes mutual funds and a college savings plan, the risk that the personal securities transactions of SFVPMC's associated persons could have an adverse impact on the interests of SFVPMC is almost non-existent. When compared to the cost of receiving, maintaining and monitoring thousands of account statements and confirmations, the benefit, if any, derived from this new requirement is without justification.

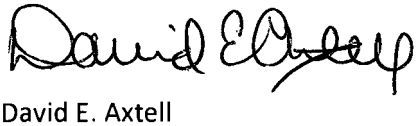
Even if there is a broader purpose to monitoring associated persons personal trading activity, SFVPMC does not possess information with which it could determine the validity of the personal transactions of its associated persons. The associated persons in question do not have access to information about the purchase and sale of securities by the investment companies for which they sell mutual funds. Therefore, it is doubtful that SFVPMC would be able to use the information contained in the account statements and confirmations to determine whether there are any questionable transactions. What is more certain is that SFVPMC would need to retain additional employees in order to supervise the receipt, retention and monitoring of the thousands of accounts statements and confirmations at significant expense with very little benefit.

Because of SFVPMC's affiliation with a registered investment adviser ("SFIMC"), some of the associated members are also access persons as defined by Rule 17j-1. Because of this, duplicate account statements and confirmations are already obtained and monitored for these individuals. In performing their role for SFIMC, these individuals may have access to information about the purchase and sale of securities for investment companies distributed by SFVPMC. This provides a sound basis for which to receive and review account statements and confirmations. However, more than 98% of SFVPMC's associated persons do not have access to such information.

Because of this, we believe it would be appropriate to provide an exemption for broker dealers that are limited to distributing mutual funds, college savings plans, variable products, and other similar products from the requirement to obtain duplicate account statements and confirmations from associated persons. The costs associated with implementing this rule proposal for limited broker dealers does not justify the minimal benefit gained.

SFVPMC appreciates the opportunity to comment on this important rule proposal. If you have any questions or would like to request clarification, please contact the undersigned at 309-735-2997.

Sincerely,



David E. Axtell
Products and Broker-Dealer Compliance Director

[1] NASD Notice to Members 97-25 stated that "Rule 3050 was designed to obligate members to use reasonable diligence in determining whether executed transactions in the accounts of associated persons of another member firm, or accounts in which the associated person has discretionary authority, will adversely affect the interests of the employer member."

Comments to proposed FINRA Rule 3210:

We are a very small nickel broker/dealer that deals with only one product and holds no customer accounts. Currently, all of our 5 registered persons are required to notify Compliance of the opening of any personal brokerage account in their names or in the names of their spouses or others whose accounts they have control over. Compliance then sends a letter to the executing member to provide confirmations and monthly statements to Compliance in hard copy. Upon receipt of the information, Compliance reviews each confirmation and monthly statement and initials and dates it as record of review. These are then stored in a file. Each registered person is also required, as a part of their annual certification, to indicate any personal securities accounts they have at any other brokerage firms.

We have been keeping all of these confirmations and statements indefinitely, but it is presenting a storage problem. As far as addressing the information gathering methodologies, it would be very helpful if the retention requirements were defined. In particular, it would be very helpful if confirmations were only required to be kept on file until monthly statements (which contain the transactions reported on the confirmations received for that month) have been received and reviewed. At that point the confirmations would be compared to the statement and then destroyed, and the monthly statement initialed and retained to indicate this. It would cut down on the amount of storage capability required.

Thank you.

Phyllis J. Beck
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Atlanta, GA 30361-6206
404.892.3300 main
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From: Dennis P. Beirne
First VP Chief Compliance Officer
Chief Operating Officer
People's Securities
1000 Lafayette Blvd.
Bridgeport, CT 06604

To: Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1753 K Street, N.W.
Washington, D.C. 20006-1506

Re: Request for Comments 09-22: Personal Securities Transactions for or by Associated Persons

June 4, 2009

Dear Sir or Madam:

People's Securities, Inc. ("PSI") would like to address several aspects of the proposed language for new FINRA Rule 3210 concerning Personal Securities Transactions for or by Associated Persons. Specifically, PSI has concerns about the ability of executing firms to verify the employment of account holders that may be registered employees of another member firm prior to the release of sensitive account information. PSI would also like to raise the possibility of incorporating the records of outside securities accounts and employer's permission to maintain those accounts through the FINRA CRD.

I would like to begin by briefly describing the methods PSI currently employs to monitor our employees' securities accounts held at other member firm's. When a new employee is hired, or yearly as part of our annual certification process, we ask our employees if they have any securities accounts at other member firms or if they have a monetary interest or discretionary authority over any such account (to include the accounts of spouses or family members within their household).

If the employee discloses that they have such an account, then a Compliance Officer requests the name of the outside brokerage, the exact title of the account, the account number, and the mailing address for correspondence on the account. The Compliance Officer then mails a form letter to the other member firm stating that permission is granted for the employee to hold such account and requesting duplicate paper copies of statements and confirms. PSI is currently exploring the possibility of receiving these documents electronically, but the number of accounts currently monitored in this way may not be sufficient to warrant this expense.

The nature of PSI's business does not provide any reason to restrict the ability of employees to have such accounts, provided that they are disclosed and duplicate confirms

and statements are made available for Compliance review, so permission to maintain the account is uniformly granted. When the Compliance Department begins receiving duplicates, they are reviewed to ensure that the registered representative's activities are consistent with our WSP.

If the firm receives correspondence from a member firm informing it that an employee has opened an account at that member firm, then the form letter indicating permission and requesting duplicate statements and confirms is sent in response. Likewise, when PSI received requests for duplicate statements and confirms, then appropriate steps are taken to provide those documents in an ongoing basis.

New FINRA Rule 3210(a) places the obligation to seek prior written consent to open an outside brokerage account on the associated person, as well as the obligation to arrange for duplicate statements and confirms to be forwarded to the associated person's employer. This approach may create a gap in supervision in that the employer firm may not be aware that the associated person has opened an account.

One concern that should be addressed in new FINRA Rule 3210 is the obligation of the executing firm to confirm the employment of the associated person at the firm requesting duplicate statements and confirms in cases where the employer firm sends correspondence requesting such documents. It has been PSI's practice to honor requests for duplicates from other brokerage firms.

PSI would propose that any correspondence seeking the release of such duplicate account documents should be signed by the account owner, which may or may not be the associated person, and that the firm and individual CRD numbers should appear on the request. Ideally, FINRA could publish a form that includes this information and standard language requesting the required documents. Currently, all the requests we receive from employer firms requesting duplicates of account documents lack any signature or other authentication from the account owner.

PSI also believes that the addition of a section on the U4 form indicating the firm and account number for all outside securities accounts would be beneficial. If employers could use the data in the form U4 to track the location of their employees' accounts, then giving permission to maintain the account and requesting duplicate confirms could be accomplished at the time a new hire is registered. When a registered person moves from one firm to another, the new employer firm would have access to the information in a timely manner. Most importantly, an executing firm would be able to confirm ongoing permission for the conduct of trades in these accounts through the CRD at the time of each trade. This way, the executing firm would be able to ensure that the employer firm has not withdrawn permission for the employee to maintain the account.

One other point of clarification PSI would like to see codified in the new FINRA Rule 3210 language is the extent of the obligation to provide duplicate statements and confirms that pre-date the time of the receipt of such a request. PSI recently received a request for all statements and confirms going back to January 1, 2006. It seems

unreasonable that an executing firm would have to provide this type of historical account research. PSI believes that the updated rule should clarify whether this type of request is compulsory and whether or not the broker producing the records can require compensation for historical research.

People's Securities has already begun to implement many, if not all, of the proposed requirements as a "best practice." The intent of our efforts is to not only comply with existing regulation, but to maintain a standard of compliance greater then the minimum required. People's Securities supports the proposed new rules concerning personal securities transactions by or for associated persons, subject to the comments above.

Sincerely,

Dennis P. Beirne
First VP - People's Securities, Inc.
Chief Operating Officer
Chief Compliance Officer

VOICE OF INDEPENDENT BROKER-DEALERS
AND INDEPENDENT FINANCIAL ADVISORS

www.financialservices.org

VIA ELECTRONIC MAIL

June 5, 2009

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:

On April 21, the Financial Industry Regulatory Authority, Inc. (FINRA) published Regulatory Notice 09-22 requesting comment on proposed FINRA Rule 3210 (Proposed Rule).[1] If adopted, the Proposed Rule would combine and streamline certain provisions of NASD Rule 3050 and NYSE Rule 407, adopt additional requirements, and attempt to promote more effective oversight of the personal trading activities of associated persons of member firms.

The Financial Services Institute[2] (FSI) recognizes that combining the rulebooks of the predecessor regulatory authorities represents a significant challenge. We commend FINRA for recognizing in the rulebook consolidation process an opportunity to develop a new organizational framework for the rules, consider new approaches to regulatory concerns, and delete obsolete rules. With so many changes in the structure and substance of the rulebook being considered, we believe industry input is more important than ever. We, therefore, praise FINRA for seeking industry comment on the Proposed Rule prior to submitting it to the SEC.

While FSI appreciates FINRA's efforts to obtain industry feedback, we are very concerned about the potential unintended consequences of the Proposed Rule. While we understand FINRA's desire for more effective oversight of personal trading activities, we believe the Proposed Rule will actually undermine broker-dealer firms' supervision of such accounts by mandating the form of these surveillance efforts. As a result, we suggest certain modifications to the Proposed Rule that we believe will achieve FINRA's objectives while enhancing broker-dealer firms' ability to comply with its terms. Our specific comments are contained in this letter.

Background on FSI Members

The independent broker-dealer (IBD) community has been an important and active part of the lives of American investors for more than 30 years. The IBD business model focuses on comprehensive financial planning services and unbiased investment advice. IBD firms also share a number of other similar business characteristics. They generally clear their securities business on a fully disclosed basis; primarily engage in the sale of packaged products, such as mutual funds and variable insurance products; take a comprehensive approach to their clients' financial goals and

[1] See the proposing release at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p118524.pdf.

[2] The Financial Services Institute, Voice of Independent Broker-Dealers and Independent Financial Advisors, was formed on January 1, 2004. Our members are broker-dealers, often dually registered as federal investment advisers, and their independent contractor registered representatives. FSI has 118 Broker-Dealer member firms that have more than 138,000 affiliated registered representatives serving more than 14 million American households. FSI also has more than 10,000 Financial Advisor members.

objectives; and provide investment advisory services through either affiliated registered investment adviser firms or such firms owned by their registered representatives. Due to their unique business model, IBDs and their affiliated financial advisors are especially well positioned to provide middle-class Americans with the financial advice, products, and services necessary to achieve their financial goals and objectives.

In the U.S., approximately 98,000 independent financial advisors – or approximately 42.3% percent of all practicing registered representatives – operate in the IBD channel.[3] These financial advisors are self-employed independent contractors, rather than employees of the IBD firms. These financial advisors provide comprehensive and affordable financial services that help millions of individuals, families, small businesses, associations, organizations, and retirement plans with financial education, planning, implementation, and investment monitoring. Clients of independent financial advisors are typically "main street America" – it is, in fact, almost part of the "charter" of the independent channel. The core market for financial advisors affiliated with IBDs is clients who have tens and hundreds of thousands as opposed to millions of dollars to invest. Independent financial advisors are entrepreneurial business owners who typically have strong ties, visibility, and individual name recognition within their communities and client base. Most of their new clients come through referrals from existing clients or other centers of influence.[4] Independent financial advisors get to know their clients personally and provide them investment advice in face-to-face meetings. Due to their close ties to the communities in which they operate their small businesses, we believe these financial advisors have a strong incentive to make the achievement of their clients' investment objectives their primary goal.

FSI is the advocacy organization for IBDs and independent financial advisors. Member firms formed FSI to improve their compliance efforts and promote the IBD business model. FSI is committed to preserving the valuable role that IBDs and independent advisors play in helping Americans plan for and achieve their financial goals. FSI's mission is to ensure our members operate in a regulatory environment that is fair and balanced. FSI's advocacy efforts on behalf of our members include industry surveys, research, and outreach to legislators, regulators, and policymakers. FSI also provides our members with an appropriate forum to share best practices in an effort to improve their compliance, operations, and marketing efforts.

Comments on the Proposed Rule

The Proposed Rule is of particular interest to FSI because it will make significant changes to broker-dealers' supervisory obligations with regard to the personal trading of associated persons. Currently, IBD firms comply with the requirements of NASD Rule 3050 which obligates broker-dealers to use reasonable diligence in determining whether executed transactions in the accounts of associated persons of another member firm, or accounts in which the associated person has discretionary authority, will adversely affect the interests of the employer member.[5] In order to comply with these requirements, IBDs have carefully developed written policies and procedures governing the surveillance of the outside brokerage accounts of their financial advisors and other associated persons. While these policies and procedures vary from firm-to-firm, in many cases they involve trained staff receiving and reviewing the periodic account statements of the outside

[3] Cerulli Associates Quantitative Update: Advisor Metrics 2007, Exhibit 2.04. Please note that this figure represents a subset of independent contractor financial advisors. In fact, more than 138,000 financial advisors are affiliated with FSI member firms. Cerulli Associates categorizes the majority of these additional advisors as part of the bank or insurance channel.

[4] These "centers of influence" may include lawyers, accountants, human resources managers, or other trusted advisors.

[5] Although FSI member firms have an independent contractor relationship with their affiliated financial advisors, we will use the term "employer member" throughout this comment letter to remain consistent with the language used by FINRA in Regulatory Notice 09-22.

brokerage accounts of their associated persons. In most cases, the account statement information is received by the IBD in hard copy form, not through an electronic data feed. As a result, the review of account statements is an arduous and time-consuming process. Despite these challenges, this methodology has proven to be an effective means for the supervision of personal trading by associated persons of IBD firms.

The Proposed Rule attempts to promote more effective oversight of personal trading activities by making material changes to the existing regulatory requirements. While FSI understands FINRA's rationale for these changes, we are concerned that the Proposed Rule undermines its own purposes by mandating a specific mode of surveillance that is unduly burdensome for independent broker-dealer firms, provides little or no additional customer protection benefits, and will detract from other important compliance efforts. We discuss our specific concerns in detail below:

- Proposed Rule Fails to Recognize the Diversity of FINRA's Membership – The Proposed Rule requires that, prior to providing written consent to an associated person's request to establish an account at an executing member, the employer member must instruct the associated person to have the executing member provide duplicate account statements and confirmations. This new requirement represents a significant departure from the current requirements of NASD Rule 3050. This NASD Rule states, in relevant part, that executing members shall "…upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to such account." NASD Notice to Members 91-27 describes the purpose of the NASD Rule as the prevention of "instances in which trades may be made by associated persons on inside information because the employer member was not aware of the existence of the account with another member." [6]

  FSI recognizes the importance of this regulatory goal and supports FINRA's reasonable efforts to promote effective oversight of personal trading. However, we are concerned that the Proposed Rule inappropriately mandates a one-size-fits-all approach to surveillance of these activities. In the context of the typical IBD firm, the risk of insider trading is extremely low because the firm does not engage in market making, participate in securities underwriting, or have research analysts.[7] We believe the Proposed Rule should recognize the diversity of FINRA's membership by allowing firms to adopt effective compliance policies and supervisory systems appropriate for their firm's business activities rather than mandating policies that would be appropriate for firms involved in research, market making, or underwriting activities.

- Proposed Rule Places the Responsibility for Communicating Documentation Needs on the Wrong Party – Section (a) of the Proposed Rule places the associated person in the role of messenger delivering one broker-dealer firm's request for account documentation to the to the other firm. We believe this is an inappropriate role for associated persons who may fail to fully understand and appreciate the compliance requirements and regulatory purposes of the Proposed Rule. Instead, we believe most IBD firms would prefer to assign this task to a specific department or trained individual who is directly responsible to the employer member for insuring its completion. As a result, we believe it is desirable

[6] NASD Notice to Members 91-27 - SEC Approval of Amendment to Article III, Section 28 of the Rules of Fair Practice Re: Associated Person Notifying Employer Prior to Opening Securities Account With Another Member. See at http://finra.complinet.com/en/display/display.html?rbid=2403&element_id=1200.

[7] Please note, some IBD firms do have "Research Departments" that provide access to third-party research services. However, the vast majority of IBDs do not employ research analysts as defined by NASD Rule 2711.

to retain NASD Rule 3050's reliance on the employer member to provide a written request for account documentation to the executing member.

- Supplementary Material .01 Imposes an Unrealistic Timeframe to Achieve Compliance – Supplementary Material .01 to the Proposed Rule states that "if the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within fifteen business days of becoming so associated, shall obtain the written consent of the employer member to maintain the account and shall notify in writing the executing member or other financial institution of his or her association with the employer member and personal financial interest." This represents a significant and unexplained change from the current requirement of NASD Rule 3050 for the associated person to provide prompt written notification to both broker-dealers. IBD firms are concerned with their ability to compel compliance with this seemingly arbitrary deadline and note that the transition period for any financial advisor is already an extremely busy and hectic period. In addition, it is difficult to imagine what customer protection benefits are derived from obtaining the required consent on the 15th day versus the 16th or 20th. The prompt written notification requirement of the NASD Rule effectively tiers the timeframe for the written consent requirement since what may be determined to be reasonable at a firm involved in extensive securities research or underwriting activities will likely be different from that for firms who do not engage in such activities. As a result, we urge FINRA to amend the Proposed Rule so that it retains NASD Rule 3050's prompt written consent requirement.

- Supplementary Material .03 Should Exempt the Specified Transactions and Accounts from the Requirements of the Proposed Rule – NASD Rule 3050(f) clearly indicates that the requirements of the rule do not apply to transactions in unit investment trusts, variable contracts, redeemable securities of companies registered under the Investment Company Act of 1940, or to accounts which are limited to transactions in such securities. Unfortunately, Supplementary Material .03 to the Proposed Rule fails to provide the same level of clarity. We see very little danger of insider trading or other actions that may adversely affect the interests of the employer member in such transactions or accounts. We, therefore, request that FINRA amend the language of Supplementary Material .03 to state clearly that such transactions and accounts are exempt from each of the Proposed Rule's requirements. For these same reasons, we also request that municipal fund securities (i.e., 529 plans) be added to the excluded transaction and account types.

- Supplementary Material .04 Should Impose Requirements on the Executing Member – Supplementary Material .04 specifies the obligations of the employer member firm when it does not receive the requested duplicate statements and confirmation in a timely manner. Specifically, it requires an employer member who has revoked its consent for the associated person to maintain the outside account to promptly obtain account records from the executing member. We believe the Supplementary Material places these obligations on the wrong broker-dealer firm. Instead, we believe the executing broker-dealer should be required by the Proposed Rule to promptly close the account and provide the account records to the employer member firm. This change will improve the Proposed Rule by placing these obligations on the firm in the best position to complete the required task.

- Proposed Rule Must Clearly Define the Scope of the Term "Personal Financial Interest" – The Proposed Rule fails to clearly define the term "personal financial interest," saying

only that "as a general matter, the associated person would have a personal financial interest in his spouse's accounts."[8] We believe more guidance is necessary in order for firms to have the necessary clarity to design compliant supervisory policies and procedures. Since FINRA is seeking better oversight of accounts over which the associated person exercises either direct or indirect control we believe the definition of "personal financial interest" should be limited to those accounts over which the associated person has the ability to direct trading activity.

- Proposed Rule Should State Clearly that Account Documentation can be Received in Electronic Format – As described above, most IBD firms currently comply with the requirements of NASD Rule 3050 by reviewing hard copies of account statements. However, a number of IBD firms use electronic data feeds provided by the executing member to obtain transaction activity and account statement information on outside accounts. We believe that the Proposed Rule should support these technological efforts. Unfortunately, the Proposed Rule fails to expressly allow electronic data feeds to meet its requirements thereby imposing unnecessary costs and recordkeeping burdens on these members. We suggest adding language to the Supplementary Material to the Proposed Rule that explicitly states firms can achieve compliance by obtaining hard copy confirmations, statements, other account information or the electronic equivalent of these documents.

- Implementation Period Should be Extended – Our members report that, in its current form, the Proposed Rule will require substantial changes to their policies and procedures. It may also require the hiring of additional staff or creation of new systems. As a result, we request an extended implementation period to allow IBD firms the ability to make the necessary changes to achieve compliance. We recommend that FINRA allow for a six-month implementation period.

The changes recommended herein would require the following amendments to the Proposed Rule:

3210. Personal Securities Transactions for or by Associated Persons

(a) No person associated with a member shall, without the prior written consent of the member ("employer member"), open or otherwise establish at a member other than the employer member ("executing member"), or at any other financial institution, any account in which securities transactions can be ~~effected~~ directed by such associated person and in which such associated person has a personal financial interest. ~~As a condition to such prior written consent, the employer member must instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member~~ The executing member shall upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to such account.

(b) Any associated person, prior to opening or otherwise establishing an account pursuant to paragraph (a) of this Rule, shall notify in writing the executing member, or other financial institution, of his or her association with the employer member and shall state in such notice that he or she has a personal financial interest in the account.

[8] See page 3 of Regulatory Notice 09-22.

(c) When an executing member has actual notice that an associated person of an employer member has a personal financial interest in any account opened or otherwise established at the executing member, such executing member shall not execute any securities transactions in that account unless it has obtained the employer member's prior written consent. In addition, such executing member shall promptly obtain and implement an instruction from the ~~associated person~~ employer member directing that duplicate account statements~~, and~~ confirmations, or other account information be provided to the employer member.

• • • Supplementary Material:——————————

.01 Account Opened Prior to Association With Employer Member.— For the purposes of paragraphs (a) and (b) of this Rule, if the account was opened or otherwise established prior to the person's association with the employer member, the associated person~~, within fifteen business days of becoming so associated,~~ shall promptly obtain the written consent of the employer member to maintain the account and shall notify in writing the executing member or other financial institution of his or her association with the employer member and personal financial interest. ~~The associated person shall instruct the executing member or other financial institution to provide to the employer member duplicate account statements and confirmations as of the date of his or her association with the employer member.~~ The executing member shall upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to such account.

.02 Account at Financial Institution Other Than a Member.— For the purposes of paragraph (c) of this Rule, with respect to any account opened or otherwise established at a financial institution other than a member, it shall be the obligation of the associated person to instruct the financial institution to provide duplicate account statements and confirmations to the employer member.

.03 Duplicate Account Statements and Confirmations.— The requirements ~~to provide to the employer member duplicate account statements and confirmations~~ of this Rule shall not be applicable to transactions in unit investment trusts, municipal fund securities and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employermember requests receipt of such duplicate account statements and confirmations.

.04 Failure to Receive Duplicate Account Statements and Confirmations.— 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~~ executing member shall promptly close the account and ~~obtain~~ provide the requested account records ~~from~~ to the ~~executing~~ employer member ~~that the account was closed~~.

.05 Other Financial Institution.— For the purposes of this Rule, the terms "other financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to Section 15(b)(11) of the Exchange Act, domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

.06 Electronic Transmission of Transaction and Account Data.— For the purposes of this Rule, the terms "confirmations", "statements", or "other information with respect to such

account" refer to hard copy confirmations, statements, other account information or the electronic equivalent of these documents.

Conclusion

We are committed to constructive engagement in the regulatory process and, therefore, welcome the opportunity to work with you to enhance investor protection.

Thank you for your consideration of our comments. Should you have any questions, please contact me at 770 980-8487.

Respectfully submitted,

Dale E. Brown, CAE
President & CEO

GWFS Equities, Inc. ***8515 E. Orchard Road, Greenwood Village, Colorado 80111***

June 5, 2009

Via Email
Ms. Marcia Asquith
Senior Vice President and Corporate Secretary
FINRA
1735 K Street, NW
Washington, D.C. 20006-1500

Re: Comments on Regulatory Notice 09-022

Dear Ms. Acquith:

GWFS Equities, Inc. ("GWFS") respectfully submits this letter in response to the Financial Industry Regulatory Authority ("FINRA") request for comments regarding the proposed consolidated FINRA Rule 3210 governing personal securities transactions for or by associated persons. To the extent not addressed herein, GWFS is supportive of the proposed rule. We recognize the objective of the proposed rules and appreciate FINRA's efforts to promote more effective oversight of the personal trading of associated persons of member firms.

GWFS applauds FINRA's recognition that copies of duplicate statements/confirms for accounts where securities transactions are limited to transactions in unit investment trusts, variable insurance contracts and mutual funds need not be provided to the employer firm for review and monitoring, presumably due to the limited or absence of risk associated with these types of accounts. To that end, GWFS queries the need for the associated person to receive prior written consent by the employer firm to open such accounts in light of the limited or absence of risk and wonders why the provision of approval of such an account is required. At the most, GWFS believes that the employer firm's approval after the account is established should be sufficient.

The proposed rule does require duplicate statements and confirmations for other securities accounts and provides no discretion to limited broker/dealers such as GWFS to determine if the firm's business model is such that there is or is not a need for duplicate statements and confirmations. GWFS's business is related entirely to variable insurance contracts and retirement accounts (401(k), 403(b), 401(a), 457 and IRAs). All associated persons are employees of our parent insurance company and no associated person receives commission-based compensation; rather each associated person's compensation is salary plus bonus only. Receipt of duplicate statements and confirmations would be extremely burdensome, both administratively and economically, for GWFS, whether such data is received in hard copy or electronically. In addition, there are not insignificant costs associated with the storage of such records. Finally, we are uncertain what information the firm would or could glean from this data that would point to improper activity by the associated person, in consideration of GWFS' business model as described here.

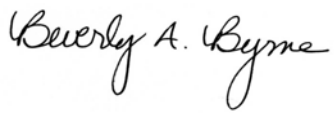
The proposal that the employer firm be required to track the timeliness of receipt of duplicate statements and confirmations is exceedingly burdensome as the sending of such information is the responsibility of the executing firm. Depending on the number of associated persons in the employer firm (GWFS has over 1,000), the monitoring of receipt of this data would require the firm to hire additional personnel to perform a function that does nothing to further the business of the firm. Further, the proposed provision

places the burden of regulating the executing firm on the employer firm ultimately at the expense of the associated person. Moreover, who defines what is "in a timely manner?" What if the mail is misdirected by the executing firm at the fault of that firm and not the fault of the associated person or employer firm? Is the employer firm allowed to define what that term means in accordance with the firm's business model? GWFS puts forward the suggestion that the Rule impose a requirement on the *executing* firm to provide such data in a timely manner.

In conclusion, it is the view of GWFS that the proposed rule is a step backward from the previous view that supervisory controls should be tailored to the business model of the broker/dealer. FINRA always has the ability and opportunity to examine the firm's supervisory policies in light of the firm's business model and determine whether or not the firm has correctly identified risks and to then require firms to implement additional controls where needed without implementing a one-size-fits-all approach, which is how GWFS views the provisions of proposed FINRA Rule 3210.

Thank you for the opportunity to comment and we hope that you will take into consideration the concerns our firm has articulated herein.

Sincerely,



Beverly A. Byrne
Chief Compliance Officer

In regards to proposed changes of FINRA Rule 3210, in the event of a revocation due to untimely duplicate account statements, is there guidance on how the account would be closed? Would stock certificates be issued? Would liquidation of holdings be necessary? If after a period where the executing member was complying with the request from the employing member, the executing member failed to provide information on a timely basis, the associated person may have several positions in the account which would have to be closed. The difficulty of closing the account could cause harm for the associated member who was not responsible for the problems of the executing member.

As a firm with only approximately 10 registered reps, our member firm does not carry client accounts. We provide merger advisory services and private placement 'best-efforts' capital raising for clients. Our firm collects both confirmations and statements in hard copy form. We review both confirmations and statements promptly when received. This review is done manually with our restricted trading lists and list of current client engagements. As a requirement prior to employment, we request all employees of our firm to provide us their account information so that we may request duplicates of their statements and confirmations. We don't see the need for any proposed rule that addresses information gathering methodologies.

Regard,
Roger Dickerson

I have concerns about this section of the rule.

Revocation of Employer Member's Consent

Proposed FINRA Rule 3210.04 sets forth a new requirement that, 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.

As an employing member the only way I may have knowing a trade occurred is from the confirm. If I don't receive a confirm had all on a trade I would not know I was not receiving them timely but Would be obligated to revoke consent to maintain the account at the executing broker.

Charles E. Dodson
Vice President & Chief Compliance Officer
J.A. Glynn & Co.
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202/326-5800 www.ici.org

June 4, 2009

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 Regarding Personal Securities Transactions*

Dear Ms. Asquith:

The Investment Company Institute[1] is writing to comment on FINRA's proposed new rule, Rule 3210, which addresses member firm oversight of personal trading by their associated persons.[2] The proposed rule combines certain provisions of NASD Rule 3050 and New York Stock Exchange Rule 407 and creates additional requirements intended to promote more effective oversight of personal trading by associated persons of member firms.

Oversight of personal trading activities is a core compliance obligation for investment companies, their investment advisers and principal underwriters.[3] Effective oversight of personal

[1] The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $10.18 trillion and serve over 93 million shareholders.

[2] *See* FINRA Regulatory Notice 09-22 (April 2009) ("Notice"), which is available at http://www.finra.org.web.grops/industry/@ip/@reg/@notice/documents/notices/p118524.pdf.

[3] *See, e.g.,* Rule 17j-1 under the Investment Company Act of 1940 (which requires all registered investment companies, their investment advisers, and their principal underwriters to adopt a code of ethics and procedures designed to detect and prevent improper personal trading and all access persons to file quarterly reports regarding their personal securities transactions); and Rule 204A-1 under the Investment Advisers Act of 1940 (which requires registered investment advisers to adopt a code of ethics setting forth a standard of business conduct and to periodically review personal securities holdings and transactions of their access persons).

trading is of paramount importance to the Institute and its members.[4] At the same time, the benefits of any proposed new compliance obligations in this area should outweigh the associated costs. Therefore, we recommend that the proposed rule be modified to recognize the distinct structure of certain member firms affiliated with investment companies and to harmonize certain reporting obligations in proposed Rule 3210 with those contained in Rule 17j-1. We also recommend expressly providing member firms with the flexibility to gather personal trading information in a variety of ways. Moreover, we recommend several technical changes to streamline and make the rule practically more workable. Our comments are provided below.

Limited Purpose Broker-Dealers

Proposed Rule 3210(a) prohibits any associated person, without the prior written consent of his or her employer ("employer member") from opening at another member firm ("executing member"), or at any other financial institution[5] any securities account in which such associated person has a personal financial interest.[6] The proposed rule further requires that, as a condition to granting prior written consent, the employer member instruct an associated person to have the executing member provide duplicates of his or her account statements and confirmations to the employer member.[7]

We urge FINRA to pursue a more targeted supervisory approach that requires reporting of personal trading by access persons of limited purpose broker-dealers.[8] Specifically, the Institute recommends that for limited purpose broker-dealers whose sole purpose is to distribute mutual funds, unit investment trusts, and variable annuity contracts, duplicate account statements and confirmations be required with respect to the personal trading of their "access persons"[9] rather than their associated

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[4] *See, e.g., Report of the Advisory Group on Personal Investing* (May 9, 1994) ("Institute's Personal Investing Report") (report issued by a committee of senior investment company industry officials and unanimously endorsed by the Institute's Board of Governors recommending that investment companies adopt certain substantive restrictions on personal investing activities and related compliance procedures).

[5] "Financial institution" is defined to include, among others, investment companies, investment advisers, and insurance companies.

[6] The Notice states that, as a general matter, personal financial interest would extend to an associated person's spouse's account. We recommend defining personal financial interest in the text of Rule 3210 as adopted. As a practical matter, doing so will make it easier for member firms to reference their authority to request an associated person's spouse's personal trading records, in response to employee queries.

[7] NASD Rule 3050 currently requires an executing member to send duplicate confirmations and account statements with respect to personal trading by associated persons of an employer member *solely on the employer member's written request*. NYSE Rule 407 requires these documents to be sent to the employer member.

[8] If an employer member was concerned about the personal trading of a particular associated person, it would be permitted, as it is today, to request duplicate account statements and confirmations from executing members. *See* NASD Rule 3050(b)(2).

[9] We recommend incorporating in Rule 3210 a definition of "access person" based on Rule 17j-1's definition of access person. *See* Rule 17j-1(a)(1) (generally providing that an access person is any director, officer, general partner, or employee of the fund or its investment adviser who, in connection with his or her regular functions or duties, makes, participates in, or obtains information regarding, the

persons. Unlike associated persons of other broker-dealer firms, associated persons of these firms do not make, participate in, or obtain information regarding the purchase or sale of securities by investment companies or for private client accounts. Nor do they make any recommendations with respect to such purchases or sales. Therefore, an employer member that is a limited purpose broker-dealer that receives account statements and confirmations from its associated persons would not have a basis on which to evaluate the legitimacy of the trading activity.[10] Despite that, by having required the transmittal of this information, there would be a perceived obligation for compliance personnel to review this information. This review potentially would take compliance personnel's time and attention away from areas where their oversight would be better spent.[11] Costs that would have to be incurred to maintain these records similarly are not warranted, because the risks of personal trading based upon misuse of client information does not exist with respect to these employees. Our recommended approach also would line up more closely FINRA's personal trading requirements with those of Rule 17j-1, thereby facilitating more cost effective compliance.[12]

Other Comments

Exceptions from Reporting Requirements

We recommend that FINRA make any personal trading requirements consistent with existing requirements for investment company personnel, thereby avoiding unnecessary costs without corresponding benefits. As proposed, executing members would not be required to provide duplicate account statements and confirmations with respect to transactions in unit investment trusts, variable contracts, or registered open-end investment companies or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts. We support these exceptions (with

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purchase or sale of certain securities by a fund, or whose functions relate to the making of any recommendations with respect to such purchases or sales). We have provided rule text to implement this recommendation in Appendix A.

[10] Review of personal securities holdings and transaction reports typically include, among other things, an assessment of whether the access person is trading for his account in the same securities he is trading for clients, and, if so, whether the clients are receiving terms as favorable as the access person takes for himself. As the Commission explained in the proposing release for Rule 204A-1, investment advisers and their personnel face inherent conflicts of interest when they trade securities for their own accounts and have access to information about their clients' securities transactions, which they can exploit for their own benefit. *See* Investment Advisers Act Release No. 2209 (January 20, 2004) at p. 4.

[11] *See, e.g.,* Rule 38a-1 under the Investment Company Act of 1940 (requiring investment companies to adopt and implement written policies and procedures reasonably designed to prevent violation of the federal securities laws by the fund, including policies and procedures that provide for the oversight of compliance by each investment adviser, principal underwriter, administrator, and transfer agent of the fund).

[12] Under Rule 17j-1, access persons are required to report securities transactions on a quarterly basis to the investment company (or relevant adviser or principal underwriter). Our recommended approach also would be consistent with a recommendation in the Institute's Personal Investing Report, which provided that investment company codes of ethics require all access persons to direct their brokers to supply to a designated compliance official duplicate confirmations and account statements. *Cf.* Commissioner Elisse B. Walter, U.S. Securities and Exchange Commission, *Regulating Broker-Dealers and Investment Advisers: Demarcation or Harmonization?* (May 5, 2009) (calling for the Commission's harmonization of the supervisory responsibilities of broker-dealers and investment advisers).

one technical change)[13] because we do not believe that any of these types of transactions present opportunities for abuse. For the same reason, we recommend that FINRA not require reporting with respect to: (i) transactions effected for, and securities held in, any account over which the person has no direct or indirect influence or control; or (ii) transactions in direct obligations of the United States government, bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements.[14]

Retain Flexibility of Executing Members' Methods for Reporting

Proposed Rule 3210 requires an executing member to send duplicate account statements and confirmations to employer members. The Notice requests comment on the methodologies firms currently use to obtain personal trading information, and whether the proposed rule should address such information-gathering methodologies. Our members report that they gather personal trading information in a variety of ways. For example, some firms receive electronic feeds of transactions and disks of account statements. Others receive electronic feeds of transactions and have access to account statements through the Internet. Still others, particularly smaller advisers, are not set up to receive electronic feeds and instead receive hard copies of confirmations and account statements. We see no reason to limit the current flexibility, and therefore recommend expressly permitting confirmations and account statements to be received in electronic or paper form or accessed through the Internet.[15]

Employer Member's Revocation of Consent

Supplementary Material .04 provides that if an employer member does not receive duplicate account statements and confirmations required pursuant to proposed Rule 3210 in a timely manner, the employer member must revoke its consent to maintain the account, and the executing member must close the account.[16] An employer member not receiving confirmations or account statements may be the result of an administrative oversight or other benign circumstance. Given that, requiring that the account be closed is an unduly severe consequence. We recommend instead requiring the employer member to provide notice to the executing member and associated person and permit an opportunity to cure within a reasonable time period. If there is failure to cure, then it may be appropriate to require the account to be closed.

* * * * * *

[13] We recommend renaming the term Monthly Investment Plan as Automatic Investment Plan and defining it in the rule along the same lines as Rule 17j-1 defines Automatic Investment Plan. The automated nature of the investment (rather than its frequency) is the feature that protects against the potential for abusive trading. *See* Rule 17j-1(a)(11) (generally defining automatic investment plan as a program in which regular periodic purchases are made automatically in investment accounts in accordance with a predetermined schedule and allocation.) We have provided a recommended definition of this term in Appendix A.

[14] These reporting exceptions are based on Rule 17j-1. *See* Rule 17j-1(a)(4) and (d)(2).

[15] Rule 17j-1 does not require information regarding access persons' personal trading to be sent or received in any particular manner.

[16] There is no corollary to this obligation in Rule 17j-1.

The Institute appreciates the opportunity to comment on the proposal. Any questions about regarding the comments may be directed to the undersigned at (202) 218-3563 or Ari Burstein at (202) 371-5408.

Sincerely,

/s/

Dorothy M. Donohue
Senior Associate Counsel

cc: Robert E. Plaze, Associate Director, Office of Regulatory Policy and Investment Adviser Regulation
Sarah A. Bessin, Assistant Director, Office of Investment Adviser Regulation

Division of Investment Management
U.S. Securities and Exchange Commission

Appendix A

3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

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3200. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

3210. Personal Securities Transactions for or by Associated Persons

(d) Notwithstanding the foregoing, this provision applies only to associated persons of limited purpose broker-dealers whose sole purpose is to distribute registered open-end investment companies, unit investment trusts, and variable annuity contracts that are access persons. An access person is any such associated person who, in connection with his or her regular functions or duties, makes, participates in or obtains information regarding, the purchase or sale of securities by those registered open-end investment companies or unit investment trusts, or whose functions relate to the making of any recommendations with respect to such purchases or sales.

Supplementary Material:

* * *

.03 Duplicate Account Statements and Confirmations. – The requirement to provide to the employer member duplicate account statements and confirmations shall not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940 or to accounts that are limited to transactions in such securities, or to Automatic Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements or confirmations. For purposes of this paragraph, "Automatic Investment Plan" means a program in which regular periodic purchases (or withdrawals) are made automatically in (or from) investment accounts in accordance with a predetermined schedule and allocation. An Automatic Investment Plan includes a dividend reinvestment plan and retirement plans under Section 401(k) of the Internal Revenue Code.

June 5, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington DC 20006-1506

RE: Comments to Regulatory Notice 9-22

Dear Ms. Asquith:

I am writing to provide comments in response to your request contained in Regulatory Notice 9-22 addressing the proposed FINRA Rule 3210.

As proposed, Rule 3210 is overly broad and would place significant burdens (with no corresponding regulatory benefit) on many firms to monitor for both the existence of outside brokerage accounts as well as to properly account for the receipt of employee statements. The proposed rule does not address what firms will have to do with statements, once received and accounted for. Presumably, the need to receive statements will carry a requirement (Notice 9-22 notes the proposed rule "…would promote more effective oversight of personal trading…") to review an employee's activity. For many firms, the question becomes what a firm may be monitoring and reviewing for. FINRA's predecessors have noted that firms have a responsibility to monitor for conflicts with firm related investment banking and proprietary activity (see NASD Notice to Members 91-45 "NASD/NYSE Joint Memo on Chinese Wall Policies and Procedures"). Therefore, the need to receive statements (to monitor their employees' personnel trading) for firms that do not engage in order entry, execution, proprietary trading or investment banking (including advisory activity) is unwarranted. Such firms effectively have nothing to monitor their employees' activity against. Exchanges and other market centers already have programs in place to detect and review for trading issues, including insider trading, on the part of all investors, including those who may be employees of limited broker-dealers.

Therefore the proposal should be amended such that for the following types of firms whose business is limited to any or all of the following activity be excluded from the proposed requirements to both identify employee accounts as well as receive account statements:

1. Firms whose business is limited to the distribution of variable insurance products and/or investment company shares and/or municipal fund securities;
2. Firms engaged in the sale or distribution of direct participation programs;

3. Firms that have other limited business (not involving order entry, trade execution or investment banking) as may be defined by FINRA.

With respect to those firms that must provide and/or receive information regarding employee trading, I would recommend that FINRA encourage firms to provide data in a consistent electronic format (as determined by FINRA, working with its membership). Currently, firms that must receive information (from those providing it) obtain it in a variety of electronic and hard copy formats. That makes review especially difficult as time is required to "sort" through existing statements and put information in a consistent format to ensure adequate review.

Thank you for the opportunity to comment.

Sincerely,

S. Kendrick Dunn
Assistant Vice President
Pacific Select Distributors, Inc.

This is a comment on the proposed rule allowing a new employer to determine whether or not you can keep an account that was opened prior to being associated with the new firm. No one should have the right to tell you that you cannot keep an account open or trade that existing account. I agree with having the ability to say that **after** you are employed, the firm's policy is NOT to allow opening an account with another firm.

Some accounts may be family accounts, trusts, estates, inheritance, or even just joint accounts where the other partner does all the trading and wants the account where it is. This is supposed to be a free country. The fact that the new firm will get duplicate statements should be enough to safeguard whatever is needed to be safeguarded.

An existing account is just that and should be sacred. No one should have that kind of power over you.

Thank you.

Karen Z Fischer

June 3, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

RE: Consolidated FINRA Rulebook, proposed FINRA Rule 3210 - Personal Securities Transactions for or by Associated Persons

Dear Ms. Asquith,

MWA Financial Services, Inc. is a wholly owned broker/dealer by an insurance company. Our business mix is simple, consisting of non-proprietary mutual funds, general securities through a fully disclosed brokerage arrangement and a proprietary variable annuity. The vast majority of our representatives are Series 6 licensed.

We appreciate that consolidation of rulebooks must be a daunting task, assuring that all contingencies are regulated adequately. However, we feel that certain wording would allow for wide and varied interpretation by regulators and litigators.

Cases in point:

> ***".05 Other Financial Institution.—****For the purposes of this Rule, the terms "other Financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to Section 15(b)(11) of the Exchange Act, domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company."*

This could be interpreted that a firm would have to obtain confirms and statements from account representatives or their spouses who have established directly with a "no-load" mutual fund company; a trust company in which they have no ability to direct or effect the securities transactions; a third party advisory account where the representative has no ability to direct or effect the securities transactions within the account or an insurance policy where the funds are held in separate accounts.

> *"3210 (b) Any associated person, prior to opening or otherwise establishing an account pursuant to paragraph (a) of this Rule, shall notify in writing the executing member, or other financial institution, of his or her association with the employer member and shall state in such notice that he or she has a* ***personal financial interest*** *in the account."*

In these instances, the representative would have no ability to affect the general securities market. The unintended consequence of this particular Supplement to the Rule would cause firms to be overwhelmed and overburdened with unnecessary and irrelevant information. The time it would take to conduct adequate evidenced, principal review and the recordkeeping requirements of such documents would place an enormous financial burden on firms.

We firmly agree with the letter and the spirit of the regulations governing market fraud, manipulating the markets for personal gain or creating a situation where a representative benefits at the expense of the customer.

We encourage FINRA to narrow the scope of this proposed rule and in general, when consolidating rules, to be diligent to assure they reflect fair dealing within the scope of securities transactions where markets and/or investors could be harmed.

Respectfully,

Pam Fritz
Chief Compliance Officer

MWA Financial Services, Inc.
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Rock Island, IL 61201

309-558-3103

UBS Investment Bank

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P.O. Box 120305
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Tel. +1-203-719 3000

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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 Stated 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

charles SCHWAB

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 conformations.

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.

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,

Bari Havlik

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

Susan Hechtlinger
Chief Compliance Officer

SunTrust Investment Services, Inc.
303 Peachtree Center Avenue
Suite 140
Atlanta, GA 30303
Tel 404.813.7712
Fax 404.813.7213

June 05, 2009

Ms. Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street NW
Washington, DC 20006-1506

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

Dear Ms. Asquith:

SunTrust Investment Services, Inc. ("STIS") appreciates the opportunity to comment on the above-referenced matter. STIS is a registered broker/dealer under the Securities Exchange Act of 1934 and a FINRA member firm.

Generally, STIS is in favor of the proposed consolidation of NASD and NYSE rules.

However, we believe that Proposed FINRA Rule 3210 ("PFR 3210") is overly burdensome and will not provide the benefits to the industry that FINRA seeks through its implementation. As a result, STIS has set out its comments to PFR 3210.

Prior Written Consent Requirement – PRF 3210(a)

Based in large part on NYSE Rule 407, PFR 3210(a) prohibits any associated person, without the prior written consent of his or her employing member from opening or otherwise establishing at another member firm, or at any other financial institution, any account in which securities transactions can be effected and in which such associated person has a personal financial interest. The proposed rule further adds a new requirement that, as a condition to granting prior written consent, the employing member must instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employing member.

Under current NASD rules, a member firm has the discretion to determine what if any documentation they want to receive from their associated person's executing financial institution. The proposed rule would require members to obtain confirmations and monthly statements for all investment accounts including trusts and third party investment advisory relationships. In both of

these situations, the associated person has no control or trading authority over the activity in the account. Since most third party accounts are actively managed, it is common for trading activity to occur daily. These types of relationships can generate a significant number of transactions. It is unclear what the benefit of receiving and supervising these transactions would be. The risk associated with not reviewing these types of transactions seems minimal yet the effort would be vast, especially if third parties are not required to provide the information electronically. Instead of requiring duplicate confirmations for these third party relationships, consideration should be given to require member firms only to obtain monthly statements.

We sincerely appreciate the opportunity to submit our comment letter to PFR 3210. STIS desires to assist FINRA in molding a workable personal securities transaction rule that benefits the industry without imposing overly burdensome obligations on the member firms. If you have any questions regarding this matter, please do not hesitate to call me at (404) 813-7713.

Sincerely,

Susan Hechtlinger
Chief Compliance Officer

This is a small firm commenting on the rule.

I understand the rule is to keep reps from profiting from front running.

It takes a hugh account to disrupt the market or profit substantially.

This is not possible for mutual fund trades.

I suggest it should not be necessary for reps to announce purchase of mutual funds, or online accounts to buy & hold mutual funds. Why should I monitor a small account my reps 'play with' at a discount broker?

It takes a lot of money to profit from or manipulate a stock with a market cap over a billion dollars. A lot of small reps like to 'play' with less than $50,000 of their money buying and selling stocks. These accounts are not going to disrupt the market or disadvantage clients.

I suggest the rule require firms to annually inquire of reps, and reps to tell firms, of the value of any accounts away from the firm. And that the rule require duplicates of statements go to reps firm only if account is over a threshold amount, say $50,000. Make it $25,000 if you think 50 is too high.

Perhaps 'introducing firms' that do not make markets, and/or firms with under $1 million of revenue from stock trades should be excluded from the rule.

This is another rule designed for large firms, with very large accounts that causes a lot of paperwork for 95% of FINRA firms that do business in a way, or in such small volume, for which the rule is meaningless, and yet a regulatory headache.

How about a section in the manual that defines firms of certain size and/or parameters that are not subject to rules designed for firms that underwrite and make markets and earn a majority of their revenue trading stocks and bonds. Call them 'exempt firms'. Then, at the beginning of other sections say, "exempt firms are not subject to the following rule." This may eliminate a large portion of the rule book from concern of small firms, and specialized firms.

NSCP
NATIONAL SOCIETY OF COMPLIANCE PROFESSIONALS INC.

June 5, 2009

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, N.W.
Washington, D.C. 2006-1500

Re: Comments on Proposed FINRA Rule 3210
(Personal Securities Transactions for or by Associated Persons)

Dear Ms. Asquith:

The National Society of Compliance Professionals ("NSCP") appreciates the opportunity to comment on the proposed Rule 3210 ("Proposed Rule") by the Financial Industry Regulatory Authority ("FINRA").

The Proposed Rule is of considerable interest to NSCP and its members. NSCP is the largest organization in the securities industry serving compliance professionals exclusively, through education, certification (CSCP), publications, and consultation forums. Since the founding in 1987, NSCP membership has grown to over 1700 members including compliance professionals at broker-dealers, investment advisers, banks, insurance companies, and hedge funds. The diversity of our membership allows the NSCP to represent a large variety of perspectives in the financial services industry.

As an initial matter, NSCP commends FINRA for addressing the effectiveness of current rules intended to help employing firms prevent improper trading activities by their associated persons. NSCP understands that FINRA seeks not only to combine and streamline certain provisions of NASD Rule 3050 and Incorporated NYSE Rule 407, but also to adopt additional requirements to promote more effective oversight of the personal trading activities of associated persons of FINRA member firms. In that regard, the practical application and effectiveness of the rule provisions contained in proposed FINRA Rule 3210 (the "Proposal") must be carefully considered, as FINRA has commendably undertaken to do.

Upon review and discussion of the Proposal, we have identified three areas requiring additional clarification or modification, specifically, (1) the notice requirements of the proposal, (2) the definition of "personal financial interest," and (3) the practicality of the employer member obtaining records of closed accounts from the executing member.

Prior Written Consent Requirement

Proposed Rule 3210(a) is based on NYSE Rule 407:

"Proposed 3210(a) No person associated with a member shall, without the prior written consent of the member ("employer member"), open or otherwise establish at another member firm other than the employer member ("executing member"), or at any other financial institution, any account in which securities transactions can be effected and in which such associated person has a personal financial interest. As a condition to such prior written consent, the employer member must instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member."

Notice Requirement: In our view there is little or no difference in risk associated with the opening of an outside brokerage account by an incumbent associated person or a new hire. Consequently, our recommendation for the provisions of Proposed 3210(a) would be to impose on all associated persons a 15-day notice requirement from the date the account is opened, analogous to the 15-day notice requirement imposed on new hires, for purposes of consistency and ease in administration.

Personal Financial Interest: As clarifying language from NYSE Rule 407 was deleted in the crafting of the Proposal, there is a need for clarification on what is meant by "Personal Financial Interest." [See Notice 09.22 footnote 9.] For example, would an account in the name of an associated person's spouse, over which the associated person has no control, be considered an account in which the associated person has a personal financial interest? This issue raises serious concerns in that the spouse might refuse to share his / her statements with the broker (akin to similar Rule 8210 issues). Similarly, how would this test come into play with respect to beneficiary / trust accounts? Finally, should FINRA view the Proposal to cover accounts in which the associated person has a financial interest but does not have effective control, we question the enforceability of such a view. A FINRA member firm has neither authority over nor the right to compel delivery of the private information of non-associated persons even if the associated person has a financial interest in such an account.

Notification by the Associated Person

Proposed 3210(b) Any associated person, prior to opening or otherwise establishing an account pursuant to paragraph (a) of this Rule, shall notify in writing the executing member, or other financial institution, of his or her association with the employer member and shall state in such notice that he or she has a personal financial interest in the account.

Personal Financial Interest: Please see our comments under Proposed 3210(a) above for clarification of the phrase "personal financial interest."

Obligations of the Executing Member

Proposed Rule 3210(c) When an executing member has actual notice that an associated person of an employer member has a personal financial interest in any account opened or otherwise established at the executing member, such executing member shall not execute any securities transactions in that account unless it has obtained the employer member's prior written consent. In addition, such executing member shall promptly obtain and implement an instruction from the associated person directing that duplicate account statements and confirmations be provided to the employer member.

No comment.

Revocation of Employer Member's Consent

Proposed 3210.04 sets forth a new requirement for employer members. 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.

Record of Closed Account: As employer members do not have control over executing members, requiring an employer member to "…promptly obtain records from the executing member that the account was closed" is impractical. Because the trigger for the requirement that the Employer Firm revoke its consent to the existence of the outside brokerage account would be its failure to receive records from the executing member as prescribed, it is very unlikely that the Employer Firm would have the ability to compel the issuance of evidence of the account closing. For this reason we recommend the language under this section be amended to require that Employer Members attempt to obtain confirmation from the Executing Member that the account was closed.

Accounts Opened Prior to Association With an Employer Member

For the purposes of paragraphs (a) and (b) of this Rule, if the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within fifteen business days of becoming so associated, shall obtain the written consent of the employer member to maintain the account and shall notify in writing the executing member or other financial institution of his or her association with the employer member and personal financial interest.

We support the concept of imposing a fixed deadline for new associated persons to notify and obtain the written consent of their new employer member firm to maintain an account at an external financial institution. We are somewhat concerned that the fifteen day deadline may be insufficient period of time for a new associated person to secure the employer member's consent, given the many competing activities and interests of a new hire. Accordingly, we would urge FINRA to give consideration to providing a longer period of time (e.g., 15 days to provide notice of an external account, and 30 days to obtain the employer member's consent). Regardless of the deadline chosen, the FINRA rule or notice of the rule's effectiveness should emphasize that the employer member has an obligation to review all new employee trading activity, even if it can only do so on a retroactive basis, from the time the new hire becomes an associated person.

Deleted Requirements

Exercising Control: Our one question about the deleted requirements section of the notice is, with respect to the removal of a reference to "exercising control," does this mean that having investment discretion is not a requirement to having a "personal financial interest" in the account?

Requests for Comment

Concluding the Proposal, FINRA posed two specific questions for comment about the practical implications of the rule requirements.

1) What methodologies do firms currently employ to obtain information pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable? Do firms collect account activity information (confirmations and statements) electronically, in hard copy or both? Should the proposed rule address such information-gathering methodologies and, if so, how?

Methodologies for Obtaining Information: We believe that FINRA should not prescribe a required medium. Firms will need the option to receive hard copy, electronic, or some combination of the two, at firm discretion. This recommendation is based on the technological diversification among member firms. Some firms restrict delivery to hard copy statements and confirmations, some firms restrict receipt to hard copy statements and confirmations, and some firms receive a combination of hard copy statements and confirmations in conjunction with data feeds directly from large brokerage firms.

2) What processes and controls do firms currently implement upon receipt of the information required under NASD Rule 3050 or NYSE Rule 407, as applicable?

Processes and controls: A minimal list of "processes and controls" might include:

1) Spot checking with respect to specific securities

2) Sampling, using a statistically accurate testing method

3) More thorough review for associated persons subject to "heightened supervision" or employees with access to information on pending trading activity by the member.

4) Data entry / management, depending on number of transactions.

5) Importantly, flexibility is the key to the effective monitoring of outside brokerage accounts. Firms should be permitted and encouraged to customize their processes and controls based on, among other things, the size of the firm, types of business conducted by the firm (Research, Investment Banking, Retail, etc.), and number of employees with accounts (and the number of accounts) at an executing member.

In this Proposal, FINRA has in large measure effectively achieved its goal of promoting more effective oversight of the personal trading activities of associated persons of member firms. NSCP's hope is that its observations here will enable FINRA to amend the Rule, and the guidance accompanying it, to facilitate the ability of member firms to effectively and efficiently achieve that oversight. We look forward to discussing the issues we have addressed in this letter with FINRA staff members, if that would be helpful. Please contact me at 860.672.0843 with any questions. Thank you.

Sincerely,

The National Society of Compliance Professionals, Inc.

Joan Hinchman
NSCP Executive Director, President and CEO
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Channel Capital Group LLC
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May 27, 2009

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

RE: Proposed FINRA Rule 3210.

The change in the current rule to require all firms to send duplicate statements and confirmations to the member firm of all registered representatives is in our opinion unnecessarily burdensome for small member firms whose business does not involve trading, or research activities. We believe that the rule should require all firms to send duplicate confirmations and statements IF requested by the account holders' member firm employer.

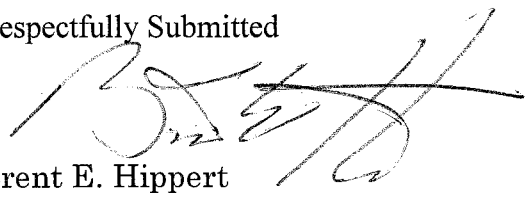
We believe there are a large number of small former NASD firms that the activities of the firm do not require duplicate confirmations or statements for effective compliance supervision. Today's rule 3050 takes into account firms that do not require duplicate confirmations or statements. **Rule 3050 (a)(2)** ***" upon written request by the employer member, transmit duplicate copies of confirmations, statements, or other information with respect to such account; and "***
Proposed Rule 3210(c) (c) When an executing member has actual notice that an associated person of an employer member has a personal financial interest in any account opened or otherwise established at the executing member, such executing member shall not execute any securities transactions in that account unless it has obtained the employer member's prior written consent. ***In addition, such executing member shall promptly obtain and implement an instruction from the associated person directing that duplicate account statements and confirmations be provided to the employer member.***

The rule could easily be changed to the current FINRA standard without any loss of member flexibility if the current language was reflected in Rule 3210(c) i.e.
When an executing member has actual notice that an associated person of an employer member has a personal financial interest in any account opened or otherwise established at the executing member, such executing member shall not execute any securities transactions in that account unless it has obtained the employer member's prior written consent. *In addition, such executing member shall promptly obtain and implement an instruction from the associated person directing that duplicate account statements and confirmations be provided to the employer member* **upon written request by the employer member.** We would also find it acceptable that the Rule require duplicate account statements and confirmations UNLESS the receiving member states in writing that it does not want the statements and confirmations.

The firms would retain the flexibility to decide if the business of the firm requires supervision of the securities transactions of its employees. There are entire groups of small firms that the business activities of the member do not currently require statements and confirmations as an example a firm that is only engaged in the business of mutual fund retailing or other types of third party marketing activities.

We urge you to consider the smaller members of FINRA when reviewing the current NYSE and NASD Rules and to incorporate as much as possible the regulatory flexibility that is in the current rules and that would not reduce market integrity and customer protection.

Respectfully Submitted



Brent E. Hippert
CCO CFO

What methodologies do firms currently employ to obtain information pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable? Notice in initial welcome packet to inform Home Office of existing accounts referencing Rule; and question on initial and annual compliance inspection report.

Do firms collect account activity information (confirmations and statements) electronically, in hard copy or both? Both

Should the proposed rule address such information-gathering methodologies and, if so, how? No, the Rule should require the outcome; methodologies should be reviewed during audits. Each Firm's methods will vary due to size and structure.

What processes and controls do firms currently implement upon receipt of the information required under NASD Rule 3050 or NYSE Rule 407, as applicable? Letter printed and sent to outside Firm to approve account, give Rep permission to open/maintain account for his/spouse's benefit, request copies of statements/confirmations; CC Rep. Copy kept in Rep's file.

Michele R. Huneycutt

Compliance Officer

Registered Principal

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ATLANTA
AUSTIN
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TALLAHASSEE
WASHINGTON DC

June 5, 2009

VIA ELECTRONIC MAIL

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

Re: Regulatory Notice 09-22: Personal Securities Transactions, FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Personal Securities Transactions for or by Associated Persons

Dear Ms. Asquith:

We are submitting this letter on behalf of our client, the Committee of Annuity Insurers (the "Committee"),[1] in response to Regulatory Notice 09-22, "FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Personal Securities Transactions for or by Associated Persons" (the "Proposal Notice"). The Proposal Notice proposes a new FINRA Rule, Rule 3210, along with Supplementary Material (the "Proposed Rule"). The Proposed Rule would replace NASD Conduct Rule 3050 and Incorporated NYSE Rule 407.

The Committee commends FINRA for maintaining many of the provisions of NASD Conduct Rule 3050 ("Rule 3050") in the Proposed Rule. However, the Committee is concerned about five aspects of the Proposed Rule that impose additional requirements, primarily impacting employer members (as defined in the Proposed Rule). These five aspects are: (1) the scope of the term "personal financial interest" as the standard for determining which outside brokerage accounts are subject to the Proposed Rule; (2) the mandatory requirement that the employer member obtain duplicate confirmations and account statements for all outside brokerage accounts (as defined below); (3) the fifteen business day time limit for obtaining employer

[1] The Committee of Annuity Insurers is a coalition of 30 life insurance companies that issue fixed and variable annuities. The Committee was formed in 1981 to participate in the development of federal securities law regulation and federal tax policy affecting annuities. The member companies of the Committee represent over two-thirds of the annuity business in the United States. A list of the Committee's member companies is attached as Appendix A.

consent to an associated person's outside brokerage account(s); (4) the requirement for employer member consent to outside brokerage accounts for investment company securities and variable contracts; and (5) the requirement that the employer member confirm the closing of an associated person's account after the employer member has revoked consent. The Committee also urges FINRA to consider an extended notice period for the compliance effective date of the Proposed Rule, if approved as proposed.

Scope of the Phrase "Personal Financial Interest"

Proposal. Paragraph (a) of the Proposed Rule would require an employer member to obtain account records for any account in which an associated person has a "personal financial interest." The Proposal Notice states that, as a general matter, an associated person would have a "personal financial interest" in a spouse's account.

Comment. The Committee notes that longstanding guidance issued by the NASD in connection with Rule 3050 has limited Rule 3050's application to accounts where an associated person has a "financial interest in" or exercises "discretion" over the account. In particular, the NASD has explained that accounts held by a relative (such as a spouse) would be subject to the reporting requirement if the registered representative "places the orders for the account."[2] The Committee requests that FINRA confirm that such guidance, which has informed and shaped existing policies and procedures, would apply to the phrase "personal financial interest." If FINRA intends to expand the scope of this phrase to cover accounts other than those where the associated person is authorized to place orders, or in other ways exercises discretion over the account, the Committee requests that FINRA explain the regulatory concern warranting a departure from this longstanding guidance.

Mandatory Requirement to Obtain Duplicate Account Statements and Confirmations

Proposal. Paragraph (a) of the Proposed Rule would mandate that, as a condition to consenting to an associated person's request to open an account (an "outside brokerage account') with another firm ("executing member"), the associated person's employing member firm ("employer member") instruct its associated person to have the executing member provide the employer member with duplicate account statements and confirmations (together "account records") for the outside brokerage account. The Proposed Rule also would mandate that the executing member implement an instruction from the associated person to provide account records for the outside brokerage account to the employer member. The Committee notes that the Proposed Rule is silent on the methods or procedures for providing such account records.

[2] *See* NASD Notice to Members 83-17, Amendments to Rules Governing Transactions Executed for Persons Associated with Another Member (May 1, 1983) (announcing amendments to Article III, Section 28 of the NASD Rules of Fair Practice to extend the rule's requirements to accounts over which associated persons exercised discretion or had a financial interest).

Comment. Committee members are concerned with the Proposed Rule's mandatory requirement that employer members obtain account records for all outside brokerage accounts. The Committee observes that a mandatory requirement is inconsistent with the historical policies and purposes of Rule 3050. Committee members note that Rule 3050 has long permitted employer firms to utilize a risk-based approach in obtaining account records for outside brokerage accounts, in recognition of the diverse nature of the business operations of FINRA members. The Committee submits that employer members whose activities are limited to those of a wholesaling or introducing firm and who do not engage in the solicitation of equity trades, research or market-making – as is the case for many of the FINRA member firms affiliated with Committee members – are not engaging in business activities warranting the collection and close review of account records for outside brokerage account transactions. Committee members whose business activities are so limited believe that the risk-based procedures already in place pursuant to Rule 3050 are more than sufficient to address any underlying regulatory concerns. Adopting a one-size-fits-all approach that applies equally to all employer members and all outside brokerage accounts would result in an inefficient use of increasingly scarce resources, and is inconsistent with regulator and industry preferences for risk-based compliance programs. Further, Committee members believe that the Proposed Rule's mandatory approach, requiring receipt of account records for every outside brokerage account, without regard to reliance on a risk-based analysis, would provide little, if any, real benefit and would be very costly to implement.

Committee members also note that compliance with the Proposed Rule would entail significant costs for executing members as well as employer members. Compliance with the Proposed Rule would likely force both employer members and executing members to develop extensive monitoring and verification systems simply to verify and confirm that all account records that should have been sent and obtained were in fact sent and obtained. Moreover, Committee members note also the additional costs for firms that have already invested significantly in effective monitoring systems consistent with Rule 3050.

To address these concerns, the Committee suggests maintaining Rule 3050's flexible, risk-based approach, which allows (rather than requires) employer members to request account records as they determine necessary and appropriate. Committee members view a flexible, risk-based approach as a more effective regulatory tool in light of the diverse nature and business operations of FINRA members.

However, if FINRA proceeds with adopting the mandatory requirement reflected in the Proposed Rule, the Committee recommends that FINRA give serious consideration to conditions that would assist member firms with limiting implementation and maintenance costs. First, the Committee recommends that executing members be required to transmit account records to employer members electronically upon the employer member's request. Further, in recognition that employer members may be most interested in the trade details reflected on account records,

particularly in a format suitable for generating activity and exception reports, the Committee recommends replacing the terms "account statements and confirmations" in the Proposed Rule with the terms "account statements and confirmations or the transaction information reported therein, in paper or compatible electronic format, as requested by the employer member."

Also, the Committee notes that the Proposal Notice does not provide guidance on the nature and scope of review of account records FINRA expects members to undertake as a matter of oversight. In this regard, the Committee notes that guidance issued in connection with Rule 3050 has recognized that the purpose for a review process is to assess whether a transaction in an outside brokerage account is "adverse" to the financial interest of the employer member.[3] The Committee wishes to point out that employer members have developed review and surveillance processes based on that determination. The Committee requests confirmation that this principle can continue to guide employer member reviews of account records for outside brokerage accounts.

Fifteen Business Day Time Limit for Obtaining Employer Consent to an Associated Person's Outside Account(s)

Proposal. Supplementary Material .01 to the Proposed Rule ("Proposed SM .01) would require an associated person to obtain the employer member's written consent to an account opened prior to his/her association with the employer member. Proposed SM .01 would apply a hard deadline of fifteen business days to this process.

Comment. The Committee notes that the Proposed Rule's other provisions imposing a time frame for compliance actions utilize a "prompt" standard.[4] The Proposal Notice does not explain why Proposed SM .01 imposes a time frame for obtaining the employer's written consent to an account opened prior to his/her association with the employer member measured in days. The Committee suggests that FINRA revise SM .01 to require associated persons to "promptly obtain" the written consent of the employer member. This approach would align Proposed SM .01's language with the rest of the Proposed Rule. It could also afford associated persons and employer members flexibility when dealing with unique employment situations.

Narrowed Scope of Exemption for Investment Company Securities Accounts

Proposal. Supplementary Material .03 to the Proposed Rule ("Proposed SM .03") explains that "the requirement to provide to the employer member duplicate account statements

[3] *See Id.* (noting that the rule "addresses the responsibilities of members to avoid adversely affecting the interests of other members when executing transactions for persons associated with such other members").

[4] *See, e.g.*, Proposed Rule 3210(c); Supplementary Material .04 to the Proposed Rule.

and confirmations shall not be applicable to accounts for or transactions in unit investment trusts, variable contracts or redeemable investment company securities, unless the employer member requests receipt."

Comment. The Committee notes that Proposed SM .03 is rooted in Rule 3050. However, Proposed SM .03 would provide a far more limited exemption than the current provision in Rule 3050. More particularly, Rule 3050 provides a complete exemption from its provisions, for both employer members and executing members, for outside brokerage accounts limited to transactions in unit investment trusts, variable contracts, and redeemable securities of registered investment companies (collectively, "investment company securities"). In other words, there is no prior consent requirement for any such accounts. Proposed SM .03 would effectively subject outside brokerage accounts limited to investment company securities to the requirement that an employer member maintain a process for the internal review and consent, on an account-by-account basis, for such accounts. The Committee questions why FINRA is subjecting outside brokerage accounts for investment company securities to this requirement, when for more than 25 years no such requirement has applied. When this exemption was first adopted, the NASD correctly noted that transactions in investment company securities do "not appear . . . to present the same potential for adverse impact on an employer member as might exist with respect to other transactions and the notification requirement appears to be unnecessarily burdensome with respect to such transactions."[5] The Proposal Notice neither explains what new potential for adverse impact has been identified, nor offers any other regulatory or compliance issues potentially necessitating an internal account-by-account review and consent process. The Committee submits that the burdens to be placed on employer members by Proposed SM .03 seem unsupported by the record.

Furthermore, the Committee notes that neither the Proposal Notice nor the Proposed Rule addresses what action an employer member should take with regard to all existing outside brokerage accounts of associated persons limited to investment company securities. Given how long the current exemption has been in place, the Committee believes that many member firms in the aggregate have tens of thousands of associated persons who have outside brokerage accounts opened for the purpose of investing in investment company securities. Committee members are especially aware that in many cases a variable contract can be purchased by an associated person only through opening an outside brokerage account with another member authorized to offer that variable contract. Implementing a process for the retroactive review and consent of all of these accounts could be an extensive and very costly process, with little or no resulting benefit. Again, the Committee encourages FINRA to expand the exemption in Proposed SM .03 to match the scope of the current exemption in Rule 3050.

[5] *See* NASD Notice to Members 83-17, Amendments to Rules Governing Transactions Executed for Persons Associated with Another Member (May 1, 1983).

Finally, the Committee notes that, since the original adoption of Rule 3050, the financial services industry has introduced a number of investments that are substantially similar to investment company securities in terms of their structure and operation, and in terms of the absence of any potential for adverse impact on employer members. Such investments include 529 plans, exchange-traded funds and other kinds of registered insurance products. The Committee recommends that the exemption for investment company securities be expanded to cover all such similar investments. Doing so would serve the same policy purposes behind the original exemption, lessen the burden placed on member firms to comply with the Proposed Rule, and allow members to focus their supervisory efforts on accounts that pose the greatest risk.

Requirement to Confirm the Closing of Certain Accounts

Proposal. Supplementary Material .04 to the Proposed Rule ("Proposed SM .04") would require an employer member to "promptly obtain records" from an executing member that an associated person's outside brokerage account was closed if the employer member revokes its consent to the account.

Comment. The Committee notes that Proposed SM .04 does not compel the executing member to close the account upon receipt of revocation of consent, or to provide records of account closing to the employer member. Thus, this new mandate imposes a burden on employer members without placing a parallel responsibility on executing members. More particularly, employer members have no assurance that an executing member will in fact close an account upon its receipt of notice of an employer member's revocation of its consent, or provide any evidence of the closing to the employer member. The Committee is concerned that employer members would be burdened needlessly with extra administrative costs associated with the inevitable follow-up activity to obtain records of account closings from executing members. Furthermore, requiring an executing member to "promptly" obtain records of the account closing – when not requiring an executing member to promptly provide such records – may allow a noncompliant executing member to place the employer member in violation of the Proposed Rule.

The Committee recommends that FINRA eliminate the requirement that an employer member obtain evidence of account closing. Once an employer member has revoked its consent to an account, it has no control over the executing member's internal processes, and it is unclear what benefit would be derived from this requirement. Alternatively, the Committee recommends that FINRA require an executing member to promptly provide the employer member with records of the account closing. Placing this burden on the executing member, which controls the account closing process, makes far more sense than essentially holding the employer member (who has no control) responsible for the executing member's actions.

Need for an Extended Implementation Period

Proposal. The Proposal Notice does not discuss any plans regarding the length of the period of advance notice for the compliance effective date of the Proposed Rule, if approved.

Comment. The Committee recommends that FINRA allow no less than 12 months advance notice for the compliance effective date of the Proposed Rule after it has been approved. The Committee believes that member firms will need at least that much time: to adopt new policies and procedures; to modify or create computerized and/or other account record tracking systems; to develop training programs for their associated persons to inform them of the new requirements; to train and/or hire additional compliance personnel to carry out the processes mandated by the Proposed Rule; and to re-document all previous consents of existing outside brokerage accounts and requests for account records in order to comply with the Proposed Rule's provisions.

The Committee appreciates this opportunity to comment on the Proposal Notice. We would be happy to answer any questions you may have about the views expressed herein.

Respectfully submitted,

SUTHERLAND ASBILL & BRENNAN LLP

BY: Clifford Kirsch (DGA)

BY: Susan Krawczyk (DGA)

FOR THE COMMITTEE OF ANNUITY INSURERS

Appendix A

THE COMMITTEE OF ANNUITY INSURERS

AEGON Group of Companies
Allstate Financial
AVIVA USA Corporation
AXA Equitable Life Insurance Company
Commonwealth Annuity and Life Insurance Company
Conseco, Inc.
Fidelity Investments Life Insurance Company
Genworth Financial
Great American Life Insurance Co.
Guardian Insurance & Annuity Co., Inc.
Hartford Life Insurance Company
ING North America Insurance Corporation
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Life Insurance Company of the Southwest
Lincoln Financial Group
MassMutual Financial Group
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Ohio National Financial Services
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
RiverSource Life Insurance Company
(an Ameriprise Financial company)
Sun Life Financial
Symetra Financial
USAA Life Insurance Company

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

Re: Regulatory Notice 09-22

Dear Ms. Asquith,

We appreciate the opportunity to comment on FINRA Regulatory Notice 09-22 and the new proposed FINRA Rule 3210 regarding personal securities transactions by or for Associated Persons (AP).

As written, the changes in the proposed rule would be overly burdensome and difficult for member firms to comply with.

Currently NASD Rule 3050 requires notification to the firm for accounts over which the AP has discretionary authority. The firm has the right, but not the obligation, to obtain duplicate copies of confirmations and statements for such accounts. The proposal would require that all firms "must" obtain duplicate confirmations and statements. All firms would be required to establish new systems to log all accounts in which the AP has any conceivable 'personal financial interest,' track the receipt of such statements on a regular schedule, identify if any such statements are not received, revoke the account with the executing member, or "…obtain promptly records from the executing member that the account was closed...".

In addition, as drafted the accounts for which the rule would apply are not objectively determinable. Without further guidance, the proposal could be construed to expand the number of accounts covered by the rule from the more objective classification of "discretionary authority" to the ambiguous requirement of any account over which the AP has a "personal financial
interest". For example, does the AP have a "personal financial interest"
in the accounts of room mates, domestic partners, siblings, parents, neighbors, UTMA's, other relatives or friends? While 'discretionary authority' or even 'ownership' rights are objective criteria, 'personal financial interest' is too vague and unmanageable. If the proposed rule is enacted as drafted this term must be further defined or deleted.

Discretion to receive duplicate confirmations and statements should continue to be the firm's prerogative based upon each firm's unique business model and supervisory systems. Responsibility for all accounts and transactions should remain with the executing firm.

To the extent the employing firm desires to maintain direct supervision over the AP's accounts, the employing firm can require all transactions to be executed solely though the firm as a condition of employment or continued registration/association. Clearly the executing firm has the most timely information and ability to a refuse or rescind a transaction, report any suspicious activity and/or to contact the employing firm to discus concerns or otherwise coordinate investigations as appropriate.

Limited broker-dealers may not generally have personnel qualified as general securities principals to review and supervise transactions.

Such employing firms would not have the ability to take action to correct to rescind a transaction deemed improper or otherwise in violation of any rule. Large limited firms, generally engaged solely in the sale of variable insurance products and mutual funds would be required tor review of a very large number of statements and/or confirmations, develop new systems to manage the work flows, again without qualified general securities principals to conduct such reviews.

We would urge that NASD Rule 3050 as currently written be adopted as the consolidated FINRA Rule 3210 and appreciate FINRA's review and consideration of our comments.

Sincerely,

Steve Klein
Chief Compliance Officer
Farmers Financial Solutions, LLC

Dear Sir/Madam:

I wish to oppose the Proposed FINRA Rule Governing Personal Securities Transactions on three points:

1. FINRA's attempt to get more information on the potential of insider or unauthorized trading by Reps completely ignores the potential for abuse against the Rep., without adding any source of information that isn't already available to the Firm.

There is a real danger that Firms and Supervisors would be in a position to withdraw authorization for an outside brokerage account under somewhat vague circumstances (not receiving statements and confirms in a timely manner...I have the same complaint about my current Clearing Firm sometimes!). Additionally, there is the potential for abuse relating to Supervisor/Rep personality conflicts, where a Supervisor now can literally prevent a Rep from obtaining or holding a brokerage account!

There is no language that addresses what remedies a Rep might have in many of these cases; What is a Rep to do if his/her Firm withdraws authorization for a brokerage account, and will not give authorization to open an account elsewhere to transfer those assets? Is the account to be frozen indeterminantly? What if a Rep suspects that his/her Supervisor is using this authorization/withholding of authorization as a tool to retaliate or discipline the Rep for some other reason? What happens when a Rep leaves the Firm...how does he/she regain control of their assets if they are either frozen and at outside Firm, or, since he/she doesn't have a new Firm yet...must be held by the Rep, thus missing a legitimate investment opportunity? What if the Rep leaves the industry - is there going to be a time-limit before they can regain control of their assets? How would this affect an IRA, which can't be distributed without penalty? Will FINRA want to expand this at some point to give the Firms electronic access on a daily basis to these accounts, or will they be happy with paper statements received 15 days after the month's end? These questions alone indicate the massive amount of additional Rules that will be needed to govern this requirement.

The concept that a Rep, once he/she chooses to become registered, must give up his/her right to maintain a brokerage account unless he/she gets and continues to receive "approval" from their employer, seems an incredible opportunity for abuse and un-intended consequences, especially when this review process is already available to the Firm. Firms already have the right to request duplicate statements and confirms from Reps with outside brokerage accounts, and to discipline (even terminate their registration) if those requests are ignored and/or prohibited transactions are found.

Additionally, for many years, Brokerage Firms have included a question on their New Account applications, asking if the applicant is affiliated with a Member FIrm. Once that is answered in the affirmative, the Firm automatically contacts the employing Firm, and inquires whether duplicate confirms and statements are requested. This system of

notification is already in place - the need to give further power to the employing Firm in overreaching.

2. FINRA hasn't considered how it might deal with those accounts where the Rep is either a Trustee or Guardian or other authorized person for the benefit of another. Are those people (Elderly parents, children, etc.) also forced to have their investment assets disclosed, and held at the whim of the employer of their son/daughter? This seems incredibly invasive to the privacy of those person who are not employed by the Firm, and does not seem to accomplish anything that can not be accomplished by the existing Rules and Regulations. Currently, if a Firm suspects insider trading by a Rep, they can report that information, and Market Surveillance can proceed to request Blue Sheets for that security, and detect improper trading in family-related accounts of a particular security (in addition to other previously un-detected persons), without disclosing the entire holdings of that family member to the Rep's employer.

Despite FINRA's current assertion that this should only extend to a Rep's "spouse", there is nothing that once begun, this practice couldn't be extended to include parent's, aunts, uncles, siblings and the other categories usually reviewed by Market Surveillance as related to the Rep.

3. FINRA should not put the FIrm in the "1st blame position" of detecting insider trading. Although it may easily detect suspicious activity in a Rep's account where they are buying or selling large blocks of thinly-traded securities, my Firm has had Blue Sheet requests for INTC and CSCO! Is my Small Firm going to be disciplined because a Rep I have traded INTC, and we didn't detect that he/she had insider information?

FINRA has vast resources, including Market Surveillance Investigators and Blue Sheets to obtain information where insider or improper trading is suspected. This is Market Surveillance's job, and although Firms can be expected to support and assist with this, they shouldn't be in danger of discipline if they miss something that isn't detectible...especially to small FIrms with small numbers of employees. (This could also be difficult for Large Firms with thousands of employees, and accounts. Are they forced to review all employee trades in INTC today because of particular "breaking news" or volume spikes?)

Firms already have the ability to (and are already required by FINRA to review and) report unusually large buying or selling in low-volume stocks. Please do not further burden Firm personnel when existing Rules require us to do this already. <u>If FINRA is finding Firms that are NOT supervising the transactions of their Reps, then FINRA should discipline those Firms, not create troubling and invasive new rules for Firms that are properly supervising this activity.</u>

Thank you for your consideration of these points.

Laura Lang
IBSI
l.lang@ibsila.com

VIA ELECTRONIC MAIL

May 29, 2009

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

Re: Comment Letter – FINRA Regulatory Notice 09-22, Proposed FINRA Rule 3210, Consolidation of FINRA Rule Governing Personal Securities Transactions for or by Associated Persons

Dear Ms. Asquith:

National Planning Holdings, Inc. ("NPH") offers this comment letter on behalf of its subsidiary broker-dealers, all of which are Financial Industry Regulatory Authority (FINRA) member firms:

- Invest Financial Corporation (IFC) CRD – 12984
- Investment Centers of America (ICA) CRD – 16443
- National Planning Corporation (NPC) CRD – 29604
- SII Investments (SII) CRD – 2225

The four NPH Broker-Dealers have over 3000 Registered Representatives offering investment services to clients in all domestic jurisdictions. We appreciate the opportunity to submit comments on the issues raised in Regulatory Notice 09-22 regarding the proposal to create FINRA Rule 3210 governing personal securities transactions. The thoughts and comments provided in this letter have been reviewed by members of senior staff of our Firms, including the respective Presidents and Chief Compliance Officers, and represent the collective view of the NPH Broker-Dealers.

We understand the intent of Rule 3210 is to "promote more effective oversight of personal trading activities of associated persons of member firms", however, we respectively submit the following concerns related to challenges we foresee should this rule become effective.

Proposed Amendment:
(a) No person associated with a member shall, without the prior written consent of the member ("employer member"), open or otherwise establish at a member other than the employer member ("executing member"), or at any other financial institution, any account in which securities transactions can be effected and in which such associated person has a personal financial interest. As a condition to such prior written consent, the employer member must instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member.

Comments:

- In reviewing proposed Rule 3210 is appears that there is a lack of consideration for the unique and varied business and operational models across member firms. For instance, generally fully disclosed introducing broker-dealers, do not engage in market making or underwriting activities, nor do they have research departments. Based on this model the relative risk for insider trading by associated persons is extremely low. To require all member firms, regardless of business scope to attain duplicate statements in addition to confirmations, (which would be a new requirement altogether), appears overly burdensome and would likely not result in the intended benefit of additional oversight.

- Existing NASD Rule 3050 provides the employer member make the determination of whether "duplicate copies of confirmations, statements, or other information with respect to such account" is necessary in relation to their oversight of the associated person's activities in the account. Based the issue cited above, in relation to variations of risk based on different business models, we would suggest maintaining this flexibility to allow employer members the flexibility they need in assessing their supervision needs.

- Based on the following element of proposed Rule 3210, "*As a condition to such prior written consent, the employer member must instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member",* the onus appears to be placed on the associated person to liaison between the employer firm and executing firm. Currently, Rule 3050 relies on the employer member to provide written a request to the executing member should duplicate statements, or other information be desired. From an operational standpoint, it will be very challenging to ensure associated persons are making the proper requests for duplicate statements and confirmations to the executing member. We suspect the concern related to privacy of information caused FINRA to propose that the associated person now be engaged to make such a request. However we suggest this be carefully evaluated to determine if other options are available to continue to allow the employer member to make these requests on behalf of the associated person.

Proposed Amendment:

.01 Account Opened Prior to Association With Employer Member. *For the purposes of paragraphs (a) and (b) of this Rule, if the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within fifteen business days of becoming so associated, shall obtain the written consent of the employer member to maintain the account and shall notify in writing the executing member or other financial institution of his or her association with the employer member and personal financial interest. The associated person shall instruct the executing member or other financial institution to provide to the employer member duplicate account statements and confirmations as of the date of his or her association with the employer member.*

Comments:

- In relation to accounts opened prior to association with an employer member firm, existing NASD Rule 3050 provides for "prompt" notification to both member firms in these cases. With an appreciation for the transition process of newly associated persons, we feel the existing provision within Rule 3050 offers a more reasonable standard versus a fifteen business day time period which is being proposed.

Proposed Amendment:

.03 Duplicate Account Statements and Confirmations. *The requirement to provide to the employer member duplicate account statements and confirmations shall not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the employer member requests receipt of such duplicate account statements and confirmations.*

Comments:

- NASD Rule 3050, Section (f) Exemption for Transactions in Investment Company Shares and Unit Investment Trusts, clearly indicates the entirety of Rule 3050 does not apply to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, or to accounts, which are limited to transactions in such securities. Proposed FINRA Rule 3210, Supplementary Material item .03, exempts only the requirement to provide duplicate accounts statements and confirmations, but does not completely exempt direct positions in UITs, VAs or mutual funds. We request that FINRA clearly exempt these packaged product positions from the rule. The failure to clearly exclude these positions will create significant administrative burden for member firms, without addressing any regulatory concerns.

Proposed Amendment:

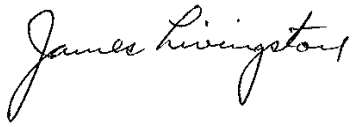
.04 Failure to Receive Duplicate Account Statements and Confirmations. *If an employer member does not receive the duplicate account statements and confirmations required pursuant to this Rule in a timely manner, the employer member shall revoke its consent to maintain the account, and shall so notify 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.*

Comments:

- We believe that the last sentence of this provision should be eliminated. The ability for the employer member firm to exert authority over the executing member to ensure the account is closed will be difficult to manage, as the employer ultimately has no control over the closing of the account. This places undue burden on the employer to continue to apply pressure to the executing member in cases where the executing member may not have satisfied this element of the rule in a prompt manner.

In summary, the NPH Broker-Dealers reiterate their support of FINRA's rule consolidation process. We have great appreciation for the time and efforts involved in such an enormous undertaking and believe that member input into the process is critically important. However, we respectfully request that the FINRA consider the issues we have outlined related to Regulatory Notice 09-22 and proposed FINRA Rule 3210, which may have unintended consequences to the member firm community.

Sincerely,



James Livingston
President/Chief Executive Officer
National Planning Holdings, Inc.

Regulatory Affairs
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St. Louis, MO 63103
MO 3110
314-955-6851
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June 4, 2009

Via E-mail: pubcom@finra.org

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K. Street, NW
Washington, DC 20006-1506

Re: Regulatory Notice 09-22
FINRA Rule Governing Personal Securities Transactions

Dear Ms. Asquith:

Wells Fargo Advisors, LLC ("WFA") is pleased to submit the below comments concerning FINRA's proposed Rule 3210 on personal securities transactions. WFA supports generally the principles underlying proposed Rule 3210 as firms, financial professionals and the investing public benefit from the oversight of the personal trading of regulated professionals. We file this brief letter to highlight some concerns raised by the proposed rule in its current form.

WFA consists of brokerage operations that administer over $900 billion in client assets. It accomplishes this task through 15,600 full-service financial advisors in 1,100 branch offices in all 50 states and 5,900 licensed financial specialists in 6,610 retail bank branches in 39 states. It would monitor the personal trading of almost 39,000 persons utilizing the standards in the proposed rule.

As proposed, the rule prohibits an associated person at a member firm from opening or maintaining an outside brokerage account without the prior written consent of the associated person's employer. In order to grant the consent, the employer firm must require the associated person to instruct the firm handling the account (the "executing firm") to send to the employer duplicate statements and confirms. The associated person must both advise the executing firm of the employment by a member firm and of the personal financial interest in the account. The executing firm is prohibited from carrying out any transactions unless it has both: 1) the employer's written consent and 2) the associated person's instruction to send duplicate statements and confirms to the employer.

From the executing firm standpoint, the proposed process can be cumbersome and contain unnecessary steps. Once the executing firm receives the employer's written consent, there is no reason to have the associated person also sign documents requesting that the executing firm send duplicate statements. The employer's consent will automatically trigger those obligations on the executing firm. Under the proposal, there will be delay and confusion as executing firms try to match up employer consents with associated persons' instructions on duplicates. There could be errors in the timing of which came first, inadvertently creating the potential for violations of the rule. FINRA should revisit the rule and eliminate the associated person instruction step for member firms.

Whether FINRA makes the change on instructions, there is a tremendous need to have clearly established central points of communication for personal trading issues. With 660,000 registered brokers and countless other associated persons in constant movement, it is unwieldy to have either employer firms or executing firms bounce around phone directories searching for the correct department or individual to handle personal trading consents or duplicate statements. FINRA should require all firms to submit and update the listings of a central contact(s) for personal trading issues. FINRA should maintain that list on its web site and offer a hard copy to members for a nominal cost. Centralized contacts will make it easier to eliminate the need for the associated person to provide an instruction to send duplicate statements. Centralized contacts should actually assist firms in managing both sides of their personal trading obligations. Under the proposed rule, permission must be revoked and accounts must be closed if timely statements are not received. A centralized contact should reduce instances where such revocations occur because of misdirected communications or other mishaps. FINRA will find that establishing centralized contacts will likely assist it in its regulatory oversight of the process.

For accounts opened before an associated person joined the employer firm, FINRA proposes that the associated person have 15 business days after joining the firm to *both* receive written permission from the employer and communicate the association with the employer to the executing firm. The new hire process at most firms has so many moving parts, from health benefits, retirement benefits, registration issues and others that 15 business days is an unrealistic time frame. Thirty calendar days seems more reasonable, and it should reduce the burdens that will flow from "gotcha" violations of a 15 business day standard.

Thank you for providing WFA the opportunity to comment on the personal securities transactions rule proposal. If you have any questions regarding this comment letter, please do not hesitate to contact me.

Sincerely,

Ronald C. Long
Director, Regulatory Affairs

Thank you for the opportunity to comment on the proposal.
In the preamble, it seems that FINRA presumes that spouses have a "personal financial interest" in each other's financial affairs—in this case, a securities account maintained at another financial institution. I believe that this is an incorrect assumption, as there are numerous instances under state law where a spouse does NOT have a "personal financial interest" in the other spouse's finances. I would prefer that the proposed Rule only make such an assumption of a "personal financial interest" if the relevant state law explicitly or impliedly grants such a presumption—usually by the way a particular account is titled, and the manner in which spousal financial assets are held.
The proposed rule should not specify the information-gathering methodology, as the particular methodology should be left to the discretion of the particular FINRA member.
I note that the proposed rule seems to cover transactions for open-end mutual funds and variable annuities and variable life insurance policies, which were formerly exempted from the "old" NASD rule that addressed personal securities transactions of associated persons. I think it is still prudent to exempt those types of personal securities accounts from the proposed rule.

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TAURUS
COMPLIANCE CONSULTING, LLC

3330 190th NE Drive, Suite 1418, Aventura, Florida 33180

June 5, 2009

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

In re: *Proposed FINRA Rule 3210*

Dear Ms. Asquith:

Taurus Compliance Consulting, LLC appreciates the opportunity to comment on proposed FINRA Rule 3210, which would consolidate NASD Rule 3050 and incorporate NYSE Rule 407.

Proposed FINRA Rule 3210, as detailed in Regulatory Notice 09-22, pertains to the proper supervision of the personal securities transactions for or by associated persons.

Taurus Compliance Consulting, LLC, hereby known as "Taurus", generally encourages all proposals which create or consolidate sensible obligations and rules for a member firm in accordance with the development of the FINRA Consolidated Rulebook. Taurus strongly believes that streamlining and consolidation is beneficial in providing clarity to the industry and will assist our clients in the development and implementation of more uniform policies, procedures and compliance controls.

1. **Methodologies currently employed to obtain information pursuant to existing rules and the processes and controls currently implemented upon receipt of the required information**

Taurus strongly believes that registered firms should continue to have the flexibility in choosing how it receives duplicate account statements from the executing firm of an employed registered representative. The processes and controls currently implemented by Taurus clients are highly dependent on whether the firm requires that outside brokerage accounts be held at the employing firm's clearing agent. If this is so required, then our clients are able to maintain electronic databases and are able to monitor unusual or suspicious trading activity and generate exception report generated by the firm's clearing agent. This is often the most effective method used by firms in monitoring trading activity.

However, some firms still receive hard copy duplicate account statements through the mail, a compliance principal is responsible for reviewing and monitoring all registered representative trading activity in the account statements. While this process may be cumbersome and labor

intensive, many firms still employ this approach. Taurus would like to stress that registered firms be given flexibility in choosing how it approaches this review process. For very small firms with very few registered representatives, it may be more practical for that firm to continue to receive duplicate account statements in the mail for manual review by a compliance principal. Larger firms with a substantial number of registered representative employees may find it more effective to only permit employees to have brokerage accounts at the firm's clearing partner, thereby allowing electronic exception reports to be generated by the executing firm for review by the employer firm.

As always, Taurus would like to emphasize that smaller firms may not have the technological resources to implement many of the electronic processes that larger firms possess.

Taurus Compliance Consulting, LLC exists to provide our clients with the knowledge and expertise necessary to have the most robust compliance structure possible. We constantly strive to strike a balance between customer protection and market efficiency. As stated earlier, Taurus is a proponent of rule proposals that streamline, simplify, and clarify the compliance obligations of a member firm.

Please feel free to contact me at 1.800.388.8822 (Ext. 125) or drome@tauruscompliance.com if you have any questions or would like to further discuss this proposed rule change. Thank you again for the opportunity to comment.

Sincerely,

Daniel C. Rome
General Counsel

June 4, 2009

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

Re: Regulatory Notice 09-22
Personal Securities Transactions

Dear Ms. Asquith:

The National Association of Independent Brokers-Dealers, Inc. (NAIBD or the association) was formed in 1979 to positively impact rules, regulations, and legislation by facilitating a consistent, productive relationship between industry professionals and regulatory organizations. The organization is national in scope with 350+ Broker-Dealer and Industry Associate Members.

NAIBD appreciates the opportunity to comment on the proposed rule noted above. We hope that our expressed views will have constructive value in presenting alternatives, issues and concerns regarding the new rule proposal, and that our responses to specific questions posed in the Regulatory Notice are informative.

NAIBD recognizes and appreciates the extent to which consolidation of the NYSE and NASD rules presents efficiencies and overcomes outdated language. In particular, the proposed elimination of NASD Rule 3050(a)'s requirement regarding account opening due diligence and the elimination of the specific supervisory requirements of NYSE Rule 407(b) positively reflect the overall efficiencies resulting from the consolidation of the rulebooks.

Notwithstanding this, NAIBD is concerned that neither the Proposed Rule 3210(a) nor the Regulatory Notice provides adequate guidance as to the scope of accounts deemed to be included in those with which the associated person has a "personal financial interest.' In the Regulatory Notice 09-22, FINRA parenthetically provides that as a general matter 'personal financial interest' is meant to include a spouse's account. The prior NYSE Rule uses the term "employee and family members." We note that many firms extend their firm-wide requirements to align more closely with the NYSE definition, thus including dependent children's and where the associated person has control (e.g., power of attorney) over another's accounts, but does not necessarily

reside in the same household (e.g., parents or in-laws). NAIBD requests additional guidance and clarification regarding FINRA's expectations in regard to accounts affected by the phrase 'personal financial interest.'

Also, as proposed, FINRA Rule 3210(b) requires the associated person to state that 'he or she has a personal financial interest' in the notice made to the executing firm. In our experience, such firms are diligent in fulfilling requests for duplicate confirmations and statements without explanation beyond the affiliation of the associated person with the employer member. Therefore, we believe this requirement serves no material purpose and as such is unnecessary.

NAIBD's membership includes numerous introducing broker-dealers who execute through one or more clearing broker-dealers. As written currently and in the proposed rule, FINRA does not clearly state whether or not associated persons' accounts technically held 'away from the firm' but at one or more of the firm's designated clearing firms would require duplicate statements to be provided to the member. Because these accounts are typically (or could be) categorized or numbered in a way that readily identifies them to the member as associated person accounts, NAIBD believes that the requirements of proposed Rule 3210 should not apply.

In consideration of existing and proposed state and federal laws and regulations designed to protect unauthorized access to personal information, NAIBD encourages the FINRA to consider incorporating language into Proposed Rule 3210(b) that would extend the associated person's notice obligation to include notice to cancel duplicates if/when the associated person's registration is terminated. NAIBD members have found that terminating the delivery of duplicates is often far more complicated and time-consuming than initiating their delivery, putting the former-employer member unwittingly in a position of unauthorized access, when little or nothing can be done to stop the flow of information.

In response to FINRA's questions:

"What methodologies do firms currently employ to obtain information pursuant to NASD Rule 3050 or NYSE Rule 407, as applicable?"

While most firms' procedures place the responsibility of prior account notice and approval on the shoulders of the associated person, NAIBD members indicate that the process of requesting duplicates from the executing member is typically initiated by the firm, rather than the associated person, based on a procedure that requires disclosure of personal investment accounts at the time of hiring, and periodically throughout the relationship.

Do firms collect account activity information (confirmations and statements) electronically, in hard copy or both? Should the proposed rule address such information-gathering methodologies and, if so, how?

Our members have identified no material barriers to collecting duplicates and statements from executing members as required. The procedures regarding methods of collection vary greatly and include both paper and electronic means. Because of this, NAIBD does not believe that the proposed rule should address specific methodologies for collection of account activity data, but rather leave to the member to tailor to its business model.

What processes and controls do firms currently implement upon receipt of the information required under NASD Rule 3050 or NYSE Rule 407, as applicable?

NAIBD members report using the personal investment data for a variety of purposes, including but not limited to insider trading, conflicts of interest, sales practices violations (such as trading ahead or other manipulative schemes), and overall soundness of the associated person's financial position. Many firms have established procedures to track, monitor and escalate for review changes in types of investments, net equity in the account, and numerous other potential red flags.

Thank you for the opportunity to comment on this proposed rule.

Sincerely,

// Lisa Roth //

Lisa Roth
Association Past-Chairman
Chair, NAIBD Member Advocacy Committee

615 East Michigan Street
Milwaukee, WI 53202

James R. Schoenike
President

May 29, 2009

Marcia E. Asquith
Senior Vice President and Corporate Secretary
1735 K Street, NW
Washington DC 20006-1500;

Dear Ms. Asquith:

RE: Regulatory Notice 09-22 **- FINRA Requests Comment on Proposed Consolidated FINRA Rule 3210 Governing Personal Securities Transactions for or by Associated Persons**

As President of Quasar Distributors, LLC, ("Quasar") a mutual fund distributor and limited purpose broker-dealer, I concur with the Investment Company Institute's ("ICI") comment letter dated June 5, 2009 regarding limited purpose broker-dealers and proposed FINRA Rule 3210.

Quasar's business model is exactly as described by the ICI in its comment letter. Associated persons of Quasar do not make, engage or participate in any recommendations, purchases or sales of securities. Receiving account statements and confirmations from our associated persons would not serve any compliance purpose given the nature of our business model.

Further, if required to receive this material, Quasar compliance personnel would be compelled to perform a review of the information, but with no apparent purpose or objective. This would be counterproductive towards maintaining a strong compliance environment within Quasar by devoting resources towards an exercise meant to detect and prevent risk or abuse, where there is no possibility of such activity.

Excerpt from ICI memorandum 23493 dated May 28, 2009 – "***The draft letter recommends that for limited purpose broker-dealers whose sole purpose is to distribute mutual funds, unit investment trusts, and variable annuity contracts, duplicate account statements and confirmations be required with respect to the personal trading of their "access persons" rather than their associated persons.*** *It points out that unlike associated persons of other broker-dealer firms, associated persons of these firms do not make, participate in, or obtain information regarding the purchase or sale of securities by investment companies or for private client accounts. Nor do they make any recommendations with respect to such purchases or sales. Therefore, an employer member that is a limited purpose broker-dealer that receives account statements and confirmations from its associated persons would not have a basis on which to evaluate the legitimacy of the trading activity. It also points out that despite that, by having required the transmittal of this information, there would be a perceived obligation for compliance personnel to review this information. This review potentially would take compliance personnel's time and attention away from areas where their oversight would be better spent."*

As described in the ICI memo, the scope of a mutual fund distributor is very focused. The additional requirement to receive account statements and trade confirmations are not truly applicable to Quasar associated persons. Quasar does not have access persons.

I appreciate the opportunity to provide my input on proposed FINRA Rule 3210. I would be happy to discuss my comments with you if necessary. Please feel free to contact me at 414-287-3994.

Respectfully,

James Schoenike

cc: Teresa Cowan
Andrew Strnad
Mike McVoy

Quasar Distributors, LLC
(414) 287-3994 • (414) 905-7939 fax
james.schoenike@usbank.com

Comment of Regulatory Notice 09-22

Sykes Financial Services LLC is a small firm with "limited business in mutual funds and/or variable annuities only."

Since our firm is not involved in the wide array of products where there could be abuses and does not produce statements, it would be logical to exempt firms operating under the "limited business exemption" from the requirement to provide statements to other member firms. Also, other member firms where our associated persons hold their personal securities accounts dealing in stocks, bonds, etc. should not be required to provide statements and confirmations for those accounts as the activity in those accounts is not related to our form of business.

William R. Sykes, President
Sykes Financial Services LLC
Tel: (570) 839-7776

PFS INVESTMENTS INC.

Member FINRA®

June 5, 2009

Via Email to *pubcom@finra.org*

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: Proposed FINRA Rule 3210: Personal Securities Transactions for or by Associated Persons

Dear Ms. Asquith:

PFS Investments Inc. ("PFSI") appreciates the opportunity to comment on FINRA's proposed Rule 3210. PFSI commends FINRA's efforts to streamline and combine the rules of the former NASD and NYSE. We believe, however, that proposed Rule 3210 does not fully consider the different business models of member firms and, as a result, eliminates the flexibility NASD Rule 3050 currently provides for all limited-service broker-dealers.

NASD Rule 3050 currently requires that a member that opens an account for an associated person of another member ("executing member") provide duplicate copies of the associated person's confirmations and statements to the employing member *upon its written request.* NASD Rule 3050, therefore, allows the employing member the flexibility of deciding whether such information would be useful in supervising its associated persons, taking into account its business model and the activities conducted at the firm. In an effort to streamline the rule and remove the burden on full-service firms of *requesting* duplicate confirmations and statements, FINRA has proposed a requirement for all firms to obtain them. An unintended consequence of this effort to streamline, however, is that member firms that would not otherwise require the statements and confirms will now be unfairly overburdened by receiving thousands upon thousands of duplicates.

We certainly appreciate the supervisory concerns that NASD Rule 3050 was designed to address, i.e., that some representatives can use information gained through their position to profit from improper transactions. A representative at a full-service firm could establish an account away from his employer so he could, for example, shadow a customer's account, trade ahead of research, trade ahead of block transactions, or take advantage of material non-public information obtained as a result of the investment banking activities of the firm. There is a large population

of your membership, however, where those concerns are not applicable. Associated persons of limited-service firms generally do not have access to the types of information that could be misused through trades in an outside brokerage account. NASD Rule 3050, therefore, allows these firms to obtain confirmations and statements on an outside brokerage account only when they think it necessary for their supervisory controls.

Unfortunately, that flexibility is lost in the proposed rule. We respectfully request that the proposal be revisited because this flexibility is important and the burden imposed in the absence of such flexibility is real. Having firms remit unnecessary duplicates as well as having firms receive unnecessary duplicates does not appear to be a simplified approach to an existing rule. Current NASD Rule 3050 allows limited-service firms to allocate their supervisory resources to actual risks presented by their business models. Proposed Rule 3210, however, would require that limited-service firms, such as ours, spend resources receiving, sorting and then reviewing these documents to evidence an effort to detect wrongdoing that could not occur at these firms because of their limited business activities.

Regarding our firm, PFSI is an introducing broker-dealer with a limited securities business that is restricted to retail sales of non-proprietary mutual funds, variable annuities and 529 college savings plans. The firm does not offer or sell individual stocks, bonds, or options, or provide advice on those securities. Also, the firm does not conduct or participate in investment banking activities, public offerings, or any of the underwriting or market-making activities normally associated with a general securities firm. Accordingly, our business model does not provide our representatives with the opportunity to gain from the misuse of information obtained as a result of the activities of the firm or the firm's clients. Securities bought or sold in an outside brokerage account by our registered representatives, therefore, pose no risk of a violation for the manipulation or misuse of information. In light of our limited securities business, it makes little sense for PFSI to be required to obtain confirmations and statements on the outside brokerage accounts of its representatives.

Unlike at most full-service firms, if our representatives desire to invest in individual securities, they ***must*** open an outside brokerage account. Our existing procedures require that our representatives notify us in writing of these accounts, but we exercise the option under the current rule and do not obtain duplicate confirmations and statements from the executing member as, for our business model, the review and analysis would serve no real supervisory purpose. If the need to obtain this information should arise, then the firm has the account information on file and can request confirmations or statements at that time.

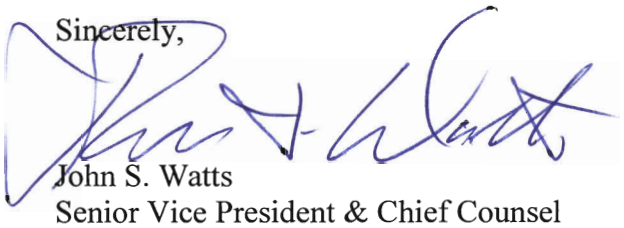
The approach taken by PFSI, which is currently provided for in NASD Rule 3050, reduces the administrative burden on the executing member and allows PFSI to allocate our supervisory resources in a manner that is reasonably designed to prevent and detect violations relevant to our business. As drafted, the proposed rule would remove this flexibility and unnecessarily require PFSI (and similarly situated firms) to expend time and effort to receive and catalogue confirmations and statements on our representatives' outside brokerage accounts. Due to the large number of representatives at PFSI (approximately 20,000), it is evident that the

proposed rule would require a substantial commitment of resources and, therefore, negatively impact the overall effectiveness of our supervisory system.

We respectfully request, therefore, that FINRA amend proposed Rule 3210 to preserve the current flexibility of allowing broker-dealers with limited business models to individually decide whether they need duplicate statements and confirmations in order to supervise their representatives. Requiring *all* firms to obtain that information is contrary to FINRA's longstanding policy of allowing firms to tailor their supervisory procedures to meet their individual needs.

Thank you for your consideration of these comments and we hope that they will be of assistance to the Staff in its preparation of the final rule proposal.

Sincerely,



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June 5, 2009

By e-mail and U.S. mail transmission

Marcia E. Asquith
Office of Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

Re: FINRA Proposed Rule 3210: Personal Securities Transactions

Dear Ms. Asquith:

We greatly appreciate the opportunity to share our views on proposed FINRA Rule 3210, which combines certain provisions of NASD Rule 3050 and NYSE Rule 407, as part of the development of a consolidated rulebook. ACLI is a national trade association with 340 members that account for 93 percent of the industry's total assets, 94 percent of life insurance premiums, and 94 percent of annuity considerations. Many of our members offer and distribute variable annuities through affiliated and independent broker-dealers ("insurance-affiliated broker-dealers"). We have participated in numerous NASD and FINRA rulemakings.

ACLI understands and supports the general objectives of FINRA's consolidation process. It is critical, however, that FINRA continue to recognize structural, operational and product-line distinctions among its broker-dealers as it executes rule consolidation. Proposed FINRA Rule 3210 does not implement these considerations. Indeed, FINRA's rule filing does not explain or justify the need to substantially alter existing procedures to approve and review employee accounts, despite the additional burdens the proposal would create for many broker-dealers.

Existing NASD Rule 3050 provides an appropriate risk-based approach to monitoring associated persons' personal securities transactions that functions well for many broker-dealers, such as insurance-affiliated broker-dealers, that have structures, operation and functions different from, and substantially more limited than, "wire-house" broker-dealers. We strongly urge FINRA to reconsider its initiative, including the proposed elimination of the current exemption for certain employee securities accounts, such as those holding only unit investment trusts ("UITs"), variable contracts or mutual funds, in light of the disproportionate impact the proposed rule would cause for a substantial number of broker-dealers.

As proposed, FINRA Rule 3210 would shift away from the existing risk-based approach and would instead impose mandatory consent, record keeping and monitoring requirements. The proposal will provoke a disproportionate expenditure of compliance resources even though the associated persons of insurance-affiliated broker-dealers have little or no contact with the kinds of material, non-public information that can create a risk of insider trading and other manipulative conduct that is the primary focus of the proposal. For these reasons, ACLI recommends that FINRA reconsider the rule in favor of continuing a risk-based approach, particularly for broker-dealers that are unlikely to be exposed to the problems the proposal seeks to address, due to the limited scope of their functions, products, and operations.

Overview of Proposal

In developing a consolidated rulebook, FINRA has proposed new Rule 3210 to replace existing NASD Rule 3050 and NYSE Rule 407. The proposed rule largely adopts and extends the mandatory consent and record keeping requirements of NYSE Rule 407. For NASD broker-dealers and their associated persons that were *not* NYSE member firms, this will require at least three major changes to procedures and related supervisory systems:

- While current NASD Rule 3050(c) requires associated persons to *notify* their member firm and executing member (or other type of financial institution) in writing of the intention to establish a securities account at the executing member, the proposed rule adopts the approach of NYSE Rule 407(a) by requiring the *consent* of the person's broker-dealer before the account can be opened. In addition, although NASD Rule 3050(f) exempted accounts limited to transactions in UITs, variable contracts, and mutual funds, the proposed rule imposes the consent requirement on such transactions and accounts.

- While NASD Rule 3050(b)(2) requires the executing broker, upon written request of the associated person's member firm, to transmit duplicate copies of confirmations, statements and other written information, the proposed rule adopts the approach of NYSE Rule 407(b) by requiring that duplicate confirmations and statements always be sent.

- While neither NASD Rule 3050 nor NYSE Rule 407 requires a particular kind of regulatory review by the associated person's member firm, the proposed rule requires the member firm to assure that account statements are received and, if not, to revoke its consent to maintain the account and to obtain records from the executing broker confirming that the account was closed.

In proposing these changes, the Notice does not indicate how any of these new requirements will promote more effective oversight or the impact it will have upon certain types of broker-dealers.[1] Nor does it address the distinct differences between broker-dealers that continue to exist and that were explicitly recognized by the different approaches taken on this issue by the NASD for NASD-only firms and by the NYSE for its member firms. This dichotomy occurs

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[1] The Notice announcing the rule proposal and seeking member comment states that the new rule "would promote more effective oversight of the personal trading activities of associated persons of member firms." It does not support that statement with any references to examination findings or enforcement actions.

because only 200 of FINRA's 5,400 broker-dealers would have confronted duplicate rule standards as NYSE members.

Statement of Position

One of the major purposes underlying both NYSE Rule 407 and NASD Rule 3050 is to implement Section 15(f) of the Securities Exchange Act of 1934, which requires broker-dealers to implement procedures "*reasonably designed, taking into consideration the nature of such broker or dealer's business*, to prevent the misuse in violation of the [Exchange] Act . . . of material, non-public information" (emphasis added), as well as Section 15A(b)(6) of the Exchange Act, which requires procedures "designed to prevent fraudulent and manipulative acts and practices." More generally, both rules aim "to prevent conflicts of interest that may arise from members' private security transactions."[2]

Thus, embedded in the foundation of FINRA Rule 3210 is a recognition that "one size does not fit all," a principle regrettably omitted in the proposed rule. Regulators readily recognize that certain areas of the securities business pose a higher risk of presenting conflicts of interest because associated persons may come into more frequent contact with material, non-public information. Examples include investment banking, research, market making, underwriting, proprietary trading, and block equities trading. Other areas, such as the distribution of mutual funds, variable annuities contracts and UITs, pose little, if any, risk that associated persons will come into contact with material, non-public information. This is consistent with the NASD's recognition that transactions in these products were not subject to market manipulation or free-riding and should be exempt from Rule 3050.[3]

A significant portion of ACLI membership engages in this more limited, low-risk business. Many ACLI members offer a limited range of products and their securities business typically focuses on variable annuity and mutual fund distribution. In addition, life insurers may create and market products and services that constructively address consumers' retirement, estate, tax, and financial planning needs. Over 50% of FINRA's universe of 675,000 registered representative work for broker-dealers affiliated with life insurance companies. These broker-dealers, however, are quite different from wire-house broker-dealers in structure, operation, products and services.

There is no indication that, in proposing FINRA Rule 3210, FINRA considered its diverse membership and the different levels of risk posed by member firms' various business models. The Notice contains no economic impact statement and does not quantify the burdens on member firms.[4] It does not indicate any deficient supervision under current NASD Rule 3050. Instead, it has adopted the general approach of NYSE Rule 407 and significantly limited the

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2 *See* Exchange Act Release 34-30744 (June 5, 1992), and Exchange Act Release 34-19347 (Dec. 30, 1982).

3 *See* Exchange Act Release 34-23866 (Dec. 15, 1986). It should also be noted that there are other products developed in recent years that are not subject to market manipulation or free-riding which would be appropriate to exempt from the proposed rule, including 529 plans and ETFs.

4 Section 23(a) of the Exchange Act requires the SEC to consider the anti-competitive effects of rule changes and to balance any impact against the regulatory benefit to be obtained, while Sections

exemption for transactions in mutual funds, UITs and variable annuities. This will impose a heavy burden on insurance-affiliated broker-dealers to develop and implement an infrastructure to review and approve requests for outside brokerage accounts, as well as to monitor and supervise personal securities transactions where there is little or no risk of conflicts of interest, or misuse of material, non-public information.

The proposed rules governing personal securities transactions should be subject to a flexible, risk-based approach. Mary Schapiro, then Chief Executive Officer of FINRA, stated in testimony to Congress that the process of drafting a combined rulebook would take into account the strengths of each organization. Regarding NASD regulation, its strength was "expertise in the sales practices used in selling products including mutual funds and variable annuities."[5] In the same testimony, Chairman Schapiro noted that the consolidated rulebook "does not mean that the smaller broker-dealers will be burdened by rules that are inapplicable to the scope or nature of their business for ease of consolidating rulebooks; rather, we will be careful in calibrating the rules to have an application to appropriate firms." For this reason, Chairman Schapiro stated that a guiding principle of the rulebook consolidation would be "to tier some rules according to firm size, business model or type of customer."[6]

Rulemaking regarding the monitoring of personal securities trading is an area where the tiered approach discussed by Chairman Schapiro is most consistent with carrying out the rule's purpose. It may make sense to impose a consistent framework upon firms and associated persons who engage in the types of business that may bring them into regular contact with material, non-public information. For insurance-affiliated broker-dealers and their associated persons that do not engage in these kinds of business, however, it is prudent to continue the risk-based approach of NASD Regulation, the organization that historically oversaw these firms and had the greater expertise in the sales practices associated with mutual funds and variable annuities.

Under current NASD Rule 3050, insurance-affiliated broker-dealers have already developed effective policies and procedures. Moreover, Rule 3050 already requires executing broker-dealers to provide duplicate confirmations and statements when requested. The rule proposal does not raise any recent examination issues or disciplinary actions that indicate deficiencies in current procedures or suggest that a significant change in approach is necessary.

15A(b)(6) and (9) of the Act require the SEC to evaluate carefully the competitive impact of proposed SRO rules and amendments.

5 Mary Schapiro, Testimony before the Committee on Banking, Housing and Urban Affairs Securities, Insurance and Investment Subcommittee United States Senate (May 17, 2007) (http://www.finra.org/Newsroom/Speeches/Schapiro/P019169).

6 Mary Schapiro, Remarks at CCO Outreach BD National Seminar (Mar. 7, 2008) (http://www.finra.org/Newsroom/Speeches/Schapiro/P038108). FINRA responsively revised its inaugural harmonization of Rule 3010 in response to comments from ACLI and others that the rule would have imposed a detrimental one-size-fits-all on broker-dealers that were not NYSE members, without regard to regulatory need or burden. This rule dealt with the scope of the terms office of supervisory jurisdiction and branch office.

Proposed FINRA Rule 3210 Will Impose Disproportionate Burdens on Insurance-Affiliated Broker-Dealers

As discussed above, the business of insurance-affiliated broker-dealers differs significantly from "wire-house" broker-dealers in their operations, products and services.[7] For these firms, the proposed rule's mandatory consent provision imposes significant burdens with little or no purpose. Many of the insurance-affiliated broker-dealers' associated persons have only a limited involvement supporting the securities business, as their principal responsibility is supporting the insurance business. While their registered representatives seldom have functions that lead them to have material, non-public information, the risk that the firm's other associated persons will obtain such information is even more remote. Moreover, the rule extends to those accounts in which the associated person has a "personal financial interest," including "as a general matter," the person's spouse. Yet for all of these people, consents must be obtained to open for all kinds of accounts, including those limited to transactions in UITs, variable annuities and mutual funds.

In practical terms, the fifteen business days for the newly associated person to obtain employer consent and notify the other financial institution of his or her association with a member firm in proposed Supplementary Material .01 is not workable in light of all the human resources, benefits, compliance and supervisory steps that occur when a new employee begins working. There are many steps to the new hire process and tasks for the associated person to complete, and within the proposed time frame the executing broker must also process the request for the associated person's member firm. Consistent with section (c) of the proposed rule, "promptly" would set a more reasonable standard.

The requirement of providing duplicate account statements and confirmations to the insurance-affiliated member also imposes a significant burden with little or no purpose. It is not clear what benefit is obtained by applying this requirement to all associated persons. Whether statements and confirmations are received manually or electronically, the volume may require a substantial investment in technology for storage and monitoring, as well as monitoring that instructions to close the accounts are sent and obeyed if receipt does not occur. These mechanical steps – for it is not clear what, if any transactions would merit substantive review in this context – will take resources away from identifying business risks, regulatory risks, and potential conflicts of interest. For example, in some accounts, such as managed accounts, there may be a high level of trading with no input by the associated member into the selection of securities. There is no rationale for gathering and reviewing these confirmations and requiring the account's closure if confirmations are not received.

Since most insurance-affiliated broker-dealers are not NYSE members and are not currently required to gather these documents under NASD 3050, they lack the infrastructure to conduct these reviews. ACLI believes that it will take its member firms at least one year to adopt new policies and procedures, develop the necessary technology to manage the documentation and to bring the accounts of current registered representatives in compliance with the proposed

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[7] In fact, most "wire-house" broker-dealers require their associated persons to maintain their securities brokerage accounts with affiliated or captive retail brokerages, thus decreasing the administrative burden on the wire-house members. This is not the case with insurance affiliated members, who are typically not affiliated with retail brokerages.

rule. The logistics, burdens and expense of creating and implementing these practices greatly overshadows the proposal's regulatory need.

Conclusion

Proposed FINRA Rule 3210 will impose a significant administrative burden on insurance-affiliated broker-dealers with little impact on deterring or detecting abusive conduct. ACLI strongly recommends that FINRA reconsider the proposed rule and propose a rule with either a risk-based or, at a minimum, a tiered approach that firms can tailor to their business model and attendant risks.

We appreciate the opportunity to share our views on this proposal. Please let me know if you have any questions, or would like to discuss our position further.

Sincerely,

Carl B. Wilkerson

Carl B. Wilkerson

Northwestern Mutual Investment Services, LLC

Jeffrey B. Williams
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June 5, 2009

Via E-Mail

Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1560

RE: Regulatory Notice 09-22 – Personal Securities Transactions

Dear Ms. Asquith:

Northwestern Mutual Investment Services, LLC ("NMIS")[1] appreciates the opportunity to comment on the above referenced FINRA notice concerning proposed consolidated FINRA rules governing personal securities transactions. NMIS fully supports FINRA's efforts to develop a consolidated rulebook that harmonizes and streamlines existing rules.

In regards to FINRA proposed rule 3210, NMIS appreciates the opportunity to comment on the proposed changes to NASD Rule 3050 and NYSE Rule 407. In addition to our comments in this letter, which focus on the proposal as to NMIS' particular perspective, we also strongly support in substantial part the comment letters submitted on behalf of the Financial Services Institute, the Committee of Annuity Insurers and the Securities Industry and Financial Markets Association.

The proposed rule would prohibit any associated person from opening or maintaining an outside brokerage account "in which securities transactions are effected" in which the associated person has a "personal financial interest," without the prior written consent of the employer member firm. The proposed rule further adds that, as a condition to granting prior written consent, the employer member must instruct the associated person to have the executing member or other financial institution provide duplicate account statements and confirmations to the employer member.

Additionally, proposed Supplementary Material .01 addresses circumstances under which an account has been opened prior to a person becoming associated with a member firm. Under those circumstances, FINRA similarly would require the associated person, within fifteen business days of becoming associated, to obtain the employer's consent to maintain the account and communicate association, together with instructions regarding duplicate account statements and confirmations for covered accounts, to the executing firm.

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[1] NMIS is a registered broker-dealer and wholly owned subsidiary of The Northwestern Mutual Life Insurance Company.

The proposal does not define the term "personal financial interest" in an account, though the Notice indicates that spousal accounts generally would fall under the definition.

NMIS encourages FINRA to reconsider and provide greater clarity with respect to the scope of the proposed rule. Specifically, NMIS recommends that FINRA:

- Allow member firms the flexibility to request duplicate copies of confirmations and statements or electronic feeds of such data with respect to the account instead of requiring the associated person to have the executing member provide duplicate account statements and confirmations based upon the member firm's business model. Most large member firms have invested significant resources and dollars for electronic feeds of securities trades in order to supervise personal securities accounts. These systems rely upon the member firm requesting the electronic feeds and effective supervision starts with the member firm's request. Moreover, most member firms have established extensive policies and procedures and have designated an individual responsible for ensuring appropriate communication with executing members. Placing the responsibility upon the associated person would be unnecessary given current rule requirements.

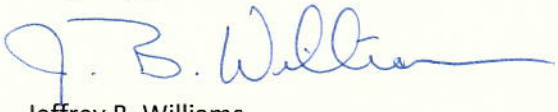
- Incorporate the concept of "control" within the rule proposal in order to focus on those types of accounts that pose the greatest risk the proposal is intended to address. In this regard, FINRA should clarify that the rule would only apply to accounts over which the associated person has investment discretion or otherwise could exercise direct or indirect control, whether pursuant to a formal trading authorization or a fiduciary position, such as trustee, or otherwise. Conversely, to the extent an associated person does *not* exercise direct or indirect control over the outside account, that account would be excluded from the rule. Moreover, if FINRA defines "personal financial interest" this would allow for more effective risk-based oversight of the personal trading activities of associated persons to detect and prevent possible violative conduct, such as insider trading and front running.

- Amend Supplementary Material .03 to exclude certain types of accounts and transactions from the duplicate account statement and confirmation requirement. We recommend that FINRA expressly exempt from the rule proposal transactions in investment companies registered under the Investment Company Act of 1940, as amended, including mutual funds, unit investment trusts, insurance company separate accounts that fund variable annuity contracts and variable life insurance policies, and other redeemable securities of companies registered under the Investment Company Act of 1940, and accounts which are limited to transactions in the above-named securities. These accounts and transactions have little risk of insider trading and other perils the proposal is intended to address, and would force member firms unnecessarily to focus on accounts that do not raise such concerns, potentially with great expense. 529 college savings plans share many of the same characteristics as those securities identified above and accounts holding such securities; therefore, we recommend that the rule proposal expressly exclude them as well.

- Amend Supplementary Material .01 to include "prompt" written customer consent if the account was opened or otherwise established prior to the person's association with the employer member. The proposed requirement of the 15 day would not be consistent with the other requirement of the Supplementary Material requiring "promptness". Moreover, a specific time duration requirement would be burdensome for a newly associated person and unnecessary for those firms that do not engage in market making or research activities.

We appreciate your consideration of our comments. Please let us know if we can provide any further assistance. If you have any questions, please contact me at 414.665.1924.

Very truly yours,



Jeffrey B. Williams
Vice President and Chief Compliance Officer

I think the requirement for the member firm to receive both statements and confirms is egregious. For many firms receiving only statements should be sufficient (i.e. firms that only trade riskless principal with large institutions and don't receive any material non-public information). It should be at the descretion of the compliance department of each firm to decide the level of scrutiny that is needed for outside brokerage accounts based on a risk based analysis.

Thank you,
Markus Witthaut

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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Text of Proposed New FINRA Rule

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3000. SUPERVISION AND RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

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3200. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS

3210. Accounts At Other Broker-Dealers and Financial Institutions

(a) No person associated with a member ("employer member") shall, without the prior written consent of the member, open or otherwise establish at a member other than the employer member ("executing member"), or at any other financial institution, any account in which securities transactions can be effected and in which the associated person has a beneficial interest.

(b) Any associated person, prior to opening or otherwise establishing an account subject to this Rule, shall notify in writing the executing member, or other financial institution, of his or her association with the employer member.

(c) An executing member shall, upon written request by an employer member, transmit duplicate copies of confirmations and statements, or the transactional data contained therein, with respect to an account subject to this Rule.

• • • Supplementary Material: ----------

.01 Account Opened Prior to Association With Employer Member. If the account was opened or otherwise established prior to the person's association with the employer member, the associated person, within 30 calendar days of becoming so associated, shall obtain the written consent of the employer member to maintain the account and shall notify in writing the executing member or other financial institution of his or her association with the employer member.

.02 Beneficial Interest. For purposes of this Rule, the associated person shall be deemed to have a beneficial interest in any account that is held by:

(a) the spouse of the associated person;

(b) a child of the associated person or of the associated person's spouse, provided that the child resides in the same household as or is financially dependent upon the associated person;

(c) any other related individual over whose account the associated person has control; or

(d) any other individual over whose account the associated person has control and to whose financial support the associated person materially contributes.

.03 Duplicate Account Confirmations and Statements. The requirement under paragraph (c) of this Rule that the executing member provide the employer member, upon the employer member's written request, with duplicate account confirmations and statements, or the transactional data contained therein, shall not be applicable to transactions in unit investment trusts, municipal fund securities as defined under MSRB Rule D-12, qualified tuition programs pursuant to Section 529 of the Internal Revenue Code and variable contracts or redeemable securities of companies registered under the

Investment Company Act, as amended, or to accounts that are limited to transactions in such securities, or to Monthly Investment Plan type accounts.

.04 Accounts At a Financial Institution Other Than a Member. With respect to an account subject to this Rule at a financial institution other than a member, the employer member shall consider the extent to which it will be able to obtain, upon written request, duplicate copies of confirmations and statements, or the transactional data contained therein, directly from the non-member financial institution in determining whether to provide its written consent to an associated person to open or maintain such account.

.05 Other Financial Institution. For purposes of this Rule, the terms "other financial institution" and "financial institution other than a member" include, but are not limited to, any broker-dealer that is registered pursuant to Section 15(b)(11) of the Exchange Act, domestic or foreign non-member broker-dealer, investment adviser, bank, insurance company, trust company, credit union and investment company.

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Text of NASD Rule to be Deleted in its Entirety from the Transitional Rulebook

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[3050. Transactions for or by Associated Persons]

Entire text deleted.

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Text of Incorporated NYSE Rules and NYSE Rule Interpretations to be Deleted in Their Entirety from the Transitional Rulebook

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Incorporated NYSE Rules

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[Rule 407. Transactions -- Employees of Members, Member Organizations and the Exchange]

Entire text deleted.

[Rule 407A. Disclosure of All Member Accounts]

Entire text deleted.

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NYSE Rule Interpretations

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[Rule 407 Transactions – Employees of Member Organizations and the Exchange]

[/01 Account of Spouse]

Entire text deleted.

[/02 Majority Stock Ownership]

Entire text deleted.

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