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Disciplinary and Other FINRA Actions

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Supervision of Electronic Communications

FINRA Provides Guidance Regarding the Review and Supervision of Electronic Communications

Executive Summary

In June 2007, FINRA (then NASD and NYSE Member Regulation)¹ issued 1for comment proposed guidance regarding the review and supervision of electronic communications. FINRA received 17 comment letters, with a majority of commenters supporting the guidance. FINRA is now issuing the final guidance, which is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- Patricia Albrecht, Assistant General Counsel, Office of General Counsel, at (202) 728-8026;
- Donald K. Lopezi, Deputy Director, Examinations Program, at (202) 728-8132;
- Stephen Kasprzak, Principal Counsel, Risk Oversight and Operational Regulation, at (212) 656-5226; or
- Cory Figman, Senior Special Counsel, Risk Oversight and Operational Regulation, at (212) 656-4893.

Background and Discussion

In June 2007, FINRA issued for comment proposed guidance setting forth principles for member firms to consider when developing supervisory systems and procedures for electronic communications that are reasonably designed to achieve compliance with applicable federal securities laws and self-regulatory organization (SRO) rules.² FINRA received 17 comment letters in response to the proposal.³ After carefully considering these comments, FINRA is now issuing final guidance in substantially the form set forth in the proposal.

December 2007

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Operations
- Registered Representatives
- Senior Management
- Training

Key Topic(s)

- Correspondence – General
- Electronic Communications
- Supervision

Referenced Rules & Notices

- NASD Rule 2210
- NASD Rule 2211
- NASD Rule 3010
- NASD Rule 3110
- NTM 98-11
- NTM 99-03
- NTM 07-30
- NYSE Information Memo 98-3
- NYSE Information Memo 07-54
- NYSE Rule 342
- NYSE Rule 410
- NYSE Rule 440

A majority of commenters supported the proposed principle-based guidance,⁴ with many considering it to be balanced, flexible and technologically neutral.⁵ One commenter further noted that the proposed guidance reflected, in large measure, best practices already integrated within many firms' supervisory practices and procedures.⁶

Another commenter that favored the principles-based aspect of the proposed guidance nonetheless raised concerns regarding the scope of communications subject to supervision.⁷ In particular, the commenter disagreed with the classification of text messaging as a form of electronic communication requiring supervision, citing the general inability of firms' electronic surveillance systems to capture text messages. The commenter stated that each firm should be entitled to apply a risk-based principled approach to determine whether communications such as text messaging need to be included in its supervisory system.

FINRA appreciates the supervisory challenges firms face given the ever-increasing pace of change in electronic communications technology. However, as FINRA noted in the context of addressing the supervision and recordkeeping requirements for text messaging, a member firm's obligations to supervise electronic communications are based on the content and audience of the message, rather than the electronic form of the communication.⁸ Consequently, as indicated in the proposed and final guidance, FINRA expects a firm to have supervisory policies and procedures to monitor *all* electronic communications technology used by the firm and its associated persons to conduct the firm's business. To that end, a firm should consider, prior to implementing new or different methods of communication, the impact on the firm's supervisory system, particularly any updates or changes to the firm's supervisory policies and procedures that might be necessary.⁹ In this way, firms can identify and timely address any issues that may accompany the adoption of new electronic communications technologies. Finally, firms are reminded that they have a separate, but equally important, obligation to ensure that their use of electronic communications media enables them to make and keep records, as required by SEC Rules 17a-3 and 17a-4, NASD Rule 3110 and NYSE Rule 440.¹⁰

Several commenters questioned whether the proposed guidance imposes new supervision requirements.¹¹ In this regard, one commenter interpreted the guidance as potentially requiring firms to review all internal electronic communications.¹² The guidance neither creates new supervisory requirements nor requires the review of every communication. Rather, it sets forth principles that firms should consider in developing supervisory systems and procedures for electronic communications to aid in accomplishing that they are reasonably designed to achieve compliance with applicable federal securities laws and SRO rules. With respect to the review of internal electronic communications, the guidance states that—with the exception of the enumerated areas requiring review by a supervisor—a firm may use risk-based principles, including an examination of existing review processes, to determine the extent to which review of any internal communications is necessary.

Other commenters noted that some firms, especially small firms with limited resources, might find it difficult to implement all aspects of the guidance (*e.g.*, firms with insufficient funds may not be able to purchase lexicon-based or random sampling review programs).¹³ However, the principles-based guidance generally allows firms the flexibility to design supervisory review procedures for electronic communications that are appropriate to each firm's business model (including whether the manner of review will be automated, manual review or a combination of various methods).

The final guidance regarding the review and supervision of electronic communications is set forth in Attachment A.

Endnotes

- 1 The Financial Industry Regulatory Authority (FINRA) was created in July 2007 through the consolidation of NASD and the member regulation, enforcement and arbitration functions of the NYSE. The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated (Incorporated NYSE Rules).
- 2 See *NASD Notice to Members 07-30* (June 2007); *NYSE Information Memo 07-54* (June 14, 2007).
- 3 James L. Harris, Chief Operating Officer, Libertas Capital, Inc. (June 22, 2007) (Libertas Letter); Charles D. Weeden, Managing Partner, 17a-4, LLC (June 27, 2007) (17a-4 Letter); Judith A. Wilson, Compliance Attorney, 1st Global (July 3, 2007) (1st Global Letter); Peter J. Chepucavage, General Counsel, Plexus Consulting (on behalf of the International Association of Small Broker Dealers and Advisors) (July 9, 2007) (IASBDA Letter); Bill Singer (July 10, 2007) (Singer Letter); Robert L. Tuch, Officer and Managing Counsel, Nationwide Financial Services, Inc. (July 11, 2007) (Nationwide Letter); Neville Golvala, Chief Executive Officer, ChoiceTrade (July 11, 2007); Ira D. Hammerman, Senior Managing Director & General Counsel, Securities Industry and Financial Markets Association (July 12, 2007) (SIFMA Letter); Tamara K. Salman, Senior Associate Counsel, Investment Company Institute (July 12, 2007) (ICI Letter); David Cohen, Senior Vice President, Orchestria Corp. (July 13, 2007) (Orchestria Letter); Marleen Scheffy, Chief Compliance Officer, Perlinski & Associates (July 13, 2007); E. Anthony Reguero, Chairman, ACTIONS, Inc. (July 13, 2007) (ACTIONS Letter); Lisa Roth, Chairman, National Association of Independent Broker-Dealers (July 16, 2007) (NAIBD Letter); Jill W. Ostergaard, Managing Director, Morgan Stanley (July 16, 2007) (Morgan Stanley Letter); Dale E. Brown, President and Chief Executive Officer, Financial Services Institute (July 18, 2007) (FSI Letter); Robert Pease, Vice President, MessageGate, Inc. (July 20, 2007) (MessageGate Letter); Elaine Mandelbaum, Managing Director & Deputy General Counsel, Citigroup Global Markets, Inc. (July 30, 2007) (CGMI Letter).
- 4 See, e.g., Libertas Letter; IASBDA Letter; Nationwide Letter; SIFMA Letter; ICI Letter; Orchestria Letter; NAIBD Letter; Morgan Stanley Letter; FSI Letter; CGMI Letter.
- 5 See, e.g., Nationwide Letter; SIFMA Letter; ICI Letter; Morgan Stanley Letter; CGMI Letter.
- 6 See SIFMA Letter.
- 7 NAIBD Letter.
- 8 See *NASD Notice to Members 03-33* (July 2003) (citing Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24643 (May 15, 1996) (Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information) and Exchange Act Release No. 38245 (January 31, 1997), 67 FR 6469 (February 12, 1997) (Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934)).
- 9 See also *NASD Notice to Members 05-49* (July 2005) (Safeguarding Confidential Customer Information).
- 10 See *NASD Notice to Members 03-33* (July 2003).
- 11 See, e.g., ChoiceTrade Letter; ACTIONS Letter.
- 12 See ACTIONS Letter.
- 13 See IASBDA Letter; Singer Letter; NAIBD Letter.

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ATTACHMENT A

FINRA Guidance Regarding Review and Supervision of Electronic Communications

I. Introduction

Technological innovations in the area of electronic communications¹ have altered how people deliver, receive and store communications. These innovations have brought, and continue to bring, new challenges to members² in the establishment of supervisory systems and procedures for electronic communications that are reasonably designed to achieve compliance with applicable federal securities laws and self-regulatory organization (SRO) rules.³

With these challenges in mind, FINRA is issuing this guidance for members to consider when developing such systems and procedures. This guidance does not specifically address every regulatory issue that may arise in connection with the supervision of electronic communications. Further, FINRA recognizes that policies and procedures may differ among members depending on their business model (*e.g.*, size, structure, customer base and product mix).⁴

II. Review and Supervision of Electronic Communications

At one time, FINRA (then NASD and NYSE Member Regulation) required that members review all correspondence of their registered representatives pertaining to the solicitation or execution of any securities transactions. In 1998, recognizing that the growing use of electronic communications such as email made adherence to this requirement difficult, FINRA amended its rules to allow members the flexibility to design supervisory review procedures for correspondence with the public that are appropriate to the individual member's business model.⁵

In considering this guidance, members generally may decide by employing risk-based principles the extent to which the review of incoming, outgoing and internal electronic communications is necessary in accordance with the supervision of their business. However, members must have policies and procedures for the review by a supervisor of employees'⁶ incoming, outgoing and internal electronic communications that are of a subject matter that require review under FINRA rules and federal securities laws. For example (without limitation):

- (1) NYSE Rule 472(b)(3) and NASD Rule 2711(b)(3)(A) require that a member's legal and compliance department be copied on communications between non-research and research departments concerning the content of a research report; NYSE Rule 472(a) and NASD Rules 2210 and 2211 require pre-approval by a principal of specified communications with the public;

- (2) NYSE Rule 351(d) and NASD Rule 3070(c) require the identification and reporting of customer complaints; NYSE Rule 401A requires that the receipt of each complaint be acknowledged by the member to the customer within 15 business days; and
- (3) NYSE Rule 410 and NASD Rule 3110(j) require the identification and prior written approval of every order error and other account designation change.

When employing risk-based procedures to review electronic communications, members should consider how to effectively:

- (1) “flag” electronic communications that may evidence or contain customer complaints, problems, errors, orders or other instructions for an account; or evidence conduct inconsistent with FINRA rules, federal securities laws and other matters of importance to the member’s ability to adequately supervise its business and manage the member’s reputational, financial and litigation risk;
- (2) identify such other business areas the member may identify as warranting supervisory review; and
- (3) educate employees to understand and comply with the member’s policies and procedures regarding electronic communications.

In adopting such supervisory review procedures, existing interpretive material directs members to, among other things:⁷

- Identify the types of correspondence that will be pre- or post-reviewed;
- Identify the organizational position(s) responsible for conducting reviews of the different types of correspondence;
- Monitor the implementation of, and compliance with, the member’s procedures for reviewing public correspondence;⁸
- Periodically re-evaluate the effectiveness of the member’s procedures for reviewing public correspondence and consider any necessary revisions;⁹
- Provide that all customer complaints, whether received via email or in other written form, are reported to FINRA in compliance with the FINRA reporting requirements;¹⁰
- Prohibit employees from the use of electronic communications unless such communications are subject to supervisory and review procedures developed by the member;¹¹ and
- Conduct necessary and appropriate training and education.

Member electronic communications related to a member’s business are subject to its overall supervisory and review procedures.¹² They are also subject to FINRA rule requirements specifically addressing communications with the public.¹³

The growth of electronic communications has raised the need for further interpretative guidance. For ease of use, the guidance that follows is divided into six categories:

- Written Policies and Procedures
- Types of Electronic Communications Requiring Review
- Identification of the Person(s) Responsible for the Review of Electronic Communications
- Method of Review for Correspondence
- Frequency of the Review of Correspondence
- Documentation of the Review of Correspondence

A. Written Policies and Procedures

The path towards an effective supervisory system starts with clear policies and procedures for the general use and supervision of electronic communications, both internal and external, which are updated to address new technologies. For example, a general electronic communications policy written five years ago may well not include policies to regulate employees' use of technologies such as weblogs¹⁴ and podcasting¹⁵ to communicate with the public.

From a general procedural perspective, members should provide their employees with the following:

- Quick and easy access to electronic communication policies and procedures through, for example, the member's intranet system. (Members should make clear to all employees that they are responsible for complying with these policies and procedures upon their employment. Updates to such policies should be made accessible to all employees in a timely manner, pursuant to the member's procedures.)
- A clear list of permissible electronic communication mechanisms (including a clear statement that all other mechanisms are prohibited). For example, if employees are permitted to utilize only the member's email and instant messaging system, then this should be clearly and unambiguously stated in the member's policies and procedures. Members should also make clear if certain communication mechanisms may only be used for communications between employees of the member (versus mechanisms that may also be used for communications with the public). Members should be cognizant that vague language addressing these issues may leave room for unwanted individual interpretation.
- Specific language explaining to employees the potential consequences of non-compliance (*e.g.*, disciplinary action).

- ▶ Training on a regular and as-needed basis. Members should include information in their training and compliance programs describing examples of permissible and prohibited technologies. In addition, while all employees should receive training with respect to the member's general electronic communication policies and procedures, there may be certain employees whose training should be further tailored to their specific business function. For example, a member may implement additional prohibitions on internal communications between business units that are privy to certain non-public information (*e.g.*, investment banking and research and proprietary trading).

B. Types of Electronic Communications Requiring Review

External Communications

As discussed above, members must have reasonable policies and procedures for the supervisory review of electronic communications that require review under FINRA rules¹⁶ and federal securities laws. Members may employ risk-based principles to determine the extent to which additional supervisory policies and procedures are required to adequately supervise their business and manage the member's reputational, financial and litigation risk.

Members also are required to establish policies and procedures regarding the forms of electronic communications that they permit employees to use when conducting business with the public and to take reasonable steps to monitor for compliance with such policies and procedures.

Traditionally, members have limited employees' electronic communications with customers to a member-supplied email address that is connected to the member's communication network. However, as technology has evolved, employees now have a myriad of ways to communicate electronically with the public. To the extent members prohibit certain types of communication media, consideration should be given to taking technological steps to block or otherwise regulate their external and internal use. In particular, members should consider the following options:

- ▶ **Non-Member Email Platforms** – Employees have the ability to communicate via email through means other than their member-issued email address by accessing email platforms through the Internet (*e.g.*, through AOL or Yahoo mail) and through third-party communication systems such as Bloomberg and Reuters. If a member permits employees to communicate with customers through these systems or through other non-member email addresses, the member is required to supervise and retain those communications. Some members prohibit, through policies and procedures, employees from accessing non-member email platforms for business purposes, and require employees to certify on an annual or more frequent basis that they are acting consistent with such policies and procedures. Where possible,

some members have chosen to block access to these email platforms through their networks. Thus, an employee would be able to access the Internet but not the email functionality. Members utilizing this blocking functionality should periodically conduct tests to ensure that it is functioning as designed or intended.

Similarly, FINRA expects members to prohibit, through policies and procedures, communications with the public for business purposes from employees' own electronic devices unless the member is capable of supervising, receiving and retaining such communications.¹⁷ Absent a prohibition, members should consider requiring pre-approval for the business-related use of any personal electronic communications device. The approval process might require a detailed business justification for using the personal device and an annual re-certification of the approval that includes a re-evaluation of the business justification for its use. In addition, members should consider obtaining agreements from employees authorizing the member to access any such personal electronic communications devices. Members should also consider prohibiting, where appropriate, the use of personal electronic communication devices in certain sensitive firm locations (*e.g.*, where material non-public information could be accessed).

- **Message Boards** – There are various publicly accessible message boards related to the securities industry. Members may consider blocking access by their employees to these message boards¹⁸ to prevent them from communicating through these boards for business purposes.
- **E-Faxes** – The use of traditional facsimile machines has started to decline as E-fax software has developed. FINRA views E-faxes as electronic communications and, thus, members should supervise them accordingly.¹⁹

When a member permits the use of any technology, the member's system of supervision should be reasonably designed to achieve compliance with applicable laws, rules and regulations.

Internal Communications

As stated above, with the exception of the enumerated areas requiring review by a supervisor, members may decide, employing risk-based principles, the extent to which review of any internal communications is necessary in accordance with the supervision of their business.

Subject to any such specific rule requirement mandating reviews, in reaching a risk-based assessment regarding the review of internal communications, consideration should be given to, for instance: detecting when a member's information barriers are not working to protect customer or issuer information; protecting against undue influence on research personnel contrary to FINRA rules; and segregating the member's proprietary trading desk activity from all or part of the other operating areas of the member.²⁰

In addition, members may consider various relevant existing processes, such as:

- ▶ Conflict-management efforts – Steps taken to reduce, manage or eliminate potential conflicts of interest, including implementing firewalls to prevent electronic communications between certain individuals/groups or monitoring communications as required by FINRA rules (*e.g.*, between non-research and research departments) or as otherwise appropriate. Members should review to determine whether adequate information barriers are in place.
- ▶ Reviews of internal electronic communications that occur in connection with branch or desk examinations and regulatory inquiries, examinations or investigations.
- ▶ Reviews of internal electronic communications that occur in connection with transaction reviews, internal disciplinary reviews and reviews relating to customer complaints or arbitration.
- ▶ Reviews of internal electronic communications that occur as a result of issues identified in connection with external electronic communication reviews.

C. Identification of the Person(s) Responsible for the Review of Electronic Communications

Members' procedures for review of electronic communications (internal and external) should address the following:

- ▶ Members' procedures should clearly identify the person(s) responsible for performing the reviews. Evidence of review can be satisfied by use of a log or other record from the electronic communication system that identifies the reviewers.
- ▶ The supervisor/principal must evidence his or her supervision as required by FINRA rules.²¹
- ▶ In the course of supervising electronic communications, a supervisor/principal may delegate certain functions to persons who need not be registered.²² However, the supervisor/principal remains ultimately responsible for the performance of all necessary supervisory reviews, irrespective of whether he or she delegates functions related to the review. Accordingly, supervisors must take reasonable and appropriate action to ensure delegated functions are properly executed and should evidence performance of their procedures sufficiently to demonstrate overall supervisory control.²³
- ▶ Where review functions are delegated, the procedures must provide a protocol to escalate regulatory issues to the designated supervisor or other appropriate department.

- All reviewers must have sufficient knowledge, experience and training to adequately perform the reviews. Members should be able to demonstrate that the reviewers meet these criteria. This could include: prior supervisory or other experience, years of service in the industry, professional licenses, completion of firm and regulatory element training, product knowledge, educational degrees, knowledge of member products and services, lecturing at, or attending, industry seminars and courses, other training, length of service at the member, familiarity with member systems and tools and prior regulatory experience.
- Unless a member's size and/or structure (*e.g.*, a sole proprietor) is such that the member has no other reasonable alternative for reviewing an individual's electronic communications, an individual may not conduct supervisory reviews of his or her own electronic communications.

D. Method of Review for Correspondence

Members should develop review procedures that are both reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules and appropriate for their business and structure, consistent with the principles set forth in this guidance. In addition, members should monitor for compliance with their supervisory procedures' prescribed frequency, timeliness and quantity parameters.

Regardless of the method utilized, members should alert their reviewers as to the issues to be raised and material to be examined, including acceptable content. For example, members should make reference to the content standards in NYSE Rule 472 and NASD Rule 2210 and provide guidance concerning other applicable areas of concern (*e.g.*, the use of confidential, proprietary and inside information; anti-money laundering issues; gifts and gratuities; private securities transactions; customer complaints; front-running; and rumor spreading). When reviewing customer complaints, members should look for indicia that a customer has received a communication that is not in conformance with the member's policies and procedures.

In addition, where members permit the use and receipt of encrypted electronic communications, they must be able to monitor and supervise those communications and must educate reviewers on how this can be accomplished. (See "Combination of Lexicon and Random Review of Electronic Correspondence" below.)

Furthermore, members must be able to review electronic correspondence in all languages in which they conduct business with the public. Therefore, if the reviewer is not fluent in the language used in an email, the member should require proper independent interpretation and review (*i.e.*, not by the author/recipient of the correspondence).

Under limited circumstances, members should consider having their legal and/or compliance departments re-review emails that have already been reviewed by line supervisors and their delegates in certain situations. Re-review might be advisable when specific problems have been identified at a branch office resulting, for instance, in a registered representative becoming the subject of an internal investigation. Members should also consider re-reviewing selected electronic communications as part of their standard branch office inspection program.

Against this background, members may consider the following methods of review:

- ▶ **Lexicon-Based Reviews of Electronic Correspondence** – Members using lexicon-based reviews (those based on sensitive words or phrases, the presence of which may signal problematic communications) of correspondence should utilize an appropriate lexicon, take reasonable security measures to keep the list confidential and periodically evaluate the efficacy of the lexicon. Members must make informed decisions regarding how best to utilize the surveillance tools they have chosen. Thus, a member that conducts lexicon-based reviews may determine that it is not necessary to review each and every lexicon “hit” in order to maintain an effective review system. The rationale for such determinations should be maintained as part of the member’s policies and procedures.

Members should also consider regular periodic reviews of the lexicon system to determine whether any changes/updates are necessary, such as adding or deleting phrases and/or words. Members should periodically inquire as to the effectiveness of the system, especially if the system is that of a vendor.²⁴ Members are responsible for ensuring that the system utilized is functioning properly. As discussed more fully below, if a member does not have confidence in the effectiveness of its lexicon system, a supplemental random review of electronic communications should be considered.

Members should consider targeted concentrated reviews of employees’ emails when warranted (*e.g.*, when concerns are raised in connection with regulatory examination findings, internal audits, customer complaints or regulatory inquiries).

When assessing the effectiveness of a lexicon-based system, members should consider the following features:

- (a) A meaningful list of phrases and/or words (including industry “jargon”) based on the size of the member, its type of business, its customer base and its location (including any branch offices that may require the inclusion of certain foreign language components). The lexicon system should be comprehensive enough to yield a meaningful sample of “flagged” communications.
- (b) Ability to add and delete phrases and words on an ongoing basis.

- (c) Ability to review attachments and identify attachments that could circumvent lexicon-based reviews.
 - (d) Ability to restrict access to the phrases and/or words that make up the lexicon system.
 - (e) Ability to conduct searches that exclude any trailers or disclaimers used by the member, as these trailers or disclaimers often contain sensitive words such as “guarantee” (*e.g.*, “firm does not guarantee”) which would “flag” every such email.
- **Random Review of Electronic Correspondence** – Members may choose to use a reasonable percentage sampling technique, whereby some percentage of the electronic communications generated by the member is reviewed. There is no prescribed minimum or fixed percentage that is required by regulation. However, the amount of electronic communications chosen for review must be reasonable given the circumstances (for example, member size, nature of business, customer base and individual employee circumstances). In this regard, members conducting random reviews may consider factors such as:
- (a) **Percentage of Electronic Correspondence Based on a Branch Office, Department or Business Unit** – For a branch office, department or business unit, a member could establish a percentage of electronic communications requiring review that is based on its size, type of business, customer base and location (including its sales locations), which includes emails from each individual in that branch office, department or business unit.
 - (b) **Percentage of Electronic Correspondence for Each Individual** – For each individual in a branch office, department or business unit, a member could establish a percentage of emails requiring review based on its size, type of business, supervisory structure (including whether certain locations are supervised remotely), customer base and location including its branch offices. Members should not necessarily limit themselves to reviewing the same percentage of emails for each employee. For example, an individual with disciplinary history or subject to special supervision may warrant a review encompassing a higher percentage of emails.
- **Combination of Lexicon and Random Review of Electronic Correspondence** – Given the strengths and weaknesses of any single review tool, members should consider complementary review techniques. For instance, members should note that while lexicon system-tracking capabilities have become considerably more sophisticated and effective over the past few years, as of this writing they are incapable of reading documents or document attachments that are password protected or encrypted. Further, the use of image files, such as “jpps,” can be used to pass information through lexicon filters undetected. In addition, a registered representative determined to circumvent a lexicon system may be able to do so by simply avoiding the use of words likely to “trigger” the system.

- ▶ **Standards Applicable to All Review Systems** – The manner and extent to which review tools are utilized is a determination to be made by each member, based on its business model. However, to best assure the effectiveness over time of any system, members should incorporate ongoing evaluation procedures to identify and address any “loopholes” or other issues that may arise as the means of transmitting sensitive information “under the regulatory radar” become more sophisticated and difficult to capture. Members’ written procedures should delineate the additional reviews that will be conducted when such issues are identified. Members utilizing automated tools or systems in the course of their supervisory review of electronic communications must have an understanding of the limitations of such tools or systems (for example, see the potential limitations of lexicon systems noted above) and should consider what, if any, further supervisory review is necessary in light of such limitations.²⁵

E. Frequency of the Review of Correspondence

- ▶ Frequency of correspondence review may vary depending on the business. For instance, the frequency of review should be related to the type of business conducted (*i.e.*, the market sensitivity of the activity); the type of customers involved; the scope of the activities; the geographical location of the activities; the disciplinary record of covered persons; and the volume of the communications subject to review.
- ▶ Members should prescribe reasonable timeframes within which supervisors are expected to complete their reviews of correspondence, taking into consideration the type of review being conducted and the method of review being used. When determining the reasonableness of such timeframes, members should carefully consider the type of business their firm is conducting and the extent to which a review’s usefulness, in the context of that business, is diminished by the passage of time. For example, a member with a primarily retail customer base may need to conduct more frequent reviews than a member that exclusively conducts institutional business.

F. Documentation of the Review of Correspondence

- ▶ Members must evidence their reviews, whether electronically or on paper,²⁶ and be able to reasonably demonstrate that such reviews were conducted.
- ▶ The evidence of review should, at a minimum, clearly identify the reviewer, the communication that was reviewed, the date of review and the steps taken as a result of any significant regulatory issues that were identified during the course of the review. Members should remind their reviewers that merely opening the communication will not be deemed a sufficient review.

III. Conclusion

As noted above, FINRA is issuing this guidance to assist members in the establishment and maintenance of supervisory systems for electronic communications that are reasonably designed to achieve compliance with the federal securities laws and self-regulatory organization rules. Members must recognize, however, that this guidance is not all-inclusive and does not represent all areas of inquiry that a member should consider when establishing and maintaining a supervisory system for electronic communications, including any existing and future electronic communications technology that this guidance may not address. In addition, members are advised that this guidance does not serve to establish a safe harbor with respect to potential supervisory or compliance deficiencies.

Endnotes

- 1 For purposes of this guidance, “electronic communications,” “email” and “electronic correspondence” may be used interchangeably and can include such forms of electronic communications as instant messaging and text messaging. Notwithstanding such use of terminology, as further detailed herein, the manner of application of FINRA rules specifically addressing particular communications with the public (*see, e.g.*, NASD Rules 2210 and 2211 and NYSE Rules 342 and 472) will depend on the type of communication.
- 2 For purposes of this guidance, the term “member” refers to members of the Financial Industry Regulatory Authority (FINRA), which was created in July 2007 through the consolidation of NASD and NYSE Member Regulation. The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated (Incorporated NYSE Rules). The Incorporated NYSE Rules apply solely to dual members of FINRA and the NYSE.
- 3 *See* NYSE Rule 342 (Offices – Approval, Supervision and Control) and NASD Rule 3010 (Supervision).
- 4 FINRA has fashioned rule provisions that, where appropriate, take into account variations in members’ size or business model. *See, e.g.*, NYSE Rules 342.23 (Offices – Approval, Supervision and Control – Internal Controls) and 472(m) (Communications with the Public – Small Firm Exception). *See also* NASD Rules 3012 (Supervisory Control System) and 2711 (Research Analysts and Research Reports).
- 5 *See NYSE Information Memo 98-3* (January 16, 1998) and *NASD Notices to Members 98-11* (January 1998) and *99-03* (January 1999). *See also* NYSE Rule 342.17 (Offices – Approval, Supervision and Control – Review of Communications with Public) and NASD Rule 3010 (Supervision). Additionally, NASD Rule 2211 (Institutional Sales Material and Correspondence) defines “correspondence” as any written letter or electronic mail message distributed by a member to (1) one or more existing retail customers, and (2) fewer than 25 prospective retail customers within any 30 calendar-day period.

Endnotes (cont'd)

- Members are not required to approve outgoing “correspondence” prior to use unless the correspondence is sent to 25 or more existing retail customers within a 30 calendar-day period and makes a financial or investment recommendation or otherwise promotes a product or service of the member. NASD Rule 2211 also allows members to adopt supervisory procedures for communications distributed only to certain institutional investors that do not require principal pre-use review and approval.
- 6 For purposes of NASD rules, the term “employees” includes all associated persons.
- 7 See *NYSE Information Memo 98-3* (January 16, 1998) and *NASD Notice to Members 98-11* (January 1998).
- 8 FINRA recognizes that, as appropriate evidence of review, email related to members’ investment banking or securities business may be reviewed electronically and the evidence of the review may be recorded electronically (see *NYSE Information Memo 98-3* and *NASD Notice to Members 98-11*).
- 9 See also NYSE Rule 342 and NASD Rule 3012, requiring implementation of a supervisory control system.
- 10 See NYSE Rule 351(d) (Reporting Requirements) and NASD Rule 3070(c) (Reporting Requirements).
- 11 For example, FINRA expects members to prohibit, through policies and procedures, communications with the public from employees’ home computers unless the member is capable of supervising and retaining such communications.
- 12 See NYSE Rules 342.16 and 342.17 (Offices-Approval, Supervision and Control - Supervision of Registered Representatives and Review of Communications with the Public) and NASD Rules 2210 (Communications with the Public) and 2211 (Institutional Sales Material and Correspondence). See also NASD Rule 3010 (Supervision) and NASD Rule 3010(d) (Review of Transactions and Correspondence). (FINRA staff notes its intention to propose amendments to NASD Rule 3010(d)(2) to eliminate outdated distinctions between certain hard copy and electronic communications and to reflect this guidance.)
- 13 See NASD Rules 2210 and 2211. See also NASD Guide to the Internet for Registered Representatives, available at www.finra.org/RulesRegulation/IssueCenter/Advertising/p006118. See also NYSE Rule 472(a), which requires pre-approval for any advertisement, market letter, sales literature, communication or research report that is distributed or made available to a customer or the public by a member.
- 14 A “weblog” (often referred to as a “blog”) is a web-based publication consisting primarily of periodic reports (generally in reverse chronological order). Similar to other media, blogs often focus on particular subjects (e.g., politics) and combine text, images and links to other blogs, web pages and other media related topics.
- 15 “Podcasting” is a method of distributing multimedia files (i.e., audio or video content) over the Internet for playback on mobile devices and personal computers.
- 16 See Section II, page 5 of this guidance.

Endnotes (cont'd)

- 17 Firms should be aware that pursuant to NYSE Rule 342.10(B) and NASD Rule 3010(g)(2), employees working at their primary residences and relying on the exception from branch office registration cannot use their personal email accounts to communicate with potential or existing customers from such locations; electronic communications from such locations must be made through the member's electronic system consistent with the terms of the exception. *See generally NYSE Information Memos 05-74* (October 6, 2005) and *06-13* (March 22, 2006) and *NASD Notice to Members 06-12* (March 2006).
- 18 FINRA views message boards as advertisements under NASD Rule 2210, and such board postings must be approved prior to use and in writing by a registered principal. (*See* "Ask the Analyst About Electronic Communications," NASD Regulatory & Compliance Alert, April 1996.)
- 19 FINRA views E-faxes sent to 25 or more prospective retail customers within a 30 calendar-day period to be sales literature under NASD Rule 2210, and they must be approved prior to use and in writing by a registered principal. FINRA also requires principal pre-use approval for E-faxes sent to 25 or more existing retail customers within any 30 calendar-day period that make any financial or investment recommendation or otherwise promote a product or service of the member. *See NASD Notice to Members 06-45* (August 2006).
- 20 *See NYSE Information Memo 91-22* (June 28, 1991) and *NASD Notice to Members 91-45* (June 1991) (Joint NASD/NYSE Memo on Chinese Wall Policies and Procedures).
- 21 *See, e.g.*, NASD Rules 3010(d)(1), 2210 and 2211 and NYSE Rules 342(b)(2) and 472.
- 22 *Cf. NASD Notice to Members 99-03* (January 1999) (allowing unregistered persons who have received sufficient training to review written, non-electronic correspondence).
- 23 *See* NYSE Rules 342(b) and 342.13 and NASD Rule 3010.
- 24 Members that outsource technical support functions related to their electronic review process (*e.g.*, the development and/or implementation of a lexicon system) should carefully pre-evaluate the vendor as well as monitor the effectiveness of such vendor's services on an ongoing basis. *See also NASD Notice to Members 05-48* (July 2005) (Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers).
- 25 *See NYSE Information Memo 98-3* (January 16, 1998).
- 26 *See, e.g.*, NASD Rules 3010(d)(1), 2210 and 2211 and NYSE Rules 342.16, 342.17 and 472.

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Financial Reporting Relief

FINRA Announces Relief Relating to Customer and PAIB Reserve Formula Computations and Required Deposits around the December 2007 Month-End Holidays

Executive Summary

Because the 2007 Christmas and 2008 New Year's Day holidays occur on Tuesdays, many employees of member firms may take off the preceding Mondays. This may impair firms' ability to prepare accurate computations of the amounts required to be reserved pursuant to SEC Rule 15c3-3. As such, FINRA is notifying member firms that staff of the Division of Trading and Markets of the SEC is granting an optional one-day extension to firms for making the deposit of amounts required to be reserved pursuant to SEC Rule 15c3-3. These reserved amounts are based on the Customer and PAIB reserve formula computations prescribed by SEC Rule 15c3-3(e)(3) and computed as of Friday, December 21 and Friday December 28, 2007.¹

Questions regarding this *Notice* should be directed to:

- Bernadette Chichetti, Senior Principal Associate, Risk Oversight & Operational Regulation (ROOR), at (212) 656-6934;
- Anthony Lucarelli, Senior Principal Associate, ROOR, at (212) 656-5764; or
- Susan DeMando, Associate Vice President, Financial Operations Department, at (202) 728-8411.

December 2007

Notice Type

- Guidance

Suggested Routing

- Capital and Accounting Staff
- Compliance
- Chief Financial Officer
- Executive Representative
- Legal
- Senior Management

Key Topic(s)

- Customer Reserve Formula Computation
- FOCUS Filing
- PAIB Reserve Formula Computation
- Reserve Bank Account Deposit

Referenced Rules & Notices

- SEC Rule 15c3-3

Background and Discussion

Weekly Reserve Formula Computation Deposit Requirement

Because the 2007 Christmas and 2008 New Year's Day holidays occur on Tuesdays, SEC staff is granting an optional one-day extension to member firms for making the requisite SEC Rule 15c3-3 Reserve Bank Account deposit(s) based on the Friday, December 21 and Friday, December 28, weekly Customer and PAIB reserve formula computations. This extension recognizes the fact that many employees of firms may take off on Monday, December 24 and Monday, December 31.

The revised deadlines are noted below:

Revised Weekly Reserve Formula Computation Deposit Requirement

Week Ending	Original Deadline	Extension Date
Friday, December 21	Wednesday, December 26	Thursday, December 27
Friday, December 28	Wednesday, January 2	Thursday, January 3

Month-End Reserve Formula Computation Deposit Requirement

Member firms that report their financials and file a FOCUS report as of the last business day of each month would be required to compute their month-end Customer and PAIB reserve formula calculations as of Monday, December 31, 2007, and to make any requisite SEC Rule 15c3-3 Reserve Bank Account deposit(s) on Thursday, January 3, 2008. Further, pursuant to SEC Rule 15c3-3(e)(3)/01 (Weekly Computation), firms that prepare such month-end Customer and PAIB reserve formula computations as of Monday, December 31, would not be required to prepare the weekly Customer and PAIB reserve formula computations as of the following Friday, January 4, 2008.

As a result of the optional one-day extension on the weekly computations, member firms that report their financials as of the last business day of the month and also elect to use the one-day extension, may be subject to a double deposit(s) on Thursday, January 3, 2008. The double deposit(s) would result from the weekly and month-end Customer and PAIB reserve formula computations required to be computed as of Friday, December 28 and Monday, December 31, respectively. To avoid this duplication, firms may elect to prepare their Friday, January 4, weekly Customer and PAIB reserve formula computation in lieu of the Friday, December 28, weekly computations. This option is only available for December 2007 for firms that report their financials as of the last **business day** of the month.

Endnotes

- 1 Paragraph (e)(3) of SEC Rule 15c3-3 requires a broker-dealer to prepare the reserve formula computations, necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of SEC Rule 15c3-3, to be made weekly, as of the close of the last business day of the week, and the deposit so computed to be made no later than one hour after the opening of banking business on the second following business day.

Trade Reporting and Compliance Engine (TRACE)

SEC Approves Exemption from TRACE Reporting Requirements for Certain “Derivative-Related Transactions”

Effective Date: December 13, 2007

Executive Summary

Effective December 13, 2007, “Derivative-Related Transactions” are exempt from the TRACE reporting requirements. Derivative-Related Transactions are transactions in TRACE-eligible securities resulting from the exercise or settlement of an option or a similar instrument, or the termination or settlement of a credit default swap (CDS), other type of swap or a similar instrument. At the same time, FINRA has made conforming amendments to the definition of “reportable TRACE transaction” in NASD Rule 6210(c).¹

The text of NASD Rule 6230(e) and NASD Rule 6210(c), as amended and approved by the SEC on October 26, 2007, is set forth in Attachment A of this *Notice*. Also, FINRA is rescinding NASD Notice to Members (NTM) 05-77 (November 2005), which concerns TRACE reporting requirements for such transactions, effective December 13, 2007.²

Questions regarding this *Notice* may be directed to:

- ▶ tracefeedback@finra.org;
- ▶ Elliot Levine, Chief Counsel, Transparency Services, at (202) 728-8405;
- ▶ Patrick Geraghty, Director, Market Regulation, at (240) 386-4973; or
- ▶ Sharon Zackula, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8985.

December 2007

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topic(s)

- ▶ Derivative-Related Transactions
- ▶ Reportable TRACE Transaction
- ▶ TRACE
- ▶ TRACE-eligible securities
- ▶ Transaction Reporting Exemption

Referenced Rules & Notices

- ▶ NASD Rule 6210
- ▶ NASD Rule 6230
- ▶ NASD NTM 05-77

Background & Discussion

Currently, the TRACE System accepts reports on transactions in TRACE-eligible securities resulting from the exercise or settlement of an option or a similar instrument, or the termination or settlement of a CDS, other type of swap or a similar instrument (collectively, Derivative-Related Transactions). As amended, NASD Rule 6230 exempts such Derivative-Related Transactions from the TRACE reporting requirements.

FINRA determined that Derivative-Related Transactions should be exempt from TRACE reporting because the information regarding price (and yield) being reported to FINRA and disseminated to the public does not reflect currently negotiated transaction prices.³ Further, reporting and dissemination of certain Derivative-Related Transactions does not foster price discovery and may contribute to investor confusion. In addition, because prices from Derivative-Related Transactions do not contribute to price discovery, the costs of continuing to require such reporting, including potential investor confusion, support exempting such transactions from TRACE reporting and dissemination.

In a related amendment to NASD Rule 6210(c), FINRA simplified the defined term, “reportable TRACE transaction,” to exclude generally any transaction exempted under NASD Rule 6230(e).

Because such Derivative-Related Transactions will no longer be reported, FINRA also is rescinding *NASD NTM 05-77* (November 2005), which provides guidance regarding the reporting of such transactions to TRACE. *NASD NTM 05-77* is rescinded effective December 13, 2007.

Endnotes

- 1 See Securities Exchange Act Release No. 56709 (October 26, 2007), 72 FR 61924 (November 1, 2007); File No. SR-FINRA-2007-07.
- 2 See *NASD Notice to Members 05-77* (November 2005).
- 3 For example, the price of a transaction in a TRACE-eligible security executed as a result of the settlement of a CDS is agreed upon at the time of execution of the CDS.

ATTACHMENT A

Below is the text of the rule change. New language is underlined; deletions are in brackets.

6200. TRADE REPORTING AND COMPLIANCE ENGINE (TRACE)

6210. Definitions

The terms used in this Rule 6200 Series shall have the same meaning as those defined in [NASD's By-Laws] FINRA's By-Laws and NASD's Rules unless otherwise specified.

(a) through (b) No Change.

(c) The term "reportable TRACE transaction" shall mean any secondary market transaction in a TRACE-eligible security except transactions exempt from reporting as specified in Rule 6230(e). [transactions in TRACE-eligible securities that are listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934, when such transactions are executed on, and reported to the exchange and the transaction information is disseminated publicly.]

(d) through (j) No Change.

* * * * *

6230. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Exempt From Reporting

The following types of transactions shall not be reported:

(1) through (4) No Change.

(5) Transactions resulting from the exercise or settlement of an option or a similar instrument, or the termination or settlement of a credit default swap, other type of swap, or a similar instrument.

(f) No Change.

Qualification Examinations

Revisions to the Series 23, 24, 42, 55, 62, 72 and 82 Examination Programs

Implementation Date: February 12, 2008

Executive Summary

FINRA has revised the following examination programs:

- General Securities Principal Sales Supervisor Module (Series 23);
- General Securities Principal (Series 24);
- Limited Representative – Options (Series 42);
- Limited Representative – Equity Trader (Series 55);
- Limited Representative – Corporate Securities (Series 62);
- Limited Representative – Government Securities (Series 72); and
- Limited Representative – Private Securities Offerings (Series 82).¹

The changes are reflected in the study outlines on FINRA's Web site at www.finra.org/brokerqualifications/exams. The changes will appear in examinations starting on February 12, 2008.

Questions concerning this *Notice* may be directed to:

- Carole Hartzog, Lead Qualifications Analyst, Testing and Continuing Education Department (TCE), at (240) 386-4678;
- Elaine Warren, Senior Qualifications Analyst, TCE, at (240) 386-4679;
- Eva Cichy, Qualifications Analyst, TCE, at (240) 386-4680; or
- Karen Bescher, Qualifications Analyst, TCE, at (240) 386-4677.

December 2007

Notice Type

- Qualifications Exam Updates

Suggested Routing

- Compliance
- Legal
- Operations
- Registration
- Training

Key Topic(s)

- Qualification Examinations
- General Securities Principal Sales Supervisor Module (Series 23)
- General Securities Principal (Series 24)
- Limited Representative – Corporate Securities (Series 62)
- Limited Representative – Equity Trader (Series 55)
- Limited Representative – Government Securities (Series 72)
- Limited Representative – Options (Series 42)
- Limited Representative – Private Securities Offerings (Series 82)

Referenced Rules & Notices

- NASD Rule 1022(a)
- NASD Rule 1032(d, e, f, g, h)
- NYSE Rule 342.13

Background and Discussion

Section 15A(g)(3) of the Securities Exchange Act of 1934 (Exchange Act) requires FINRA to prescribe standards of training, experience and competence for persons associated with FINRA member firms. In accordance with that provision, FINRA has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with FINRA member firms have attained specified levels of competence and knowledge. FINRA periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter.

FINRA and committees of industry representatives recently reviewed the Series 23, 24, 42, 55, 62, 72 and 82 examination programs. As a result of these reviews, and as discussed in greater detail below, FINRA has revised the examination programs to reflect changes to the laws, rules and regulations covered by the examinations and to better reflect the duties and responsibilities of the individuals who are taking these examinations.

Series 23 (General Securities Principal Sales Supervisor Module)

The Series 23 is a limited qualification examination that tests a candidate's knowledge of securities industry rules and regulations pertaining to the supervision of investment banking, securities markets and trading as well as financial responsibility requirements. The Series 23 examination, in combination with the General Securities Sales Supervisor (Series 9/10) examination, is an acceptable qualification alternative to the General Securities Principal (Series 24) examination for associated persons who are required to register and qualify as a General Securities Principal with FINRA. The Series 23 examination covers material from the Series 24 examination not otherwise covered under the Series 9/10 examination.

Among other revisions, FINRA has changed the references to the FINRA and the Nasdaq Stock Market LLC (NASDAQ) rules in the Series 23 study outline to reflect NASDAQ's separation from FINRA (then known as NASD). In addition, FINRA has added sections on:

- SEC Regulation M-A (Mergers and Acquisitions)
- SEC Regulation S-K
- SEC Regulation S-X
- SEC Regulation NMS
- SEC Regulation SHO
- the Sarbanes-Oxley Act

- SEC Rule 3a4-1 (Associated Persons of an Issuer Deemed Not to Be Brokers)
- SEC Rule 405 (Definitions of Terms)
- NASDAQ Initial Public Offering Process (NASDAQ Head Trader Alert 2005-096)
- NYSE Rule 392 (Notification Requirements for Offerings of Listed Securities)
- NASD IM-2110-7 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes)
- NASD IM-2210-6 (Requirements for the Use of Investment Analysis Tools)
- NASD Rule 2111 (Trading Ahead of Customer Market Orders)
- NASD Rule 2290 (Fairness Opinions)
- NASD Rule 2370 (Borrowing From or Lending to Customers)
- NASD Rule 2441 (Net Transactions with Customers)
- NASD Rule 5110 (Transactions Related to Initial Public Offerings)

FINRA has changed the title of Section 1 of the study outline from “Supervision of Investment Banking Activities” to “Supervision of Investment Banking, Underwriting Activities and Research,” and the title of Section 4 from “Sales Supervision; General Supervision of Employees; Regulatory Framework of NASD” to “Sales Supervision and General Supervision of Employees.”

Further, FINRA has modified the number of questions in each section of the study outline as follows:

- Supervision of Investment Banking, Underwriting Activities and Research: increased from 25 to 30 questions;
- Supervision of Trading and Market Making Activities: decreased from 29 to 24 questions;
- Supervision of Brokerage Office Operations: decreased from 16 to 12 questions;
- Sales Supervision and General Supervision of Employees: increased from 19 to 23 questions; and
- Compliance with Financial Responsibility Rules: no change to the number of questions (11).

FINRA has made similar changes to the Series 23 selection specifications and question bank. The number of questions on the Series 23 examination remains at 100, and candidates continue to have 2½ hours to complete the exam. Also, each question continues to count as one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

Series 24 (General Securities Principal)

Pursuant to NASD Rule 1022(a), each associated person of a member firm who is included within the definition of principal in NASD Rule 1021(b), and each person designated as a Chief Compliance Officer on Schedule A of Form BD (Uniform Application for Broker-Dealer Registration), is required to register with FINRA as a General Securities Principal, or in such other limited principal registration categories, as may be appropriate.² An associated person also may be required to register as a General Securities Principal due to other FINRA rule requirements.³ The Series 24 examination is the FINRA examination that qualifies an individual to function as a General Securities Principal. An associated person seeking to register as a General Securities Principal also must register as either a General Securities Representative (Series 7) or, depending on the scope of his or her supervisory responsibilities, as a Limited Representative – Corporate Securities (Series 62).⁴

Among other revisions, FINRA has changed the references to the FINRA and NASDAQ rules in the Series 24 study outline to reflect NASDAQ's separation from FINRA (then known as NASD). In addition, FINRA has added sections on:

- SEC Regulation M-A
- SEC Regulation S-K
- SEC Regulation S-X
- SEC Regulation NMS
- SEC Regulation SHO
- the Sarbanes-Oxley Act
- SEC Rule 3a4-1
- SEC Rule 405
- NASDAQ Initial Public Offering Process (NASDAQ Head Trader Alert 2005-096)
- NYSE Rule 392
- NASD IM-2110-7
- NASD IM-2440-2 (Additional Mark-Up Policy for Transactions in Debt Securities, Except Municipal Securities)
- NASD IM-2210-6
- NASD Rule 2111
- NASD Rule 2290
- NASD Rule 2370
- NASD Rule 2441
- NASD Rule 5110

FINRA has changed the title of Section 1 of the study outline from “Supervision of Investment Banking Activities” to “Supervision of Investment Banking, Underwriting Activities and Research,” and the title of Section 4 from “Sales Supervision; General Supervision of Employees; Regulatory Framework of NASD” to “Sales Supervision and General Supervision of Employees.”

Further, FINRA has modified the number of questions in each section of the study outline as follows:

- ▶ Supervision of Investment Banking, Underwriting Activities and Research: increased from 23 to 33 questions;
- ▶ Supervision of Trading and Market Making Activities: decreased from 39 to 31 questions;
- ▶ Supervision of Brokerage Office Operations: decreased from 34 to 29 questions;
- ▶ Sales Supervision and General Supervision of Employees: increased from 38 to 43 questions; and
- ▶ Compliance with Financial Responsibility Rules: decreased from 16 to 14 questions.

FINRA has made similar changes to the Series 24 selection specifications and question bank. The number of questions on the Series 24 examination remains at 150, and candidates continue to have 3½ hours to complete the exam. Also, each question continues to count as one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

Series 42 (Limited Representative – Options)

Pursuant to NASD Rule 1032(d), each associated person of a member firm who is included within the definition of representative in NASD Rule 1031(b) may register with FINRA as a Limited Representative – Options and Security Futures if: (1) the individual’s activities in the investment banking and securities business of the member firm are limited solely to the solicitation or sale of option or security futures contracts, including option contracts on government securities as that term is defined in Section 3(a)(42)(D) of the Exchange Act, for the account of a broker-dealer or public customer; (2) the individual also registers as either a Limited Representative – Corporate Securities (Series 62) or Limited Representative – Government Securities (Series 72); (3) the individual passes the Series 42 qualification examination; and (4) the individual completes a firm element continuing education program that addresses security futures before engaging in any security futures business.

Among other revisions, FINRA has changed the Series 42 study outline to add sections on NASD IM-2110-7 and NASD Rules 2370 and 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings).

FINRA also has decreased the number of sections covered by the Series 42 outline from five to four. Further, FINRA has modified the section headings and the number of questions in each section of the outline as follows:

- ▶ Section 1, Terminology, Types of Options, Investment Strategies and Taxation (20 questions);
- ▶ Section 2, Handling Options Accounts (14 questions);
- ▶ Section 3, Trading and Settlement Practices (10 questions); and
- ▶ Section 4, Qualifications and Business Conduct of Registered Options Representatives, Reporting and Recordkeeping Requirements (6 questions).

FINRA has made similar changes to the Series 42 selection specifications and question bank. The number of questions on the Series 42 examination remains at 50, and candidates continue to have 1½ hours to complete the exam. Also, each question continues to count as one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

Series 55 (Limited Representative – Equity Trader)

Pursuant to NASD Rule 1032(f), each associated person of a member firm who is included within the definition of representative in NASD Rule 1031(b) is required to register with FINRA as a Limited Representative – Equity Trader if, with respect to transactions in equity, preferred or convertible debt securities effected otherwise than on a securities exchange, such person is engaged in proprietary trading, the execution of transactions on an agency basis or the direct supervision of such activities. There is an exception from the Limited Representative – Equity Trader requirement for any associated person of a member firm whose trading activities are conducted principally on behalf of an investment company that is registered with the SEC pursuant to the Investment Company Act of 1940 (Investment Company Act) and that controls, is controlled by or is under common control with the member firm. The Series 55 examination is the FINRA examination that qualifies an individual to function as a Limited Representative – Equity Trader. Before registration as a Limited Representative – Equity Trader may become effective, the individual must be registered as either a General Securities Representative (Series 7) or Limited Representative – Corporate Securities (Series 62).

Among other revisions, FINRA has changed the references to the FINRA and NASDAQ rules in the Series 55 study outline to reflect NASDAQ's separation from FINRA (then known as NASD). FINRA also has added sections on NASD Rules 2441 and 5110.

FINRA has changed the title of Section 2 of the study outline from “NASDAQ Display, Execution and Trading Systems” to “Display, Execution and Trading Systems.” Further, FINRA has modified the number of questions in each section of the study outline as follows:

- NASDAQ and Over-the-Counter Markets: increased from 41 to 42 questions;
- Display, Execution and Trading Systems: decreased from 17 to 12 questions;
- Trade Reporting Requirements: increased from 19 to 22 questions; and
- General Industry Standards: increased from 23 to 24 questions.

FINRA has made similar changes to the Series 55 selection specifications and question bank. The number of questions on the Series 55 examination remains at 100, and candidates continue to have 3 hours to complete the exam. Also, each question continues to count as one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

Series 62 (Limited Representative – Corporate Securities)

Pursuant to NASD Rule 1032(e), each associated person of a member firm who is included within the definition of representative in NASD Rule 1031(b) may register with FINRA as a Limited Representative – Corporate Securities if: (1) the individual’s activities in the investment banking and securities business of the member firm are limited solely to the solicitation, purchase and sale of a “security,” as that term is defined in Section 3(a)(10) of the Exchange Act; (2) the individual does not engage in any activities relating to the following securities: municipal securities as defined in Section 3(a)(29) of the Exchange Act, option securities as defined in NASD Rule 2860, redeemable securities of companies registered pursuant to the Investment Company Act (except for money market funds), variable contracts of insurance companies registered pursuant to the Securities Act of 1933 (Securities Act) and direct participation program securities as defined in NASD Rule 1022(e); and (3) the individual passes the Series 62 qualification examination.

Among other revisions, FINRA has changed the references to the FINRA and NASDAQ rules in the Series 62 study outline to reflect NASDAQ’s separation from FINRA (then known as NASD). In addition, FINRA has added sections on:

- exchange-traded funds
- hedge funds
- unit investment trusts
- SEC Regulation M-A

- SEC Regulation S-K
- SEC Regulation S-X
- SEC Regulation NMS
- SEC Regulation SHO
- SEC Rule 405
- NASD IM-2110-7
- NASD IM-2440-2
- NASD IM-2210-6
- NASD Rule 2111
- NASD Rule 2370
- NASD Rule 2441

FINRA has changed the title of Section 1 of the study outline from “Characteristics of Corporate Securities” to “Types and Characteristics of Securities and Investments,” the title of Section 3 from “Valuing Corporate Securities” to “Evaluation of Securities and Investments,” and the title of Section 4 from “Handling Customer Accounts” to “Handling Customer Accounts and Securities Industry Regulations.”

Further, FINRA has modified the number of questions in each section of the study outline as follows:

- Types and Characteristics of Securities and Investments: decreased from 28 to 25 questions;
- The Market for Corporate Securities: increased from 31 to 40 questions;
- Evaluation of Securities and Investments: no change to the number of questions (14); and
- Handling Customer Accounts and Securities Industry Regulations: decreased from 42 to 36 questions.

FINRA has made similar changes to the Series 62 selection specifications and question bank. The number of questions on the Series 62 examination remains at 115, and candidates continue to have 2½ hours to complete the exam. Also, each question continues to count one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

Series 72 (Limited Representative – Government Securities)

Pursuant to NASD Rule 1032(g), each associated person of a member firm who is included within the definition of representative in NASD Rule 1031(b) may register with FINRA as a Limited Representative – Government Securities if: (1) the individual's activities in the investment banking and securities business of the member firm are limited solely to the solicitation, purchase and sale of "government securities," as that term is defined in Sections 3(a)(42)(A) through (C) of the Exchange Act, for the account of a broker-dealer or public customer; and (2) the individual passes the Series 72 qualification examination.

Among other revisions, FINRA has changed the Series 72 study outline to add sections on NASD IM-2210-6, NASD Rule 2370 and NASD Rule 2790.

FINRA also has changed the title of Section 3 of the study outline from "Other Related Securities and Financial Instruments" to "Related Securities and Financial Instruments," and the title of Section 5 from "Legal Considerations" to "Securities Industry Regulations and Legal Considerations." Further, FINRA has modified the number of questions in each section of the study outline as follows:

- Government Securities: decreased from 25 to 22 questions;
- Mortgaged-Backed Securities: no change to the number of questions (25);
- Related Securities and Financial Instruments: no change to the number of questions (9);
- Economic Activity, Government Policy and the Behavior of Interest Rates: decreased from 16 to 13 questions;
- Securities Industry Regulations and Legal Considerations: increased from 10 to 15 questions; and
- Customer Considerations: increased from 15 to 16 questions.

FINRA has made similar changes to the Series 72 selection specifications and question bank. The number of questions on the Series 72 examination remains at 100, and candidates continue to have 3 hours to complete the exam. Also, each question continues to count as one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

Series 82 (Limited Representative – Private Securities Offerings)

Pursuant to NASD Rule 1032(h), each associated person of a member firm who is included within the definition of representative in NASD Rule 1031(b) may register with FINRA as a Limited Representative – Private Securities Offerings if: (1) the individual's activities in the investment banking and securities business of the member firm are limited solely to effecting sales as part of a primary offering of securities not involving a public offering, pursuant to Sections 3(b), 4(2) or 4(6) of the Securities Act and the rules and regulations thereunder; (2) the individual does not effect sales of municipal or government securities, or equity interests in or the debt of direct participation program securities as defined in NASD Rule 1022(e); and (3) the individual passes the Series 82 qualification examination.

Among other revisions, FINRA has revised the Series 82 study outline to add sections on exchange-traded funds, Private Investment in Public Equity (PIPE) offerings, NASD IM-2110-7 and NASD Rule 2370.

FINRA also has changed the title of Section 3 of the study outline from “Analyzing Corporate Securities” to “Analyzing Corporate Securities and Investment Planning.” Further, FINRA has modified the number of questions in each section of the study outline as follows:

- ▶ Characteristics of Corporate Securities: no change to the number of questions (13);
- ▶ Regulation of The Market for Registered and Unregistered Securities: no change to the number of questions (45);
- ▶ Analyzing Corporate Securities and Investment Planning: increased from 15 to 16 questions; and
- ▶ Handling Customer Accounts and Industry Regulations: decreased from 27 to 26 questions.

FINRA has made similar changes to the Series 82 selection specifications and question bank. The number of questions on the Series 82 examination remains at 100, and candidates continue to have 2½ hours to complete the exam. Also, each question continues to count as one point, and each candidate must correctly answer 70 percent of the questions to receive a passing grade.

Availability of Study Outlines

The study outlines for the revised examination programs are available on FINRA's Web site at www.finra.org/brokerqualifications/exams.

Endnotes

- 1 See File Nos. SR-FINRA-2007-027 (Proposed Rule Change Relating to Revisions to the Series 23 Examination Program); SR-FINRA-2007-028 (Proposed Rule Change Relating to Revisions to the Series 24 Examination Program); SR-FINRA-2007-029 (Proposed Rule Change Relating to Revisions to the Series 42 Examination Program); SR-FINRA-2007-030 (Proposed Rule Change Relating to Revisions to the Series 55 Examination Program); SR-FINRA-2007-031 (Proposed Rule Change Relating to Revisions to the Series 62 Examination Program); SR-FINRA-2007-032 (Proposed Rule Change Relating to Revisions to the Series 72 Examination Program); and SR-FINRA-2007-033 (Proposed Rule Change Relating to Revisions to the Series 82 Examination Program). These rule filings were filed with the SEC for immediate effectiveness on December 12, 2007.
- 2 In addition, NYSE Rule 342.13 recognizes the Series 24 examination as an acceptable alternative to the Series 9/10 examination for persons whose duties do not include supervision of options or municipal securities sales activities. FINRA has incorporated into its rulebook certain rules of NYSE, including NYSE Rule 342.13. FINRA's NYSE Rule 342.13 applies solely to those members of FINRA that also are members of NYSE on or after July 30, 2007.
- 3 See, e.g., NASD Rules 3010(a)(2), 3010(a)(4) and 3012(a)(1).
- 4 As a prerequisite to the Series 24 examination, FINRA also recognizes the Limited Registered Representative (Series 17), Canada Modules of the Series 7 (Series 37 and Series 38) and Limited Representative – Private Securities Offerings (Series 82) examinations.

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Odd-Lot Transactions

FINRA Adopts Rule Amendments Relating to Reporting of Odd-Lot Transactions

Effective Date: March 3, 2008

Executive Summary

Effective Monday, March 3, 2008, when reporting odd-lot transactions¹ to a FINRA Trade Reporting Facility (TRF), the Alternative Display Facility (ADF) and the OTC Reporting Facility (ORF) (collectively referred to as the “FINRA Facilities”), firms:

- 1) will no longer use the special “.RO” trade report modifier to indicate that an odd-lot transaction is reported for regulatory transaction fee purposes and
- 2) must report odd-lot transactions marked for media dissemination (*i.e.*, “for publication” or as “tape eligible”), as applicable.

The text of the amended rule language is available at www.finra.org/RulesRegulation/RuleFilings/2007RuleFilings/P037160.

Questions regarding this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126; or the Office of General Counsel, at (202) 728-8071.

Background & Discussion

Today, with the exception of OTC Equity Securities, as defined in NASD Rule 6610, firms do not report odd-lot transactions to FINRA for purposes of public dissemination.² Firms are, however, required to report such transactions for regulatory transaction fee purposes and must use a special “.RO” trade report modifier (the “.RO modifier”) to indicate that the transaction is reported pursuant to Section 3 of Schedule A to the By-Laws (Section 3). FINRA uses the .RO modifier to identify odd-lot transactions that are required to be included in FINRA’s calculation of its Section 31 obligation to the Securities and Exchange Commission (SEC).³

December 2007

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Finance
- Legal
- Operations
- Registered Representatives
- Senior Management
- Systems
- Trading

Key Topic(s)

- Alternative Display Facility
- Odd-Lots
- OTC Reporting Facility
- Regulatory Transaction Fees
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- Section 3 of Schedule A to the By-Laws
- NASD Rules 4200, 4200A, 4200C and 4200E
- NASD Rules 4632, 4632A, 4632C and 4632E
- NASD Rule 6610
- NASD Rules 6130, 6130A, 6130C and 6130E
- NASD Rule 6620
- NTM 07-23
- Regulatory Notice 07-38
- Regulation NMS
- Section 31 of the Exchange Act

With the implementation of Regulation NMS and a new trade report messaging format,⁴ firms are required to include the .RO modifier on trade reports of odd-lot transactions in the same information level (or byte) as other regulatory modifiers. Thus, in certain instances, firms may be faced with prioritizing and determining which modifier should be included in the trade report submitted to FINRA. This can lead to confusion, inaccuracies and inconsistencies in trade reporting which, in turn, can impair FINRA's ability to produce a complete and accurate audit trail. FINRA has determined that the .RO modifier can be eliminated because the FINRA Facilities can systematically identify odd-lot transactions based on the number of reported shares.⁵

Accordingly, on October 10, 2007, FINRA filed with the SEC for immediate effectiveness a proposed rule change⁶ to amend its trade reporting rules⁷ to eliminate the requirement that firms use the .RO modifier on reports of odd-lot transactions. FINRA also amended its trade reporting rules⁸ to require that firms report odd-lot transactions marked for media dissemination (*i.e.*, "for publication" or as "tape eligible"), as applicable.⁹ Thus, instead of appending the .RO modifier on reports of odd-lot transactions that are subject to a regulatory transaction fee, firms should mark those reports as "tape eligible." FINRA will include odd-lot trades in covered securities reported as "tape eligible" in the aggregate dollar amount of its covered sales for purposes of calculating its Section 31 obligation to the SEC. However, although odd-lot transactions will be marked "tape eligible," the FINRA Facilities will suppress such transactions from public dissemination.¹⁰

With the exception of the changes described above, firms should continue to report odd-lot transactions as they do today. FINRA is clarifying that firms are not required to mark an odd-lot transaction report as "tape eligible" pursuant to the rule amendments if that report would not be marked with the .RO modifier today. For example, firms should continue to submit non-tape (or clearing-only or non-tape, non-clearing) reports, as applicable, to reflect the offsetting leg of a riskless principal transaction¹¹ or agency transaction where a firm is acting as agent on behalf of another member firm.¹² In such instances, the first leg would be reported to FINRA as "tape eligible" and would be assessed a Section 3 fee, and the second offsetting leg would be reported to FINRA as a non-tape (clearing-only or non-tape, non-clearing) entry and would not be assessed a Section 3 fee.

Additionally, FINRA notes that the rule amendments do not affect the status of odd-lot transactions under Regulation NMS; in particular, the application of the Regulation NMS Order Protection Rule.¹³

The rule amendments become operative on Monday, March 3, 2008.

Endnotes

- 1 For purposes of the trade reporting rules, an odd lot is less than a “normal unit of trading,” which is defined as “100 shares of a security unless, with respect to a particular security, NASD determines that a normal unit of trading shall constitute other than 100 shares.” See NASD Rules 4200, 4200A, 4200C and 4200E.
- 2 See NASD Rules 4632(e), 4632A(i), 4632C(e) and 4632E(f). Pursuant to NASD Rule 6620, odd-lot transactions in OTC Equity Securities are required to be reported to FINRA for purposes of publication.
- 3 Pursuant to Section 31 of the Securities Exchange Act of 1934, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government’s supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership, in accordance with Section 3.
- 4 See *NASD Notice to Members 07-23* (May 2007).
- 5 Firms should note that they are still required to use special trade report modifiers to indicate that away-from-the-market sales and exercises of OTC options are reported in accordance with Section 3 (the “RA” and “RX” modifiers, respectively).
- 6 See Securities Exchange Act Release No. 56669 (October 17, 2007), 72 FR 60398 (October 24, 2007) (notice of filing and immediate effectiveness of SR-FINRA-2007-017).
- 7 See NASD Rules 6130(g), 6130A(c), 6130C(f) and 6130E(f).
- 8 See NASD Rules 4632(e), 4632A(i), 4632C(e) and 4632E(f).
- 9 Firms should consult the applicable technical specifications for details on how to report trades for media dissemination to a particular FINRA Facility, as the specific reporting requirements may differ across facilities.
- 10 FINRA notes that today, with the general exception of certain high-priced securities, transactions of fewer than 100 shares are not publicly disseminated by FINRA or the appropriate exclusive securities information processor.
- 11 See NASD Rules 4632(d)(3)(B), 4632A(e)(1)(C)(ii), 4632C(d)(3)(B), 4632E(e)(3)(B) and 6620(d)(3)(B).
- 12 See *FINRA Regulatory Notice 07-38* (August 2007).
- 13 See Question 7.03, Division of Market Regulation: Responses to Frequently Asked Questions concerning SEC Rule 611 and Rule 610 of Regulation NMS (June 8, 2007 update).

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Office of Supervisory Jurisdiction Definition

SEC approves amendments to NASD Rule 3010(g)(1) to Exempt Locations that Solely Conduct Final Approval of Research Reports

Effective Date: December 19, 2007

Executive Summary

Effective December 19, 2007, locations that solely conduct final approval of research reports are exempt from the definition of Office of Supervisory Jurisdiction.¹ NASD Rule 3010(g)(1), as amended, is set forth in Attachment A.

Questions concerning this *Notice* should be directed to Rachael Grad, Counsel, Office of General Counsel, at (202) 728-8290.

Background & Discussion

The SEC has approved an amendment to NASD Rule 3010(g)(1) to exempt from the definition of Office of Supervisory Jurisdiction (OSJ) those locations that solely conduct final approval of research reports.² The amendment allows FINRA to classify such locations consistently under both NASD and the incorporated NYSE rules.

In July 2006, amendments to the branch office definition under NASD Rule 3010(g)(2) went into effect (Uniform Branch Office Definition).³ The Uniform Branch Office Definition was developed by FINRA (then NASD), the NYSE and the North American Securities Administrators Association (NASAA) to establish a broad national standard. In conjunction with the new Uniform Branch Office Definition, a new Form BR was introduced to provide a more efficient, standardized method for member firms to register branch office locations.

December 2007

Notice Type

- Rule Amendment

Suggested Routing

- Corporation Finance
- Legal
- Registration
- Senior Management
- Branch Office

Key Topic(s)

- Office of Supervisory Jurisdiction
- Research Reports
- Supervision
- Uniform Branch Office Definition

Referenced Rules & Notices

- NTM 07-12
- NASD Rule 3010
- NYSE Information Memo 05-74
- NYSE Information Memo 06-13

While FINRA and the NYSE sought to adopt consistent interpretations of the new Uniform Branch Office Definition, they classified differently locations where final approval by a principal of research reports occurs. Under NASD rules, final review of advertising or sales literature (which includes research reports) makes a location an OSJ, and therefore a branch office. The NYSE rules, however, do not include an OSJ definition, and NYSE stated in *Information Memos 05-74* and *06-13* that it deems a location where a member firm stations a Series 16 qualified supervisory analyst solely to review research reports as a “non-sales” location, which is an express exclusion from the Uniform Branch Office Definition.⁴ Because of the definition of OSJ set forth in NASD Rule 3010(g)(1), FINRA could not classify such locations as “non-sales” locations under NASD rules, unless the review of the research reports conducted from such locations constituted something less than final approval.⁵

The SEC recently approved the amendment to NASD Rule 3010(g)(2) to exclude locations that solely conduct final approval of research reports from the definition of OSJ. As a result of this amendment, FINRA is of the view that a location where a member firm conducts final approval of research reports may be considered a “non-sales” location for purposes of NASD Rule 3010(g)(2), the Uniform Branch Office Definition, provided no other activities at such location would require branch office registration.

Endnotes

- 1 See Securities Exchange Act Release No. 56585 (October 1, 2007) 72 FR 57081 (October 5, 2007) (Notice of Filing of Proposed Rule Change Relating to Amending the Definition of Office of Supervisory Jurisdiction in NASD Rule 3010(g)(1) to Exempt Locations that Solely Conduct Final Approval of Research Reports; SR-FINRA-2007-008).
- 2 NASD Rule 3010(g)(1) defines the term OSJ to mean any office of a member at which any one or more of the following functions take place: (a) order execution and/or market making; (b) structuring of public offerings or private placements; (c) maintaining custody of customers' funds and/or securities; (d) final acceptance (approval) of new accounts on behalf of the member; (e) review and endorsement of customer orders, pursuant to NASD Rule 3010(d); (f) final approval of advertising or sales literature for use by persons associated with the member, pursuant to NASD Rule 2210(b)(1); or (g) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.
- 3 See Securities Exchange Act Release No. 52403 (September 9, 2005); 70 FR 54782 (September 16, 2005) (Order Granting Approval of Proposed Rule Change Relating to Proposed Uniform Branch Office Definition; SR-NASD-2003-104).
- 4 See NYSE *Information Memo 05-74* (October 6, 2005) (Branch Office Definition) ("An example of a non-sales location would be where a member or member organization stations a Series 16 qualified supervisory analyst in an office of a foreign affiliate, solely to review research reports") and NYSE *Information Memo 06-13* (March 22, 2006) (Joint Interpretive Guidance from NYSE and NASD Relating to the Uniform Branch Office Definition, Question and Answer #5).
- 5 Compare NYSE *Information Memo 06-13* (March 22, 2006) (Joint Interpretive Guidance from NYSE and NASD Relating to the Uniform Branch Office Definition, Question and Answer #5) with *NASD Notice to Members 06-12* (March 2006) (Uniform Branch Office Definition, Question and Answer #5).

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Attachment A

New language is underlined.

3010 Supervision

(g) Definitions

(1) “Office of Supervisory Jurisdiction” means any office of a member at which any one or more of the following functions take place:

- (A) order execution and/or market making;
- (B) structuring of public offerings or private placements;
- (C) maintaining custody of customers’ funds and/or securities;
- (D) final acceptance (approval) of new accounts on behalf of the member;
- (E) review and endorsement of customer orders, pursuant to paragraph (d) above;
- (F) final approval of advertising or sales literature for use by persons associated with the member, pursuant to Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or
- (G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

PLEASE NOTE: The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated, including NYSE Rule 409. The incorporated NYSE Rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as “Dual Members.” Dual Members also must comply with NASD Rules. Until the adoption of a consolidated rulebook, FINRA’s *Regulatory Notices* will address both NASD and the incorporated NYSE Rules.

Amendments to NYSE Rule 409(f)

FINRA Amends NYSE Rule 409(f) (Statements of Accounts to Customers) to Eliminate the Requirement to Include the Name of the Securities Market on which a Transaction is Effected

Effective Date: January 1, 2008

Executive Summary

Effective January 1, 2008,¹ Dual Member firms will not be required to disclose the name of the securities market on which the transaction was effected on confirmations or reports as required under NYSE Rule 409(f). This change makes permanent the temporary relief that was granted in March 2007 and extended until January 1, 2008. The text of the amended rule is set forth in Attachment A to this *Notice*.

Questions concerning this *Notice* should be directed to the FINRA Office of General Counsel, at (202) 728-8071.

December 2007

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Technology

Key Topic(s)

- Confirmations
- Statements of Accounts

Referenced Rules & Notices

- NASD Rule 2320
- Notice 07-35
- NTM 01-22
- NYSE Info Memo 07-84
- NYSE Rule 409
- Regulation NMS
- SEC Rule 10b-10

Background & Discussion

On March 20, 2007, NYSE granted temporary relief, until September 30, 2007, from the application of NYSE Rule 409(f) regarding the disclosure of the name of the securities market on which a transaction was effected.² The temporary relief was extended by FINRA and by NYSE until January 1, 2008.³ FINRA has filed a rule amendment for immediate effectiveness to make this relief permanent as of January 1, 2008.

NYSE Rule 409(f) (Statements of Customer Accounts) requires that confirmations of all transactions (including those made over-the-counter and on other exchanges) in securities admitted to dealings on the NYSE, sent by Dual Members to their customers, indicate the settlement date of the transaction and the name of the securities market on which the transaction was effected. This requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from which the orders were received.⁴

Following the SEC's adoption of Regulation NMS (Reg NMS), an increasing number of orders, or portions of orders, routed to a given market for execution are rerouted to other markets that, at that time, display a better quotation. This process, which often is necessary due to the requirements of the Order Protection Rule under Reg NMS, may lead to relatively small orders receiving executions in multiple market centers.⁵ This creates an operational challenge for Dual Members to capture the name of the market of execution on a timely basis for inclusion on the transaction confirmation as required by NYSE Rule 409(f).

Because of this challenge, both FINRA and NYSE granted temporary relief from the application of NYSE Rule 409(f) regarding the disclosure of the name of the securities market on which a transaction was effected. In granting the relief, FINRA and NYSE stated that they would continue to reassess the utility of NYSE Rule 409(f) in the current regulatory environment.

FINRA has concluded that, because of member firms' existing best execution and disclosure requirements, the usefulness of including on a confirmation or correspondent report the securities market on which a transaction in a security admitted to dealings on the NYSE was effected does not outweigh the operational difficulties of capturing the information following the adoption of Reg NMS. Specifically, the duty of best execution requires Dual Members to exercise diligence to obtain the best price when routing customer trades for execution.⁶ In this regard, NASD Rule 2320 (Best Execution and Interpositioning) requires every FINRA member to employ reasonable diligence in ascertaining best execution in the execution of a transaction.⁷ In addition to existing best execution obligations, Reg NMS imposes disclosure obligations on broker-dealers regarding the handling of customer orders.⁸ Because of these existing obligations, FINRA has eliminated from NYSE Rule 409(f)

the requirement that confirmations and correspondent reports for transactions in securities admitted to dealings on the NYSE include the securities market on which the transaction was effected. Dual Members are, however, still required to indicate the settlement date of each transaction on customer and correspondent confirmations and correspondent reports for all transactions (including those made over-the-counter and on other exchanges) in securities admitted to dealings on the NYSE.

Endnotes

1. FINRA filed this amendment with the Securities and Exchange Commission (SEC) for immediate effectiveness on December 21, 2007, with an operative date of January 1, 2008. *See* SR-FINRA-2007-037.
2. *See NYSE Information Memorandum 07-28* (March 20, 2007).
3. *See* FINRA *Regulatory Notice 07-35* (August 2007); *NYSE Information Memorandum 07-84* (August 2, 2007).
4. *See also* SEC Rule 10b-10.
5. The Order Protection Rule requires trading centers, including broker-dealers that internally execute orders, to establish, maintain, and enforce written policies and procedures reasonably designed to protect against “trade-throughs” of protected quotations in NMS stocks. *See* Rule 611(a) under Reg NMS, 17 CFR 242.611(a).
6. *See, e.g.*, Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37537-38 (June 29, 2005) (discussing the duty of best execution in relation to Reg NMS).
7. As stated in *NASD Notice to Members 01-22*, members generally may execute such diligence on either a trade-by-trade basis or through the regular and rigorous review of the execution quality of various market centers.
8. SEC Rule 606(b) requires a broker-dealer to disclose to its customer upon request “the identity of the venue to which the customer’s orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders.” *See* Rule 606(b) under Reg NMS, 17 CFR 242.606(b). SEC Rule 607 requires a broker-dealer that acts as agent for a customer to disclose, in writing, upon opening a new account and on an annual basis thereafter, the firm’s policies regarding receipt of payment for order flow and the firm’s policies for determining where to route customer orders that are the subject of payment for order flow. *See* Rule 607 under Reg NMS, 17 CFR 242.607(a).

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ATTACHMENT A

New language is underlined; deletions are in brackets.

Rule 409. Statements of Accounts to Customers

(a) through (e) No change.

(f) Confirmation of all transactions (including those made “over-the-counter” and on other exchanges) in securities admitted to dealings on the Exchange, sent by members or member organizations to their customers, shall [indicate] clearly set forth with a suitable legend the settlement date of each transaction[and bear the name of the securities market on which the transaction was made]. This requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from whom the orders were received.

[All confirmations shall contain a suitable legend clearly setting forth all required information.]

Election Notice

Small Firm Advisory Board Election and Ballots

December 14, 2007

Suggested Routing

- Executive Representatives
- Senior Management

Executive Summary

The purpose of this *Election Notice* is to distribute to FINRA Small Firm members¹ ballots to elect the five regional members of the Small Firm Advisory Board (SFAB). The SFAB provides guidance to FINRA staff, particularly regarding the potential impact of proposed regulatory initiatives on FINRA's Small Firm members.

Firms are urged to vote in this election. For a ballot to be considered valid, it must be signed by the executive representative of a member firm eligible to vote in the election. Firms that are Small Firm members of FINRA as of the close of business on December 13, 2007, are eligible to vote in this election.

Ballots must be returned no later than **January 11, 2008**, and the newly elected SFAB members will take office in April 2008.

SFAB Composition

Beginning in 2008, the SFAB will consist of:

- ▶ five regional members elected by Small Firms in the five FINRA regions, one from each region; and
- ▶ five at-large members appointed by FINRA.

Additionally, the FINRA Board's Small Firm Governors² will serve as ex-officio members of the SFAB.

The five regional members up for election will represent the following geographic regions:

- ▶ **Midwest Region:** Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin (Districts 4 and 8)
- ▶ **New York Region:** New York (the counties of Nassau and Suffolk, and the five boroughs of New York City) (District 10)
- ▶ **North Region:** Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City), Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia (Districts 9 and 11)
- ▶ **South Region:** Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, the Canal Zone, Puerto Rico and the Virgin Islands (Districts 5, 6 and 7)
- ▶ **West Region:** Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and the former U.S. Trust Territories (Districts 1, 2 and 3)

Any senior member of a Small Firm whose primary place of business is in the region in which his or her firm has its main office (as indicated in FINRA records) was eligible to have his or her name placed on the SFAB ballot for that region. Senior members of firms include owners, chief executive officers, presidents, chief compliance officers, chief operating officers or individuals of comparable status.

Terms of SFAB Members

The successful candidate will be the individual who receives the most votes in his or her region. All SFAB members eventually will serve three-year terms. However, in order to maintain continuity on the SFAB going forward, the end of the terms of the individuals elected during this election will be staggered—and not all of them will serve for three years. Three-year terms will be phased in over the next three election cycles, with all SFAB members elected beginning with the 2009 election serving full three-year terms.

The schedule below shows the terms for persons to be elected in the upcoming election.

	Serves until December 31, 2010	Serves until December 31, 2009	Serves until December 31, 2008
Midwest Region			x
New York Region	x		
North Region		x	
South Region			x
West Region		x	

The term of an SFAB member shall terminate immediately upon a determination by the SFAB, by a majority vote of the remaining members, that the member no longer satisfies the eligibility criteria. Additionally, the FINRA Board may remove from the SFAB a member who is unable or fails to discharge the member's duties.

Once an individual has completed a full three-year elected term on the SFAB, he or she is ineligible to run for reelection to the SFAB for another three years.

Attachment A lists the candidates certified by the Corporate Secretary of FINRA as satisfying requirements for each regional SFAB seat. Information about each candidate is available on FINRA's Web site at www.finra.org/sfab/candidateprofiles.

Voting Eligibility

FINRA Small Firms, as of the close of business on December 13, 2007, are eligible to vote for candidates running for the SFAB seat representing the region corresponding to the district to which they are assigned in the Central Registration Depository. The size of each firm and the location of each firm's main office will be verified on the day the ballots are mailed.

A ballot containing the candidates for your region is enclosed. Firms may vote for only one candidate listed on the ballot.

Voting Methods

Member firms are able to submit ballots by U.S. mail. The enclosed ballot contains detailed instructions on the submission procedures.

As mentioned above, it is important that all Small Firms vote.

Questions/Further Information

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

Barbara Z. Sweeney
Senior Vice President and
Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

or

T. Grant Callery
Executive Vice President and
General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006-1506

(202) 728-8062

(202) 728-8285

Endnotes

- 1 A Small Firm is defined as a member that employs at least one and no more than 150 registered persons. See Article I (ww) of the FINRA By-Laws.
- 2 A Small Firm Governor is defined as a member of the Board elected by Small Firm members, provided, however, that in order to be eligible to serve, a Small Firm Governor must be registered with a member which is a Small Firm member and must be an Industry Governor. See Article I (xx) of the FINRA By-Laws.

Attachment A – SFAB Candidates

Following is the list of candidates certified by the Corporate Secretary of FINRA as satisfying requirements for each regional SFAB seat. Information about each candidate is available on FINRA's Web site at: www.finra.org/candidateprofiles.

Midwest Region Candidates

George D. Bates	Principal – Compliance and Sales	Bates Securities, Inc.
Mari Buechner	President, Chief Executive Officer and Chief Compliance Officer	Coordinated Capital Securities, Inc.
Steve Cairney	Chief Compliance Officer	Nations Financial Group, Inc.
James R. Carlson, Sr.	Senior Vice President and Branch Manager	First MidAmerica Investment Corporation
Andrea R. Christensen	Chief Compliance Officer	Midwest Financial and Investment Services, Inc.
Heidi Donahe	Senior Vice President and Chief Compliance Officer	Octavus, LLC
Victor Elting, III	Executive Vice President	Podesta & Co.
Gregory W. Goelzer	Vice Chairman and Chief Executive Officer	Goelzer Investment Management
Edward Alan Horwitz	President	Horwitz & Associates, Inc.
Basil Joseph	Chief Compliance Officer and Chief Financial Officer	Van Clemens & Co., Inc.
Marc Jay Lane	Chief Executive Officer	Marc J. Lane & Company
John Moloney	President and Chief Executive Officer	Moloney Securities Co., Inc.
Thomas M. McDonald	Chief Executive Officer	Thomas McDonald Partners
Thomas E. Stern	Chief Financial Officer, Financial and Operations Principal and Director	optionsXpress, Inc.

New York Region Candidates

Jacob Alpert	Executive Vice President and Head of Underwriting, Trading & Sales	M. R. Beal & Company
Dr. Ying Cui	President, Chief Executive Officer and Chief Financial Officer	Univest Securities, Inc.
Paul Ehrenstein	Financial and Operations Principal	Zenith American Securities Corporation
Larry Kimmel	Managing Director and Director of Compliance	DEPFA First Albany Securities LLC
John Stevenson Miller	Chief Compliance Officer and Financial and Operations Principal	Hedge Fund Capital Partners
Richard Oh	Managing Director, Chief Operating Officer, and Chief Compliance Officer	Taglich Brothers, Inc.
Philip V. Oppenheimer	President, Chief Financial Officer and Chief Compliance Officer	Oppenheimer & Close, Inc.
David V. Shields	President and Chief Executive Officer	Shields & Company
David M. Sobel	Executive Vice President, Chief Compliance Officer and In-House Counsel	Abel/Noser Corp.
Howard Spindel	Financial and Operations Principal	A.J. Pace & Co., Inc.

North Region Candidates

Leonid Berline	Executive Vice President and Chief Compliance Officer	Winslow, Evans & Crocker
John Clardy	Sales Manager and Executive Vice President- Investments	Johnston, Lemon & Co., Inc.
John C. Crittenden, III	Chief Compliance Officer	FTI Capital Advisors, LLC
Michael J. Dell'Olio	President and Chief Compliance Officer	North Atlantic Securities, LLC
Eric M. Earnhardt	Director of Compliance/Chief Compliance Officer	Emerging Growth Equities
John I. Fitzgerald	Director – Legal & Compliance	Leerink Swann & Company
Jerry Gruenbaum	Chief Executive Officer and Chief Compliance Officer	Puritan Securities, Inc.
Michael Hogan	Chief Executive Officer and President	FOLIOfn, Investments, Inc.
Gregg A. Kidd	President	Pinnacle Investments, LLC
S. Bradley Mell	Chief Executive Officer	W. H. Mell Associates, Inc.
Michael Molloy	Head Trader - Munis	Ridgeway & Conger, Inc.
Richard Neubert	Senior Vice President, Branch Manager and Producing Manager	Network 1 Financial Securities, Inc.
Tommasina A. Olson	President and Chief Compliance Officer	Lifestest Financial, Inc.
Richard Petrone	Executive Vice President, Director of Capital Markets	Domestic Securities, Inc.
Gordon D. Smith	President	Highland Financial, Ltd.
Michael Stupay	Financial and Operations Principal	EBX LLC
Aimee A. Toth	Chief Compliance Officer and General Counsel	Allegheny Investments, Ltd.

South Region Candidates

Jed Bandes	President	Mutual Trust Company of America Securities
Mark Beloyan	President	Beloyan Investment Securities, Inc.
Robert M. Drake	President and Chief Operating Officer	USF Securities, L.P.
Bryan T. Emerson	Managing Director and Owner	Starlight Investments, LLC
Robert Keenan	Chief Executive Officer and Financial and Operations Principal	St. Bernard Financial Services, Inc.
Daniel R. Levene	President and Chief Compliance Officer	Pointe Capital, Inc.
Carolyn R. May	Chief Compliance Officer and Advisory Director	Simmons First Investment Group, Inc.
James R. Muse	Partner and Chief Compliance Officer	Emerald Ventures, LLC
Carlos F. Otalvaro	President and Chief Executive Officer	Wallstreet Electronica, Inc.
Charles F. O'Kelley	President, Chief Executive Officer and Chief Compliance Officer	Atlantic Coast Securities Corporation
Phillip H. Palmer	President, Chief Executive Officer and Owner	First Independent Financial Services, Inc.
Robert T. Podraza	Senior Vice President/Compliance	Shay Financial Services, Inc.
W. Bruce Robinson	Vice President	Maplewood Investment Advisors, Inc.
Clive Slovin	President and Chief Executive Officer	The Strategic Financial Alliance, Inc.

West Region Candidates

Suzanne L. Bond	Chief Compliance Officer and Vice President	Madison Avenue Securities, Inc.
Henry Wolfgang Carter	General Counsel and Chief Compliance Officer	Global Crown Capital, LLC
Robert C. Daum	Chief Compliance Officer, Financial and Operations Principal and Executive Representative	ABD Financial Services, Inc.
Donald G. Gloisten	Chief Executive Officer	GBS Financial Corp.
Herbert Kurlan	Chief Executive Officer and Chief Compliance Officer	VT Brokers, LLC
Martin R. Ledgerwood	Vice President-Operations	South Valley Wealth Management
Rodney Wayne Lueck	National Director of Business Development/Recruiting, Sales, Marketing and Field Operations	GIA Financial Group, L.L.C.
Timothy C. Phillips	Chief Executive Officer	Phillips & Company Securities
Paige W. Pierce	President and Chief Executive Officer	R.W. Smith & Associates, Inc.
Daniel E. Pisenti	Compliance Advisor	Whitehall-Parker Securities, Inc.
Arthur E. Raitano	Chief Financial Officer and Chief Compliance Officer	E.J. De La Rosa & Co., Inc.
Daniel W. Roberts	President, Chief Executive Officer and Compliance Principal	Roberts & Ryan Investments, Inc.

Information Notice

PLEASE NOTE: The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated. The incorporated NYSE Rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as “Dual Members.” Dual Members also must comply with NASD Rules. Until the adoption of a consolidated rulebook, FINRA’s *Notices* will address both NASD and the incorporated NYSE Rules.

2007–2008 Filing Due Dates

Executive Summary

Member firms are reminded of their obligation to file, and the due dates for, FOCUS reports, Schedule I filings, Annual Audits, Customer Complaints and Short Interest reports. The schedules in this *Notice* outline the due dates for year-end 2007 reports and for 2008 reports.

The due dates for FOCUS reports, Schedule I filings, Customer Complaints and Short Interest reports are also combined and listed in chronological order in Attachment A.

- For firms filing through **WebFOCUS**:
 - Questions regarding the information to be filed should be directed to your firm’s Liaison.
 - Technical questions, including how to file a FOCUS report, resetting passwords and system requirements, file uploads, submission problems for Web-based FOCUS and Customer Complaints should be directed to FINRA’s Call Center at (800) 321-6273.
- For firms filing through **eFOCUS**:
 - Questions regarding the information to be filed should be directed to your firm’s Finance Coordinator.
 - Technical questions, including how to file a FOCUS report, resetting passwords and system requirements, file uploads, submission problems for eFOCUS and Customer Complaints should be directed to the SIAC Service Center at (212) 383-2062.
- Questions regarding Short Interest reporting deadlines should be directed to Yvonne Huber at (240) 386-5034 or Michele Bowan at (240) 386-4986.

December 20, 2007

Suggested Routing

- Compliance

Key Topics

- Annual Audits
- Customer Complaints
- FOCUS reports
- Schedule I filings
- Short Interest reports

Schedule I Filings

The Schedule I report, required pursuant to SEC Rule 17a-10, is filed electronically and is due at midnight, Eastern Time (ET) on the due dates noted.

Report Date	Due Date
December 31, 2007	January 25, 2008
December 31, 2008	January 27, 2009

2008 Monthly and Fifth FOCUS II/IIA Filings

A “fifth” FOCUS report is required by SEC Rule 17a-5(a)(2)(iii) for quarterly FOCUS report filers that have a fiscal year end other than a quarter end. Such report is due within 17 business days after the firm’s fiscal year end.

Period Ending	Due Date
January 31, 2008	February 26, 2008
February 29, 2008	March 26, 2008
April 30, 2008	May 23, 2008
May 31, 2008	June 24, 2008
July 31, 2008	August 25, 2008
August 31, 2008	September 24, 2008
October 31, 2008	November 25, 2008
November 30, 2008	December 23, 2008

2007 – 2008 Quarterly FOCUS Part II/IIA Filings

FOCUS reports (monthly, quarterly and fifth) are filed electronically and are due at midnight, ET on the due dates noted.

Quarter Ending	Due Date
December 31, 2007	January 25, 2008
March 31, 2008	April 23, 2008
June 30, 2008	July 24, 2008
September 30, 2008	October 23, 2008
December 31, 2008	January 27, 2009

2008 Fiscal Year-End Annual Audit Filings Due Dates

Annual Audits are filed in hard copy and must be received by close of business on the dates noted. Annual Audits are due, pursuant to SEC Rule 17a-5(d)(5) and NYSE Rule 418, no later than 60 calendar days after fiscal year end. Firms that do not use a fiscal year-end date coinciding with a month-end date should not rely on this schedule in determining due dates.

Period Ending	Due Date
January 31, 2008	March 31, 2008
February 29, 2008	April 29, 2008
March 31, 2008	May 30, 2008
April 30, 2008	June 30, 2008
May 31, 2008	July 30, 2008
June 30, 2008	August 29, 2008
July 31, 2008	September 29, 2008
August 31, 2008	October 30, 2008
September 30, 2008	December 1, 2008
October 31, 2008	December 30, 2008
November 30, 2008	January 29, 2009
December 31, 2008	March 2, 2009

2007 – 2008 NASD Rule 3070 and NYSE Rule 351 Customer Complaints Due Dates

Report Date	Due Date
4th quarter 2007	January 15, 2008
1st quarter 2008	April 15, 2008
2nd quarter 2008	July 15, 2008
3rd quarter 2008	October 15, 2008
4th quarter 2008	January 15, 2009

2008 Short Interest Reporting Deadlines

Short Interest reports, required pursuant to NASD Rule 3360 and NYSE Rule 421, are filed electronically and due by the dates and times listed below (all times are Eastern Time).

	Trade Date	Settlement Date	Exchange-Listed Short Interest Due	NASDAQ/OTC Equities Short Interest Due
January	1/10/08 1/28/08	1/15/08 1/31/08	1/17/08 – 1 p.m. 2/04/08 – 1 p.m.	1/17/08 – 6 p.m. 2/04/08 – 6 p.m.
February	2/12/08 2/26/08	2/15/08 2/29/08	2/20/08 – 1 p.m. 3/04/08 – 1 p.m.	2/20/08 – 6 p.m. 3/04/08 – 6 p.m.
March	3/11/08 3/26/08	3/14/08 3/31/08	3/18/08 – 1 p.m. 4/02/08 – 1 p.m.	3/18/08 – 6 p.m. 4/02/08 – 6 p.m.
April	4/10/08 4/25/08	4/15/08 4/30/08	4/17/08 – 1 p.m. 5/02/08 – 1 p.m.	4/17/08 – 6 p.m. 5/02/08 – 6 p.m.
May	5/12/08 5/27/08	5/15/08 5/30/08	5/19/08 – 1 p.m. 6/03/08 – 1 p.m.	5/19/08 – 6 p.m. 6/03/08 – 6 p.m.
June	6/10/08 6/25/08	6/13/08 6/30/08	6/17/08 – 1 p.m. 7/02/08 – 1 p.m.	6/17/08 – 6 p.m. 7/02/08 – 6 p.m.
July	7/10/08 7/28/08	7/15/08 7/31/08	7/17/08 – 1 p.m. 8/04/08 – 1 p.m.	7/17/08 – 6 p.m. 8/04/08 – 6 p.m.
August	8/12/08 8/26/08	8/15/08 8/29/08	8/19/08 – 1 p.m. 9/03/08 – 1 p.m.	8/19/08 – 6 p.m. 9/03/08 – 6 p.m.
September	9/10/08 9/25/08	9/15/08 9/30/08	9/17/08 – 1 p.m. 10/02/08 – 1 p.m.	9/17/08 – 6 p.m. 10/02/08 – 6 p.m.
October	10/09/08 10/28/08	10/15/08 10/31/08	10/17/08 – 1 p.m. 11/04/08 – 1 p.m.	10/17/08 – 6 p.m. 11/04/08 – 6 p.m.
November	11/10/08 11/24/08	11/14/08 11/28/08	11/18/08 – 1 p.m. 12/02/08 – 1 p.m.	11/18/08 – 6 p.m. 12/02/08 – 6 p.m.
December	12/10/08 12/26/08	12/15/08 12/31/08	12/17/08 – 1 p.m. 1/05/09 – 1 p.m.	12/17/08 – 6 p.m. 1/05/09 – 6 p.m.

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Attachment A

2008 Filing Due Dates: Calendar View¹

Date	Filing
January 15, 2008	NASD Rule 3070 and NYSE Rule 351 Customer Complaints for 4th quarter 2007
January 17, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 1/10/08 trade and 1/15/08 settlement dates
January 25, 2008 Midnight (ET)	Schedule I Filings for 12/31/07 Report Date
January 25, 2008 Midnight (ET)	Quarterly FOCUS Part II/IIA Filings for quarter ending December 31, 2007
February 4, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 1/28/08 trade and 1/31/08 settlement dates
February 20, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 2/12/08 trade and 1/2/15/08 settlement dates
February 26, 2008 Midnight (ET)	Monthly FOCUS Filing for period ending January 31, 2008
March 4, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) due for 2/26/08 trade and 2/29/08 settlement dates
March 18, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 1/28/08 trade and 1/31/08 settlement dates
March 26, 2008 Midnight (ET)	Monthly FOCUS Filing for period ending February 29, 2008
April 2, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 3/26/08 trade and 3/31/08 settlement dates
April 15, 2008	NASD Rule 3070 and NYSE Rule 351 Customer Complaints for 1st quarter 2008
April 17, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 4/10/08 trade and 4/15/08 settlement dates
April 23, 2008 Midnight (ET)	Quarterly FOCUS Filings for quarter ending March 31, 2008
May 2, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 4/25/08 trade and 4/30/08 settlement dates

May 19, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 5/12/08 trade and 5/15/08 settlement dates
May 23, 2008 Midnight (ET)	Monthly FOCUS Filing for period ending April 30, 2008
June 3, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 5/27/08 trade and 5/30/08 settlement dates
June 17, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 6/10/08 trade and 6/13/08 settlement dates
June 24, 2008 Midnight (ET)	Monthly FOCUS Filing for period ending for Mary 31, 2008
July 2, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 6/25/08 trade and 6/30/08 settlement dates
July 15, 2008	NASD Rule 3070 and NYSE Rule 351 Customer Complaints for 2nd quarter 2008
July 17, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 7/10/08 trade and 7/15/08 settlement dates
July 24, 2008 Midnight (ET)	Quarterly FOCUS Filings for quarter ending June 30, 2008
August 4, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 7/28/08 trade and 7/31/08 settlement dates
August 19, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 8/12/08 trade and 8/15/08 settlement dates
August 25, 2008 Midnight (ET)	Monthly FOCUS Filing for period ending July 31, 2008
September 3, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 8/26/08 trade and 8/29/08 settlement dates
September 17, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 9/10/08 trade and 9/15/08 settlement dates
September 24, 2008 Midnight (ET)	Monthly FOCUS Filing for period ending August 31, 2008

October 2, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 9/25/08 trade and 9/30/08 settlement dates
October 15, 2008	NASD Rule 3070 and NYSE Rule 351 Customer Complaints for 3rd quarter 2008
October 17, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 10/9/08 trade and 10/15/08 settlement dates
October 23, 2008 Midnight (ET)	Quarterly FOCUS Filings for quarter ending September 30, 2008
November 4, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 10/28/08 trade and 10/31/08 settlement dates
November 18, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 11/10/08 trade and 11/14/08 settlement dates
November 25, 2008 Midnight (ET)	Monthly FOCUS Filing for period ending October 31, 2008
December 2, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 11/24/08 trade and 11/28/08 settlement dates
December 17, 2008	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 12/10/08 trade and 12/15/08 settlement dates
December 23, 2008 Midnight (ET)	Monthly FOCUS Filing for period ending November 30, 2008
January 5, 2009	Exchange-Listed Short Interest due at 1 p.m. (ET) and NASDAQ/OTC Equities Short Interest due at 6 p.m. (ET) for 12/26/08 trade and 12/31/08 settlement dates
January 15, 2009	NASD Rule 3070 and NYSE Rule 351 Customer Complaints for 4th quarter 2008
January 27, 2009 Midnight (ET)	Schedule I Filings for 12/31/08 Report Date
January 27, 2009 Midnight (ET)	Quarterly FOCUS Filings for quarter ending December 31, 2008

1 This calendar does not include Annual Audits, which must be filed in hard copy and received by close of business no later than 60 calendar days after fiscal year end. Firms that do not use a fiscal year-end date coinciding with a month-end date should not rely on this schedule in determining due dates.

Information Notice

2008 Holiday Trade Date, Settlement Date and Margin Extensions Schedule

Executive Summary

FINRA is providing the following schedule to assist member firms and reduce the number of Federal Reserve Board Regulation T 220.8 and SEC Rule 15c3-3(m) and (n) margin extensions denied around holidays. "Regular way" transactions made on the business days noted below will be subject to the following schedule.

Questions regarding this *Notice* should be directed to:

- ▶ Debra German, Credit Regulation Specialist, Risk Oversight and Operational Regulation (ROOR), at (212) 656-8572;
- ▶ Theresa Reynolds, Credit Regulation Coordinator, ROOR, at (212) 656-5281; or
- ▶ Vincent Rotolo, Senior Credit Specialist, ROOR, at (212) 656-5521.

Background

Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five business days from the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown below in the column titled "**Regulation T Date.**"

Similarly, SEC Rule 15c3-3 requires member organizations to take prompt steps to obtain possession or control of securities pursuant to paragraph (m) through a buy-in procedure or otherwise if securities are not received within thirteen business days from the date of sale or, pursuant to paragraph (n), make application to extend the time period specified. The date by which members must take such action is shown below in the column titled "**SEC Extension Date.**"

December 21, 2007

Suggested Routing

- ▶ Compliance
- ▶ Internal Audit
- ▶ Legal
- ▶ Municipal/Government Securities
- ▶ Operations
- ▶ Trading

Key Topics

- ▶ Holiday Trade Date, Settlement
- ▶ Date and Margin Extension Schedule

Referenced Rules & Notices

- ▶ Regulation T 220.8
- ▶ SEC Rule 15c3-3

New Year's Day:

The securities exchanges will be closed on Tuesday, January 1, 2008, in observance of New Year's Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
December 26	December 31	January 3	January 15
27	January 2	4	16
28	3	7	17
31	4	8	18
January 1	Markets Closed —	—	—
2	7	9	22

Martin Luther King, Jr. Day:

The securities exchanges will be closed on Monday, January 21, 2008, in observance of Martin Luther King's birthday.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
January 15	January 18	January 23	February 4
16	22	24	5
17	23	25	6
18	24	28	7
21	Markets Closed —	—	—
22	25	29	8

Presidents' Day:

The securities exchanges will be closed on Monday, February 18, 2008, in observance of Presidents' Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
February 12	February 15	February 20	March 3
13	19	21	4
14	20	22	5
15	21	25	6
18	Markets Closed —	—	—
19	22	26	7

Good Friday:

The securities exchanges will be closed on Friday, March 21, 2008, in observance of Good Friday.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
March 17	March 20	March 25	April 4
18	24	26	7
19	25	27	8
20	26	28	9
21	Markets Closed —	—	—
24	27	31	10

Memorial Day:

The securities exchanges will be closed on Monday, May 26, 2008, in observance of Memorial Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
May 20	May 23	May 28	June 9
21	27	29	10
22	28	30	11
23	29	June 2	12
26	Markets Closed —	—	—
27	30	3	13

Independence Day:

The securities exchanges will be closed on Friday, July 4, 2008, in observance of Independence Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
June 30	July 3	8	July 18
July 1	7	9	21
2	8	10	22
3	9	11	23
4	Markets Closed —	—	—
7	10	14	24

Labor Day:

The securities exchanges will be **closed** on **Monday, September 1, 2008**, in observance of Labor Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
August 26	29	September 3	September 15
27	September 2	4	16
28	3	5	17
29	4	8	18
Sept 1	Markets Closed —	—	—
2	5	9	19

Columbus Day:

The securities exchanges will be **open** for trading on Columbus Day, **Monday, October 13, 2008**. Therefore, it is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
October 7	October 10	October 14	October 24
8	14	15	27
9	15	16	28
10	16	17	29
13	16	20	30
14	17	21	31

Veteran's Day:

The securities exchanges will be **open** for trading on Veteran's Day, **Tuesday, November 11, 2008**. Therefore, it is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
November 5	November 10	November 12	November 24
6	12	13	25
7	13	14	26
10	14	17	28
11	14	18	December 1
12	17	19	2

Thanksgiving Day:

The securities exchanges will be closed on **Thursday, November 27, 2008**, in observance of Thanksgiving Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
November 21	November 26	December 1	December 11
24	28	2	12
25	December 1	3	15
26	2	4	16
27	Markets Closed —	—	—
28	3	5	17

Christmas Day:

The securities exchanges will be closed on **Thursday, December 25, 2008**, in observance of Christmas Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
December 19	December 24	December 29	January 9, 2009
22	26	30	12
23	29	31	13
24	30	January 2, 2009	14
25	Markets Closed —	—	—
26	31	5	15

Brokers, dealers and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the securities exchanges.

Disciplinary and Other FINRA Actions

Firms Fined, Individuals Sanctioned

Access Financial Group, Inc. (CRD #33065, Chicago, Illinois) and Richard Irl Konst (CRD #273746, Registered Principal, Ocean City, Florida) submitted a Letter of Acceptance, Waiver and Consent in which they were censured. The firm was fined \$150,000, ordered to disgorge \$113,000 in administrative fees it received from hedge fund clients and pay \$194,831.20 in restitution representing the profits the hedge fund clients realized. Konst was fined \$20,000 and must requalify by examination as a general securities principal within 120 days. If Konst fails to requalify on or before that date, his registration as a general securities principal will be suspended on that date until such time as he passes the required examination. Without admitting or denying the findings, the firm and Konst consented to the described sanctions and to the entry of findings that the firm acted as a selling agent through its broker-dealer division and enabled hedge fund clients to engage in deceptive practices regarding market timing in the sub-accounts of variable annuities through accounts maintained at the firm. The findings stated that as a result of the firm's activities, the hedge fund clients transferred assets between the sub-accounts of variable annuities from companies, after receiving restriction letters from the companies, that yielded \$194,831.20 in profits to the clients. The findings also stated that the firm received \$113,000 in fees for administrative services rendered in connection with the variable annuity contracts the clients purchased through the firm. The findings also included that Konst failed to adequately supervise the firm's variable annuity business and the market timing activities of the hedge fund clients. FINRA found that the firm failed to keep electronic communications for three years and/or failed to preserve electronic mail communications for the first two years in an accessible place. (FINRA Case #SAF2004040801)

Prospera Financial Services, Inc. (CRD #10740, Dallas, Texas), Michael Allen Lovett (CRD #2203338, Registered Principal, Puyallup, Washington) and Michael Steven Corelli (CRD #3017984, Registered Representative, Goldens Bridge, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000, \$10,000 was jointly and severally with Lovett, and \$15,000 was jointly and severally with Corelli. In addition, Corelli was fined \$8,395, which includes \$3,395 in disgorgement of trading profits, and was suspended from association with any FINRA member in a research analyst capacity for 30 days. Lovett was suspended from association with any FINRA member in a principal or supervisory capacity for 10 business days. Without admitting or denying the findings, the firm, Lovett and Corelli consented to the described sanctions and to the entry of findings that the firm, acting through Corelli, issued research reports that failed to comply with SEC Regulation AC and NASD Rule 2711, in that Corelli issued a favorable research report on a stock issuer although he subsequently sold his stock shares after the report was published. The findings stated that the firm, acting through Corelli, issued research

Reported for December 2007

FINRA® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB).

reports that failed to disclose the meaning of each rating the firm used in its rating system; failed to disclose the percentage of all securities the firm rated, to which the firm would assign certain ratings; failed to provide clear and comprehensive disclosures; and did not include certifications from Corelli that all of the views expressed in the reports accurately reflected his personal views, and did not disclose whether Corelli's compensation was directly related to the research.

The findings also stated that the firm, acting through Corelli, issued research reports and/or sales literature that failed to provide readers with a sound basis on which to evaluate the risks associated with an investment in the stocks being discussed; some pieces of literature failed to provide readers with a sound basis on which to evaluate estimated data regarding projected profits and cash flow; and some contained non-affirmative, unclear disclosures. The findings also included that the firm, acting through Lovett, failed to establish and maintain a system to supervise the activities of its registered representatives and associated persons reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules regarding research reports. FINRA found that the firm, acting through Lovett, failed to adequately supervise the issuance of the research reports and sales literature because Lovett approved the reports and literature with the above-noted deficiencies.

Lovett's suspension in a principal or supervisory capacity was in effect from November 19, 2007, through December 3, 2007. Corelli's suspension as a research analyst is in effect from November 19, 2007, through December 18, 2007. **(FINRA Case #E062005000301)**

Whitaker Securities LLC (CRD #121465, New York, New York), Thomas Edward O'Neill (CRD #1237573, Registered Principal, Plandome, New York) and Frank Anthony Coniglio (CRD #2560370, Associated Person, Brick, New Jersey) submitted Letters of Acceptance, Waiver and Consent in which the firm was censured and fined \$30,000, jointly and severally with O'Neill. O'Neill was suspended from association with any FINRA member in a principal capacity for 15 business days. Coniglio was fined \$10,000 and suspended from association with any FINRA member in any capacity for 10 business days. The fine must be paid either immediately upon Coniglio's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, the firm, O'Neill and Coniglio consented to the described sanctions and to the entry of findings that the firm, acting through O'Neill, permitted Coniglio to act in a capacity that required registration with FINRA while he was not registered in any capacity. The findings stated that the firm, acting through O'Neill, permitted firm employees to act in a capacity that required registration as research analysts, without being so registered.

O'Neill's suspension in a principal capacity was in effect from November 19, 2007, through December 10, 2007. Coniglio's suspension in any capacity was in effect from November 5, 2007, through November 16, 2007. **(FINRA Case #s 2005001198801/2005001198802)**

Firm and Individual Fined

Prestige Financial Center, Inc. (CRD #30407, New York, New York) and Lawrence Gary Kirshbaum (CRD #270856, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which they were censured and fined \$15,000, jointly and severally. The firm was fined an additional \$12,500. Without admitting or denying the findings, the firm and Kirshbaum consented to the described sanctions and to the entry of findings that the firm, acting through Kirshbaum, received and held public customer funds made payable to the firm without receiving FINRA's advance approval prior to engaging in such actions and, as a result, failed to maintain the required minimum net capital while conducting securities business. The findings stated that the firm failed to maintain a Checks Received and Forwarded Blotter or an equivalent record as SEC Rule 17a-3 required. The findings also stated that the firm, acting through Kirshbaum, permitted individuals to maintain their FINRA registrations through their purported associations with the firm, when in fact they were not actively involved in its investment banking or securities business or otherwise functioning as firm representatives. (FINRA Case #2006003723101)

Firms Fined

A.B. Watley Direct, Inc. (CRD #18663, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted customer short sale orders in Nasdaq Small Cap securities and for each order, failed to make an affirmative determination that the firm would receive delivery of the security on the customer's behalf, or that the firm could borrow the security on the customer's for delivery by settlement date. (FINRA Case #20070090221-02)

Access Financial Group, Inc. (CRD #33065, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely report customer transactions in municipal securities to the MSRB. The findings stated that the firm failed to include the date and time of receipt in municipal securities transactions. The findings also stated that the firm failed to establish, maintain and enforce adequate written supervisory procedures designed to achieve compliance with applicable securities laws and regulations, in that the firm failed to establish adequate procedures for the timely reporting of municipal securities transactions to the MSRB. The findings also included that the firm executed corporate bond transactions that were eligible for reporting to the Trade Reporting and Compliance Engine (TRACE) that were reported late; transactions with a customer did not have a receipt time; some transactions were reported with the incorrect execution time and one trade was reported with the incorrect capacity; order tickets for agency transactions did not include a time of receipt or time of entry; and order tickets for principal transactions did not include a receipt time. FINRA found that the firm failed to establish, maintain and enforce adequate written

supervisory procedures reasonably designed to achieve compliance with applicable transaction reporting requirements under NASD rules related to TRACE reporting. (FINRA Case #2006003858001)

American General Securities Incorporated (CRD #13626, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report, and to timely report, transaction information for corporate bond transactions to TRACE. The findings stated that the firm failed to report, and to timely report, municipal securities transactions with their corresponding inter-dealer trades to the MSRB. The findings also stated that the firm failed to establish, maintain and enforce a system to supervise the activities of its registered representatives reasonably designed to ensure compliance with NASD's TRACE reporting rule and MSRB Rule G-14. (FINRA Case #E062005001101)

Commonwealth Church Finance, Inc. dba Charter Financial Services (CRD #11768, McDonough, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain its required net capital. The findings stated that the firm's net capital calculation and books and records were inaccurate based upon the same failure to accrue liabilities in a timely manner. The findings also stated that the firm modified a contingency offering without disclosure, and broke escrow without depositing the full contingency amount in escrow, rendering false the representations in the offering document regarding the handling of the escrow account and the satisfaction of the contingency. (FINRA Case #2006003959001)

First Montauk Securities Corporation (CRD #13755, Red Bank, New Jersey) submitted a Letter of Acceptance, Waiver and consent in which the firm was censured, fined \$175,000 and required to review its systems and procedures regarding training and monitoring of supervisors, and establish systems and procedures reasonably designed to achieve compliance with the laws, regulations and rules concerning supervisors fulfilling their supervisory responsibilities. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to reasonably supervise its registered representatives' activities, and failed to establish and maintain an adequate supervisory system to ensure that supervisors were trained and reasonably fulfilling supervisory obligations. The findings stated that the firm's supervisors repeatedly ignored red flags warning of possible excessive trading and unsuitable transactions, and allowed branch managers to supervise their own business. The findings also stated that the firm failed to train its supervisors on how to use its broker audit system, what data and reports to review and how to respond to indications of red flags. The findings also included that the firm failed to retain business-related internal emails because it failed to configure its email system properly after a software upgrade. (FINRA Case #2005002133004)

G.A. Repple and Company (CRD #17486, Casselberry, Florida) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it allowed registered representatives to preserve emails in a manner that permitted deletion and alteration, and failed to utilize media in compliance with SEC Rule 17a-4 that would have preserved records in a non-erasable and non-rewriteable format. The findings stated that the firm's systems and procedures were not reasonably designed to achieve compliance with the preservation requirements of SEC Rule 17a-4 with respect to electronic communications. The findings also stated that the firm failed to establish and maintain a system and procedures to supervise the activities of each registered and associated person to achieve compliance with securities laws and regulations requiring retention of emails. **(FINRA Case #2006003701201)**

GLB Trading, Inc. (CRD #125363, Irvine, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$10,000 and required to revise its written supervisory procedures concerning trade reporting requirements. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in over-the-counter (OTC) equity securities to the OTC Reporting Facility, and failed to designate some of the reports as late. The findings also stated that the firm incorrectly designated last sale reports of transactions in OTC equity securities reported to the OTC Reporting Facility within 90 seconds of execution as ".SLD." The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade reporting requirements. **(FINRA Case #20060055593-01)**

Joseph Stevens & Company, Inc. (CRD #35459, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that in transactions for or with public customers, the firm failed to use reasonable diligence to ascertain the best inter-dealer market and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning best execution. **(FINRA Case #20050021708-01)**

NFP Securities, Inc. (CRD #42046, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to timely file Uniform Termination Notices for Securities Industry Registration (Forms U5), and failed to file accurate and timely reports with FINRA pursuant to NASD Rule 3070. **(FINRA Case #E062005012702)**

Oppenheimer & Co., Inc. (CRD #249, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$15,000 and required to pay \$6,852.51, plus interest, in restitution to public customers. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to use reasonable diligence in customer transactions to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customers was as favorable as possible under prevailing market conditions. **(FINRA Case #20060059062-01)**

RBC Capital Markets Corporation (CRD #6579, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$225,000 to be paid jointly to NASD (and now, FINRA), New York Stock Exchange and the American Stock Exchange. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it inaccurately reported numerous short interest positions. The findings stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with NASD Rule 3360. **(FINRA Case #20060043882-01)**

SICOR Securities Inc. (CRD #16195, Dayton, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it used the mails or other means or instrumentalities of interstate commerce to effect securities transactions when it failed to meet its minimum net capital requirements. The findings stated that the firm prepared inaccurate trial balances, general ledgers and net capital computations for various time periods, and filed Financial and Operational Combined Uniform Single (FOCUS) IIA Reports with FINRA that were inaccurate, in that they overstated the firm's net capital. **(FINRA Case #2006004682101)**

Valic Financial Advisors, Inc. (CRD #42803, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$250,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted directed brokerage commissions in exchange for providing a mutual fund company with preferred access to its sale force. The findings stated that the firm failed to report, or to timely report, disclosure events pursuant to NASD Rule 3070. The findings also stated that the firm failed to establish, maintain and enforce a system and procedures reasonably designed to achieve compliance with federal securities laws and NASD Rule 3070 reporting requirements. **(FINRA Case #E062005009701)**

Veritrust Financial, LLC (CRD #106594, Austin, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain its required minimum net capital and, as a result, its original net capital computations and FOCUS reports were materially inaccurate. The findings stated that the firm failed to file notice of its net capital deficiencies. The findings also stated that, in connection with best efforts, contingent private placement offerings, the firm deposited investor

funds into separate accounts at a real estate escrow company rather than at a bank as required by SEC Rule 15c2-4. The findings also included that the firm had inadequate procedures regarding contingent securities offerings. FINRA found that the firm failed to report disclosure events pursuant to NASD Rule 3070 and failed to update, or to timely update, Uniform Applications for Securities Industry Registration or Transfer (Forms U4) or Forms U5 to disclose required information. **(FINRA Case #2005003230201)**

Individuals Barred or Suspended

Leighton David Applefeld (CRD #6661, Registered Principal, Delray Beach, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Applefeld consented to the described sanction and to the entry of findings that he effected private securities transactions without prior written notice to, or written approval from, his member firm. The findings stated that Applefeld borrowed \$180,000 from public customers despite his member firms' prohibitions and contrary to NASD Rule 2370 provisions. The findings also stated that Applefeld failed to respond to a FINRA request for information and to appear for a FINRA on-the-record interview. **(FINRA Case #2006005878501)**

Peter Guy Canonico (CRD #1680294, Registered Representative, Middletown, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Canonico consented to the described sanction and to the entry of findings that he obtained \$46,000 from a deceased customer's mutual fund account and used the funds to his own use and benefit without authorization or consent. **(FINRA Case #2006005020701)**

Paul Jude Casella (CRD #2461957, Registered Principal, Woodbury, New York) was fined \$50,000 and suspended from association with any FINRA member in any capacity for one year. The sanctions were based on findings that Casella failed to supervise a registered representative who was engaged in selling unregistered securities without an exemption pursuant to Section 4 of the Securities Act of 1933. The findings stated that Casella ignored repeated red flags regarding the securities and made no inquiry to determine whether the shares were in compliance with Section 5 of the Securities Act.

The suspension in any capacity will be in effect from May 21, 2008, through May 20, 2009. **(FINRA Case #2005000075701)**

Charles Anthony Chatman (CRD #4716532, Registered Representative, Streamwood, Illinois) submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Chatman consented to the described sanction and to the entry of findings that he exercised control over public customer accounts, and recommended and executed numerous securities transactions that were excessive and unsuitable for the customers based on their investment objectives, financial situation and needs, and lack of

knowledge and experience necessary to understand the risks associated with the transactions recommended. The findings stated that Chatman, by the use of any means or instrumentality of interstate commerce or of the mails, intentionally or recklessly engaged in manipulative or deceptive devices or contrivances in connection with the purchase or sale of securities, and intentionally or recklessly effected transactions in, or induced the purchase or sale of, securities by means of manipulative, deceptive or other fraudulent devices or contrivances. The findings also stated that Chatman exercised discretion in the public customers' accounts, making stock and option transactions without prior written authorization from the customers or his member firm's acceptance of the accounts as discretionary. The findings also included that Chatman engaged in outside business activities and failed to notify his firm prior to engaging in these activities. **(FINRA Case #20050003461-01)**

Nigel Sheldow Christiani, (CRD #4513166, Registered Representative, Brooklyn, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$2,500 and suspended from association with any FINRA member in any capacity for 30 business days. The fine must be paid either immediately upon Christiani's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Christiani consented to the described sanctions and to the entry of findings that he failed to respond to FINRA requests to appear and provide testimony, but subsequently provided information in a written response.

The suspension in any capacity is in effect from November 5, 2007, through December 17, 2007. **(FINRA Case #2005001225401)**

Bryan Lee Claggett (CRD #820866, Registered Principal, Benton, Arkansas) was barred from association with any FINRA member in any capacity. The National Adjudicatory Council (NAC) imposed the sanction following appeal of an Office of Hearing Officers (OHO) decision. The sanction was based on findings that Claggett forged a public customer's signature on two account transfer documents and falsified a Form 1099 in order to mislead a customer that his account owned money market shares when, in fact, it owned none. Although the NAC also found that Claggett failed to notify his member firm in writing of his financial interest in a brokerage account held at another member firm, it declined to impose a sanction for this violation given the bar it imposed for the other two violations. **(FINRA Case #2005000631501)**

Tony Nathan Cota (CRD #4147725, Registered Representative, Clovis, California) was barred from association with any FINRA member in any capacity and ordered to pay \$43,539.36, plus interest, in restitution to a public customer. The sanctions were based on findings that Cota borrowed \$24,000 from a public customer in violation of his member firm's written procedures prohibiting such borrowing. The findings stated that Cota used a customer's annuity funds to feign loan repayments deposited in the customer's checking account, and failed to respond to FINRA requests for information and to provide testimony. **(FINRA Case #20060043565-01)**

John Richard Cullen (CRD #2453019, Registered Principal, Oakhurst, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Cullen consented to the described sanction and to the entry of findings that he actively traded his personal account, incurring significant losses and in order to sell illiquid securities, gain a profit or avoid incurring future losses, he executed unauthorized transactions in his member firm's proprietary account. (FINRA Case #2006005824801)

Linda Patricia Deck (CRD #4591299, Registered Representative, Greenfield, Wisconsin) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Deck's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Deck consented to the described sanctions and to the entry of findings that she cut and pasted or otherwise affixed the public customers' signatures to various insurance application forms without the customers' knowledge or consent. The findings stated that Deck submitted these applications along with customer checks that only partially covered premium payments for processing, knowing that the applications would be denied. The findings also stated that although the applications were denied, Deck was credited with sales numbers that counted toward her expected production level.

The suspension in any capacity is in effect from October 15, 2007, through April 14, 2008. (FINRA Case #2006004587701)

Ronald James Derouin (CRD #5268829, Associated Person, Philadelphia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Derouin consented to the described sanction and to the entry of findings that he willfully failed to disclose material information on his Form U4. The findings stated that Derouin failed to appear for a FINRA on-the-record interview. (FINRA Case #2007007841901)

Stephen Roy Desiderio (CRD #2833627, Registered Principal, Staten Island, New York) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Desiderio knowingly provided false and misleading information to FINRA during on-the-record interviews. (FINRA Case #E102004104901)

Harry Elmer Eschbach (CRD #4097936, Registered Representative, Miami, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Eschbach consented to the described sanction and to the entry of findings that he forged customer signatures on account transfer request forms in order to transfer the customers' accounts from his former member firm to his new member firm. (FINRA Case #2007008288401)

Ralph Martin Freyberg Jr. (CRD #214274, Registered Principal, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in a principal capacity for three months. Without admitting or denying the findings, Freyberg consented to the described sanctions and to the entry of findings that he failed to take appropriate action to supervise a registered representative that was reasonably designed to prevent his churning of a customer's account and achieve compliance with applicable securities laws, regulations and FINRA rules.

The suspension in a principal capacity is in effect from November 5, 2007, through February 4, 2008. (FINRA Case No. 2006006255401)

Joseph Michael Giordano (CRD #2278341, Registered Principal, Mineola, New York) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$7,500 and suspended from association with any FINRA member in any principal capacity for 10 business days. Without admitting or denying the findings, Giordano consented to the described sanctions and to the entry of findings that he failed to properly supervise a registered representative who engaged in penny stock transactions for public customers without satisfying required penny stock disclosure requirements.

The suspension in any principal capacity was in effect from November 5, 2007, through November 16, 2007. (FINRA Case #2005002464702)

Virginia Sue Graham (CRD #5253162, Registered Representative, Davisville, West Virginia) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Graham's reassociation with a FINRA member firm following her suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Graham consented to the described sanctions and to the entry of findings that she wrote checks totaling \$3,700 payable to herself against a personal bank account that she had closed, knowing that the checks would be dishonored, and deposited them to an account she held at another bank to benefit temporarily from the "float" on the checks.

The suspension in any capacity is in effect from November 19, 2007, through February 18, 2008. (FINRA Case #2007009132701)

Scott Martin Hacker (CRD #1997386, Registered Principal, Providence, Rhode Island) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Hacker consented to the described sanction and to the entry of findings that he caused his member firm's parent company to make charitable donations of \$32,000 to a non-profit organization of which he was treasurer without the authority to do so. The findings stated that Hacker failed to provide on-the-record testimony that FINRA requested. (FINRA Case #20070079701)

Michael Charles Hopen (CRD #1315490, Registered Representative, Cape Girardeau, Missouri) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Hopen consented to the described sanction and to the entry of findings that he engaged in a scheme to obtain non-securities funds from a public customer by transmitting, or causing to be transmitted, electronic wire transfer of funds and money from the customer's bank account to Hopen's credit card accounts. The findings stated that Hopen caused checks to be written on the customer's bank account that were made payable to Hopen, and obtained approximately \$16,700 in non-securities funds from the customer. The findings also stated that Hopen failed to respond to FINRA requests for documents and information. **(FINRA Case #20060065638-01)**

Trent Alan Johnson (CRD #3187364, Registered Representative, Rockford, Illinois) was suspended from association with any FINRA member in any capacity for two years. The sanction was based on findings that Johnson willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from November 5, 2007, through November 4, 2009. **(FINRA Case #2006004240301)**

Brian Peter King (CRD #2785488, Registered Principal, Massapequa Park, New York) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for nine months. Without admitting or denying the allegations, King consented to the described sanctions and to the entry of findings that he executed orders to purchase stock in his member firm's omnibus account using an electronic order routing system. The findings stated that as a result of the trades, King's firm had an unrealized loss of \$116,340 at the end of the day, and to prevent the discovery of the loss, King falsely allocated the stock trade to a non-proprietary account. The findings also stated that King knew the non-proprietary account's owner had not authorized the stock purchase. The findings also included that because of the trades, King caused his firm to conduct a securities business while failing to maintain the minimum required net capital. FINRA found that King's falsification of the transaction spreadsheet on which the trades were recorded, and his failure to respond truthfully to firm inquiries about the trades, caused his firm to be unaware of its net capital deficiency for several days.

The suspension in any capacity is in effect from November 19, 2007, through August 18, 2008. **(FINRA Case #E022004007205)**

Joshua Wayne Lankford (CRD #2783571, Registered Representative, Dallas, Texas) submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Lankford consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests to provide testimony and information and documents. **(FINRA Case #2005000075702)**

Daniel Richard LaPiana (CRD #1550192, Registered Representative, Gibsonia, Pennsylvania) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, LaPiana consented to the described sanction and to the entry of findings that he improperly obtained \$822.53 from his member firm by submitting a falsified expense report indicating purchases for his branch office, and misrepresenting the charges on the requisition request. The findings stated that LaPiana created a fictitious critical illness insurance application for a public customer without the customer's authority or consent, signed the customer's name and submitted the document to his member firm's underwriting department. The findings also stated that LaPiana improperly maintained former employees on the payroll of an insurance company following their resignations, failed to notify his member firm that they resigned, created false productivity reports and submitted the documents to his member firm, thereby ensuring that they would continue to receive compensation. **(FINRA Case #2007008905001)**

Joshua Elliott Lord (CRD #3127269, Registered Principal, Brooklyn Park, Minnesota) and Mark Raymond Sheffield (CRD #4130223, Registered Representative, Lakeville, Minnesota) submitted Letters of Acceptance, Waiver and Consent in which Lord was fined \$5,000 and suspended from association with any FINRA member in any principal capacity for 15 business days. Sheffield was suspended from association with any FINRA member in any capacity for 30 business days. In light of Sheffield's financial status, no monetary sanctions were imposed. Without admitting or denying the findings, Lord and Sheffield consented to the described sanctions and to the entry of findings that Sheffield prepared and distributed market updates that Lord reviewed and approved that met the definition of a "research report," but did not meet the disclosure and content requirements for research reports and communications with the public. The findings stated that Sheffield acted as a research analyst although he was not registered in that capacity. The findings also stated that Lord failed to detect the disclosure and content violations, and did not prevent the use of the updates, thereby failing to reasonably supervise Sheffield.

Lord's suspension in a principal capacity was in effect from November 5, 2007, through November 26, 2007. Sheffield's suspension in any capacity is in effect from November 5, 2007, through December 17, 2007. **(FINRA Cases #20050035738-01/20050035738-02)**

Steven Kenneth Maidlow (CRD #1831371, Registered Representative, Cincinnati, Ohio) submitted an Offer of Settlement in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Maidlow consented to the described sanction and to the entry of findings that he caused \$10,000 to be electronically transferred from a public customer's account and sent to the customer's deceased mother's estate checking account, without the customer's knowledge and consent, to resolve a shortfall in that account caused by Maidlow's failure to liquidate bonds the estate held in a timely fashion. The findings stated that Maidlow prepared and sent to the customer documentation showing that the \$10,000 previously removed from the customer's account had been returned when, in fact, it had not. The findings also stated that Maidlow failed to respond to FINRA requests for information. **(FINRA Case #2006005483001)**

Robert Gibbes McDowell Jr. (CRD #1047763, Registered Representative, Beaufort, South Carolina) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 60 days. The fine must be paid either immediately upon McDowell's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, McDowell consented to the described sanctions and to the entry of findings that he participated in private securities transactions without giving prompt written notice to, and receiving approval from, his member firm.

The suspension in any capacity is in effect from November 5, 2007, through January 3, 2008. (FINRA Case #2006006123601)

Richard Wayne Mentz Jr. (CRD #2150829, Registered Principal, Scottsdale, Arizona) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Mentz recommended and effected transactions in a public customer's account that were unsuitable in light of the customer's age, financial situation and investment objective of income. The findings stated that Mentz' churning of the customer's account was egregiously excessive and demonstrated his intention to enrich himself at the customer's expense. (FINRA Case #2005001087801)

Aaron Dale Mittelbuscher (CRD #5063688, Registered Representative, Shiloh, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Mittelbuscher's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Mittelbuscher consented to the described sanctions and to the entry of findings that he signed public customers' names to variable deferred annuity applications without the customers' knowledge or consent, and when confronted by his member firm, denied forging the customers' signatures.

The suspension in any capacity is in effect from November 19, 2007, through May 18, 2008. (FINRA Case #2006006338501)

Jayant Murthy (CRD #5106842, Registered Representative, Princeton Junction, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Murthy's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Murthy consented to the described sanctions and to the entry of findings that while taking the Series 7 qualification exam, he made several telephone calls to his co-workers requesting assistance regarding topics tested on the exam.

The suspension in any capacity is in effect from November 19, 2007, through November 18, 2009. (FINRA Case #2007008698501)

Clarence Morris O'Shields (CRD #2427077, Registered Principal, Lexington, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Without admitting or denying the findings, O'Shields consented to the described sanctions and to the entry of findings that he effected a securities transaction in a public customer's account without her prior authorization.

The suspension in any capacity was in effect from November 19, 2007, through December 3, 2007. **(FINRA Case #2006006619601)**

Pratik V. Patel (CRD #5203105, Associated Person, Gilberts, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two months. The fine must be paid either immediately upon Patel's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Patel consented to the described sanctions and to the entry of findings that he failed to disclose a material fact on his Form U4.

The suspension in any capacity is in effect from November 5, 2007, through January 4, 2008. **(FINRA Case #2006006687501)**

James Reilly (CRD #2689870, Registered Representative, Hampton, New Hampshire) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 90 days. The fine must be paid either immediately upon Reilly's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Reilly consented to the described sanctions and to the entry of findings that he caused a public customer's signature to be affixed to a document that was used to purchase a fixed annuity without the customer's authorization or consent.

The suspension in any capacity is in effect from November 5, 2007, through February 2, 2008. **(FINRA Case #2006006759101)**

David Chris Rice (CRD #1855792, Registered Principal, Lewisville, Texas) submitted an Offer of Settlement in which he was fined \$10,000 and suspended from association with any FINRA member in any capacity for 30 business days. Without admitting or denying the allegations, Rice consented to the described sanctions and to the entry of findings that he used discretion to effect securities transactions in public customers' accounts but never reduced his use of discretion to writing, and his member firm never accepted the accounts as discretionary because it did not permit discretionary accounts.

The suspension in any capacity is in effect from November 5, 2007, through December 17, 2007. **(FINRA Case #E062004031301)**

Rafael F. Rodriguez-Abella (CRD #2567805, Registered Representative, San Juan, Puerto Rico) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for 10 business days. In light of Rodriguez-Abella's financial status, no monetary sanction has been imposed. Without admitting or denying the findings, Rodriguez-Abella consented to the described sanction and to the entry of findings that he borrowed \$10,000 from a public customer without his member firm's approval.

The suspension in any capacity was in effect from October 29, 2007, through November 9, 2007. **(FINRA Case #2006006423901)**

Wanda Pittman Sears (CRD #2214419, Registered Representative, Roanoke, Virginia) was suspended from association with any FINRA member in any capacity for two years for unauthorized trading. She was also suspended from association with any FINRA member in any capacity for six months for engaging in outside business activities without providing her member firm with prompt written notice. The suspensions will be served concurrently. In light of Sears' financial status, no monetary sanction was imposed. The NAC imposed these sanctions after Sears appealed from an OHO decision which barred her for unauthorized trading and suspended her for one year for engaging in outside business activities without notice. The NAC based its sanctions on findings that Sears effected unauthorized securities transactions in 20 customers' accounts and that Sears admitted that she participated in outside business activities without providing prompt written notice to her member firm.

This decision has been appealed to the SEC, thus, the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #C0720050042)**

Laura C. Schatz (CRD #5147201, Associated Person, Round Lake Beach, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Schatz consented to the described sanction and to the entry of findings that she used her supervisor's credit card to pay for her personal expenses without her supervisor's knowledge or consent. **(FINRA Case #2007007821601)**

Paul Gerard Schiller (CRD #1416950, Registered Representative, Waubun, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$11,000, which included disgorgement of \$6,000 received in compensation, and suspended from association with any FINRA member in any capacity for one year. The fine must be paid either immediately upon Schiller's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Schiller consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to his member firm describing in detail the proposed transactions and his proposed role therein. The findings stated that Schiller's firm did not approve, in writing, his participation in the transactions.

The suspension in any capacity is in effect from November 19, 2007, through November 18, 2008. **(FINRA Case #20070081057-01)**

Richard Walter Simpson (CRD #2129917, Registered Principal, San Diego, California) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for 20 business days. The fine must be paid either immediately upon Simpson's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the allegations, Simpson consented to the described sanctions and to the entry of findings that he failed to respond, and to timely respond, to FINRA requests for information and documents. The findings stated that Simpson failed to respond to FINRA requests for an on-the-record interview.

The suspension in any capacity was in effect from November 5, 2007, through December 3, 2007. (FINRA Case #E022004014507)

Todd Edward Smith (CRD #2211835, Registered Representative, Independence, Kentucky) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two months. The fine must be paid either immediately upon Smith's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Smith consented to the described sanctions and to the entry of findings that he signed a customer's wife's name on transfer letters, without the customer's knowledge or consent, to transfer stock out of their joint account to charitable organizations.

The suspension in any capacity is in effect from November 5, 2007, through January 4, 2008. (FINRA Case #2007008035201)

Debbie E. Strnad (CRD #5262687, Associated Person, Westchester, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Strnad consented to the described sanction and to the entry of findings that she took \$20,560 from her member firm's banking affiliate, without the bank's knowledge or consent, and used the funds for her own purposes. (FINRA Case #2007009277002)

Hitomi Tsuyuki (CRD #1550142, Registered Representative, Coto de Caza, California) was barred from association with any FINRA member in any capacity and ordered to pay \$188,957.82, plus interest, in restitution to public customers. The sanctions were based on findings that Tsuyuki received \$188,957.82 from public customers to be deposited into a money market account, or to purchase municipal bonds but, instead, deposited the funds into his own accounts and concealed these acts of conversion by providing false account statements to the customers. The findings stated that Tsuyuki failed to respond to FINRA requests for information and to appear for an on-the-record interview. (FINRA Case #2005002253201)

Larry Washington (CRD #2228845, Registered Representative, Oak Park, Michigan) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Washington borrowed \$5,000 from a public customer when his member firm's written supervisory procedures prohibited borrowing money from customers. The findings stated that Washington failed to respond to FINRA requests for information. **(FINRA Case #2006006623601)**

James B. Weigler (CRD #5248663, Associated Person, Woodbridge, Virginia) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Weigler's reassociation with a FINRA member firm following his suspension, or prior to the filing of any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Weigler consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Form U4.

The suspension in any capacity is in effect from October 15, 2007, through January 14, 2008. **(FINRA Case #2007008532701)**

Decision Issued

The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of October 31, 2007. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed in the decision. Initial decisions which time for appeal has not yet expired will be reported in the next FINRA Notices.

Harvest Capital Investments, LLC (CRD #40367, Vienna, Virginia) and Dennis Cotto (CRD #3047293, Associated Person, Vienna, Virginia). The firm was expelled from FINRA membership and Cotto was barred from association with any FINRA member in any capacity. The sanctions were based on findings that the firm, acting through Cotto, permitted Cotto to manage and control its securities business and otherwise engage in activities and functions that required registration with FINRA as a general securities principal, even though he was not registered with FINRA, and while he was suspended by FINRA for six months in any capacity. The findings stated that Cotto appeared for a FINRA on-the-record interview without bringing all the documents FINRA had requested. The findings also stated that the firm, acting through Cotto, failed to respond, failed to respond fully and completely, and failed to respond timely, to FINRA requests for information. FINRA further found that Cotto willfully failed to amend, or caused it to be amended, his Form U4 to disclose material information. FINRA also found that the firm, acting through Cotto, willfully filed a false Uniform Application for Broker-Dealer Registration (Form BD) amendment and, failed to amend, and to timely amend, the firm's Form BD to disclose material information.

This decision has been appealed to the NAC and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #2005001305701)**

Complaint Filed

FINRA issued the following complaint. Issuance of a disciplinary complaint represents FINRA's initiation of a formal proceeding in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding these allegations in the complaint.

Thomas Charles Helbig (CRD #1039534, Registered Representative, Carnegie, Pennsylvania) was named as a respondent in a FINRA complaint alleging that he misused funds belonging to a public customer by causing an unauthorized transfer of \$10,000 from an annuity the customer owned to a bank account he owned, thereby commingling the customer's funds with his personal funds. The complaint alleges that Helbig failed to respond fully to FINRA requests for information and documents and failed to appear to testify. **(FINRA Case #2006005528601)**

Firm Expelled for Failure to Pay Fines and/or Costs Pursuant to NASD Rule 8320

STG Secure Trading Group, Inc.
Boca Raton, Florida
(October 18, 2007)

Firms Expelled for Failure to Supply Financial Information Pursuant to NASD Rule 9552(h)

Cannondale Securities, LLC
New York, New York
(October 23, 2007)

Seaway Investment Company, Inc.
Muskegon, Michigan
(October 24, 2007)

Firms Suspended for Failure to Supply Financial Information Pursuant to NASD Rule 9552

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Docent Financial Services, Corp
Natick, Massachusetts
(October 8, 2007)

The Orion Capital Group, Inc.
Hoboken, New Jersey
(October 8, 2007)

Individual Suspended Pursuant to NASD Rule 9553 for Failure to Pay Arbitration Fees

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Justin Charles Lasalla
Centerreach, New York
(October 24, 2007 – November 5, 2007)

Individual Revoked for Failing to Pay Fines and/or Costs Pursuant to NASD Rule 8320

Alan David Weiner
Delray Beach, Florida
(October 18, 2007)

**Individuals Barred Pursuant to
NASD Rule 9552(h)**

(If the bar has been vacated, the date follows the bar date.)

Eric James Brown
Highland Beach, Florida
(October 5, 2007)

Sherman Edd Douglas
Mobile, Alabama
(October 3, 2007)

Brian Lintag Fernando
Las Vegas, Nevada
(October 31, 2007)

Brian Frederick Ferraioli
West Orange, New Jersey
(October 17, 2007)

Kenneth A. Kuley
Cincinnati, Ohio
(October 25, 2007)

Robert John Langley
Irvine, California
(December 3, 2003 – October 23, 2007)

Erik Karl Penzin
Santa Monica, California
(October 19, 2007)

Alethea Outing Ramey
Charlotte, North Carolina
(October 10, 2007)

Deanna Louise Snodgrass
Tucson, Arizona
(October 4, 2007)

Robert Starace
Brooklyn, New York
(October 17, 2007)

**Individuals Suspended Pursuant to
NASD Rule 9552(d)**

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Garfield Earnest Como
Richmond, Texas
(October 15, 2007 – November 27, 2007)

Kendall George Sohaski
Fort Wayne, Indiana
(October 1, 2007)

Nwaka Ogwuru Ugokwe
Smyrna, Georgia
(October 15, 2007)

Coco Chanel Worthy
Atlanta, Georgia
(October 30, 2007)

Individuals Suspended Pursuant to NASD Rule Series 9554 for Failure to Comply with an Arbitration Award or Settlement Agreement

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Joseph Ruggerio Barile
Parsippany, New Jersey
(October 12, 2007)

George Stanley Blake
Alpharetta, Georgia
(October 16, 2007)

Ronald Edward Diehl
Germantown, Tennessee
(October 16, 2007)

Robert Darrell Drew
La Jolla, California
(October 1, 2007)

Emily Jean Halsband
Waukee, Iowa
(October 15, 2007)

LouAnn Hinish
Saxton, Pennsylvania
(October 1, 2007)

Mitchell R. Jesse
Reno, Nevada
(October 18, 2007)

Christopher Drury Johnson
Miami, Florida
(January 3, 2007 - October 1, 2007)

Edward Robert Lanahan
Parkville, Maryland
(October 1, 2007)

David Vincent Liuzza
Covington, Louisiana
(October 23, 2007)

Robert Christopher Patrick
Ronkonkoma, New York
(October 3, 2007)

Harvey Nathan Permutt
Melville, New York
(October 16, 2007)

Gilad Sartena
New York, New York
(October 3, 2007)

Steven Frederick Schaefer
Mars, Pennsylvania
(October 11, 2007)

Mark Jeffrey Sheehy
Scottsdale, Arizona
(October 8, 2007)

Timothy Patrick Shively
San Antonio, Texas
(October 12, 2007)

Eduardo M. Tejeda
Houston, Texas
(October 18, 2007)

Alan Kent Wise
Carlsbad, California
(October 18, 2007)

FINRA Fines UBS Financial Services \$370,000 for Late Reporting, Failing to Report Broker Information

Firm Was Late With More Than 550 Disclosure Filings Relating to Customer Complaints, Regulatory Actions and Criminal Disclosures; Firm Failed to Disclose Customer Complaints in 24 Other Instances

The Financial Industry Regulatory Authority (FINRA) has censured and fined UBS Financial Services, Inc. (UBS) \$370,000, for making hundreds of late disclosures to FINRA's Central Registration Depository (CRD) of information about its brokers, including customer complaints, regulatory actions and criminal disclosures. Those reporting violations occurred over a three-year period, from January 2002 through December 2004.

The firm also failed to disclose a significant number of customer complaints and filed late and inaccurate notices concerning the termination of certain brokers' relationships with the firm.

"Investors, regulators and others rely heavily on the accuracy and completeness of the information in the CRD public reporting system—and, in turn, the integrity of that system depends on timely and accurate reporting by firms," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement.

As a practical matter, the violations may have hampered investors' ability to assess the background of certain brokers via BrokerCheck, FINRA's public disclosure program. They also may have compromised firms' ability to conduct background checks when making hiring decisions, reduced the ability of state securities regulators to review brokers' transfer applications and hindered FINRA from promptly investigating certain disclosure items.

Under FINRA rules, when a securities firm hires a broker it must ensure that information on the broker's registration application (Form U4) is updated and kept current in the CRD system. The firm must update that information whenever significant events occur, including regulatory actions against the broker, certain customer complaints, settlements involving the broker and certain criminal charges and convictions. Normally, those updates must be filed within 30 calendar days of the event. A reportable event involving statutory disqualification (often the result of a criminal conviction) must be disclosed to CRD within 10 calendar days. Firms also are required to notify FINRA within 30 calendar days of the termination of a registered person's association with a member firm by filing a notice known as Form U5. Firms also must notify FINRA within 30 calendar days of learning that information disclosed on a Form U5 filed for a broker has become inaccurate or is incomplete.

Regarding complaints, certain types of written, consumer-initiated, investment-related complaints made within the past 24 months must be disclosed on Forms U4 and/or U5. If a complaint alleges that a broker was involved in one or more sales practice violations and contains a claim for compensatory damages of \$5,000 or more, it must be disclosed. Additionally, complaints alleging broker involvement in forgery, theft, misappropriation or conversion of funds or securities must also be disclosed.

In the UBS case, FINRA found that:

- From January 2002 through December 2004, UBS failed to report on time 559 required disclosures on Forms U4 and U5 relating to reportable customer complaints, regulatory actions and criminal disclosures, representing a non-compliance rate of over 18 percent. During the same time period, the firm failed to have supervisory systems and procedures in place reasonably designed to achieve compliance with reporting obligations for timely disclosures.
- From January 2002 through December 2004, UBS failed to disclose on Forms U4 and U5 at least 24 reportable written customer complaints that the firm had received.
- From January 2002 through mid-June 2003, in connection with retired registered persons who participated in UBS's Retiring Broker Program, the firm failed to file 31 termination notices on time (Forms U5), representing over 64 percent of such filings, and failed to report accurate termination dates on 32 Forms U5, representing over 66 percent of such filings.

As part of the settlement, UBS agreed to conduct an internal audit to evaluate the effectiveness of its system for timely compliance with certain Forms U4 and U5 reporting obligations. In addition, the firm agreed that an officer of the firm will certify that such audit has occurred and that recommendations from the audit have been or will be implemented.

In settling this matter, UBS neither admitted nor denied the allegations, but consented to the entry of FINRA's findings.

FINRA Fines Oppenheimer \$1 Million to Settle Charges that It Produced Flawed, Incomplete and Untimely Data in Breakpoint Self-Assessment Submission of Data the Firm Knew To Be Flawed Among Key Findings

The Financial Industry Regulatory Authority (FINRA) has fined Oppenheimer & Co. Inc. \$1 million for submitting mutual fund breakpoint data to FINRA that the firm knew to be inaccurate, as well as for related supervisory deficiencies. FINRA also ordered the firm to engage an independent consultant to evaluate its policies, systems and procedures for responding to information requests from regulators.

"The self-regulatory model depends on accurate, timely, and complete responses by firms to informational requests from FINRA," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement. "This settlement sends a clear message to broker dealers that they must have sound programs that insure conscientious responses to regulatory requests as well as reasonable safeguards when responsibility is delegated."

FINRA's (then NASD) initial request to Oppenheimer for a breakpoint assessment was made in March 2003 as part of a review of approximately 2,000 broker-dealers that sold front-end load mutual funds in 2001 and 2002. That request followed findings by NASD and other regulators that showed that nearly one in three mutual fund transactions in front-end load mutual funds that appeared eligible for a breakpoint discount did not receive one.

FINRA found that on two occasions, June 11, 2003, and Nov. 20, 2003, Oppenheimer submitted inaccurate and incomplete data in response to NASD's request to perform a self-assessment of its mutual fund breakpoint discount practices. The firm knowingly, or at a minimum recklessly, submitted flawed data to NASD, failed to notify NASD that the data was flawed, failed to follow up to correct the firm's data and failed to timely submit accurate data to NASD.

In its June 11 submission, Oppenheimer provided data that it knew to be flawed, without advising NASD of the known flaws. On June 13, 2003, NASD advised the firm that its submission was "pervasively flawed" and "rife with errors" and directed Oppenheimer to immediately generate and submit a new self-assessment.

The investigation further found that the firm's second self-assessment, submitted more than five months after the firm's initial submission, contained obvious deficiencies, such as the inclusion of ineligible transactions that should have been excluded from the sample; the failure to identify linked accounts; the failure to include proper discount information; the failure to provide actual sales charge percentages, appropriate sales charge percentages and proper discount descriptions; and the failure to identify overcharged trades, among other problems. Each of Oppenheimer's self-assessment submissions so completely and fundamentally failed to comply with the regulatory request that FINRA was unable to rely on Oppenheimer's data to analyze the firm's breakpoint compliance both in absolute terms and in relation to the approximately 2,000 other registered firms that contemporaneously submitted breakpoint self-assessments.

In addition to a fine, censure and independent consultant's review, Oppenheimer is obligated to conduct internal audits of its processes for intake, assignment and responses to regulatory inquiries. Oppenheimer is required to report its findings to FINRA quarterly for a period of six quarters.

Oppenheimer settled the matter without admitting or denying the charges, but consented to the entry of FINRA's findings and dismissal of charges against Oppenheimer CEO Albert Grinsfelder Lowenthal.