January 2009

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FINRA *Notices* are published monthly by FINRA Corporate Communications, Michelle Volpe-Kohler, Editor, 1735 K Street, NW, Washington, DC 20006-1506, (202) 728-8289.

Notices (December 1996 to current) are also available on the Internet at *www.finra.org/notices*.

Regulatory Notice 09-01

BD and IA Renewals for 2009

Broker-Dealer, Investment Adviser Firm, Agent and Investment Adviser Representative, and Branch Renewals for 2009

Payment Deadline: February 4, 2009

Executive Summary

FINRA is issuing this *Notice* to help firms review, reconcile and respond to their Final Renewal Statements and reports that are currently available on Web CRD and IARD for the 2009 registration renewal process.

Questions concerning this *Notice* should be directed to the FINRA Gateway Call Center at (301) 869-6699.

Background & Discussion

Final Renewal Statements

On January 2, 2009, Final Renewal Statements and reports became available for viewing and printing. These statements reflect the final status of broker-dealer, registered representative (AG), investment adviser firm and investment adviser representative (RA) registrations and/or notice filings as of December 31, 2008. Any adjustments in fees owed as a result of registration terminations, approvals, firm IA registrations or notice filings subsequent to the Preliminary Renewal Statement are included in this final reconciled statement.

If the amount assessed on the Final Renewal Statement is greater than the amount assessed on the Preliminary Renewal Statement, the additional renewal fees are due by February 4, 2009. If the amount assessed on the Final Renewal Statement is less than the amount assessed on the Preliminary Renewal Statement, a credit will be issued to the firm's CRD/IARD Daily Account.

January 2009

Notice Type
- Renewals

Suggested Routing
- Compliance
- Legal
- Operations
- Registered Representatives
- Registration
- Senior Management

Key Topic(s)
- CRD®
- IARD
- Registration
- Renewals

Referenced Rules & Notices
- NTM 02-48

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The Final Renewal Statements include the following fees (if applicable):

- Web CRD system processing fees;
- FINRA branch office fees;
- FINRA branch renewal processing fees;
- American Stock Exchange (AMEX), BATS Exchange, Inc. (BATS), Boston Stock Exchange (BSE), Chicago Board Options Exchange (CBOE), Chicago Stock Exchange (CHX), International Securities Exchange (ISE), NASDAQ Stock Exchange (NQX), New York Stock Exchange (NYSE), NYSE Arca, Inc. (ARCA) and Philadelphia Stock Exchange (PHLX) maintenance fees;
- State agent renewal fees;
- State BD renewal fees;
- State BD branch fees;
- Investment adviser firm and representative renewal fees; and
- Broker-dealer and/or investment adviser branch renewal fees.

FINRA must receive full payment of the Final Renewal Statement fees no later than February 4, 2009.

Renewal Payment

A Final Renewal Statement that reflects a zero balance requires no further action by the firm. If you believe your firm overpaid and is due a renewal refund, please check your firm's Daily (registration) Account to verify that the overpayment was transferred. All renewal overpayments were systematically transferred to firms' Daily Accounts on January 2, 2009. To request a refund check, have an appropriate signatory send a request on firm letterhead and mail it to:

FINRA Finance Department
9509 Key West Avenue
Rockville, MD 20850

If the Final Renewal Statement reflects an amount due, FINRA must receive payment no later than February 4, 2009. Firms have four (4) payment options:

- Automatic Daily-to-Renewal Account Transfer;
- Web CRD/IARD E-Pay;
- Check; or
- Wire transfer.

Automatic Daily-to-Renewal Account Transfer

To facilitate renewal payment processing for all firms, FINRA will automatically transfer funds from a firm's Daily Account to its Renewal Account on February 4, 2009, the Final Renewal Statement payment deadline. FINRA will transfer funds only if a firm has sufficient funds available in its Daily Account on February 4 to cover the full amount.

Please Note: If a firm does not want funds automatically transferred from its Daily Account to its Renewal Account, the firm should ensure that its payment is received in its Renewal Account by February 4. Separately, if a firm wishes to transfer funds between affiliated firms, the firm should contact the Gateway Call Center at (301) 869-6699 for further instructions prior to the renewal deadline.

Web CRD/IARD E-Pay

The Web CRD/IARD E-Pay application is accessible from both the Preliminary and Final Renewal Statements and the FINRA (*www.finra.org/crd*) or IARD (*www.iard.com*) Web sites and allows a firm to make an ACH payment from a designated bank account to its Web CRD/IARD Renewal Account. Please note that in order for funds to be posted to a firm's Renewal Account by February 4, 2009, firms must submit payment electronically, no later than 8:30 p.m. Eastern Time (ET) on February 2, 2009.

Check

The check should be drawn on the firm's account. To ensure prompt processing of your renewal payment check:

- Include a printout of the first page of your Final Renewal Statement with payment. (Do not include any other forms or fee submissions.)
- Write your firm's CRD number and "Renewal" on the check memo line.
- Mail payment to:

U.S. Mail

FINRA
P.O. Box 7777-8705
Philadelphia, PA 19175-8705

Note: This box will not accept courier or overnight deliveries.

Overnight or Express Delivery

FINRA
8705
Mellon Bank Room 3490
701 Market Street
Philadelphia, PA 19106
Telephone: (301) 869-6699

Please note: The addresses for renewal payments are different from the addresses for funding firms' CRD/IARD Daily Account.

Wire Payment

A firm may wire full payment for its Final Renewal Statement by requesting its bank to initiate the wire transfer to: **"Mellon Financial, Philadelphia, PA."** A firm should provide its bank the following information:

Transfer funds to:	Mellon Financial, Philadelphia, PA
ABA Number:	031 000 037
Beneficiary:	FINRA
FINRA Account Number:	8-234-353
Reference Number:	Firm CRD number and "Renewals"

To ensure prompt processing of a renewal payment by wire transfer, remember to:

- Inform the bank that the funds are to be credited to the FINRA bank account.
- Provide the firm's CRD number and "Renewal" as reference only.
- Record the confirmation number of the wire transfer provided by the bank.

Renewal Reports

Renewal reports include all individual registrations renewed for 2009. Registrations that were "pending approval" or were "deficient" at year-end 2008 were not assessed renewal fees; therefore, they will not be reported on the Firm (Agent) Renewal Report. Firms should examine their reports carefully to ensure that all registration approvals are properly listed. FINRA also suggests that firms include these reports in firms' permanent records.

Firm Renewal Report: Applicable to broker-dealer and investment adviser firms. This report lists all renewed personnel with FINRA, AMEX, ARCA, BATS, BSE, CBOE, CHX, ISE, NQX, NYSE, PHLX and/or each jurisdiction. Individuals whose registrations are "approved" with any of these regulators during November and December will be included in this report, while registrations that are still pending approval or are deficient at year's end will not be included in the 2009 Renewal Program nor will they be listed on the report. Firms should use this report to reconcile their records for renewal purposes.

Branches Renewal Report: Applicable to both broker-dealer and investment adviser firms. This report lists each branch registered with FINRA and other regulators that renews branches registered with them through Web CRD/IARD for which the firm was assessed a fee. Firms should use this report to reconcile their records for renewal purposes.

Discrepancies

If a firm finds any discrepancies between its records and those maintained on Web CRD/IARD, the discrepancy must be reported to FINRA at the same address used for refund requests. All discrepancies should be reported by February 4, 2009. Copies of appropriate documentation from the firm's Web CRD/IARD queues, such as a Web CRD-generated notice of termination, notification of deficient condition, or notice of approval, should be readily available.

The 2009 Renewal Program Bulletin contains detailed instructions to help firms complete the renewal process. This publication can also be found at *www.finra.org/renewals*.

Regulatory Notice 09-02

Information and Data Reporting and Filing Requirements

FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Information and Data Reporting and Filing Requirements

Comment Period Expires: February 20, 2009

Executive Summary

As part of the process of developing a new Consolidated FINRA Rulebook,[1] FINRA is requesting comment on proposed new FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements). The proposed rule:

1. establishes a new information reporting requirement;
2. requires member firms to report additional applicable contact information; and
3. consolidates, streamlines and modifies into one rule several separate reporting and filing requirements in the NASD and Incorporated NYSE Rules.

The proposed rule also supports FINRA's efforts to consolidate several existing electronic reporting platforms into a single electronic platform that all firms will use to report required information.

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

Questions concerning this *Notice* should be directed to:

- Patricia Albrecht, Assistant General Counsel, Office of General Counsel (OGC), at (202) 728-8026; or
- Ann-Marie Mason, Counsel, Member Regulation, Sales Practice Policy, at (202) 728-8231.

January 2009

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Systems

Key Topic(s)

- Annual Form
- Contact Information
- Filing Requirements
- Reporting Requirements

Referenced Rules & Notices

- NASD IM-3011-2
- NASD-IM-3150-1
- NASD Rule 1120
- NASD Rule 1150
- NASD Rule 1160
- NASD Rule 3150
- NASD Rule 3170
- NASD Rule 3520
- NYSE Rule 416A
- Notice 08-57

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Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by February 20, 2009.

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

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

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

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

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.[2]

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.[3]

Background & Discussion

A. Background

Currently, Dual Members and FINRA-only firms report and file information using different forms via separate electronic platforms. As part of the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA is creating a single electronic platform that will replace the existing electronic platforms. FINRA is also developing a standard form (Annual Form) to collect certain critical business information, such as number of accounts and total assets under management based on the type of customer involved and service being provided. Additionally, firms will be asked to verify whether they engage in certain business activities that are not enumerated on Form BD (*e.g.*, hedge fund management, prime brokerage). This information will enable FINRA to identify different firm types and business models (*e.g.*, institutional versus retail and full-service versus discount).

To the extent a firm clears for itself or others, it will also be asked to provide certain information pertaining to its clearing operations which will assist FINRA in, among other things, its examination and surveillance efforts. FINRA will also collect additional categories of contact persons beyond those currently required by specific regulatory rules. These contacts (*e.g.*, Chief Technology Officer and General Counsel, in cases where member firms maintain such positions) will better enable FINRA to quickly communicate critical information to key firm personnel responsible for specific business areas. Such capability would be particularly useful in time-sensitive or emergency situations.

B. Proposed FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements)

FINRA is proposing new FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements) to, among other things:

1. establish the Annual Form reporting requirement;
2. require the reporting of additional applicable contact information; and
3. consolidate, streamline and modify certain NASD and Incorporated NYSE Rules governing reporting requirements.

1. Proposed FINRA Rule 4540(a)(1): Annual Form Reporting Requirements and Additional Contact Information

Proposed FINRA Rule 4540(a)(1) requires each firm to report, update and review, in such format, time frame and manner as FINRA may require, all specified data or information. The proposed rule text is intentionally broad to provide FINRA the necessary flexibility to specify the data and information elements of the Annual Form. Firms will report the Annual Form data and information, review and, if necessary, update such data and information on an annual basis. FINRA intends to provide firms with advance notice through a *Regulatory Notice* (or similar guidance) of the Annual Form reporting requirement and of any future changes to the required data and information elements.

Also pursuant to this proposed provision, firms would report and update all applicable contact person information that is not currently required by a regulatory rule. For instance, a firm would be required to report its Chief Technology Officer and/or General Counsel if the firm has such positions. The proposed rule does not require a firm to create new positions for which it must then provide contact information.

Proposed FINRA Rule 4540(a)(1) also allows FINRA the flexibility to require member firms to report additional specified data and information, as necessary.[4] Barring exigent circumstances, FINRA generally will consult with firms regarding additional data and information required under the rule and will allow for a reasonable period of time for any necessary technology coding or reporting changes that firms may need to make to comply with the rule.

2. Proposed FINRA Rule 4540(a)(2): Mandatory Filing Requirements

Proposed FINRA Rule 4540(a)(2) replaces nearly identical NASD Rule 3170 (Mandatory Electronic Filing Requirements), which requires each firm to file with (or otherwise submit to) FINRA, in such electronic format as FINRA may require, all regulatory notices or other documents required to be filed (or otherwise submitted) to FINRA, as specified by FINRA. Proposed FINRA Rule 4540(a)(2), however, permits FINRA to specify both the format and manner of the filing or submission and does not limit the format only to an electronic format. These changes will provide FINRA with the flexibility needed to use a variety of filing and submission tools, as well as electronic ones. FINRA will continue to let firms know which regulatory notice or document that firms are required to file with or submit to FINRA, the compliance date for these electronic filings or submissions and the requisite manner and format.

3. Proposed FINRA Rule 4540(a)(3): Contact Information Reporting Requirements

Proposed FINRA Rule 4540(a)(3) replaces NASD Rule 1160 (Contact Information Requirements). Currently, NASD Rule 1160 supports firms' compliance with NASD Rules 1120 (Continuing Education Requirements), 1150 (Executive Representative), IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) and 3520 (Emergency Contact Information), which all require firms to provide FINRA with designated contact person information.[5] The proposed rule provision requires each firm to report to FINRA this and any additional contact information applicable to the firm, via the Firm Gateway or such other means as FINRA may specify. In addition, related supplementary material extends NASD Rule 1160's requirements to update designated contact information promptly (but no later than 30 days following any change in the information) and verify the information annually (within 17 business days after the end of the calendar year) to all of a firm's contact information. As with the reporting obligation, FINRA would require firms to update and verify their contact information through the Firm Gateway unless otherwise specified by FINRA.

The supplementary material to Rule 4540 also retains, but extends to all contact information, NASD Rule 1160's requirement that each firm comply promptly with any FINRA request for such information. As with current NASD Rule 1160, the proposed rule change will not relieve firms from any separate requirements to update such information.[6]

4. Proposed FINRA Rule 4540(b): Clearing Member Reporting Requirements

Proposed FINRA Rule 4540(b)(1) is based on NASD Rule 3150(a) (Reporting Requirements for Clearing Firms) requiring that each clearing firm (both self-clearing and those that clear for other firms) electronically report to FINRA on a daily basis prescribed data pertaining to the firm and any firm for which it clears. This data is used as part of FINRA's examination program.[7] Additionally, proposed FINRA Rule 4540(b)(2), which is based on NASD Rule 3150(b), requires that each clearing firm report the prescribed data in a manner that enables FINRA to distinguish between data belonging to an introducing firm and data belonging to an introducing firm that acts as an intermediary in obtaining clearing services.

FINRA is also proposing to relocate as supplementary material to Rule 4540 NASD Rule 3150's provisions:

1. permitting a clearing firm to enter into third-party agreements to fulfill its reporting obligations; and
2. providing FINRA with general exemptive authority to exempt a firm in exceptional and unusual circumstances.

FINRA, however, proposes to delete NASD IM-3150 (Exemptive Relief), which provides specific grounds for which certain clearing firms may request exemptive relief pursuant to the FINRA Rule 9600 Series. Firms that might be affected by the deletion of this provision may still request a general exemption pursuant to the Rule 9600 Series based on the grounds currently identified in NASD IM-3150.

C. Proposal to Eliminate NASD and Incorporated NYSE Rules

As noted above, FINRA proposes to eliminate NASD IM-3150 in its entirety and also to eliminate NASD Rules 1160, 3150 and 3170 after incorporating their requirements into proposed FINRA Rule 4540 and supplementary material.

FINRA also proposes to delete Incorporated NYSE Rule 416A (Member and Member Organization Profile Information Updates and Quarterly Certifications Via the Electronic Filing Platform) requiring member organizations to report, update and review all of the profile information required by the NYSE Electronic Filing Platform (EFP). The provisions of this rule are, in large part, substantially similar to the Annual Form reporting and additional contact information requirements of proposed FINRA Rule 4540 discussed above. Incorporated NYSE Rule 416A also contains requirements that do not align with the recommended changes (*e.g.*, verifying contact information quarterly).

Endnotes

1 The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The new FINRA Rules apply to all member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see FINRA Information Notice 03/12/08* (Rulebook Consolidation Process).

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

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

4 Firms would still be expected to provide information in compliance with any request made pursuant to FINRA Rule 8210. S*ee Regulatory Notice 08-57* (SEC Approves New Consolidated FINRA Rules) (October 2008).

5 The proposed rule change will also replace any references to NASD Rule 1160 in these rules with references to proposed FINRA Rule 4540. FINRA, however, proposes to delete NASD Rule 1150 (Executive Representative) as duplicative of provisions in Article IV, Section 3 of the FINRA By-Laws.

6 For example, a firm must identify, among others, its Chief Executive Officer and Chief Compliance Officer on Form BD, and promptly update such information by submitting an amendment whenever the information becomes inaccurate or incomplete for any reason. *See* also Article IV, Section 1(c) of the FINRA By-Laws, requiring each firm to ensure that its membership application is kept current at all times by supplementary amendments, and to file any such amendment no later than 30 days after learning of the facts or circumstances giving rise to the amendment.

7 Rule 3150 is designed to require firms to provide summaries of information that they already collect. FINRA intends to continue its practice of providing firms with advance notice through a *Regulatory Notice* (or similar guidance) of any changes to the required data elements.

Attachment A

Below is the text of proposed FINRA Rule 4540. Incorporated NYSE Rule 416A and NASD Rules 1160, 3150, 3170 and NASD IM-3150 would be deleted in their entirety.

* * * * *

4540. Member Information and Data Reporting and Filing Requirements

(a) Reporting Requirements for All Members

(1) Each member is required to report, update and review, in such format, time frame and manner as FINRA may require, all specified data or information.

(2) Each member is required to file with FINRA in such manner and format as FINRA may require, all regulatory notices or other documents required to be filed or submitted to FINRA.

(3) Each member shall report to FINRA all contact information via the Firm Gateway or such other means as FINRA may specify.

(b) Reporting Requirements for Clearing Members

(1) Each member that is a clearing firm or self-clearing firm shall be required to report to FINRA in such format as FINRA may require, specified data or information pertaining to the member and any member broker-dealer for which it clears.

(2) Each member that is a clearing firm is required to report specified data or information to FINRA in such a manner as to enable FINRA to distinguish between data or information pertaining to all proprietary and customer accounts of an introducing member and data or information pertaining to all proprietary and customer accounts of any member for which the introducing member is acting as an intermediary in obtaining clearing services from a clearing firm. The reporting requirements of this paragraph (b)(2) shall apply to the proprietary and customer accounts of members that have established an intermediary clearing arrangement with an introducing member on or after February 20, 2006.

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

.01 Review and Update of Contact Information. For purposes of paragraph (a)(3):

(a) Each member shall update its contact information promptly, but in any event not later than 30 days following any change in such information. In addition, each member shall review and, if necessary, update its contact information within 17 business days after the end of the calendar year.

(b) Each member shall comply with any FINRA request for its contact information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.

.02 Third-Party Agreements. A clearing firm or self-clearing firm may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the obligations of a clearing firm or self-clearing firm under paragraph (b) of this Rule. Notwithstanding the existence of such an agreement, each clearing firm or self-clearing firm remains responsible for complying with the requirements of paragraph (b) of this Rule.

.03 Exemptive Relief. Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members unconditionally or on specified terms from any or all of the provisions of paragraph (b) of this Rule that it deems appropriate.

Any self-clearing firm that, due to a change in the facts pertaining to the operation and nature of its business or the operation and nature of the business of a firm for which it clears, as applicable, no longer qualifies for an exemption previously granted by FINRA from the reporting requirements of paragraph (b) of this Rule must promptly report such change in circumstances to FINRA, Department of Member Regulation, and commence compliance with the reporting requirements of paragraph (b) of this Rule.

Regulatory Notice 09-03

Financial Responsibility and Related Operational Rules

FINRA Requests Comment on Proposed Consolidated FINRA Rules Governing Financial Responsibility and Operational Requirements

Comment Period Expires: February 20, 2009

Executive Summary

In its continued effort to develop a set of financial responsibility and related operational rules[1] for the consolidated rulebook (the Consolidated FINRA Rulebook),[2] FINRA is requesting comment on proposed new FINRA Rules 4150, 4311, 4522 and 4523 (the proposed rules). The proposed rules are based in part on Incorporated NYSE[3] and NASD Rules and would, in combination with the proposed rules FINRA recently filed with the SEC,[4] govern financial responsibility as well as certain operational and contractual requirements of member firms.[5]

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

Questions regarding this *Notice* should be directed to:

- Kris Dailey, Vice President, Risk Oversight and Operational Regulation (ROOR), at (646) 315-8434;
- Susan M. DeMando, Associate Vice President, Financial Operations, at (202) 728-8411; or
- Adam H. Arkel, Assistant General Counsel, Office of General Counsel, at (202) 728-6961.

January 2009

Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Capital Compliance
- Financial Responsibility
- Operational Rules

Referenced Rules & Notices

- NASD Rule 3230
- NYSE Rule 322
- NYSE Rule 382
- NYSE Rule Interpretation 382
- NYSE Rule 440.10
- NYSE Rule 440.20
- SEA Rule 15c3-1
- SEA Rule 15c3-3
- SEA Rule 17a-3(a)(10)
- SEA Rule 17a-4(b)
- SEA Rule 17a-13

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Action Requested

FINRA encourages all interested parties to comment on the proposed rules. Comments must be received by February 20, 2009.

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

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

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

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

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.[6]

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.[7]

Background

The proposed rules enhance FINRA's authority to execute effectively its financial and operational surveillance and examination programs. Consistent with the approach that FINRA discussed in SR-FINRA-2008-067 and *Regulatory Notice 08-23*, many of the requirements set forth in the proposed rules are substantially the same as requirements found in current rules and, where appropriate, are tiered to apply only to carrying or clearing firms, or to firms that engage in certain specified activities. Certain of the proposed rule provisions are new for FINRA member firms that are not Dual Members (referred to as "non-NYSE member firms"). Certain other provisions are new for both Dual Members and non-NYSE member firms alike. The more significant changes are discussed below.

Discussion

A. Proposed FINRA Rule 4150 (Guarantees by, or Flow Through Benefits for, Members)

Proposed FINRA Rule 4150, based in large part on NYSE Rule 322, requires that prior written notice be given to FINRA whenever a member firm guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities of another person (including entity),[8] or receives flow-through capital benefits in accordance with Appendix C of SEA Rule 15c3-1. The timing and details of what constitutes the notice are included in proposed FINRA Rule 4150.01. Proposed FINRA Rule 4150.02 provides that a member firm may at any time (*i.e.*, not just within the context of the prior written notice the member firm provides pursuant to the proposed rule) be required to provide FINRA with information with respect to the arrangement, relationship and dealings with a person referred to in the proposed rule.

Proposed FINRA Rule 4150.03 prohibits any member firm from entering into an arrangement described in the proposed rule unless the firm has the authority to make available promptly the books and records of the other person for inspection by FINRA in the United States. The proposed rule provides that the books and records of the other person must be kept separately from those of the member firm.

With respect to persons referred to in the proposed rule that are registered broker-dealers, proposed FINRA Rule 4150.04 requires that the member firm must furnish to FINRA copies of the persons' FOCUS Reports simultaneous with their being filed with the persons' designated examining authority. With respect to persons that are not registered broker-dealers, the proposed rule requires, in lieu of FOCUS Reports, submission of financial and operational statements, in such format and at such time periods as FINRA may require, sufficient to gauge the capital and operational effects of the arrangement or relationship on the member firm.

Proposed FINRA Rule 4150.05 provides that guarantees executed routinely in the normal course of business, such as trade guarantees, signature guarantees, endorsement of securities and the writing of options, are not subject to the requirements of the proposed rule provided that, in regard to the guarantee of the writing of options, the transaction is appropriately recorded on the member firm's books and records in accordance with SEA Rule 17a-3(a)(10) and is reflected in its capital computation.

NASD Rules do not have a provision that corresponds to NYSE Rule 322. Accordingly, the requirements of proposed FINRA Rule 4150 are new to non-NYSE members.

B. Proposed FINRA Rule 4311 (Carrying Agreements)

Proposed FINRA Rule 4311 is based on NASD Rule 3230 and NYSE Rule 382 (including its Interpretations). The proposed rule governs the requirements applicable to member firms when entering into agreements for the carrying of customer accounts. Historically, the purpose of the NASD and NYSE rules upon which the proposed rule is based has been to ensure that certain functions and responsibilities are clearly allocated to either the introducing or carrying firm, consistent with any requirements of the SRO's and SEC's financial responsibility and other rules and regulations, as applicable.[9] The proposed rule continues to serve that same purpose and, accordingly, contains many requirements that are substantially unchanged from NASD Rule 3230 and NYSE Rule 382. Proposed FINRA Rule 4311 also codifies certain provisions that are new for non-NYSE members, or are new for both Dual Members and non-NYSE members alike. Following is a summary of the more significant and/or new provisions of the proposed rule.

Proposed FINRA Rule 4311(a)(1) prohibits a member firm from entering into an agreement with a carrying firm for the carrying of its customer accounts on an omnibus or fully disclosed basis, unless the carrying firm is a FINRA member firm. This is a new requirement for all member firms; however, the vast majority of carrying firms in the United States are FINRA member firms. Proposed FINRA Rule 4311(a)(1) also includes a provision that requires that when an introducing firm acts as an intermediary for another introducing firm or firms (so-called "piggyback" or "intermediary clearing arrangements") for the purpose of obtaining clearing services from the carrying firm, the introducing firm must notify the carrying firm of the existence of the arrangement(s) with the other introducing firm(s) and disclose the identity of the firm(s). Based in large part on NYSE Rule Interpretation 382/05, the proposed rule further requires that each carrying agreement must identify and bind every direct and indirect recipient of clearing services as a party thereto.

Proposed FINRA Rule 4311(b)(1), consistent with the requirements of NASD Rule 3230(e) and NYSE Rule 382(a), requires that the carrying firm must submit to FINRA for approval any agreement for the carrying of accounts, whether on an omnibus or fully disclosed basis, before such agreement can become effective. The proposed rule also provides that the carrying firm must also submit to FINRA for approval any material changes to an approved carrying agreement before the changes become effective.[10]

The proposed rule codifies the practice under NASD Rule 3230 of permitting use of pre-approved standardized forms of agreement, with the exception of agreements with parties that are not U.S.-registered broker-dealers. The proposed rule requires a carrying firm to submit to FINRA for approval each carrying agreement with a non-U.S.-registered broker-dealer.[11] This is a new requirement for non-NYSE member firms.

Proposed FINRA Rule 4311(b)(3) codifies the current practice under NYSE Rule 382 of requiring that as early as possible, but not later than 10 business days, prior to the carrying of any accounts of a new introducing firm (including the accounts of any piggyback or intermediary introducing firm(s)), the carrying firm must submit to FINRA a notice identifying each such introducing firm by name and CRD number and include such additional information as FINRA may require.[12] This is a new requirement for non-NYSE carrying member firms, and permits FINRA to obtain additional information that enables it to evaluate the impact of the new carrying arrangement on the financial and operational condition of the member firm. Proposed FINRA Rule 4311(b)(4) expressly requires each carrying firm to conduct appropriate due diligence with respect to any new introducing firm relationship, including, but not limited to, inquiry into the introducing firm's business mix and customer account activity, proprietary and customer positions, FOCUS and similar reports, audited financial statements and complaint and disciplinary history. The carrying firm must maintain a record, in accordance with the timeframes prescribed by SEA Rule 17a-4(b), of the due diligence conducted for each new introducing firm.

Based in part on NASD Rule 3230(g), NYSE Rule 382(c) and NYSE Rule Interpretation 382/03, proposed FINRA Rule 4311(d) requires that each customer whose account is introduced on a fully disclosed basis must be notified in writing upon the opening of the account of the existence of the carrying agreement and the responsibilities allocated to each respective party. The proposed rule provides that the carrying firm would be responsible for the content of the notification to the customer. A new provision further provides that the customer must be notified promptly and in writing in the event of any change to any of the parties to the agreement or any material change to the allocation of responsibilities thereunder.

Consistent with NYSE Rule Interpretation 382/03, proposed FINRA Rule 4311(e) requires that each carrying agreement must expressly state that to the extent that a particular responsibility is allocated to one party, the other party or parties will supply to the responsible organization all appropriate data in their possession pertinent to the proper performance and supervision of that responsibility. This is a new requirement for non-NYSE member firms.

Based in large part on NASD Rule 3230(d) and NYSE Rule 382(f), proposed FINRA Rule 4311(f) provides that a carrying agreement may authorize an introducing firm to issue negotiable instruments directly to its customers, using instruments for which the carrying firm is the maker or drawer, provided that the parties comply with SEA Rule 15c3-3 and further that the introducing firm represents to the carrying firm in writing that the introducing firm maintains, and will enforce, supervisory policies and procedures with respect to such check writing that are satisfactory to the carrying firm.

The provisions of proposed FINRA Rule 4311(g)(1), and (h) generally address the obligations of the parties to provide the referenced information to each other and/or to FINRA and are based upon existing rule provisions. Proposed FINRA Rule 4311(g)(2) provides that, upon a showing of good cause, FINRA, at its discretion, may exclude certain carrying firms from the requirements of proposed FINRA Rule 4311(g)(1) in instances where the introducing firm is an affiliated entity of the carrying firm. This provision is based upon NASD Rule 3230(b)(3) but is not in NYSE Rule 382. Member firms should also note that the July 1 deadline set forth in paragraph (h)(2) of the proposed rule differs from the current requirement (no later than July 31) specified by the corresponding NASD and NYSE rule provisions.

Proposed FINRA Rule 4311(i) is based largely on NASD Rule 3230(h) and does not have a corresponding provision to NYSE Rule 382. The proposed rule provides that all carrying agreements must require each introducing firm to maintain its proprietary and customer accounts, and the proprietary and customer accounts of any introducing firm for which it is acting as an intermediary in obtaining clearing services from the carrying firm, in such a manner as to enable the carrying firm and FINRA to specifically identify the proprietary and customer accounts belonging to each introducing firm. Consistent with NASD Rule 3230(h), the proposed rule's requirements apply only to intermediary clearing arrangements that are established on or after February 20, 2006.

C. Proposed FINRA Rule 4522 (Periodic Security Counts, Verifications and Comparisons)

Proposed FINRA Rule 4522(a), based in large part on NYSE Rule 440.10, requires each member firm that is subject to the requirements of SEA Rule 17a-13 to make the counts, examinations, verifications, comparisons and entries set forth in SEA Rule 17a-13. Proposed FINRA Rule 4522(b), again based in large part on NYSE Rule 440.10, requires each carrying or clearing member firm subject to SEA Rule 17a-13 to make more frequent counts, examinations, verifications, comparisons and entries where prudent business practice would so require. Each such carrying or clearing member firm would be required to receive position statements no less than once per month with respect to securities held by clearing corporations, other organizations or custodians and, at least once per month, reconcile all such securities and money balances by comparison of the clearing corporations' or custodians' position statements to the member firm's books and records. The carrying or clearing member firm must promptly report any differences to the contra organization, and both the contra organization and the member firm must promptly resolve the differences. Where there is a higher volume of activity, the proposed rule provides that good business practice may require a more frequent exchange of statements and performance of reconciliations. The rule further requires that no later than seven business days after each security count, the carrying or clearing member firm must enter any unresolved differences in a "Difference" account for that security count.

NASD Rules do not have a provision that corresponds to NYSE Rule 440.10. Accordingly, the requirements of proposed FINRA Rule 4522(b) are new to non-NYSE carrying or clearing member firms that are subject to the requirements of SEA Rule 17a-13.

D. Proposed FINRA Rule 4523 (Assignment of Responsibility for General Ledger Accounts and Identification of Suspense Accounts)

Proposed FINRA Rule 4523, based in large part on NYSE Rule 440.20, is intended to help assure the accuracy of each member firm's books and records and includes supervisory measures for their implementation. Paragraph (a) of the proposed rule requires that members designate an individual to be responsible for each general ledger account of the member firm. This individual is responsible for controlling and overseeing the entries into each such account and determining that it is current and accurate. The proposed rule requires that a supervisor must review each account at least monthly for accuracy, to determine that any items that are aged or uncertain as to resolution are promptly identified for research and possible transfer to a suspense account. Paragraph (b) of the proposed rule requires that each carrying or clearing member firm must maintain a record of the name of each individual assigned primary and supervisory responsibility for each account as required by paragraph (a) of the rule. Paragraph (c) of the proposed rule requires each member firm to record, in an account that must be clearly identified as a suspense account, money charges or credits and receipts or deliveries of securities whose ultimate disposition is pending determination. The proposed rule requires that member firms maintain a record of all information known with respect to each item so recorded.

NASD Rules do not have a provision that corresponds to NYSE Rule 440.20. Accordingly, the requirements of proposed FINRA Rule 4523 are new to non-NYSE members.

Endnotes

1 *See SR-FINRA-2008-067 (Proposed Rule Change to Adopt Rules Governing Financial Responsibility in the Consolidated FINRA Rulebook) (filed on December 29, 2008).*

2 The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice 03/12/08* (Rulebook Consolidation Process).

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

4 *See supra* note 1.

5 The proposed rules would replace NYSE Rules 322 (Guarantees by, or Flow Through Benefits for Members or Member Organizations), 382 (Carrying Agreements) (including Rule 382's related Interpretations), 440.10 (Periodic Securities Counts, Verifications, Comparisons, etc.) and 440.20 (Identification of Suspense Accounts and Assignment of Responsibility for General Ledger Accounts) and NASD Rule 3230 (Clearing Agreements).

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

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

8 NASD Rule 0120(n) defines "person" to include any natural person, partnership, corporation, association, or other legal entity. Similarly, NYSE Rule 2(d) states that "person" means a natural person, corporation, limited liability company, partnership, association, joint stock company, trust, fund or any organized group of persons whether incorporated or not. All references to "persons" in this *Notice* include entities.

9 *See e.g. NASD Notice to Members 94-7* (SEC Approves New NASD Rule Relating to the Obligations and Responsibilities of Introducing and Clearing Firms) (February 1994) and *NYSE Information Memo 82-18* (Carrying Agreements – Amendments to Rules 382 and 405) (March 1982).

10 The proposed rule includes guidance as to what constitutes a material change. Specifically, material changes would include, but not be limited to, the allocation of responsibilities required by the proposed rule, termination clauses applicable to the introducing firm, changes affecting the liability of the parties and changes to the parties to the agreement. (*See* Proposed FINRA Rule 4311.01.)

11 Note that proposed FINRA Rule 4311(a)(2) would expressly permit a carrying firm to enter into a carrying agreement with a person other than a U.S. registered broker or dealer, subject to the conditions set forth in the proposed rule.

12 Proposed FINRA Rule 4311.02 provides that, for purposes of the notice requirement, the carrying firm must submit a form letter to be specified by FINRA in a *Regulatory Notice*, which form letter may be updated from time to time as FINRA deems necessary.

ATTACHMENT A

Below is the text of Proposed FINRA Rules 4150, 4311, 4522 and 4523.

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

4100. FINANCIAL CONDITION

* * * * *

4150. Guarantees by, or Flow Through Benefits for, Members

Prior written notice shall be given to FINRA whenever any member:

(a) guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities of another person; or

(b) receives flow through capital benefits in accordance with Appendix C of SEA Rule 15c3-1.

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

.01 Financial and Operational Impact.—The written notice required by this Rule shall be given to FINRA at least 10 business days prior to entering into such arrangement or relationship with another person and shall include the address and general nature of business conducted by such person, a description of the relationship or arrangement between the parties, details regarding the capitalization of such person (including the percentage of ownership or profits by the member), as well as the actual and potential effect of the arrangement or relationship on the member's capital (including net capital) and operations and such other information as FINRA may require.

.02. Dealings with members.— A member may at any time be required to provide FINRA with information with respect to the arrangement, relationship and dealings with a person referred to in this Rule.

.03 Books and records.— No member shall enter into an arrangement described in this Rule unless it has the authority to make available promptly the books and records of such other person for inspection by FINRA in the United States. The books and records of such person shall be kept separately from those of the member.

.04 FOCUS Reporting Requirements.— For persons referred to in this Rule that are registered broker-dealers, the member shall furnish to FINRA copies of such person's FOCUS Reports simultaneous with their being filed with the person's designated examining authority. For persons referred to in this Rule that are not registered broker-dealers, FINRA requires, in lieu of FOCUS Reports, submission of financial and operational statements, in such format and at such time periods as may be required by FINRA, sufficient to gauge the capital and operational effects of the arrangement or relationship.

.05. Routine guarantees.— Guarantees executed routinely in the normal course of business such as trade guarantees, signature guarantees, endorsement of securities and the writing of options, are not subject to the requirements of this Rule provided that, in regard to the guarantee of the writing of options, the transaction is appropriately recorded on the member's books and records in accordance with SEA Rule 17a-3(a)(10) and is reflected in its capital computation.

* * * * *

4300. OPERATIONS

4310. Member Agreements and Contracts

4311. Carrying Agreements

(a)(1) A member shall not enter into an agreement with a carrying firm for the carrying of its customer accounts on an omnibus or fully disclosed basis, unless such carrying firm is a FINRA member. An introducing firm that acts as an intermediary for another introducing firm(s) for the purpose of obtaining clearing services from the carrying firm must notify such carrying firm of the existence of such arrangement(s) and the identity of the other introducing firm(s). Each such carrying agreement(s) shall identify and bind every direct and indirect recipient of clearing services as a party thereto.

(2) A carrying firm may enter into a carrying agreement(s) with a person other than a U.S. registered broker or dealer, subject to the conditions set forth in this Rule.

(b)(1) The carrying firm shall submit to FINRA for approval any agreement for the carrying of accounts, whether on an omnibus or fully disclosed basis, before such agreement can become effective. The carrying firm also shall submit to FINRA for approval any material changes to an approved carrying agreement before such changes become effective.

(2) A carrying firm may use a standardized form of agreement that has been approved by FINRA pursuant to paragraph (b)(1) of this Rule, to enter into new carrying arrangements with other U.S. registered brokers or dealers, without the re-submission and re-approval of such agreement. However, a carrying firm must submit to FINRA for approval each carrying agreement that includes a party that is not a U. S. registered broker or dealer.

(3) As early as possible, but not later than 10 business days prior to the carrying of any accounts of a new introducing firm (including the accounts of any introducing firm(s) for which a new or existing introducing firm is acting as an intermediary in obtaining clearing services from the carrying firm), the carrying firm shall submit to FINRA a notice identifying each such introducing firm by name and CRD number and shall include such additional information as FINRA may require.

(4) Each carrying firm shall conduct appropriate due diligence with respect to any new introducing firm relationship, including but not limited to inquiry into the introducing firm's business mix and customer account activity; proprietary and customer positions; FOCUS and similar reports; audited financial statements; and complaint and disciplinary history. The carrying firm shall maintain a record, in accordance with the timeframes prescribed by SEA Rule 17a-4(b), of such due diligence conducted for each new introducing firm.

(c) Each carrying agreement in which accounts are to be carried on a fully disclosed basis shall specify the responsibilities of each party to the agreement, including at a minimum the allocation of the responsibilities set forth in paragraphs (c)(1) through (10) of this Rule. The allocation of responsibilities shall be subject to approval by FINRA pursuant to paragraph (b)(1) of this Rule.

(1) Opening and approving accounts.

(2) Acceptance of orders.

(3) Transmission of orders for execution.

(4) Execution of orders.

(5) Extension of credit.

(6) Receipt and delivery of funds and securities.

(7) Safeguarding of funds and securities for the purposes of SEA Rule 15c3-3.

(8) Confirmations and statements.

(9) Maintenance of books and records.

(10) Monitoring of accounts.

(d) Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of the account of the existence of the carrying agreement and the responsibilities allocated to each respective party. The carrying firm shall be responsible for the content of such notification to the customer. The customer shall be notified promptly and in writing in the event of any change to any of the parties to the agreement or any material change to the allocation of responsibilities there under.

(e) Each carrying agreement shall expressly state that to the extent that a particular responsibility is allocated to one party, the other party or parties will supply to the responsible organization all appropriate data in their possession pertinent to the proper performance and supervision of that responsibility.

(f) A carrying agreement may authorize an introducing firm to issue negotiable instruments directly to its customers, using instruments for which the carrying firm is the maker or drawer, provided that the parties comply with SEA Rule 15c3-3 and further that the introducing firm represents to the carrying firm in writing that such introducing firm maintains, and will enforce, supervisory policies and procedures with respect to such check writing that are satisfactory to the carrying firm.

(g)(1) Each carrying agreement shall expressly authorize and direct the carrying firm to:

(A) furnish promptly to the introducing firm and the introducing firm's designated examining authority (or, if none, to its appropriate regulatory agency or authority) any written customer complaint received regarding the conduct of the introducing firm or firms and its associated persons; and

(B) notify the complaining customer, in writing, that it has received the complaint and that such complaint has been furnished to the introducing firm and its designated examining authority (or, if none, to its appropriate regulatory agency or authority).

(2) Upon a showing of good cause, FINRA, at its discretion, may exclude certain carrying firms from the requirements of paragraph (g)(1) in instances where the introducing firm is an affiliated entity of the carrying firm.

(h)(1) At the commencement of the agreement and annually thereafter, the carrying firm must furnish to each of its introducing firms a list of all reports (e.g. exception reports) available to assist the introducing firm with the responsibilities allocated to it pursuant to the carrying agreement. The introducing firm must promptly request of the carrying firm, in writing, those offered reports that it requires.

(2) No later than July 1 of each year, the carrying firm shall notify the introducing firm's chief executive and chief compliance officer(s) in writing of the list of reports offered to, requested by and supplied to the introducing firm as of the date of the notice. A copy of this written notice must at the same time be provided to the introducing firm's designated examining authority (or if none, to its appropriate regulatory agency or authority).

(3) The carrying firm shall maintain as part of its books and records those reports requested by and supplied to the introducing firm. The carrying firm may satisfy the requirements of this paragraph by furnishing, upon request of the introducing firm's designated examining authority (or if none, to its appropriate regulatory agency or authority):

(A) a recreated copy of the report originally produced; or

(B) the format of the report and the applicable data elements contained in the original report.

(4) Upon a showing of good cause, FINRA, at its discretion, may exclude certain carrying firms from the requirements of this paragraph (h) in instances where the introducing firm is an affiliated entity of the carrying firm.

(i) All carrying agreements shall require each introducing firm to maintain its proprietary and customer accounts and the proprietary and customer accounts of any introducing firm for which it is acting as an intermediary in obtaining clearing services from the carrying firm, in such a manner as to enable the carrying firm and FINRA to specifically identify the proprietary and customer accounts belonging to each such introducing firm. The requirements of this paragraph (i) shall apply to intermediary clearing arrangements that are established on or after February 20, 2006.

• • • **Supplementary Material** ——————-——————

.01 Material Changes.— For the purpose of paragraph (b)(1), material changes include, but are not limited to, the allocation of responsibilities required by this Rule, termination clauses applicable to the introducing firm, changes affecting the liability of the parties and changes to the parties to the agreement.

.02 Notice of New Introducing Firm Arrangement.— For the purposes of the notice requirements of paragraph (b)(3), the carrying firm shall submit a form letter to be specified by FINRA in a Regulatory Notice, which form letter may be updated from time to time as FINRA deems necessary.

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4500. BOOKS, RECORDS AND REPORTS

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4520. Financial Records and Reporting Requirements

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4522. Periodic Security Counts, Verifications and Comparisons

(a) Each member that is subject to the requirements of SEA Rule 17a-13 shall make the counts, examinations, verifications, comparisons and entries set forth in SEA Rule 17a-13.

(b) Each carrying or clearing member subject to the requirements of SEA Rule 17a-13 shall make more frequent counts, examinations, verifications, comparisons and entries where prudent business practice would so require. In addition, each such carrying or clearing member shall:

(1) Receive position statements as frequently as good business practice requires, but no less than once per month with respect to securities held by clearing corporations, other organizations or custodians. Each such member shall at least once per month reconcile all such securities and money balances by comparison of the clearing corporations' or custodians' position statements to the member's books and records and promptly report differences to the contra organization and such differences shall be promptly resolved by both. Where there is a higher volume of activity, good business practice may require a more frequent exchange of statements and their reconciliation; and

(2) At a maximum of seven business days after each security count, enter all unresolved differences into a Difference account, for that security count. The Difference account shall identify the unverified securities and reflect the number of shares or principal amount long or the number of shares or principal amount short of each security difference and the date of the security count that disclosed such difference. Thereafter, any adjustment of a difference position shall be made by entry into such account.

4523. Assignment of Responsibility for General Ledger Accounts and Identification of Suspense Accounts

(a) Each member shall designate an individual who shall be responsible for each general ledger bookkeeping account and account of like function used by the member and such individual shall control and oversee entries into each such account and shall determine at all times that the account is current and accurate. A supervisor shall, as frequently as is necessary considering the function of the account but, in any event, at least monthly, review each account to determine that it is current and accurate and that any items that become aged or uncertain as to resolution are promptly identified for research and possible transfer to a suspense account(s).

(b) Each carrying or clearing member shall maintain a record of the names of the individuals assigned primary and supervisory responsibility for each account as required by paragraph (a) of this Rule.

(c) Each member must record, in an account that shall be clearly identified as a suspense account, money charges or credits and receipts or deliveries of securities whose ultimate disposition is pending determination. A record must be maintained of all information known with respect to each item so recorded. Such suspense accounts include, but are not limited to, DK fails, unidentified fails, unallocable securities receipts versus payment, returned deliveries, and any other receivable or payable (money or securities) "suspended" because of doubtful ownership, collectibility or deliverability. To the extent that suspense items can be distinguished by type, separate accounts may be used provided that the word "suspense" is made a prominent part of the account title.

* * * * *

Regulatory Notice 09-04

Arbitration Submission Agreement

SEC Approves Proposed Rule Change to Amend the Submission Agreement and Related Rules in the Arbitration Codes for Customer and Industry Disputes

Effective Date: February 9, 2009

Executive Summary

On February 9, 2009, an amendment to the Submission Agreement and related rules of the Codes of Arbitration Procedure for Customer and Industry Disputes becomes effective and applies to claims filed on or after February 9, 2009.[1] The amendment:

(1) clarifies what the parties are attesting to when they execute the agreement;

(2) requires parties to indicate in what capacity they are signing the agreement; and

(3) converts it to a FINRA-specific agreement.

The text of the rule amendment and the revised Submission Agreement are set forth in Attachment A.

Questions concerning this *Notice* should be directed to Richard W. Berry, Vice President and Director of Case Administration, FINRA Dispute Resolution, at (212) 858-4307 or *richard.berry@finra.org*; or Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, at (202) 728-8151 or *mignon.mclemore@finra.org*.

January 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Registered Representatives
- Senior Management

Key Topic(s)

- Arbitration
- Code of Arbitration Procedure
- Dispute Resolution

Referenced Rules & Notices

- FINRA Rule 12100
- FINRA Rule 12302
- FINRA Rule 12303
- FINRA Rule 12306
- FINRA Rule 12307
- FINRA Rule 13100
- FINRA Rule 13302
- FINRA Rule 13303
- FINRA Rule 13306
- FINRA Rule 13307

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Background and Discussion

The Submission Agreement is a document that claimants and respondents (hereinafter, collectively referred to as "parties") must sign prior to entering into arbitration. Rule 12302(a) of the Code of Arbitration Procedure for Customer Disputes (Customer Code) and Rule 13302(a) of the Code of Arbitration Procedure for Industry Disputes (Industry Code) require a claimant to file a signed and dated Submission Agreement and a statement of claim to initiate an arbitration. Similarly, Rules 12303(a) and 13303(a) require a respondent to serve each other party with a signed and dated Submission Agreement and an answer within 45 days of receipt of the statement of claim. By signing the Submission Agreement, the parties agree to submit to the arbitration process, and to be bound by FINRA's arbitration procedures and rules and any award that may be rendered by the arbitrator(s).

The amendment to the Submission Agreement and related rules:

(1) clarifies what the parties are attesting to when they execute the agreement;

(2) requires parties to indicate in what capacity they are signing the agreement; and

(3) converts it to a FINRA-specific agreement.

First, FINRA is amending section 2 of the Submission Agreement to permit parties to certify that they or their representatives read the relevant procedures and rules and that the parties agree to be bound by them. The current Submission Agreement requires that the parties make this certification, and does not permit representatives to do so. The amendment takes into account current practice in the forum in which investors who are represented by counsel rely on their attorneys or other representatives to know and read the rules. Thus, the amendment better reflects what the parties are attesting to when they execute the Submission Agreement. The rule makes clear, however, that the parties themselves continue to be bound by the procedures and rules, whether or not they read them personally.

Second, the amendment requires parties to indicate in what capacity they are signing the agreement. Because the Submission Agreement is a contract between the parties and the arbitration forum, FINRA must ensure that the parties entering the agreement have the authority or standing to sign the agreement. In cases in which the person signing the agreement is not an individual, such as a trustee of an estate, the party must sign the agreement in his or her capacity, so that FINRA can determine from the statement of claim and other supporting information whether he or she is authorized to enter the agreement.

Third, the amendment converts the Submission Agreement into a FINRA-specific agreement by:

(1) removing generic references and replacing them with "FINRA;"

(2) expressly describing the names of rules and regulations used by the forum; and

(3 removing the term "Uniform" from the title of the agreement.

FINRA is also making some minor plain-English changes to the document that clarify the applicability of the form and which FINRA rules apply in the arbitration context.

Effective Date

The amendment will become effective on February 9, 2009, and will apply to claims filed on or after February 9, 2009.

Endnote

1 Exchange Act Release No. 59091 (Dec. 12, 2008), 73 Federal Register 77086 (Dec. 18, 2008) (File No. SR-FINRA-2008-031).

ATTACHMENT A

New language is underlined; deleted language in brackets.

Code of Arbitration Procedure for Customer Disputes
and
Code of Arbitration Procedure for Industry Disputes

* * * * *

Customer Code

12100[(y)] (x). [Uniform] Submission Agreement

The term "[Uniform] Submission Agreement" means the FINRA [Uniform] Submission Agreement. The FINRA [Uniform] Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

* * * * *

12100[(x)] (y). Third Party Claim

No change.

* * * * *

12302. Filing an Initial Statement of Claim

(a) Filing Claim with the Director

(1) To initiate an arbitration, a claimant must file the following with the Director:

- Signed and dated [Uniform] Submission Agreement; and

{Remainder of rule – No change.}

(b) Number of Copies

The claimant must file enough copies of the statement of claim, if it has not been submitted electronically, and the signed [Uniform] Submission Agreement, and any additional materials, for the Director, each arbitrator and each other party.

(c) No change.

(d) Service by Director

Unless the statement of claim is deficient under Rule 12307, the Director will send a copy of the [Uniform] Submission Agreement, the statement of claim, and any additional materials filed by the claimant, to each other party, and to each arbitrator once the panel has been appointed.

* * * * *

12303. Answering the Statement of Claim

(a) Respondent(s) must directly serve each other party with the following documents within 45 days of receipt of the statement of claim:

- Signed and dated [Uniform] Submission Agreement; and

{Remainder of rule – No change.}

(b) No change.

(c) At the same time that the answer to the statement of claim is served on the other parties, the respondent must file copies of the [Uniform] Submission Agreement, the answer to the statement of claim, and any additional documents, with the Director, with enough copies for the Director and each arbitrator.

(d) No change.

* * * * *

12306. Answering Third Party Claims

(a) A party responding to a third party claim must directly serve all other parties with the following documents within 45 days of receipt of the third party claim:

- Signed and dated [Uniform] Submission Agreement; and

{Remainder of rule – No change.}

(b) No change.

(c) At the same time that the answer to the third party claim is served on the other parties, the third party respondent must also file copies of the [Uniform] Submission Agreement, the answer to the third party claim, and any additional documents, with the Director, with additional copies for each arbitrator.

(d) No change.

* * * * *

12307. Deficient Claims

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

- A [Uniform] Submission Agreement was not filed by each claimant;
- The [Uniform] Submission Agreement was not properly signed and dated;
- The [Uniform] Submission Agreement does not name all parties named in the claim;
- The claimant did not file the correct number of copies of the [Uniform] Submission Agreement, statement of claim or supporting documents for service on respondents and for the arbitrators;

{Remainder of rule – No change.}

(b) – (c) No change.

* * * * *

Industry Code

13100[(bb)] (z). [Uniform] Submission Agreement

The term "[Uniform] Submission Agreement" means the FINRA [Uniform] Submission Agreement. The FINRA [Uniform] Submission Agreement is a document that parties must sign at the outset of an arbitration in which they agree to submit to arbitration under the Code.

* * * * *

13100 [(z)] (aa). Temporary Injunctive Order

No change.

* * * * *

13100[(aa)] (bb). Third Party Claim

No change.

* * * * *

13302. Filing an Initial Statement of Claim

(a) Filing Claim with the Director

(1) To initiate an arbitration, a claimant must file the following with the Director:

Signed and dated [Uniform] Submission Agreement; and

{Remainder of rule – No change.}

(b) Number of Copies

The claimant must file enough copies of the statement of claim, if it has not been submitted electronically, and the signed [Uniform] Submission Agreement, and any additional materials, for the Director, each arbitrator and each other party.

(c) No change.

(d) Service by Director

Unless the statement of claim is deficient under Rule 13307, the Director will send a copy of the [Uniform] Submission Agreement, the statement of claim, and any additional materials filed by the claimant, to each other party, and to each arbitrator once the panel has been appointed.

* * * * *

13303. Answering the Statement of Claim

(a) Respondent(s) must directly serve each other party with the following documents within 45 days of receipt of the statement of claim:

- Signed and dated [Uniform] Submission Agreement; and

{Remainder of rule – No change.}

(b) No change.

(c) At the same time that the answer to the statement of claim is served on the other parties, the respondent must file copies of the [Uniform] Submission Agreement, the answer to the statement of claim, and any additional documents, with the Director, with enough copies for the Director and each arbitrator.

(d) No change.

* * * * *

13306. Answering Third Party Claims

(a) A party responding to a third party claim must directly serve all other parties with the following documents within 45 days of receipt of the third party claim:

- Signed and dated [Uniform] Submission Agreement; and

{Remainder of rule – No change.}

(b) No change.

(c) At the same time that the answer to the third party claim is served on the other parties, the third party respondent must also file copies of the [Uniform] Submission Agreement, the answer to the third party claim, and any additional documents, with the Director, with additional copies for each arbitrator.

(d) No change.

* * * * *

13307. Deficient Claims

(a) The Director will not serve any claim that is deficient. The reasons a claim may be deficient include the following:

- A [Uniform] Submission Agreement was not filed by each claimant;
- The [Uniform] Submission Agreement was not properly signed and dated;
- The [Uniform] Submission Agreement does not name all parties named in the claim;
- The claimant did not file the correct number of copies of the [Uniform] Submission Agreement, statement of claim or supporting documents for service on respondents and for the arbitrators;

{Remainder of rule – No change.}

(b) – (c) No change.

* * * * *

SUBMISSION AGREEMENT FOR CLAIMANTS

FINRA Arbitration

[UNIFORM] SUBMISSION AGREEMENT

Claimant(s)

In the Matter of the Arbitration Between

Name(s) of Claimant(s) _____

_____

_____

and

Name(s) of Respondent(s) _____

_____

_____

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, [cross claims] and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the [Constitution,] FINRA By-Laws, Rules, [Regulations,] and[/or] Code of Arbitration Procedure [of the sponsoring organization].
2. The [undersigned] parties hereby state that they or their representative(s) have read the procedures and rules of [the sponsoring organization] FINRA relating to arbitration and the parties agree to be bound by these procedures and rules.
3. The [undersigned] parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The [undersigned] parties further agree and understand that the arbitration will be conducted in accordance with the [Constitution, By-Laws, Rules, Regulations, and/or] FINRA Code of Arbitration Procedure [of the sponsoring organization].
4. The [undersigned] parties [further] agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. [and] The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the [undersigned] parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.
5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

* * *

_____

Claimant Name (please print)

_____

Claimant Signature Date

State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)

_____

Claimant Name (please print)

_____

Claimant Signature Date

State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)

If needed, copy this page.

SUBMISSION AGREEMENT FOR RESPONDENTS

FINRA Arbitration

[UNIFORM] SUBMISSION AGREEMENT

Respondent(s)

In the Matter of the Arbitration Between

Name(s) of Claimant(s) _____

_____

_____

and

Name(s) of Respondent(s) _____

_____

_____

1. The undersigned parties ("parties") hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, [cross claims] and all related cross claims, counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the [Constitution,] FINRA By-Laws, Rules, [Regulations,] and[/or] Code of Arbitration Procedure [of the sponsoring organization].
2. The [undersigned] parties hereby state that they or their representative(s) have read the procedures and rules of [the sponsoring organization] FINRA relating to arbitration and the parties agree to be bound by these procedures and rules.
3. The [undersigned] parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The [undersigned] parties further agree and understand that the arbitration will be conducted in accordance with the [Constitution, By-Laws, Rules, Regulations, and/or] FINRA Code of Arbitration Procedure [of the sponsoring organization].
4. The [undersigned] parties [further] agree to abide by and perform any award(s) rendered pursuant to this Submission Agreement. [and] The parties further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the [undersigned] parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may properly enter such judgment.
5. The parties hereto have signed and acknowledged the foregoing Submission Agreement.

_____

Respondent Name (please print)

_____

Respondent's Signature Date

State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)

_____

Respondent Name (please print)

_____

Respondent's Signature Date

State Capacity if other than individual (example: Executor, Trustee, Corporate Officer)

If needed, copy this page.

Regulatory Notice 09-05

Unregistered Resales of Restricted Securities

FINRA Reminds Firms of Their Obligations to Determine Whether Securities are Eligible for Public Sale

January 2009

Notice Type

- Guidance

Suggested Routing

- Compliance
- Registered Representatives
- Trading
- Training

Key Topic(s)

- Unregistered Resale of Restricted Securities
- Unregistered Distributions

Referenced Rules & Notices

- NASD Rule 2710
- NASD Rule 2720
- NASD Rule 2810
- NASD Rule 3010
- SEC Rule 144
- Section 4(1) of the Securities Act
- Section 4(2) of the Securities Act
- Section 4(4) of the Securities Act

Executive Summary

FINRA reminds firms[1] of their responsibilities to ensure that they comply with the federal securities laws and FINRA rules when participating in unregistered resales of restricted securities. These responsibilities are particularly important in situations where the surrounding circumstances place the firm on notice that it may be participating in illegal, unregistered resales of restricted securities, such as when a customer physically deposits certificates or transfers in large blocks of securities and the firm does not know the source of the securities.

Recent FINRA investigations have revealed instances in which firms failed to recognize certain "red flags" that signaled the possibility of an illegal, unregistered distribution. This *Notice* identifies situations in which firms should conduct a searching inquiry to comply with their regulatory obligations under the federal securities laws and FINRA rules. FINRA also has reviewed procedures provided by a number of large, medium and small firms that are designed to address compliance. This *Notice* describes and discusses those procedures.

Questions concerning this *Notice* should be directed to:

- Gary L. Goldsholle, Vice President and Associate General Counsel, Office of the General Counsel, at (202) 728-8104;
- Joseph E. Price, Vice President, Corporate Financing, at (240) 386-4623; or
- Lisa Jones Toms, Counsel, Corporate Financing, at (240) 386-4661.

FINRA™
Financial Industry Regulatory Authority

Background & Discussion

Firms play a critical role in helping prevent illegal, unregistered resales of restricted securities into the public markets. It is a violation of the federal securities laws for a firm to offer or sell a security without an effective registration statement or an applicable exemption from the Securities Act of 1933 (Securities Act). In addition, such sales may violate NASD Rules 2710 (Corporate Financing Rule – Underwriting Terms and Arrangements)[2], 2720 (Distribution of Securities and Affiliates – Conflicts of Interest) and 2810 (Direct Participation Programs).[3]

All firms must have procedures reasonably designed to avoid becoming participants in the potential unregistered distribution of securities. The nature of those procedures and the required level of firm inquiry concerning the customer and the source of the securities will depend on the particular circumstances. In addition, firms may not rely solely on others, such as clearing firms, transfer agents, or issuers' counsel, to fulfill these obligations. Firms' specific obligations are discussed in more detail below.

The Securities Act prohibits the sale of securities unless the sale is made pursuant to an effective registration statement, or falls within an available exemption from registration. Before selling securities in reliance on an exemption, a firm must take reasonable steps to ensure that the transaction qualifies for the exemption, regardless of whether the sale is for its own accounts or on behalf of customers. This includes taking whatever steps necessary to ensure that the sale does not involve an issuer, a person in a control relationship with an issuer, or an underwriter with a view to offer or sell the securities in connection with an unregistered distribution.[4]

Section 4(1) of the Securities Act provides an exemption for the routine trading of already-issued securities. It does not, however, exempt sales by an issuer, or a control person of the issuer, or an underwriter or dealer. Section 4(2) of the Securities Act exempts sales made by an issuer not involving a public offering. Whether a sale is one that involves a public offering, however, is a question of fact which requires an inquiry regarding the surrounding circumstances, including such factors as the relationship between the seller and the issuer, and the nature, scope, size, type and manner of the offering. Section 4(4) of the Securities Act provides an exemption for unsolicited brokers' transactions. However, this exemption is available only if a broker is not aware, after a reasonable inquiry, of circumstances indicating that the selling customer is participating in a distribution of securities.

Recently, FINRA has investigated and brought several enforcement actions concerning unregistered distributions.[5] A common theme in these cases was that firms resold large amounts of low-priced equity securities in over-the-counter transactions. Among the allegations in these cases are that the inquiries necessary to uncover the facts of the unregistered distribution were not done or were inadequate, and the firms lacked proper supervisory controls to ensure that their written procedures were being followed. More specifically, in some instances, firms failed to take steps to determine when or how their customers had received the share certificates at issue, whether their customers were control persons of the issuers, or what percentage of the outstanding shares of these companies their customers owned. In some instances, physical certificates for shares were repeatedly deposited into accounts and then sold by firms that participated in unregistered distributions.

Red Flags and the Duty to Make an Inquiry

Firms typically serve as the channel of distribution through which issuers, affiliates and promoters can access the public securities markets. Firms that do not adequately supervise or manage their role in such distributions run the risk of participating in an illegal, unregistered distribution. As recent investigations have shown, problems can arise when firms fail to recognize or take appropriate steps when confronted with "red flags" that signal the possibility of an illegal, unregistered distribution.

The following are examples of red flags (these are by no means comprehensive and should not be considered a "roadmap" for compliance purposes):

- A customer opens a new account and delivers physical certificates representing a large block of thinly traded or low-priced securities;
- A customer has a pattern of depositing physical share certificates, immediately selling the shares and then wiring out the proceeds of the resale;
- A customer deposits share certificates that are recently issued or represent a large percentage of the float for the security;
- Share certificates reference a company or customer name that has been changed or that does not match the name on the account;
- The lack of a restrictive legend on deposited shares seems inconsistent with the date the customer acquired the securities or the nature of the transaction in which the securities were acquired;
- There is a sudden spike in investor demand for, coupled with a rising price in, a thinly traded or low-priced security;
- The company was a shell company when it issued the shares;

- A customer with limited or no other assets under management at the firm receives an electronic transfer or journal transactions of large amounts of low-priced, unlisted securities;
- The issuer has been through several recent name changes, business combinations or recapitalizations, or the company's officers are also officers of numerous similar companies;
- The issuer's SEC filings are not current, are incomplete, or nonexistent.

As noted above, these examples are merely illustrative. There are many other situations that may signal that a firm should take a closer look at the circumstances of a proposed resale transaction.

Regarding the duty of firms to determine whether restricted securities are eligible for public sale, the SEC has said that:

> [A] dealer who offers to sell, or is asked to sell a substantial amount of securities must take whatever steps are necessary to be sure that this is a transaction not involving an issuer, person in a control relationship with an issuer or an underwriter. For this purpose, it is not sufficient for him merely to accept "self-serving statements of his sellers and their counsel without reasonably exploring the possibility of contrary facts."(footnote omitted)
>
> The amount of inquiry called for necessarily varies with the circumstances of particular cases. A dealer who is offered a modest amount of a widely traded security by a responsible customer, whose lack of relationship to the issuer is well known to him, may ordinarily proceed with considerable confidence. On the other hand, when a dealer is offered a substantial block of a little-known security, either by persons who appear reluctant to disclose exactly where the securities came from, or where the surrounding circumstances raise a question as to whether or not the ostensible sellers may be merely intermediaries for controlling persons or statutory underwriters, then searching inquiry is called for.
>
> The problem becomes particularly acute where substantial amounts of a previously little known security appear in the trading markets within a fairly short period of time and without the benefit of registration under the Securities Act of 1933. In such situations, it must be assumed that these securities emanate from the issuer or from persons controlling the issuer, unless some other source is known and the fact that the certificates may be registered in the names of various individuals could merely indicate that those responsible for the distribution are attempting to cover their tracks.[6]

Inquiry Obligations under Securities Act Rule 144

A firm that distributes securities for its own account or on behalf of a customer may be considered a statutory underwriter. Securities Act Rule 144 establishes a non-exclusive "safe harbor" from being deemed an underwriter if the securities are sold in compliance with its requirements. Unregistered securities that are not freely transferable are considered "restricted securities" when they are acquired in a private transaction or are acquired by a control person of the issuer.[7]

The SEC recently revised Rule 144 and made substantial changes to the requirements governing resales of restricted securities.[8] The amendments, which became effective on February 15, 2008, continue to impose a one-year holding period prior to any public resale on restricted securities of companies that are not subject to the Exchange Act reporting requirements. The amendments eliminated the sales volume and manner of sale limitations on resales made by non-affiliates. Revised Rule 144 also includes more stringent restrictions on the resale of shares issued by shell companies. Accordingly, firms should review whether the company that issued the subject shares was a shell company when the shares were issued.

Before reselling restricted securities, firms must take reasonable steps to ensure that the transaction complies with Rule 144 or another available exemption. The factors set forth in the Notes to Rule 144(g) serve as a pragmatic guideline in determining what questions firms should ask their customers before engaging in an unregistered resale of securities:[9]

- How long has the customer held the security?
- How did the customer acquire the securities?
- Does the customer intend to sell additional shares of the same class of securities through other means?
- Has the customer solicited or made any arrangement for the solicitation of buy orders in connection with the proposed resale of unregistered securities?
- Has the customer made any payment to any other person in connection with the proposed resale of the securities? and
- How many shares or other units of the class are outstanding, and what is the relevant trading volume?

Firms should also try to physically inspect share certificates, if possible, as an opportunity to identify red flags and deter risks from forgery and fraudulent certificates.

Supervisory Procedures and Controls for Unregistered Resales of Securities

NASD Rule 3010 (Supervision) requires a firm to establish a supervisory system and corresponding written procedures to supervise its businesses and associated persons' activities. Accordingly, firms that accept delivery of large quantities of low-priced OTC securities, in either certificate form or by electronic transfer, and effect sales in these securities, should have written procedures and controls in place to prevent participation in an illegal, unregistered distribution of securities.

To help firms evaluate their procedures for supervising these resale transactions, FINRA has reviewed the procedures of a number of large, medium and small firms. The procedures noted below are not intended to be a comprehensive roadmap for compliance and supervision with respect to unregistered resales of restricted securities, but rather highlight measures that some firms are using to ensure better compliance with their obligations. While a particular practice may work well for one firm, the same approach may not be effective or economically feasible for another. Firms must adopt procedures and controls that are effective given their size, structure and operations.

The procedures we surveyed varied depending on the firms' business models; nevertheless, the most comprehensive ones tended to include a mandatory, standardized process that requires formal approval of the proposed resale transaction and thorough accompanying documentation that:

- Clearly communicates each step in the review, approval and post-approval process through the various stages of background inquiry, information gathering, required documentation, review, final approval, execution and recordkeeping of the transaction;
- Assigns clear "ownership" of each step of the transaction review, approval and execution process to the responsible representative, principal, legal or compliance specialist, business unit or department; and
- Is easily accessible to the personnel involved in the process, often through internal Web-based applications that are clear, instructive and encourage process standardization.

Standardized procedures should be accompanied by supervisory controls to ensure that a reasonable and meaningful investigation of the surrounding circumstances is conducted and that the information obtained is evaluated to identify whether a proposed resale transaction could amount to an illegal, unregistered distribution of a restricted security on behalf of an underwriter, an issuer, or a control person of the issuer. As a general matter, the procedures and controls should apply to not only proposed resales, but also the transfer of securities from one account to another by journal or book entry.

Among the compliance procedures FINRA reviewed are:

A. Initial Assessment and Review

A number of firms had procedures that required a comprehensive initial review of the proposed resale, which includes gathering information concerning how, when, and under what circumstances a customer obtained the securities; whether the securities are registered pursuant to an effective Securities Act registration statement; how much of the stock is owned by or under the control of the customer; whether the stock was paid for by the customer; what relationship, if any, the customer has with the issuer or its control persons; and how much stock has been sold by the customer. Some procedures also contained brief descriptions of how holders of unregistered securities may acquire them, such as via private placements, corporate reorganizations, business combinations and stock options plans, and explained that the requirements for resales of such securities can vary depending on the nature of the transaction and the status of the seller, *i.e.*, whether the seller is considered an affiliate of the issuer.

Some firms prohibited their representatives from accepting large blocks of securities in certificate form or required supervisory approval before a transfer of restricted securities would be accepted.

Many firms required the results of the initial review to be documented and held the persons performing the review accountable for completion of the fact-gathering and documentation process. As part of this process, firm procedures required the use of questionnaires completed by the selling customer regarding the proposed resale transaction, form letters completed by the customer and registered representative, and other standardized documentation depending on the transaction.

Some firms deferred the documentation requirements to the person or department responsible for approval. Most firms required the completed documentation to be reviewed for any unusual circumstances and for completeness before submitting it for formal approval of the transaction. This assessment may also alert the firm to unusual or suspicious circumstances that may trigger other compliance procedures (such as Anti-Money Laundering (AML) reporting) or additional approvals given the size or nature of the transaction.

B. Formal Review and Approval

Most of the procedures we reviewed required formal approval by a person, unit or department that is independent of the initial assessment and review of the proposed resale transaction. The person or department responsible for such approval was required to document the steps taken and was accountable for the final approval. For many firms, the final approval process is more than a verification of the adequacy of the documentation. It included an investigation of the customer's and issuer's background; a formal process to confirm the seller's affiliation status and the conditions upon which the shares can be resold; verification that the issuer is current in its filings and the issuer's information is publicly available; and a thorough review of the opinion of counsel, restricted stock legend, offering materials or prospectus, and other documents for reasonableness of the information and representations. It also took into account any previous sales by the customer through any accounts at the firm. Approval from a designated principal or legal and compliance specialist generally is required in these instances *before* executing or submitting the trade for execution. The approval document also specifies whether there are any conditions to the resale, such as volume, manner of sale or other applicable requirements.

C. Recordkeeping Obligations and Post-Approval Review

Because of the manner of sale and other requirements that apply to unregistered resales of restricted securities by affiliates, some firms' procedures included steps to monitor executions of approved transactions to ensure they comply with applicable volume or manner of sale requirements. Other firms have a process in place, post-approval of the resale transaction, to examine repeated resales by the same account or accounts under common control and to review and monitor aggregated resales in the same securities.

Some procedures we reviewed did not assign specific recordkeeping obligations. Other procedures designated a registered representative at the firm as the person responsible for retaining all documents related to the resale as opposed to having another entity such as the firm's legal or compliance group or securities transfer unit designated as primarily responsible for document retention or, at least, to receive and retain copies of the documentation related to the resale.

Other Considerations

A. Reliance on Third Parties

In considering their obligations, firms should be aware that there are limitations on their ability to discharge those obligations by relying on others. FINRA, the SEC and the courts have repeatedly held that firms cannot rely on outside counsel, clearing firms, transfer agents, issuers, or issuer's counsel to discharge their obligations to undertake an inquiry. Moreover, the fact that securities have been issued by a transfer agent without a restrictive legend, or have been put into trading status by a clearing firm, does not mean that those securities can be resold immediately and without limitation under the Securities Act.[10]

B. AML Compliance

A firm must also ensure that its AML compliance program adequately addresses red flags that may be associated with unregistered resales conducted through the firm.[11] In recent investigations, FINRA has found that firms that participated in unregistered resales of restricted securities also may have ignored a number of red flags that indicate not only that the resale was part of an unregistered distribution, but also that action may have been required under AML reporting requirements.[12] Failure to conduct appropriate inquiry and respond to red flags may have consequences under both the federal securities laws and AML requirements.

Conclusion

Firms must have written procedures that are reasonably designed to avoid becoming participants in the illegal, unregistered resale of restricted securities into the public markets. As noted above, these procedures and the required level of firm inquiry depend on the facts and circumstances of the proposed resale. FINRA urges firms to pay careful attention to these obligations and the implementation of these procedures.

Endnotes

1 This *Notice* refers to broker-dealers and their associated persons collectively as "firms" unless otherwise specified.

2 NASD Rule 2710 is being re-designated as FINRA Rule 5110. See SR-FINRA-2008-039.

3 *See, e.g.,* FINRA's Corporate Financing Rules (NASD Rules 2710, 2720 and 2810), which apply to public offerings, and NASD Rule 2110, which requires firms to act under just and equitable principles of trade. Regulation M under the Exchange Act and other FINRA and SEC rules may also apply to an unregistered public distribution in addition to civil liabilities under the Securities Act.

4 The term "underwriter" is broadly defined in the Securities Act to include any person or entity that purchases securities from an issuer with a view to distribute, or offers or sells for an issuer in connection with a distribution, and any person or entity participating, directly or indirectly, in a distribution of securities. The term "issuer" includes any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. *See* Sec. 2(a)(11), Securities Act of 1933. Whether a customer is acting as an underwriter, is a control person, or is acting on behalf of an underwriter or control person, depends on the particular facts and circumstances of the transaction.

5 *See, e.g., Network 1 Financial Securities, Inc.* NASD AWC No. EAF0400940001, July 11, 2007; *NevWest Securities Corporation*, NASD AWC E0220040112-01, March 21, 2007, and related case SEC v. CMKM Diamonds, Inc., *et. al*, U.S. Dist. Court for the District of Nevada, Civil Action No. 08- CV 0437 (Lit. Rel. No. 20519 / April 7, 2008); and *Cardinal Capital Management, Inc.* NASD AWC E072003004201, July 22, 2005. In addition, FINRA has numerous ongoing investigations involving allegations of unregistered distributions. *Barron Moore, Inc.*, Disc. Proceeding No. 2005000075703, July 21, 2008.

6 *See*, Securities Act Rel. No. 4445, 1962 SEC LEXIS 74 (February 2, 1962); *see also* Section 21(a) Report, *Transactions in the Securities of Laser Arms Corp. by Certain Broker-Dealers,* 50 S.E.C. 489 (1991).

7 *See* Preliminary Note to Securities Act Rule 144. 17 CFR 230.144. The term "restricted securities" is defined in Rule 144(a)(3), and includes securities acquired directly or indirectly from the issuer or an affiliate of the issuer in a transaction or chain of transactions not involving a public offering.

8 Securities Act Release No. 8869, 72 FR 71546 (December 17, 2007).

9 Securities Act Rule 144(g). 17 CFR 230.144(g).

10 Recent investigations have uncovered fact patterns in which firms inappropriately relied on stock certificates issued without restrictive legends or certificates accompanied by false attorney opinions, or assumed that their clearing agent had the responsibility to determine if shares could be sold without restriction. FINRA has noted in previous guidance that firms are still responsible for the discharge of their obligations, even if they rely on third parties to perform certain activities and functions related to their business operations and regulatory responsibilities. Additionally, FINRA guidance makes clear that firms may not contract supervisory and compliance activities away from their direct control. *See Notice to Members 05-48* (Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers).

11 *See* NASD Rule 3011 (Anti-Money Laundering Compliance Program) and *Notice to Members 02-21* (Guidance to Member Firms Concerning Anti-Money Laundering Compliance Programs Required by Federal Law).

12 *See, e.g, NevWest Securities Corporation*, and related case SEC v. CMKM Diamonds, Inc., *et. al*, U.S. Dist. Court for the District of Nevada, Civil Action No. 08- CV 0437 (Lit. Rel. No. 20519 / April 7, 2008) (failure to take action in response to the suspicious circumstances surrounding accounts controlled by certain customers, including the practice of depositing penny stocks, liquidating them and wiring the proceeds to bank accounts.) *Barron Moore, Inc.*, Disc. Proceeding No. 2005000075703, July 21, 2008.

Regulatory Notice 09-06

Retail Forex

FINRA Requests Comment on Proposed Rule to Establish a Leverage Limitation for Retail Forex

Comment Period Expires: February 20, 2009

Executive Summary

FINRA is requesting comment on a proposed rule prohibiting any member firm from permitting a customer to: (1) initiate any forex position with a leverage ratio of greater than 1.5 to 1; and (2) withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 1.5 to 1.

The text of proposed FINRA Rule 2380 (Leverage Limitation for Retail Forex) is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- Gary Goldsholle, Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8104; or
- Matthew E. Vitek, Counsel, OGC, at (202) 728-8156.

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by February 20, 2009.

January 2009

Notice Type

- Request for Comment

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topics

- Forex
- Foreign Currency
- Futures
- Leverage

Referenced Rules & Notices

- NASD Rule 2520
- NYSE Rule 431

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

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

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

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

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.[1]

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.[2]

Background and Discussion

The primary foreign currency exchange market is the interbank market, in which commercial banks, central banks, currency speculators, corporations, governments and other institutions trade currencies amongst themselves. This market is an over-the-counter (OTC), decentralized market without any trade reporting or central clearing facility. In recent years, an electronic, secondary OTC spot contract market has developed for retail customers (retail forex).

The current retail forex regulatory environment is a by-product of the Commodity Futures Modernization Act of 2000 (CFMA)[3] and the CFTC Reauthorization Act of 2008 (Reauthorization Act).[4] The CFMA and the Reauthorization Act amended the Commodity Exchange Act (CEA)[5] by removing some of the legal uncertainty pertaining to the Commodity Futures Trading Commission's oversight of retail forex activity by permitting only certain enumerated regulated entities to act as counterparties to a retail forex contract. Specifically, the CEA allows futures commission merchants, retail foreign exchange dealers, financial institutions, broker-dealers and certain other entities to act as counterparty to retail forex contracts.[6]

Historically, retail forex activity has been concentrated in the futures commission merchant (FCM) channel. Retail forex transactions conducted through a broker-dealer are expressly precluded from CFTC oversight under the terms of the CEA.[7]

In general, the leverage ratios for retail forex by futures intermediaries were set to be comparable to the leverage ratios for currency futures traded on futures exchanges. As such, retail forex contracts in the FCM channel commonly have leverage ratios of 100 to 1 or more. For example, if an investor wishes to purchase $1 million worth of a foreign currency offered with a 100 to 1 leverage, the investor would only need a good faith deposit of $10,000. If the investor deposits only the minimum funds required, and if the value of the foreign currency contract dropped by 1 percent (to $990,000), the account equity would be depleted entirely and the investor's position would be closed out. The investor would lose the entire $10,000 deposit. In the retail forex market, there is neither any margin call nor any notice for an investor to deposit additional funds to maintain his or her position. As a result, even small intra-day swings in currency rates have the potential to close out investors on either side of the market.

FINRA has observed a potential migration of retail forex activity from the FCM channel to broker-dealers. To protect investors, FINRA proposes to limit the leverage ratio a broker-dealer can offer to a retail forex customer. FINRA does not believe that high leverage ratios are consistent with its mandate to protect investors. In the securities industry, the initial margin requirement for marginable equity securities is 50 percent, representing a leverage ratio of 2 to 1.[8] In addition, there are separate, lower maintenance margin requirements.[9] Further, if the current market value of the equity in a securities account drops below the maintenance requirement, the investor would not be immediately closed out, but would receive a "margin call" and have an opportunity to deposit additional funds to keep the position open. FINRA also notes that any funds deposited to maintain a forex position or any account equity derived from a forex position may not be used to purchase securities.

Given the speculative and volatile nature of retail forex activity, FINRA believes the maximum leverage ratio for retail forex should be 1.5 to 1. FINRA also believes a firm should not permit a customer to withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 1.5 to 1. Requiring greater initial deposits for retail forex will substantially reduce the likelihood that any small adverse percentage change in the exchange rate of a foreign currency will cause an investor's funds to be wiped out. Moreover, limiting the leverage ratios is intended to reduce the risks of excessive speculation.

Endnotes

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

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

3 Commodity Futures Modernization Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763, 2763A-378 (2001).

4 CFTC Reauthorization Act of 2008, Pub. L. No. 110-246, 122 Stat. 1651 (2008).

5 7 U.S.C. §§ 1 – 27f.

6 *See* 7 U.S.C. § 2(c)(2.)

7 *Id.*

8 12 C.F.R. 220.12.

9 *See* NASD Rule 2520(c)(1) and NYSE Rule 431(b)(4).

Attachment A

* * * * *

2380. Leverage Limitation for Retail Forex

(a) Leverage Ratio Limitation

(1) No member shall permit a customer to initiate any forex position with a leverage ratio greater than 1.5 to 1. In addition, no member shall permit a customer to withdraw money from an open forex position that would cause the leverage ratio for such position to be greater than 1.5 to 1.

(b) Definitions

(1) The term "forex" means foreign currency futures and options and any other agreement, contract, or transaction in foreign currency that is:

(A) offered or entered into on a leveraged basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis;

(B) offered to or entered into with persons that are not eligible contract participants as defined in Section 1a(12) of the Commodity Exchange Act; and

(C) not executed on or subject to the rules of a contract market registered pursuant to Section 5 of the Commodity Exchange Act, a derivatives transaction execution facility registered pursuant to Section 5a of the Commodity Exchange Act, a national securities exchange registered pursuant to Section 6(a) of the Securities Exchange Act of 1934, or a foreign board of trade.

(2) The term "leverage ratio" is the fraction represented by the numerator which is the notional value of a forex transaction, and the denominator, which is the amount of good faith deposit or account equity required by the customer for a forex position.

• • • Supplementary Material ——————-——————

.01 Leverage Ratio Example - In order to meet the leverage ratio limitations of Rule 2380(a), a customer must deposit at least 2/3 of the notional value of the forex contract. For example, a customer entering into a forex contact representing $750,000 of a foreign currency must deposit $500,000 to achieve a leverage ratio of 1.5 to 1.

Regulatory Notice 09-07

Motion to Dismiss and Eligibility Rules

SEC Approves New Motion to Dismiss Rule and Amendment to the Eligibility Rule in Arbitration

FINRA Imposes Immediate 30-Day Moratorium on Motions to Dismiss; Effective January 23, 2009

January 2009

Notice Type

- New Rule and Amendment

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topics

- Arbitration
- Code of Arbitration Procedure
- Eligibility Rule
- Dispute Resolution
- Motions to Dismiss

Referenced Rules & Notices

- FINRA Rule 12206
- FINRA Rule 12504
- FINRA Rule 13206
- FINRA Rule 13504

Executive Summary

Effective February 23, 2009, FINRA will implement new procedures for handling motions to dismiss in arbitration. The SEC approved a proposal to adopt Rule 12504 of the Code of Arbitration Procedure for Customer Disputes and Rule 13504 of the Code of Arbitration Procedure for Industry Disputes (collectively, the Codes) to establish procedures that will govern motions to dismiss.[1] The proposal also amends Rules 12206 and 13206 to address motions to dismiss based on eligibility grounds.

The text of the amendment is set forth in Attachment A and will apply to motions to dismiss filed on or after the effective date.

This *Notice* also announces that FINRA is imposing a moratorium on filing motions to dismiss prior to the conclusion of a party's case-in-chief from the date of this *Notice*, January 23, 2009, until the effective date of the new rules, February 23, 2009.

Questions concerning this *Notice* should be directed to Richard W. Berry, Vice President and Director of Case Administration, at (212) 858-4307 or *richard.berry@finra.org*; or Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, at (202) 728-8151 or *mignon.mclemore@finra.org*.

FINRA™
Financial Industry Regulatory Authority

Background and Discussion

In new Rules 12504 and 13504, FINRA is adopting specific procedures to govern motions to dismiss. FINRA also is amending the dismissal provisions of Rules 12206 and 13206 (the eligibility rule) related to time limits on submissions of arbitration claims. The rules will ensure that parties have their claims heard in arbitration by significantly limiting motions to dismiss filed prior to the conclusion of a party's case-in-chief and by imposing stringent sanctions against parties for engaging in abusive practices under the rules.

Prior to the approval of the new rules, FINRA administered all motions, including motions to dismiss, under Rules 12503 and 13503 of the Codes. With the approval of the rules, Rules 12503 and 13503 no longer will apply to motions to dismiss; however, the rules will apply to all other motions filed in arbitration.

Under new Rules 12504 and 13504, motions filed before a hearing on the merits (*i.e.*, prehearing motions), or motions filed during the hearing on the merits but before a party has concluded its case-in-chief, will be referred to as a Rule 12504(a) motion.[2] Motions filed after a party has concluded its case-in-chief will be referred to as a Rule 12504(b) motion.[3]

New Rule 12206(b) will govern motions to dismiss based on eligibility grounds and will be referred to as eligibility motions.[4]

The new rules establish procedures that specifically address motions to dismiss. These procedures implement a number of changes from current motions practice, which are listed below:

- Parties must file the motions in writing, separately from the answer, and only after they file the answer.
- Parties must file any Rule 12504(a) motion at least 60 days in advance of a hearing.
- Parties will have 45 days to respond to a Rule 12504(a) motion.
- In the case of an eligibility motion, parties must file any motion to dismiss at least 90 days before a hearing, and the other parties will have 30 days to respond.
- The full panel will decide a Rule 12504(a) motion and an eligibility motion.
- The panel cannot act upon a motion to dismiss a party or claim under Rule 12504(a), unless the panel determines that: (1) the non-moving party signed a settlement and release, or (2) the moving party was not associated with the account, security, or conduct at issue.

- The panel cannot act upon a motion to dismiss a party or claim under Rule 12206(b) unless the panel determines that the claim is not eligible for arbitration because it does not meet the six-year eligibility requirement.
- If a party files a motion to dismiss on multiple grounds, including eligibility, the panel must decide eligibility first. If the panel grants the motion on eligibility, it must not rule on any other grounds for the motion.
- The panel must hold a hearing before it grants a Rule 12504(a) motion, unless the parties waive the hearing.
- If the panel grants a Rule 12504(a) motion, the decision must be unanimous and be accompanied by a written explanation.
- If the panel denies a Rule 12504(a) motion, a party may not re-file it, unless specifically permitted by panel order.
- If the panel denies a Rule 12504(a) motion, the panel must assess forum fees against the party who filed the motion.
- If the panel deems a Rule 12504(a) motion frivolous, it must also award reasonable costs and attorneys' fees to the party who opposed the motion.
- If the panel determines that a party filed a motion to dismiss under Rules 12206(b) and 12504(a) in bad faith,[5] it may issue other sanctions under Rules 12212 and 13212 of the Codes.

The following questions and answers provide more detail on the purpose of the new rules and how they will be applied.

What is a motion to dismiss?

A motion to dismiss is a request made by a party to the arbitrator(s) to remove some or all claims raised by a party filing a claim. Currently, motions to dismiss may be filed at any stage of an arbitration proceeding, but they are often filed before a hearing is held. If the single arbitrator or panel[6] grants a motion to dismiss before a hearing is held (a prehearing motion), the party filing a claim loses the opportunity to have his or her arbitration case heard by the arbitrator(s).

Why are the rules necessary?

FINRA received complaints that parties were filing prehearing motions routinely and repetitively in an apparent effort to delay scheduled hearing sessions on the merits, increase customers' costs, and intimidate less sophisticated customers. As a result, FINRA believes customers are spending additional resources to defend against these motions, increasing the costs and processing times of the arbitration process.

FINRA also learned through an independent study that the number of motions to dismiss filed in customer cases had begun to increase over a two-year period starting in 2004. Even though most motions to dismiss are denied, FINRA became concerned that, if left unregulated, this type of motion practice would limit investors' access to the forum, either by making arbitration too costly or by denying customers their right to have their claims heard in arbitration.

FINRA believes that the enforcement mechanisms in the rules will minimize parties' costs and ensure strict compliance with the rules. The risk of monetary penalties and sanctions, imposed either by the panel on its own initiative, or as a result of a party's motion, should deter parties from filing a Rule 12504(a) motion frivolously or in bad faith.

How will the rules affect motions to dismiss filed in FINRA's arbitration forum?

Rules 12504(a)(1) and 13504(a)(1) reinforce FINRA's position that parties have the right to a hearing in arbitration by clarifying that motions to dismiss filed prior to the conclusion of a party's case-in-chief, including prehearing motions, are discouraged in arbitration. The rules significantly limit motions to dismiss filed prior to the conclusion of a party's case-in-chief.[7] Under the rules, the panel cannot act upon a motion to dismiss a party or claim, unless the panel determines that: (1) the non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release; (2) the moving party was not associated with the account(s), security(ies) or conduct at issue; or (3) the claim does not meet the criteria of the eligibility rule.

How should arbitrators apply the three exceptions?

Prior settlement or release

A panel cannot act on a motion to dismiss under Rules 12504(a)(6)(A) and 13504(a)(6)(A) unless the panel determines that the non-moving party previously released the claims in dispute by a signed settlement agreement and/or written release. Parties seeking this exception should provide arbitrators with valid documents that indicate that the claims in the current dispute have been resolved in a previous dispute.

Not associated with the account, security or conduct at issue

A panel cannot act on a motion to dismiss under Rules 12504(a)(6)(B) and 13504(a)(6)(B) unless the panel determines that the moving party was not associated with the accounts, securities or conduct at issue. FINRA intends this exception to apply in cases involving issues of misidentification. For example, the panel could grant a motion to dismiss under this exception if a party files a claim against the wrong person or entity, or a claim names an individual who was not employed by the firm during the time of the dispute, or a claim names an individual or entity that was not connected to an account, security or conduct at the firm during the time of the dispute.

Eligibility

A panel may grant a motion to dismiss on eligibility grounds at any stage of the proceeding, including a prehearing motion, under Rules 12206(b)(7) and 13206(b)(7) if the claim is not eligible for submission to arbitration because six years have elapsed from the occurrence or event giving rise to the claim. Parties seeking this exception should provide arbitrators with valid documents that indicate when the occurrence or event took place.

FINRA emphasizes that these exceptions do not constitute an invitation to parties to file motions to dismiss. The fact that a motion may be filed under one of these exceptions does not mean that the panel should or will grant a motion that does not have merit.

How should a party file a Rule 12504(a) motion?

A Rule 12504(a) motion must be filed in writing, separately from the answer and filed only after the answer is filed. For a Rule 12504(a) motion, the party filing the motion must serve the other parties and the FINRA Director of Arbitration with the motion at least 60 days before a scheduled hearing.[8] The parties receiving the Rule 12504(a) motion will have 45 days to respond to the motion.[9] The filing and response deadlines are different under the eligibility rule and are discussed later in this *Notice*.

Are there procedures that a panel must follow to decide a Rule 12504(a) motion?

Yes. The full panel must decide a Rule 12504(a) motion.[10] Moreover, the panel may not grant a Rule 12504(a) motion unless the panel holds or the parties waive an in-person or telephonic prehearing conference on the motion.[11] In addition, FINRA will record prehearing conferences to decide these motions.[12]

What happens if the panel grants a Rule 12504(a) motion?

If the panel grants a Rule 12504(a) motion (in whole or part), the decision must be unanimous and accompanied by a written explanation.[13] FINRA believes that the type of relief requested by a Rule 12504(a) motion—the complete dismissal of a claim before an evidentiary hearing is completed—justifies the requirement that all arbitrators on the panel agree, based on the evidence presented by the party filing the motion, that the motion should be granted.

What happens if the panel denies a Rule 12504(a) motion?

If a panel denies a Rule 12504(a) motion, it must assess forum fees associated with the hearing(s) on the motion against the party who filed the Rule 12504(a) motion.[14]

May a party re-file a Rule 12504(a) motion that has been denied?

A party may not re-file a Rule 12504(a) motion that has been denied, unless specifically permitted by panel order.[15] If a panel denies a Rule 12504(a) motion that was filed before the effective date of the new rules but permits a party to re-file the motion after the effective date, the re-filed Rule 12504(a) motion will be governed by the new rules.

What happens if the panel determines that a party has filed a motion to dismiss frivolously?

If a panel determines that a party filed a Rule 12504(a) or eligibility motion frivolously, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.[16]

What happens if the panel determines that a party has filed a motion to dismiss in bad faith?

If a panel determines that a party filed a Rule 12504(a) or eligibility motion in bad faith, the panel may also issue sanctions against the party that filed the motion.[17] Under the Codes, the panel may sanction a party for failure to comply with any provision in the Code, or any order of the panel or single arbitrator authorized to act on behalf of the panel.[18] Such sanctions may include, but are not limited to:

- assessing monetary penalties payable to one or more parties;
- precluding a party from presenting evidence;
- making an adverse inference against a party;
- assessing postponement and/or forum fees; and
- assessing attorneys' fees, costs and expenses.[19]

Do the rules prohibit a party from filing other motions to dismiss?

No. A party may file a Rule 12504(b) motion and such a motion will not be subject to the exceptions in Rule 12504(a).[20] Thus, a moving party may file a Rule 12504(b) motion based on any applicable theory of law. FINRA expects these motions to be relevant to the case and based on theories that are germane to the issues raised in the non-moving party's case. FINRA believes that by the close of the non-moving party's case, the panel will have heard enough evidence to decide whether a motion filed at this stage of the case should be considered and, if warranted, granted.

FINRA notes, however, that if a party files a Rule 12504(b) motion, the panel is not required to consider or grant the motion; rather, arbitrators will continue to control the hearing process, which includes deciding whether to hear such a motion. Further, the rule will not preclude a panel from assessing parties who file these motions with sanctions, costs or attorney's fees if the panel determines that a Rule 12504(b) motion filed at this time is frivolous or in bad faith.[21]

Are the changes under the eligibility rule the same as the provisions under the motion to dismiss rule?

Many of the changes under the eligibility rule are the same as those under the motion to dismiss rule, but there are some differences:

- First, the two exceptions to the motion to dismiss rule that prohibit arbitrators from acting on a motion to dismiss prior to the conclusion of party's case, including a prehearing motion (*i.e.*, a signed settlement agreement and/or written release and the contention that a moving party was not associated with the accounts, securities or conduct at issue), will not apply to eligibility motions.
- Second, the filing deadlines for eligibility motions are different from those in the motion to dismiss rule. Under the eligibility rule, a party may file a motion to dismiss on eligibility grounds at any stage of the proceeding, except that a party may not file this motion any later than 90 days before the scheduled hearing on the merits,[22] rather than the 60-day timeframe required under the motion to dismiss rule. The 90-day requirement will encourage parties wishing to file an eligibility motion to determine in the early stages of the case whether to pursue their claims in court or to proceed with the arbitration. Further, the rule also provides parties with 30 days to respond to an eligibility motion,[23] instead of the 45 days permitted under the motion to dismiss rule. The 30-day timeframe to respond to eligibility motions will expedite the process, so that the time between filing a claim and resolution of the dispute is shortened.

- Third, if a party files an eligibility motion that includes multiple other grounds (*i.e.*, a mixed motion), the panel must decide the eligibility issue first.[24] If the panel grants a mixed motion on eligibility grounds, it must not rule on any other grounds for the motion.[25] Further, if a party files a mixed motion, the party responding to the mixed motion will have 45 days to respond. FINRA believes the response time is appropriate in the case of a mixed motion, because the non-moving party will be required to prepare for and address each ground that the moving party uses to argue for dismissal.

Effective Date Provisions

The amendment becomes effective on February 23, 2009, and applies to motions to dismiss filed on or after the effective date.

30-Day Moratorium on Motions to Dismiss

FINRA is imposing a moratorium on filing motions to dismiss prior to the conclusion of a party's case-in-chief from the date of this *Notice*, January 23, 2009, until the effective date of the new rules, February 23, 2009. This means that parties may not file such motions from January 23, 2009 to February 23, 2009. The term "case-in-chief" means the main case presented by the party who files the statement of claim, through the use of documentary evidence and witnesses, at an arbitration hearing. FINRA believes that imposing a moratorium on such motions during this pre-effective period will make the arbitration process fair to all parties, will make the new rules simple for staff and arbitrators to apply and will prevent abuse during the time before the rules become effective.

Does the moratorium apply to all motions filed in arbitration?

No. The moratorium does not apply to the following motions:

- motions filed after a party has concluded its case-in-chief;
- motions filed under Rules 12503 and 13503 other than motions to dismiss;
- motions to compel discovery under Rules 12509 and 13509;
- motions for sanctions under Rules 12212 and 13212;
- motions for discovery sanctions under Rules 12511 and 13511;
- motions to withdraw a claim under Rules 12702 and 13702; and
- motions to submit documents after the case is closed under Rules 12905 and 13905.

Parties may file these motions during the moratorium and arbitrators may consider and act on them.

What happens to motions to dismiss filed prior to January 23, 2009?

The moratorium will not apply to motions to dismiss filed prior to the date of this *Notice*. Arbitrators may consider and act on motions filed prior to the date of the *Notice*, using the current procedures established for motions under the Codes, until the effective date of the new rules.

Do you have examples of how FINRA will apply the moratorium?

Yes. The following examples should help users of the forum understand how the moratorium will be applied.

- **Example 1:** A party filed an arbitration claim in 2008. The arbitration hearings have not begun. A moving party filed a motion to dismiss on January 19, 2009 and the arbitrators took it under advisement. The moratorium would not apply, and the arbitrators should address this motion using the current procedures established for motions under the Codes.
- **Example 2:** A party filed an arbitration claim in 2008. The arbitration hearings are scheduled to begin on January 28, 2009. A moving party files a motion to dismiss on January 26, 2009. The motion would be subject to the moratorium. Thus, the party filing the arbitration claim will not be required to respond to the motion and arbitrators will not consider it.
- **Example 3:** The same facts as Example 2, except that the party concludes its case-in-chief on January 30, 2009. A moving party files a motion to dismiss at the conclusion of the party's case-in-chief. The motion would not be subject to the moratorium because the party has finished presenting its case-in-chief. The arbitrators would address this motion using the current procedures established for motions under the Codes.

Endnotes

1 Exchange Act Release No. 59189 (December 31, 2008), 74 Federal Register 731 (January 7, 2009) (File No. SR-FINRA-2007-021).

2 FINRA describes this motion using the rule number from the Customer Code for simplicity. However, the description also applies to motions filed under Rule 13504(a) of the Industry Code.

3 *See* note 2. The same rationale applies to Rule 13504(b) of the Industry Code.

4 FINRA describes the eligibility motion using the rule number from the Customer Code for simplicity. However, the description also applies to eligibility motions filed under Rule 13206(b) of the Industry Code.

5 *See also* Rules 13206(b) and 13212(b) of the Industry Code.

6 A single arbitrator ordinarily hears cases involving $50,000 or less in dispute; a panel of three arbitrators hears larger cases. FINRA uses the term "panel" for both situations in this *Notice*. FINRA is proposing to raise the amount in controversy heard by a single chair-qualified arbitrator to $100,000. *See* SR-FINRA-2008-047.

7 Rules 12504(a)(6) and 13504(a)(6) of the motion to dismiss rule and Rules 12206(b)(7) and 13206(b)(7) of the eligibility rule.

8 Rules 12504(a)(3) and 13504(a)(3). Under this provision, parties may agree to or the panel may decide to modify this deadline.

9 *Id.*

10 Rules 12504(a)(4) and 13504(a)(4) of the motions to dismiss rule and Rules 12206(b)(3) and 13206(b)(3) of the eligibility rule.

11 Rules 12206(b)(4) and 13206(b)(4) of the eligibility rule and Rules 12504(a)(5) and 13504(a)(5).

12 *Id.*

13 Rules 12504(a)(7) and 13504(a)(7) of the motion to dismiss rule and Rules 12206(b)(5) and 13206(b)(5) of the eligibility rule.

14 Rules 12504(a)(9) and 13504(a)(9) of the motions to dismiss rule and Rules 12206(b)(8) and 13206(b)(8) of the eligibility rule.

15 Rules 12504(a)(8) and 13504(a)(8) of the motions to dismiss rule and Rules 12206(b)(6) and 13206(b)(6) of the eligibility Rule.

16 Rules 12504(a)(10) and 13504(a)(10) of the motion to dismiss rule and Rules 12206(b)(9) and 13206(b)(9) of the eligibility rule.

17 Rules 12504(a)(11) and 13504(a)(11) of the motion to dismiss rule and Rules 12206(b)(10) and 13206(b)(10) of the eligibility rule.

18 Rules 12212 and 13212 of the Codes.

19 *Id.*

20 Rules 12504(b) and 13504(b) of the motions to dismiss rule.

21 Note 18.

22 Rules 12206(b)(2) and 13206(b)(2) of the eligibility rule.

23 *Id.*

24 Rules 12206(b)(7) and 13206(b)(7) of the eligibility Rule.

25 *Id.* The rule also contains other criteria concerning motions to dismiss based on eligibility grounds.

Attachment A

New language is underlined.

Code of Arbitration Procedure for Customer Disputes

and

Code of Arbitration Procedure for Industry Disputes

* * *

Customer Code

12206. Time Limits

(a) No change.

(b) Dismissal under Rule

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(1) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(2) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 90 days before a scheduled hearing, and parties have 30 days to respond to the motion.

(3) Motions under this rule will be decided by the full panel.

(4) The panel may not grant a motion under this rule unless an in-person or telephonic prehearing conference on the motion is held or waived by the parties. Prehearing conferences to consider motions under this rule will be recorded as set forth in Rule 12606.

(5) If the panel grants a motion under this rule (in whole or part), the decision must be unanimous, and must be accompanied by a written explanation.

(6) If the panel denies a motion under this rule, a party may not re-file the denied motion, unless specifically permitted by panel order.

(7) If the party moves to dismiss on multiple grounds including eligibility, the panel must decide eligibility first.

- If the panel grants the motion to dismiss the case on eligibility grounds on all claims, it shall not rule on any other grounds for the motion to dismiss.
- If the panel grants the motion to dismiss on eligibility grounds on some, but not all claims, and the party against whom the motion was granted elects to move the case to court, the panel shall not rule on any other ground for dismissal for 15 days from the date of service of the panel's decision to grant the motion to dismiss on eligibility grounds.
- If a panel dismisses any claim on eligibility grounds, the panel must record the dismissal on eligibility grounds on the face of its order and any subsequent award the panel may issue.
- If the panel denies the motion to dismiss on eligibility grounds, it shall rule on the other bases for the motion to dismiss the remaining claims in accordance with the procedures set forth in Rule 12504(a).

(8) If the panel denies a motion under this rule, the panel must assess forum fees associated with hearings on the motion against the moving party.

(9) If the panel deems frivolous a motion filed under this rule, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.

(10) The panel also may issue other sanctions under Rule 12212 if it determines that a party filed a motion under this rule in bad faith.

(c) - (d) No change.

* * * * *

Rule 12504. [Reserved] Motions to Dismiss

(a) Motions to Dismiss Prior to Conclusion of Case-in-chief

(1) Motions to dismiss a claim prior to the conclusion of a party's case-in-chief are discouraged in arbitration.

(2) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(3) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion.

(4) Motions under this rule will be decided by the full panel.

(5) The panel may not grant a motion under this rule unless an in-person or telephonic prehearing conference on the motion is held or waived by the parties. Prehearing conferences to consider motions under this rule will be recorded as set forth in Rule 12606.

(6) The panel cannot act upon a motion to dismiss a party or claim under paragraph (a) of this rule, unless the panel determines that:

(A) the non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release; or

(B) the moving party was not associated with the account(s), security(ies), or conduct at issue.

(7) If the panel grants a motion under this rule (in whole or part), the decision must be unanimous, and must be accompanied by a written explanation.

(8) If the panel denies a motion under this rule, the moving party may not re-file the denied motion, unless specifically permitted by panel order.

(9) If the panel denies a motion under this rule, the panel must assess forum fees associated with hearings on the motion against the moving party.

(10) If the panel deems frivolous a motion filed under this rule, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.

(11) The panel also may issue other sanctions under Rule 12212 if it determines that a party filed a motion under this rule in bad faith.

(b) Motions to Dismiss After Conclusion of Case-in-chief

A motion to dismiss made after the conclusion of a party's case-in-chief is not subject to the procedures set forth in subparagraph (a).

(c) Motions to Dismiss Based on Eligibility

A motion to dismiss based on eligibility filed under Rule 12206 will be governed by that rule.

(d) Motions to Dismiss Based on Failure to Comply with Code or Panel Order

A motion to dismiss based on failure to comply with any provision in the Code, or any order of the panel or single arbitrator filed under Rule 12212 will be governed by that rule.

(e) Motions to Dismiss Based on Discovery Abuse

A motion to dismiss based on discovery abuse filed under Rule 12511 will be governed by that rule.

* * *

Industry Code

13206. Time Limits

(a) No change.

(b) Dismissal under Rule

Dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

(1) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(2) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 90 days before a scheduled hearing, and parties have 30 days to respond to the motion.

(3) Motions under this rule will be decided by the full panel.

(4) The panel may not grant a motion under this rule unless an in-person or telephonic prehearing conference on the motion is held or waived by the parties. Prehearing conferences to consider motions under this rule will be recorded as set forth in Rule 13606.

(5) If the panel grants a motion under this rule (in whole or part), the decision must be unanimous, and must be accompanied by a written explanation.

(6) If the panel denies a motion under this rule, a party may not re-file the denied motion, unless specifically permitted by panel order.

(7) If the party moves to dismiss on multiple grounds including eligibility, the panel must decide eligibility first.

- If the panel grants the motion to dismiss the case on eligibility grounds on all claims, it shall not rule on any other grounds for the motion to dismiss.
- If the panel grants the motion to dismiss on eligibility grounds on some, but not all claims, and the party against whom the motion was granted elects to move the case to court, the panel shall not rule on any other ground for dismissal for 15 days from the date of service of the panel's decision to grant the motion to dismiss on eligibility grounds.
- If a panel dismisses any claim on eligibility grounds, the panel must record the dismissal on eligibility grounds on the face of its order and any subsequent award the panel may issue.
- If the panel denies the motion to dismiss on eligibility grounds, it shall rule on the other bases for the motion to dismiss the remaining claims in accordance with the procedures set forth in Rule 13504(a).

(8) If the panel denies a motion under this rule, the panel must assess forum fees associated with hearings on the motion against the moving party.

(9) If the panel deems frivolous a motion filed under this rule, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.

(10) The panel also may issue other sanctions under Rule 13212 if it determines that a party filed a motion under this rule in bad faith.

(c) - (d) No change.

* * * * *

13504. [Reserved] Motions to Dismiss

(a) Motions to Dismiss Prior to Conclusion of Case-in-chief

(1) Motions to dismiss a claim prior to the conclusion of a party's case-in-chief are discouraged in arbitration.

(2) Motions under this rule must be made in writing, and must be filed separately from the answer, and only after the answer is filed.

(3) Unless the parties agree or the panel determines otherwise, parties must serve motions under this rule at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion.

(4) Motions under this rule will be decided by the full panel.

(5) The panel may not grant a motion under this rule unless an in-person or telephonic prehearing conference on the motion is held or waived by the parties. Prehearing conferences to consider motions under this rule will be recorded as set forth in Rule 13606.

(6) The panel cannot act upon a motion to dismiss a party or claim under paragraph (a) of this rule, unless the panel determines that:

(A) the non-moving party previously released the claim(s) in dispute by a signed settlement agreement and/or written release; or

(B) the moving party was not associated with the account(s), security(ies), or conduct at issue.

(7) If the panel grants a motion under this rule (in whole or part), the decision must be unanimous, and must be accompanied by a written explanation.

(8) If the panel denies a motion under this rule, the moving party may not re-file the denied motion, unless specifically permitted by panel order.

(9) If the panel denies a motion under this rule, the panel must assess forum fees associated with hearings on the motion against the moving party.

(10) If the panel deems frivolous a motion filed under this rule, the panel must also award reasonable costs and attorneys' fees to any party that opposed the motion.

(11) The panel also may issue other sanctions under Rule 13212 if it determines that a party filed a motion under this rule in bad faith.

(b) Motions to Dismiss After Conclusion of Case-in-chief

A motion to dismiss made after the conclusion of a party's case-in-chief is not subject to the procedures set forth in subparagraph (a).

(c) Motions to Dismiss Based on Eligibility

A motion to dismiss based on eligibility filed under Rule 13206 will be governed by that rule.

(d) Motions to Dismiss Based on Failure to Comply with Code or Panel Order

A motion to dismiss based on failure to comply with any provision in the Code, or any order of the panel or single arbitrator filed under Rule 13212 will be governed by that rule.

(e) Motions to Dismiss Based on Discovery Abuse

A motion to dismiss based on discovery abuse filed under Rule 13511 will be governed by that rule.

* * *

Regulatory Notice 09-08

Trade Reporting

SEC Approves Amendments to FINRA Trade Reporting Rules

Effective Date: August 3, 2009

Executive Summary

Effective Monday, August 3, 2009, firms' trade reporting obligations for over-the-counter (OTC) equity transactions[1] will change. Specifically, amendments to FINRA trade reporting rules will:

- replace the current market maker-based trade reporting structure with an "executing party" structure; and
- require firms with the trade reporting obligation that are acting in a riskless principal or agency capacity on behalf of another member firm(s) to submit non-tape report(s) to FINRA, as necessary, to identify such other firm(s) as a party to the trade.

The text of the amendments can be found at *www.finra.org/rulefilings/2008-011/*.

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.

January 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Executive Representatives
- Legal
- Operations
- Senior Management
- Systems
- Trading
- Training

Key Topic(s)

- Alternative Display Facility
- Agency Transactions
- Direct Participation Program Securities
- NMS Stocks
- OTC Equity Securities
- OTC Reporting Facility
- PORTAL Equity Securities
- Riskless Principal Transactions
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- FINRA Rule 6282
- FINRA Rule 6380A
- FINRA Rule 6380B
- FINRA Rule 6420
- FINRA Rule 6622
- FINRA Rule 6633
- FINRA Rule 6643
- FINRA Rule 7230A
- FINRA Rule 7230B
- FINRA Rule 7330

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Background and Discussion

Trade Reporting Structure

On November 5, 2008,[2] the SEC approved amendments to FINRA rules that replace the current market maker-based structure[3] with a simpler, more uniform structure for purposes of reporting OTC equity transactions to FINRA. Specifically, for transactions between member firms, the "executing party" must report the trade to FINRA, and for transactions between a member firm and a non-member firm or customer, the member firm must report the trade. The "executing party" reporting structure applies to reporting trades to FINRA in NMS stocks, OTC Equity Securities, DPP securities and PORTAL equity securities.[4]

The amendments define "executing party" as the member firm that receives an order for handling or execution or is presented an order against its quote, does not subsequently re-route the order, and executes the transaction. Thus, for example, an alternative trading system (ATS) (a term that includes electronic communications networks (ECNs)) is the executing party and has the reporting obligation where the transaction is executed on the ATS. Alternatively, if an ATS routes an order to another member firm for handling and/or execution, then the ATS would not be the executing party and would not have the reporting obligation.[5] For trades between a member firm and a non-member firm, the member firm must report the trade.

In certain limited circumstances, it may not be clear which firm should be deemed the executing party for trade reporting purposes (*e.g.*, manually negotiated trades between two members via the telephone). Accordingly, for transactions between two member firms where both firms could reasonably maintain that they satisfy the definition of "executing party," the firm representing the sell-side must report the transaction to FINRA, unless the parties agree otherwise and the firm representing the sell-side contemporaneously documents such agreement. In such instances, the sell-side will be presumed to have the trade reporting obligation, unless it can demonstrate there was an agreement to the contrary (*e.g.*, contemporaneous notes of a telephone conversation or notation on the order ticket).

For example, if Firm A represents the sell-side and Firm B represents the buy-side in a manually negotiated trade where both member firms reasonably maintain that they satisfy the definition of "executing party," Firm A, as the sell-side, has the reporting obligation. If the parties agree that Firm B will report the trade and Firm A contemporaneously documents the parties' agreement, the trade reporting obligation shifts to Firm B, and Firm B is responsible for reporting the transaction in accordance with FINRA rules.

FINRA notes that the parties may comply with the "contemporaneously documented agreement" requirement through the use of a blanket agreement that expressly shifts the trade reporting obligation in this scenario (*i.e.*, in a manually negotiated trade between Firm A and Firm B, where Firm A as the sell-side has the reporting obligation, the parties agree that Firm B will have the reporting obligation).[6]

Submission of Non-Tape Reports to Identify Other Member Firms for Agency and Riskless Principal Transactions

The amendments also require that any firm with the obligation to report the trade under FINRA rules that is acting in a riskless principal[7] or agency capacity on behalf of one or more other member firms submit to FINRA one or more non-tape report(s),[8] as necessary, to identify such other member firm(s) as a party to the transaction.[9] A firm that matches, as agent, the orders of multiple member firms on one or both sides of the trade may have to submit multiple non-tape reports to identify all other member firms.

It is important to note that under current FINRA rules, member firms already are required to submit a non-tape report to reflect the offsetting, "riskless" leg of a riskless principal transaction where the tape report was not properly marked as riskless principal.[10] This requirement applies to all firms—even firms that do not have the responsibility to report the trade for publication purposes—and the amendments do not in any way negate or modify the existing requirements for reporting riskless principal transactions under FINRA rules. However, a firm acting on a riskless principal basis on behalf of another member firm would have no separate reporting obligation under the amendments if the other member firm is identified on the non-tape report submitted to comply with the riskless principal reporting requirements.

A firm can satisfy its reporting obligation under the amendments by submitting a clearing-only report(s), if necessary to clear the offsetting leg(s) of the transaction through a FINRA Facility. If the parties do not need to clear the offsetting leg(s) of the transaction through a FINRA Facility, then the firm must submit a non-tape, non-clearing report(s).

The non-tape reporting requirement applies only to the firm that has the responsibility under FINRA rules to report the trade to FINRA for tape purposes (*e.g.*, the "executing party" in a trade between two member firms, as discussed above). A firm that is acting on behalf of another member firm would have no separate reporting obligation under the amendments if the other member firm is identified on the initial (tape) trade report. In addition, the non-tape reporting requirement does not apply where a firm is acting as agent or riskless principal on behalf of a non-member firm. Nor does the requirement apply to transactions that are executed on and reported through an exchange; in that instance, firms have the option, as they do today, of submitting a non-tape (typically, a clearing-only) report to FINRA for the offsetting leg of the transaction.[11]

The scope and application of the non-tape reporting requirement can be illustrated in the following examples, and FINRA also included several examples in the amended rule text. The examples are not intended to represent all possible trade reporting scenarios under the amendments. In the examples below, assume all firms are FINRA member firms (except where specifically indicated in Examples #6 and #7).

Example #1: Firm A receives a buy order from Firm B and a sell order from Firm C. Firm A matches, as agent, the orders of Firm B and Firm C. For purposes of this example, Firm A has the obligation under FINRA rules to report the trade. Under the amendments, Firm A must submit a non-tape report(s) to identify the member firm(s) not identified on the tape report. The number of non-tape reports and the parties that appear on the non-tape report(s) depend on how the trade is reported to the tape. As illustrated below, there are three possible alternatives.

Alternative #1

Tape Report:	Firm A (capacity agent) reports a cross
Non-Tape Report #1:	Firm A (capacity agent) buys from Firm C
Non-Tape Report #2:	Firm A (capacity agent) sells to Firm B

Alternative #2

Tape Report:	Firm A (capacity agent) buys from Firm C
Non-Tape Report:	Firm A (capacity agent) sells to Firm B

Alternative #3

Tape Report:	Firm A (capacity agent) sells to Firm B
Non-Tape Report:	Firm A (capacity agent) buys from Firm C

Example #2: Firm A, as riskless principal on behalf of Firm B, and Firm C execute an OTC trade. For purposes of this example, Firm C has the obligation under FINRA rules to report the trade for tape purposes. Under the amendments, Firm A is not required to submit a non-tape report to indicate that it was acting on behalf of Firm B because Firm A is not the firm that is required to report the trade for tape purposes.

However, because Firm A is acting as riskless principal on behalf of Firm B, Firm A is required under current FINRA rules to submit a non-tape report (either a non-tape, non-clearing report or a clearing-only report) to reflect the offsetting leg of the riskless principal transaction, if the tape report submitted by Firm C does not properly reflect Firm A's capacity as riskless principal.[12]

Example #3: Firm A, as agent on behalf of Firm B, and Firm C execute an OTC trade. For purposes of this example, Firm C has the obligation under FINRA rules to report the trade for tape purposes. Under the amendments, Firm A is not required to submit a non-tape report to indicate that it was acting on behalf of Firm B because Firm A is not the firm that is required to report the trade for tape purposes.

Example #4: Firm A, as agent or riskless principal on behalf of Firm B, executes a trade on an exchange. The trade is reported to the tape by the exchange (and must not be reported to FINRA). Under the amendments, Firm A is not required to submit a non-tape report to FINRA to indicate that it was acting on behalf of Firm B; however, as is the case today, Firm A may submit a clearing-only report to clear the offsetting leg of the transaction between Firm A and Firm B through a FINRA Facility.[13]

Example #5: Firm A, as agent or riskless principal on behalf of Firm B, and Firm C execute an OTC trade. For purposes of this example, Firm A has the obligation under FINRA rules to report the trade[14] and submits to FINRA a tape report between Firm A and Firm C. Under the amendments, Firm A is required to submit a non-tape report to FINRA with Firm A and Firm B represented as parties to the trade to indicate that Firm A was acting on behalf of Firm B.

Example #6: Firm A, as agent on behalf of non-member Firm B, and Firm C execute an OTC trade. For purposes of this example, Firm A has the obligation under FINRA rules to report the trade and submits to FINRA a tape report between Firm A and Firm C. Under the amendments, Firm A is not required to submit a non-tape report to FINRA to indicate that it was acting on behalf of Firm B because Firm B is a non-member.

Example #7: Firm A, as riskless principal on behalf of non-member Firm B, and Firm C execute an OTC trade. For purposes of this example, Firm A has the obligation under FINRA rules to report the trade and submits to FINRA a tape report between Firm A and Firm C. Under the amendments, Firm A is not required to submit a non-tape report to FINRA to indicate that it was acting on behalf of Firm B because Firm B is a non-member.

However, because Firm A is acting as riskless principal on behalf of Firm B, Firm A is required under current FINRA rules to properly reflect Firm A's capacity as riskless principal on the tape report. If Firm A is unable to do so, it must submit a non-tape report (either a non-tape, non-clearing report or a clearing-only report) to properly reflect the offsetting leg of the riskless principal transaction.[15]

FINRA notes that the submission of non-tape reports is not subject to the 90-second reporting requirement under FINRA trade reporting rules. Thus, firms generally have until the end of the day on trade date to submit the non-tape reports required under the amendments, unless a shorter reporting time is required under other FINRA rules.[16]

The examples above also will be included in FINRA's Trade Reporting FAQs *(www.finra.org/tradereportingfaq/)*, which are updated periodically to address additional trade reporting scenarios as questions arise.

The amendments become effective on August 3, 2009.

Endnotes

1 OTC equity transactions are: (1) transactions in NMS stocks effected otherwise than on an exchange, which are reported through the Alternative Display Facility (ADF) or a Trade Reporting Facility (TRF); and (2) transactions in OTC Equity Securities (*e.g.*, OTC Bulletin Board and Pink Sheets securities), Direct Participation Program (DPP) securities and PORTAL equity securities, which are reported through the OTC Reporting Facility (ORF). The ADF, TRFs and ORF are collectively referred to herein as the "FINRA Facilities."

2 *See* Securities Exchange Act Release No. 58903 (November 5, 2008), 73 FR 67905 (November 17, 2008) (order approving SR-FINRA-2008-011); and Securities Exchange Act Release No. 58903A (November 13, 2008), 73 FR 69700 (November 19, 2008) (correction to order approving SR-FINRA-2008-011).

3 The market maker-based reporting structure is as follows: (1) in transactions between two market makers, the sell-side reports; (2) in transactions between a market maker and a non-market maker, the market maker reports; (3) in transactions between two non-market makers, the sell-side reports; and (4) in transactions between a member firm and either a non-member firm or customer, the member firm reports.

4 *See* FINRA Rules 6282(b), 6380A(b), 6380B(b), 6622(b), 6633(b) and 6643(a)(3).

5 The rules requiring a "Reporting ECN" to ensure that trades are reported in accordance with one of three enumerated methods and to notify FINRA in writing of the method of reporting for each of its subscribers have been deleted (specifically, paragraphs (c)(5) through (7) of FINRA Rules 7230A, 7230B and 7330).

6 A previously executed give-up agreement may satisfy the requirement of a contemporaneously documented agreement under FINRA rules if the give-up agreement expressly states that in a manually negotiated trade between Firm A and Firm B, where Firm A as the sell-side has the reporting obligation, the parties agree that Firm B will have the reporting obligation.

It is FINRA's understanding that firms' current give-up agreements are not specific in this regard and, therefore, must be amended or re-executed if the parties would like to use that agreement for this purpose. If Firm A and Firm B do not have a contemporaneously documented agreement to shift the reporting obligation to Firm B, under the typical operation of a give-up agreement, Firm B can report the trade on behalf of Firm A; however, Firm A still has the trade reporting obligation under FINRA rules and is responsible for the trade report submitted on its behalf by Firm B.

7 For purposes of FINRA trade reporting rules applicable to equity securities, a "riskless principal" transaction is a transaction in which a firm, after having received an order to buy (sell) a security, purchases (sells) the security as principal and satisfies the original order by selling (buying) as principal at the same price.

8 "Non-tape reports" are reports that are not submitted to the appropriate exclusive Securities Information Processor for public dissemination. They can be (1) "non-tape, non-clearing," meaning that the report is submitted to FINRA solely for regulatory purposes, or (2) "clearing-only," meaning that the report is submitted to FINRA for clearing; *i.e.*, for submission by FINRA to the National Securities Clearing Corporation (and perhaps also for regulatory purposes).

9 *See* FINRA Rules 6282(e)(1)(D), 6380A(d)(4), 6380B(d)(4), 6622(d)(4) and 6643(d)(5). *See also* FINRA Rule 6633(a)(3), amended to cross-reference FINRA Rule 6622(d).

10 An OTC riskless principal transaction can be reported to FINRA in a single tape report properly marked as riskless principal, or in two separate reports: (1) a tape report to reflect the initial leg of the transaction and (2) a non-tape report to reflect the offsetting, "riskless" leg of the transaction, with the correct capacity of riskless principal. *See* FINRA Rules 6282(e)(1)(C)(ii), 6380A(d)(3)(B), 6380B(d)(3)(B) and 6622(d)(3)(B).

11 *See Regulatory Notice 07-38* (August 2007).

12 *See supra* note 10. If Firm A's capacity is properly marked as riskless principal on the tape report, Firm A would not be required under current rules to submit a non-tape report to FINRA.

13 *See Regulatory Notice 07-38* (August 2007).

14 The most likely scenario where Firm A would have the trade reporting obligation is with respect to trades in OTC Equity Securities, as defined in FINRA Rule 6420.

15 *See supra* note 10. If Firm A's capacity is properly marked as riskless principal on the tape report, Firm A would not be required under current rules to submit a non-tape report to FINRA.

16 *See Trade Reporting Frequently Asked Questions*, FAQ 102.2, at *www.finra.org/tradereportingfaq/*.

Election Notice

District Elections

February 5, 2009

Upcoming District Committee and District Nominating Committee Elections

Suggested Routing

- Branch Managers
- Executive Representatives
- Senior Management

Executive Summary

The purpose of this *Election Notice* is to notify firms of the nomination and election process to fill forthcoming vacancies on FINRA District Committees and District Nominating Committees.

The current District Committee and District Nominating Committee members are included in Attachment A. Information on District Election procedures is included in Attachment B. A candidate profile form is included as Attachment C.

Note: This *Notice* was distributed electronically only to the Executive Representative of each FINRA firm and it is posted on FINRA's Web site at *www.finra.org/Notices/Election/010208* Executive Representatives should circulate this Notice to their firm's branch managers.

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

- The appropriate District Director;
- Marcia Asquith, Senior Vice President and Corporate Secretary, FINRA, at (202) 728-8949; or
- *CorporateSecretary@finra.org*.

Background

The FINRA District Committees serve an important role in the self-regulatory process by, among other things:

- alerting FINRA to industry trends that could present regulatory concerns;
- consulting with FINRA on proposed policies and rule changes; and
- serving on disciplinary panels in accordance with FINRA Rules.

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Committee members must have the experience, ability and commitment to fulfill these responsibilities, including:

- understanding the issues facing the securities industry and possessing the ability to apply knowledge and expertise to these issues to develop solutions;
- educating firms in their District on the responsibilities of FINRA;
- attending regularly and participating professionally, effectively and in a collegial manner in District Committee meetings; and
- remaining objective and unbiased in the performance of District Committee matters.

Committee members must also adhere to certain prohibitions and restrictions. These include:

- refraining from serving as an expert witness in FINRA disciplinary hearings or arbitrations;
- being sensitive to conflicts, and refraining from participating in a particular matter when a conflict exists;
- refraining from using membership on the District Committee for commercial purposes, or otherwise suggesting special access to FINRA; and
- keeping sensitive, non-public or proprietary information confidential.

Vacancies and Terms

In this election, the District Committees for Districts 1, 2, 4, 5, 6, 8, 9 and 11 each have three positions to fill; the District Committees for Districts 3 and 7 each have four positions to fill; and the District Committee for District 10 has five positions to fill.[1] The term of office for District Committee members is three years unless selected to complete an existing term. Additionally, each District Nominating Committee will have five vacancies to fill for one-year terms.

Due to the consolidation of NASD and the member regulation functions of the New York Stock Exchange during 2007, the District Committee and District Nominating Committee election calendar was delayed by six months. Beginning in 2008, the three-year terms for District Committee members and one-year terms for District Nominating Committee members began to rotate on a June 1 to May 31 annual cycle. Terms of the individuals elected during this election will begin on June 1, 2009.

Nomination Process

Individuals from firms of all sizes and segments of the industry are encouraged to submit names for consideration for membership on the 11 District Committees and District Nominating Committees.

Individuals who are interested in serving on the District Committee or the District Nominating Committee within their district must complete a candidate profile form (Attachment C) and submit it by hand delivery, courier service, mail or facsimile to the appropriate District Director. Completed candidate profile forms must be received by the District Director on or before **January 16, 2009**. Candidate profile forms received after this date will not be considered. FINRA encourages current and former committee members to assist FINRA by soliciting candidates for both committees.

Article VIII, Sections 8.2 and 8.9 of the By-Laws of FINRA Regulation establish formal eligibility requirements for members of the District Committees and District Nominating Committees respectively. They provide that such members:

- be registered with a FINRA member firm eligible to vote in the district for District Committee elections; and
- work primarily from such FINRA member firm's principal office or a branch office that is located within the district where the member serves on a District Committee or District Nominating Committee.

Completed candidate profile forms that are received by January 16, 2009, will be provided to all appropriate District Nominating Committee members for review. FINRA anticipates that on or before February 13, 2009, each District Director, acting on behalf of the District Nominating Committee, will notify FINRA's Corporate Secretary of each candidate nominated by the District Nominating Committee and the committee to which the candidate is nominated.

Firm Contact Information

Firms are reminded of the importance of accurately maintaining their Executive Representative's name and email address information, and their firm's main postal address, in FINRA's records. This will ensure that mailings, such as election information, will be properly directed. Failure to keep this information accurate may jeopardize the member firm's ability to participate in District elections as well as other votes.

Pursuant to NASD Rule 1160, firms must update their contact information promptly, but in any event not later than 30 days following any change in such information, as well as review and, if necessary, update the information within 17 business days after the end of each calendar year. Additionally, firms must comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.[2]

To update an Executive Representative's name and contact information, firms should access the FINRA Contact System (FCS), located on FINRA's Web site at *www.finra.org/fcs*. For assistance updating FCS, you may contact our Call Center at (301) 590-6500.

Endnotes

1 In some cases, a District Committee may have positions to fill if a member of the District Committee has resigned since the last election, as indicated in Attachment A.

2 *See* NASD Rule 1160 and FINRA *Regulatory Notice 07-42* (September 2007).

Attachment A—District Committee and District Nominating Committee Lists

Expiring and vacant positions are highlighted.

District 1

Northern California (the counties of Monterey, San Benito, Fresno and Inyo, and the remainder of the state north or west of such counties), northern Nevada (the counties of Esmeralda and Nye, and the remainder of the state north or west of such counties) and Hawaii

Christian A. Zrull, District Director

One Montgomery Street, Suite 2100, San Francisco, CA 94104 (415) 217-1100
(415) 956-1931 fax

District Committee for District 1—Chair: Christopher D. Charles

➤ Committee members to be elected to terms expiring May 31, 2012: 3

Committee Members to Serve Until May 31, 2009

Christopher D. Charles	Wulff, Hansen & Co.	San Francisco, CA
Kevin T. Kitchin	Wachovia Securities, LLC	San Francisco, CA
Edward M. Stephens	FSC Securities Corporation	Santa Rosa, CA

Committee Members to Serve Until May 31, 2010

Robert Angle	White Pacific Securities, Inc.	San Francisco, CA
Leonard Berry	Backstrom McCarley Berry & Co. LLC	San Francisco, CA
James H. Williams	Financial Telesis	San Rafael, CA

Committee Members to Serve Until May 31, 2011

Christopher Aguilar	Merriman Curhan Ford & Co.	San Francisco, CA
Stephen Chipman	Foothill Securities, Inc.	Mountain View, CA
Philip J. Economopoulos	Howe Barnes Hoefer & Arnett, Inc.	San Francisco, CA

District Nominating Committee for District 1—Chair: William A. Evans, III

➤ Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Howard A. Bernstein	Pacific Growth Equities, LLC	San Francisco, CA
William A. Evans, III	Stone &Youngberg, LLC	San Francisco, CA
Warren E. Gordon	Charles Schwab & Co.	San Francisco, CA
Bruce W. Nollenberger	Nollenberger Capital Partners, Inc.	San Francisco, CA
Daniel W. Roberts	Roberts & Ryan Investments Inc.	San Francisco, CA

District 2

Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye) and the former U.S. Trust Territories

David A. Greene, District Director

300 South Grand Avenue, Suite 1600, Los Angeles, CA 90071-3126 (213) 229-2300
(213) 617-3299 fax

District Committee for District 2—Chair: Steven K. Klein

➤ Committee members to be elected to terms expiring May 31, 2012: 3

Committee Members to Serve Until May 31, 2009

Steven K. Klein	Farmers Financial Solutions, LLC	Agoura Hills, CA
Gary A. Martino	brokersXpress, LLC	Thousand Oaks, CA
Mitchell W. Howard	First Wilshire Securities Management, Inc.	Pasadena, CA

Committee Members to Serve Until May 31, 2010

Craig M. Biddick	Mission Securities Corporation	San Diego, CA
Mark S. Stewart	Mark Stewart Securities, Inc.	Irvine, CA
Craig R. Watanabe	NRP Financial, Inc.	Pasadena, CA

Committee Members to Serve Until May 31, 2011

Donna B. Lawson	First Allied Securities, Inc.	San Diego, CA
Kerry E. Cunningham	Financial Network Investment Corporation	El Segundo, CA
Westley H. King	Centarus Financial, Inc.	Anaheim, CA

District Nominating Committee for District 2—Chair: Valorie A. Seyfert

➤ Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Stephen B. Benton	Financial Network Investment Corporation	El Segundo, CA
James M. Dillahunty	Advisors Asset Management	San Diego, CA
Kenneth R. Hyman	Partnervest Securities, Inc.	Santa Barbara, CA
Valorie A. Seyfert	CUSO Financial Services, LP	San Diego, CA
Bryan R. Plank	Merrill Lynch, Pierce, Fenner & Smith Incorporated	San Diego, CA

District 3

Arizona, Colorado, New Mexico, Utah and Wyoming

Joseph M. McCarthy, Vice President and Regional Director (West Region)

4600 S. Syracuse Street, Suite 1400, Denver, CO 80237 (303) 446-3100
(303) 620-9450 fax

Alaska, Idaho, Montana, Oregon and Washington

Michael E. Lewis, District Director

601 Union Street, Suite 1616, Seattle, WA 98101-2327 (206) 624-0790
(206) 623-2518 fax

District Committee for District 3—Chair: Chester J. Hebert

- Committee members to be elected to terms expiring May 31, 2012: 3
- Committee members to be elected to terms expiring May 31, 2010: 1

Committee Members to Serve Until May 31, 2009

David J. Director	McAdams Wright Ragen, Inc.	Seattle, WA
Daniel J. Lind	Wells Fargo Investments	Tucson, AZ
Steven S. Iversen	NEXT Financial Group, Inc.	Albuquerque, NM

Committee Members to Serve Until May 31, 2010

Chester J. Hebert	Colorado Financial Service Corp	Centennial, CO
Douglas W. Schriner	Harrison Douglas, Inc.	Aurora, CO
[VACANT]*		

Committee Members to Serve Until May 31, 2011

James R. Cannon	United Planners Financial Service	Scottsdale, AZ
Adam M. Carmel	Larimer Capital Corporation	Denver, CO
Paige W. Pierce	RW Smith & Associates, Inc.	Sandy, UT

District Nominating Committee for District 3—Chair: Gregory R. Anderson

- Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Gregory R. Anderson	MCL Financial Group, Inc.	Denver, CO
Curtis J. Hammond	Morgan Stanley & Co., Incorporated	Bellevue, WA
Craig A. Jackson	Financial Network Investment Corporation	Roseburg, OR
Harry L. Striplin	Strand, Atkinson, Williams & York, Inc.	Portland, OR
Arlene M. Wilson	D.A. Davidson & Co.	Great Falls, MT

* Russell R. Diachok of Geneos Wealth Management, Inc. in Centennial, CO, was appointed to replace a resigning Committee member and is currently serving in this position until elections are held.

District 4

Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota

Thomas D. Clough, Associate Vice President and District Director

120 W. 12th Street, Suite 800, Kansas City, MO 64105 (816) 421-5700
(816) 421-5029 fax

District Committee for District 4—Chair: Andrew C. Small

➤ Committee members to be elected to terms expiring May 31, 2012: 3

Committee Members to Serve Until May 31, 2009

Steven F. McWhorter	Securities America, Inc.	Omaha, NE
Andrew C. Small	Scottrade, Inc.	St. Louis, MO
Jennifer R. Relien	Thrivent Investment Management, Inc.	Minneapolis, MN

Committee Members to Serve Until May 31, 2010

Robert E. Hillard	Arlington Securities	St. Louis, MO
Richard D. Link	Edward Jones	St. Louis, MO
Daniel J. May	Financial Network Investment Corporation	Minneapolis, MN

Committee Members to Serve Until May 31, 2011

Christopher A. Cokinis	ING Financial Partners, Inc.	Des Moines, IA
Cheryl L. Heilman	Ameritas Investment Corp.	Lincoln, NE
James E. Nelson	Minnesota Valley Investments	Redwood Falls, MN

District Nominating Committee for District 4—Chair: Joseph D. Fleming

➤ Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Kenneth M. Cherrier	Woodbury Financial Services, Inc.	Woodbury, MN
Joseph D. Fleming	RBC Dain Rauscher Inc.	Minneapolis, MN
Mark T. Lasswell	Wells Fargo Brokerage Services, LLC	Minneapolis, MN
Allen J. Moore	SMITH HAYES Financial Services Corporation	Lincoln, NE
Minoo Spellerberg	Princor Financial Services Corporation	Des Moines, IA

District 5

Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Tennessee

Keith E. Hinrichs, District Director

1100 Poydras Street, Energy Centre, Suite 850
New Orleans, LA 70163-0802

(504) 522-6527
(504) 522-4077 fax

District Committee for District 5—Chair: Jefferson G. Parker

➤ Committee members to be elected to terms expiring May 31, 2012: 3

Committee Members to Serve Until May 31, 2009

Curtis F. Bradbury, Jr.	Stephens Inc.	Little Rock, AR
William A. Geary	Morgan Keegan & Company, Inc.	Jackson, MS
Jefferson G. Parker	Howard Weil Incorporated	New Orleans, LA

Committee Members to Serve Until May 31, 2010

Robert Keenan, Jr.	St. Bernard Financial Services, Inc.	Russellville, AR
Michael J. Mungenast	ProEquities, Inc.	Birmingham, AL
Gary K. Wunderlich, Jr.	Wunderlich Securities, Inc.	Memphis, TN

Committee Members to Serve Until May 31, 2011

Rush F. Harding, III	Crews & Associates, Inc.	Little Rock, AR
Phillip H. Palmer	First Independent Financial Services, Inc.	Tulsa, OK
Sarah J. Sherck	Avondale Partners, LLC	Nashville, TN

District Nominating Committee for District 5—Chair: Henry M. Fyfe, III

➤ Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Henry M. "Trey" Fyfe, III	Duncan-Williams, Inc.	Memphis, TN
James S. Jones	Crews & Associates, Inc.	Little Rock, AR
Michaela D. Myers	NAFA CapitalMarkets, LLC	Oklahoma City, OK
R. Patrick Shepherd	Avondale Partners, LLC	Nashville, TN
F. Eugene Woodham	Sterne, Agee & Leach, Inc.	Birmingham, AL

District 6

Texas

Virginia F. M. Jans, Senior Vice President and Regional Director, South Region

12801 N. Central Expressway, Suite 1050, Dallas, TX 75243 (972) 701-8554
(972) 716-7646 fax

District Committee for District 6—Chair: John Christopher Melton

➤ Committee members to be elected to terms expiring May 31, 2012: 3

Committee Members to Serve Until May 31, 2009

Alan K. Goldfarb	Oakbrook Financial Group, LLC	Dallas, TX
John Christopher Melton	Coastal Securities, L.P.	Houston, TX
[VACANT]		

Committee Members to Serve Until May 31, 2010

Caroline B. Austin	Evolve Securities, Inc.	Dallas, TX
Kennard (Ken) R. George	VSR Financial Services, Inc.	Dripping Springs, TX
Fenner R. Weller, Jr.	Weller Anderson & Co., Ltd.	Houston, TX

Committee Members to Serve Until May 31, 2011

Darla Bartkowiak	Amherst Securities Group, LP	Austin, TX
Frederick T. Greene	Raymond James Financial Services, Inc.	The Woodlands, TX
Wilson Williams	WFG Investments, Inc.	Dallas, TX

District Nominating Committee for District 6—Chair: Cynthia E. Besek

➤ Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Cynthia E. Besek	Maplewood Investment Advisors, Inc.	Dallas, TX
Bryan T. Emerson	Starlight Investments, LLC	Houston, TX
Brent T. Johnson	Multi-Financial Securities Corporation	Houston, TX
William H. Lowell	Lowell & Company, Inc.	Lubbock, TX
Michael A. Pagano	1st Global Capital Corp.	Dallas, TX

District 7

Georgia, North Carolina and South Carolina

Daniel J. Stefek, Associate Vice President and District Director

One Securities Centre
Suite 500, 3490 Piedmont Road, NE, Atlanta, GA 30305
(404) 239-6100
(404) 237-9290 fax

Florida, Puerto Rico, the Canal Zone and the Virgin Islands

Mitchell C. Atkins, Vice President and District Director

Crystal Corporate Center
2500 N. Military Trail, Suite 302, Boca Raton, FL 33431
(561) 443-8000
(561) 443-7995 fax

District Committee for District 7—Chair: Ronald J. Kovack

- Committee members to be elected to terms expiring May 31, 2012: 3
- Committee members to be elected to terms expiring May 31, 2010: 1

Committee Members to Serve Until May 31, 2009

Marc A. Ellis	GunnAllen Financial, Inc.	Tampa, FL
Ronald J. Kovack	Kovack Securities, Inc.	Ft. Lauderdale, FL
Ruth A. Burgess	INVEST Financial Corp.	Tampa, FL

Committee Members to Serve Until May 31, 2010

Jed E. Bandes	Mutual Trust Co. of America Securities	Clearwater, FL
Karen Z. Fischer	Hunter Scott Financial, LLC	Delray Beach, FL
[VACANT]		

Committee Members to Serve Until May 31, 2011

Richard K Bryant	Capital Investment Group, Inc.	Raleigh, NC
Matthew A. Guerrise	FMSBonds, Inc.	Boca Raton, FL
Raymond H. Smith, Jr.	Smith, Brown & Groover, Inc.	Macon, GA

District Nominating Committee for District 7—Chair: Kenneth W. McGrath

- Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Richard G. Averitt	Raymond James Financial Services, Inc.	St. Petersburg, FL
William G. McMaster	Scott & Stringfellow, Inc.	Columbia, NC
Charles F. O'Kelley	Atlantic Coast Securities Corporation	Tampa, FL
Kenneth W. McGrath	Popular Securities, Inc.	San Juan, PR
Alan L. Maxwell, Jr.	Wachovia Capital Markets, LLC	Charlotte, NC

District 8

Illinois, Indiana, Kentucky, Michigan, Ohio and Wisconsin

Carla A. Romano, Senior Vice President and Regional Director, Midwest Region

55 West Monroe Street, Suite 2700, Chicago, IL 60603-5052 (312) 899-4400
(312) 899-4399 fax

District Committee for District 8—Chair: Stephen F. Anderson

➤ Committee members to be elected to terms expiring May 31, 2012: 3

Committee Members to Serve Until May 31, 2009

Stephen F. Anderson	Waterstone Financial Group, Inc.	Itasca, IL
Eric A. Bederman	Bernardi Securities, Inc.	Chicago, IL
Barbara A. Turner	The O.N. Equity Sales Company	Cincinnati, OH

Committee Members to Serve Until May 31, 2010

Joel R. Blumenschein	Freedom Investors Corp.	Brookfield, WI
Thomas A. Bono	David A. Noyes & Company	Oak Park, IL
Steven J. Greenwald	Telemus Investment Brokers, LLC	Southfield, MI

Committee Members to Serve Until May 31, 2011

Jeffry F. Freiburger	Robert W. Baird & Co.	Milwaukee, WI
Edward A. Horwitz	Horwitz & Associates, Inc.	Riverwoods, IL
James P. Miller	SII Investments, Inc.	Appleton, WI

District Nominating Committee for District 8—Chair: Mari Buechner

➤ Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Richard M. Arceci	ValMark Securities, Inc.	Akron, OH
Michael E. Bosway	City Securities Corporation	Indianapolis, IN
Mari Buechner	Coordinated Capital Securities, Inc.	Madison, WI
Ronald J. Dieckman	J.J.B. Hilliard, W.L. Lyons, Inc.	Louisville, KY
Thomas M. McDonald	Thomas McDonald Partners, LLC	Cleveland, OH

District 9

New Jersey and New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City)

Gary K. Liebowitz, Senior Vice President and Regional Director, North Region

581 Main Street, 7th Floor, Woodbridge, NJ 07095 (732) 596-2025
(732) 596-2001 fax

Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia

Robert B. Kaplan, District Director

1835 Market Street, Suite 1900, Philadelphia, PA 19103 (215) 963-1992
(215) 963-7442 fax

District Committee for District 9—Chair: Timothy L. Smith

➤ Committee members to be elected to terms expiring May 31, 2012: 3

Committee Members to Serve Until May 31, 2009

John M. Ivan	Janney Montgomery Scott LLC	Philadelphia, PA
Kenneth I. Schindler	Prudential Investment Management Svcs.	Newark, NJ
Thomas T. Wallace	Johnston, Lemon & Co. Incorporated	Washington, DC

Committee Members to Serve Until May 31, 2010

Wayne F. Holly	Sage Rutty & Co.	Rochester, NY
Richard Seelaus	R. Seelaus & Co., Inc.	Summit, NJ
Timothy L. Smith	Comprehensive Asset Management and Servicing, Inc.	Parsippany, NJ

Committee Members to Serve Until May 31, 2011

Nancy L. H. Boyd	Lincoln Investment Planning, Inc.	Wyncote, PA
Celeste Leonard	First Montauk Securities Corp.	Red Bank, NJ
Sarah McCafferty	T. Rowe Price Investment Services, Inc.	Baltimore, MD

District Nominating Committee for District 9—Chair: A. Louis Denton

➤ Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Michael T. Corrao	Knight Equity Markets, LP	Jersey City, NJ
A. Louis Denton	Petersen Investments, Inc.	Blue Bell, PA
Richard Grobman	Oppenheimer & Co. Inc.	Philadelphia, PA
John P. Meegan	Hefren-Tillotson, Inc.	Pittsburgh, PA
Stephen M. Youhn	Lincoln Financial Advisors Corporation	Philadelphia, PA

District 10

New York (the counties of Nassau and Suffolk, and the five boroughs of New York City)

Hans L. Reich, Senior Vice President and Regional Director, New York Region

One Liberty Plaza, 49th Floor, 165 Broadway, New York, NY 10006 (212) 858-4000
(212) 858-4078 fax

District Committee for District 10—Chair: Allen Meyer

- Committee members to be elected to terms expiring May 31, 2012: 4
- Committee member to be elected to term expiring May 31, 2011: 1

Committee Members to Serve Until May 31, 2009

Barry M. Cash	Citigroup Global Markets Inc.	New York, NY
Robyn Jeffrey	Oppenheimer & Co. Inc.	New York, NY
Allen Meyer	Credit Suisse First Boston LLC	New York, NY
[VACANT]		

Committee Members to Serve Until May 31, 2010

James A. Brodie	Jesup & Lamont Securities Corp.	New York, NY
Kathryn G. Casparian	CIBC World Markets Corp.	New York, NY
Paul S. Ehrenstein	Zenith American Securities Corp.	New York, NY
James D. Lamke	Bear, Stearns & Co. Inc.	New York, NY

Committee Members to Serve Until May 31, 2011

Eric L. Kriftcher	Banc of America Securities LLC	New York, NY
Thomas J. Santucci	Royal Alliance Associates, Inc.	Garden City, NY
David M. Sobel	Abel/Noser Corp.	New York, NY
[VACANT]*		

District Nominating Committee for District 10—Chair: Vacant

- Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2009

Lon T. Dolber	American Portfolios Financial Services	Holbrook, NY
Clifford H. Goldman	Marco Polo Securities Inc.	New York, NY
Judith R. MacDonald	Rothschild Inc.	New York, NY
Howard R. Plotkin	Lehman Brothers Inc.	New York, NY
Howard Spindel	Integrated Management Solutions USA LLC	New York, NY

* Vlad Uchenik of Jesup & Lamont Securities in New York, NY, was appointed to replace a resigning Committee member and is currently serving in this position until elections are held.

District 11

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont

Robert M. Sulik, Associate District Director

99 High Street, Suite 900, Boston MA 02110 (617) 532-3418
(617) 451-3524 fax

District Committee for District 11—Chair: Michael E. Callaghan

➤ Committee members to be elected to terms expiring May 31, 2012: 3

Committee Members to Serve Until May 31, 2009

Martin W. Courage	Bank of America Investment Services	Boston, MA
Robert J. Reilly	Barclays Capital	Boston, MA
Edward J. Wiles, Jr.	Genworth Financial Securities Corp.	Stamford, CT

Committee Members to Serve Until May 31, 2010

Michael E. Callaghan	Harvest Capital LLC	Wethersfield, CT
Tina Blakely Maloney	Winslow, Evans & Crocker	Boston, MA
David J. Freniere	LPL Financial Corporation	Boston, MA

Committee Members to Serve Until May 31, 2011

Vincent M. Manzi	State Street Global Markets, LLC	Boston, MA
Victoria L. Olson	Prudential Annuities Distributors	Shelton, CT
Stephen L. Schardin	Charles River Brokerage, LLC	Burlington, MA

District Nominating Committee for District 11—Chair: Thomas J. Horack

➤ Committee members to be elected to terms expiring May 31, 2010: 5

Committee Members to Serve Until May 31, 2010

David K. Booth	Lincoln Financial Securities Corporation	Concord, NH
John I. Fitzgerald	Leerink Swann, LLC	Boston, MA
Joseph Gritzer	USI Securities, Inc.	Glastonbury, CT
Thomas Horack	Signator Investors, Inc.	Boston, MA
Curtis L. Snyder	American Technology Research, Inc.	Greenwich, CT

Attachment B—Procedures for Electing District Committee and District Nominating Committee Members

1. Each FINRA District shall maintain a District Committee and District Nominating Committee in the manner specified in Article VIII of FINRA Regulation's By-Laws.
2. FINRA's Corporate Secretary has sent a letter to each District Nominating Committee member and each District Director identifying the members of the District Committee and the District Nominating Committee whose terms expire on May 31, 2009. The letter described the election procedures to be followed in filling these positions.
3. FINRA will email a reminder to all member firms of their responsibility, and obligation, to keep current and accurate the information on their Executive Representative. The email will contain a reference to the FINRA Contact System, located on FINRA's Web site at *http://www.finra.org/fcs*, for changing a firm's Executive Representative name, email and postal address. This email will note that failure to keep this information accurate may jeopardize the firm's ability to participate in the district elections, as well as in other votes.
4. FINRA will send an *Election Notice* announcing the forthcoming elections to all member firms and the Executive Representative of all FINRA member firms eligible to vote in each district. The Election Notice will describe the election procedures and identify the number of positions to be filled in each district and the incumbent members of each District Committee. Individuals who are interested in serving on the District Committee or the District Nominating Committee within their district must complete a candidate profile form and submit it by hand delivery, courier service, mail or facsimile to the District Director. Completed candidate profile forms must be received by the District Director on or before **January 16, 2009**. Candidate profile forms received after this date will not be considered.
5. Completed candidate profile forms received by the District Director on or before **January 16, 2009**, will be provided to all members of the appropriate District Nominating Committee for review. FINRA also will provide the District Nominating Committee members with information considered to be relevant to the nomination process and analytical data pertaining to the district's membership. Soon after receiving the candidate profile forms and district membership information, the District Nominating Committee will identify and solicit candidates to nominate for election to the District Committee and the District Nominating Committee.

6. In determining its slate of candidates for the election, the District Nominating Committee will review the background and qualifications of the proposed candidates, and endeavor to secure appropriate and fair representation on the District Committee and on the District Nominating Committee of the various sections of the district and various classes and types of FINRA members engaged in the investment banking or securities business within the district. The slate must include the same number of nominees as there are positions to be filled on the District Committee and the District Nominating Committee.

   A District Nominating Committee may not nominate more than two incumbent members of the District Nominating Committee to succeed themselves. Each District Nominating Committee member shall: (1) be registered with a FINRA member firm eligible to vote in the district for District Committee elections, and (2) work primarily from such FINRA member firm's principal office or a branch office that is located within the district where the member firm serves on a District Nominating Committee, but shall not be a member of the District Committee. A majority of the members of the District Nominating Committee must include persons who previously have served on a District Committee, as a current or former Director of the FINRA Regulation Board, or as a current or former Governor of the FINRA Board, or its predecessors.

   A District Nominating Committee shall not nominate an incumbent member of the District Committee to succeed himself or herself on the District Committee unless the incumbent member of the District Committee was appointed to fill a vacancy on the District Committee resulting from (1) death, resignation, removal, or other cause of a regularly elected member's office prior to the expiration of the full term or (2) a newly created membership on a District Committee by virtue of an increase in the authorized number of members on the District Committee. Each District Committee member shall: (1) be registered with a FINRA member firm eligible to vote in the district for District Committee elections, and (2) work primarily from such FINRA member firm's principal office or a branch office that is located within the district where the member serves on a District Committee. District Committee members may not serve more than two consecutive terms.

   The District Nominating Committee may also nominate one alternate candidate for the District Committee and one alternate candidate for the District Nominating Committee. In the event of an uncontested election pursuant to Article VIII, Section 8.19 of FINRA Regulation's By-Laws, the alternate candidate would replace any member of the nominated slate of candidates who withdrew or was determined to be ineligible.

7. On or before **February 13, 2009**, the District Director, acting on behalf of the District Nominating Committee, will notify FINRA's Corporate Secretary of each candidate nominated by the District Nominating Committee and the committee and, if applicable, class to which the candidate is nominated.

8. On or before **February 23, 2009**, FINRA will send a second *Election Notice* to the District Committees and the Executive Representatives of FINRA member firms eligible to vote in each district, identifying the nominees for the District Committees and the District Nominating Committees.

   If the District Nominating Committee nominates the same number of nominees as there are positions to be filled on the District Committee and the District Nominating Committee and no additional candidate comes forward by delivering written notice to the appropriate District Director within 14 calendar days after the date of the second *Election Notice* identifying the district nominees, the candidates nominated by the District Nominating Committee are considered duly elected.

9. If a person who is otherwise eligible to serve on the District Committee or the District Nominating Committee was not nominated by the District Nominating Committee and wants to be considered for election as an additional candidate, he or she must notify the District Director in writing within 14 calendar days after the date of the second *Election Notice* referenced in item 8 above. The District Director must make a written record of the time and date of the receipt of such notification. Such person will be designated as an "additional candidate."

10. Promptly following receipt of the additional candidate's timely notice by the District Director, FINRA's Corporate Secretary will provide to the additional candidate a list of all FINRA member firms eligible to vote in the district, their mailing addresses and their Executive Representatives.

11. An additional candidate is considered nominated if a petition signed by the Executive Representative of at least 10 percent of the FINRA member firms eligible to vote in the district is filed with the District Nominating Committee within 30 calendar days after the mailing date of the list to the additional candidate referenced in item 10 above.

12. If an additional candidate secures the required petition within the 30-day designated timeframe, the election is considered a contested election. The Corporate Secretary of FINRA will send a third *Election Notice* to the Executive Representatives of the FINRA member firms eligible to vote in the district announcing the names of all candidates and describing the contested election procedures.

Additional information pertaining to the District Committee and District Nominating Committee Election Procedures may be found in Article VIII of FINRA Regulation's By-Laws.

Attachment C—District Election Candidate Profile Form

Indicate the position for which you wish to be considered:

☐ District Committee **OR** ☐ District Nominating Committee

For which District: _____

Current Registration

Name: _____ CRD#: _____

Firm Name: _____ Firm#: _____

Title/Primary Responsibility: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Fax: _____

Email: _____

Prior Registration *(List the most recent first. Feel free to include extra pages if necessary.)*

Firm: _____

Title/Primary Responsibility: _____

Firm: _____

Title/Primary Responsibility: _____

General Areas of Expertise
(please check all that apply)

- ☐ Compliance/Legal
- ☐ Corporate Finance
- ☐ Financial/Operational
- ☐ Institutional Sales
- ☐ Investment Advisory
- ☐ Retail Sales
- ☐ Trading/ Market Making
- ☐ Other

Product Expertise
(please check all that apply)

- ☐ Corporate Bonds
- ☐ Direct Participation Programs
- ☐ Equity Securities
- ☐ Municipal/ Government Securities
- ☐ Investment Company
- ☐ Options
- ☐ Variable Contracts Securities
- ☐ Other

Memberships/Positions in Trade or Business Organizations

_____

_____

Past NASD or FINRA Experience and Dates of Service *(please check all that apply)*

- ☐ Committee Member *(identify committee)*: _____ Approx. Dates: _____
- ☐ Arbitrator Approx. Dates: _____
- ☐ Mediator Approx. Dates: _____
- ☐ Expert Witness *(arbitrations; disciplinary proceedings)* Approx. Dates: _____
- ☐ Other: _____ Approx. Dates: _____

Educational Background

School: _____ Degree: _____

School: _____ Degree: _____

Return completed candidate profile forms to the appropriate District Director on or before January 16, 2009.

Information Notice

Public Company Accounting Oversight Board Registration Relief Expired December 31, 2008

January 8, 2009

Suggested Routing

- Compliance
- Financial Reporting
- Legal
- Senior Management

Key Topics

- Annual Financial Audit

Referenced Rules & Notices

- Sarbanes-Oxley Act of 2002
- SEA Rule 17a-5(f)(4)

Executive Summary

FINRA is issuing this *Notice* to remind firms that the SEC's December 12, 2006, Order[1] permitting non-public broker-dealer firms to have their balance sheet and income statements audited by independent public accounting firms not registered with the Public Company Accounting Oversight Board (PCAOB) expired December 31, 2008.

Firms whose fiscal year ends December 31, 2008, or earlier may continue to rely on the December 12, 2006, SEC Order to conduct the 2008 annual financial audit of their income statement and balance sheet. Their fiscal year 2009 and subsequent audits must, however, be conducted by a PCAOB-registered accounting firm.

Firms whose fiscal year ends after December 31, 2008, must comply with the section of the Sarbanes-Oxley Act of 2002 that requires that their financial statements be audited by a PCAOB-registered accounting firm.

A small number of firms have fiscal years that end in January or February but do not have PCAOB-registered accountants. FINRA will contact these firms to ensure timely compliance with the requirement to have an audit conducted by a PCAOB-registered audit firm in light of the limited time available to obtain a PCAOB-registered accountant.

Questions concerning this *Notice* should be directed to Chip Jones, Vice President, Member Relations, at (240) 386-4797; or Susan DeMando, Associate Vice President, Financial Operations, at (202) 728-8411.

FINRA™
Financial Industry Regulatory Authority

Background & Discussion

The Sarbanes-Oxley Act of 2002 established the PCAOB and amended Section 17(e) of the Securities Exchange Act of 1934 to replace the requirement of an audit by "an independent public accountant" with an audit by "a registered public accounting firm," meaning a public accounting firm registered with the PCAOB.

The SEC issued a temporary order on August 4, 2003,[2] permitting non-public broker-dealers to file with the SEC and send to their customers documents and information required by Section 17(e) certified by an independent public accountant instead of by a PCAOB-registered public accounting firm. That temporary order was extended on July 14, 2004,[3] December 7, 2005[4] and, finally, on December 12, 2006.

Expiration of December 12, 2006, Order

The SEC has not extended its December 12, 2006, extension order—and has not announced plans to do so—and thus it expired on December 31, 2008.

Because that order covered non-public firms whose fiscal year ended on or before the December 31, 2008, deadline, those firms can use a non-PCAOB-registered accounting firm to audit their balance sheets and income statements for 2008, but not for 2009 and subsequent fiscal years.

All non-public firms whose fiscal year ends after December 31, 2008, must comply with the Sarbanes-Oxley Act of 2002 and have their financial statements audited by a PCAOB-registered accounting firm.

Audit Due Date

Less than 1 percent of firms have a fiscal year that ends in January or February. FINRA recognizes the limited time that these firms have to obtain a PCAOB-registered accounting firm for their audit of the fiscal year that is about to close, and will contact them to discuss the requirement to have an audit conducted by a PCAOB-registered audit firm and their compliance.

Additional Information

Firms can find a list of PCAOB-registered accounting firms at *www.pcaobus.org*. That site also provides information on how accounting firms that are not yet registered can become PCAOB-registered.

Firms that change their accounting firms are reminded of their obligations under SEC Rule 17a-5(f)(4) (Replacement of Accountant) to file a notice with the SEC within 15 days of termination of their previous auditor.

Endnotes

1 Exchange Act Release No. 54920, 71 FR 75779 (December 18, 2006).

2 Exchange Act Release No. 48281, 68 FR 47375 (August 8, 2003).

3 Exchange Act Release No. 50020, 69 FR 43482 (July 20, 2004).

4 Exchange Act Release No. 52909, 70 FR 73809 (December 13, 2005).

Disciplinary and Other FINRA Actions

Firms Expelled, Individuals Sanctioned

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 National Adjudicatory Council (NAC) imposed the sanctions following appeal of an Office of Hearing Officers (OHO) decision. 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 NAC further found that Cotto failed to produce certain documents at a FINRA on-the-record interview, and the firm, acting through Cotto, failed to respond fully and completely to additional FINRA requests for information. The NAC also found that Cotto willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer (Form U4) to disclose material information. The findings also included that the firm, acting through Cotto, willfully filed false or inaccurate amendments to its Uniform Application for Broker-Dealer Registration (Form BD). **(FINRA Case #2005001305701)**

Malory Investments, LLC (CRD #110936, Los Angeles, California) and Ronald Stein (CRD #434761, Registered Principal, Los Angeles, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was expelled from FINRA membership and Stein was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, the firm and Stein consented to the described sanctions and to the entry of findings that they failed to respond to FINRA requests for information and documents. The findings stated that Stein failed to respond to a FINRA request to appear for an on-the-record interview. **(FINRA Case #2007011152802)**

Reported for January 2009

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

Firm Fined, Individual Sanctioned

First Dallas Securities, Inc. (CRD #24549, Dallas, Texas) and Eric Jay Marshall (CRD #2981115, Registered Principal, Grapevine, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $50,000, $10,000 of which was jointly and severally with Marshall. Marshall was fined an additional $5,428.07, which included $428.07 in disgorgement of trading profits, and was suspended from association with any FINRA member as a research analyst for 15 days. Without admitting or denying the findings, the firm and Marshall consented to the described sanctions and to the entry of findings that the firm permitted Marshall and another individual to execute trades in covered securities during a period beginning 30 calendar days prior to and ending five calendar days after publishing research reports concerning the subject companies. The findings stated that the firm permitted Marshall to trade in a manner that was inconsistent with his recommendation, as reflected in the most recent research report the firm published. The findings also included that the firm and Marshall provided a subject company with a draft copy of a research report that contained prohibited information before the report was published. FINRA found that the firm, acting through Marshall, issued research reports that failed to disclose that Marshall and/or a member of his household had a financial interest in the securities of the subject company and the nature of the financial interest. FINRA also found that the firm failed to affirmatively disclose in one research report that an affiliate owned more than one percent of a subject company's common equity securities, and failed to disclose in research reports the risks that may have impeded achievement of the price target stated in each report.

In addition, FINRA determined that the firm's research reports did not include clear, comprehensive and prominent disclosures regarding whether it or any of its affiliates, officers or employees held interests in the subject companies' securities. Moreover, FINRA determined that the firm failed to develop and implement adequate written supervisory procedures reasonably designed to ensure that the firm and its employees complied with the provisions of NASD Rule 2711. Furthermore, FINRA found that the firm failed to provide an attestation to FINRA for a year that it had adopted and implemented procedures regarding compliance with NASD Rule 2711, and failed to develop and implement any written supervisory procedures concerning watch or restriction lists. FINRA also found that the firm failed to develop and implement a Firm Element Continuing Education program, specifically, to develop a written training plan for its covered registered persons.

The suspension was in effect from December 1, 2008, through December 15, 2008. **(FINRA Case #2007007161501)**

Firms Fined

Albert Fried & Company, LLC (CRD # 1914, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $15,000 and required to revise its written supervisory procedures regarding riskless principal trade reporting; short sale trade reporting; trades reported on the firm's behalf; SEC Rules

203(b)(3)(iii), 203(g), 604 and 606; best execution of customer orders; the three quote rule; NASD Rule 2110 and Interpretative Material 2110-2; NASD Rule 2111 quoting in subject securities as a non-market maker; anti-intimidation/coordination; trading halts; quoting in multiple quotation systems; soft dollar accounts and trading; registration status of employees; continuing education; best execution of not held or specially-priced orders; best execution of volume-weighted average price transactions; and the Order Audit Trail System (OATS) clock. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it reported to the NASD/NASDAQ Trade Reporting Facility (NNTRF) last sale reports of transactions in designated securities it was not required to report; incorrectly reported the second leg of "riskless" principal transactions as "principal" to the NNTRF; failed to submit to the NNTRF, for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity indicator of "riskless principal"; and failed to report the correct execution time to the NNTRF in one last sale report of a transaction in a designated security.

The findings stated that the firm reported to the Over-the-Counter (OTC) Reporting Facility (OTCRF) last sale reports of transactions in OTC equity securities it was not required to report; incorrectly reported the second leg of "riskless" principal transactions as "principal" to the OTCRF; and failed to report to the OTCRF the correct symbol indicating whether the transaction was a buy, sell or cross in a last sale report of a transaction. The findings also stated that the firm failed to report to the OTCRF the correct symbol indicating whether it executed transactions in reportable securities in a principal, riskless principal or agency capacity; failed to report to the OTCRF the correct symbol indicating whether transactions were buy, sell, sell short or cross for transactions in reportable securities; and failed to decline transactions in reportable securities within 20 minutes after execution when, as the order identifying firm (OEID), the firm was obligated to do so.

The findings also included that the firm failed to provide documentary evidence that it performed the supervisory reviews set forth in its written supervisory procedures concerning riskless principal trade reporting; short sale trade reporting; trades reported on the firm's behalf; SEC Rules 203(b)(3)(iii), 203(g), 604 and 606; best execution of customer orders; the three quote rule; NASD Rule 2110, Interpretative Material 2110-2 and NASD Rule 2111; quoting in subject securities as a non-market maker; anti-intimidation/coordination; trading halts; quoting in multiple quotation systems; soft dollar accounts and trading; registration status of employees; and continuing education. FINRA found that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules addressing minimum requirements for adequate written supervisory procedures in the following areas: three quote rule; anti-intimidation; riskless principal trade reporting; short sale reporting; trading halts; soft dollars; best execution of not held or specially-priced orders; best execution of volume-weighted average price transactions; continuing education; and the Order Audit Trail System (OATS) clock. **(FINRA Case #2007008339001)**

Carlton Capital, Inc. (CRD #42533, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $40,000, required to comply with the requirements of the Taping Rule, NASD Rule 3010(b)(2) until February 17, 2012, (an additional three years), and retain an independent consultant to conduct a comprehensive review of the adequacy of its policies, systems and procedures (written and otherwise) and training related to compliance with the Taping Rule, and adopt and implement the consultant's recommendations. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to comply with the Taping Rule, in that it provided certain representatives with access to unrecorded telephone lines, allowed representatives to accept customer orders on unrecorded telephone lines when the representatives were out of the office, and failed to catalog tape recordings that registered persons had made. The findings stated that, during a later period, the firm installed a new system that recorded telephone calls to the hard drives of the computers on representatives' desks, which was not password protected and was backed up by the firm only once a year, and which allowed representatives access to erase recorded telephone calls. **(FINRA Case #2006003684702)**

CIBC World Markets Corp. (CRD #630, New York, New York) 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, within 90 seconds after execution, to transmit to the NASDAQ Market Center (NMC) last sale reports of transactions in OTC equity securities, and failed to designate some of them as late. The findings stated that the firm failed to report the correct execution time to the NMC in late, last sale reports of transactions in OTC equity securities; failed to submit to the NMC, for the offsetting, "riskless" portion of "riskless" principal transactions in OTC securities, either a clearing-only report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The findings also stated that the firm incorrectly reported the second leg of "riskless" principal transactions as "principal" to the NMC. **(FINRA Case #2006004157601)**

Daiwa Securities America Inc. (CRD #1576, 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 transmitted inaccurate data to OATS. The findings stated that the firm submitted limit orders with a limit order display indicator of "Y" (Yes), which indicated that it had received instructions from customers that a non-block limit order should not be displayed when no such instructions had been received. **(FINRA Case #2007008916801)**

Domestic Securities, Inc. (CRD #34721, Montvale, New Jersey) was fined $10,000 and ordered to revise its Anti-Money Laundering (AML) policies and procedures and certify its compliance to FINRA within 30 days of the final decision, and quarterly for one year thereafter. The NAC imposed the sanctions following a call for review of an OHO decision. The sanctions were based on findings that the firm failed to develop and implement written AML policies and procedures reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act and the Treasury's implementing regulations including policies and procedures to detect and report

suspicious activity. The findings stated that, while the firm had AML policies and procedures in effect for retail transactions, it did not have the requisite AML policies and procedures in effect for its market-marking activities. **(FINRA Case #2005001819101)**

Financo Securities LLC (CRD #128592, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $55,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to maintain copies of electronic communications as required by Section 17(a) of the Securities Exchange Act of 1934. The findings stated that the firm failed to create or maintain a written Business Continuity Plan (BCP) as required by NASD Rule 3510. **(FINRA Case #2008011738201)**

GFI Securities LLC (CRD #19982, 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 failed to report to the Trade Reporting and Compliance Engine (TRACE) transactions in TRACE-eligible securities within 15 minutes of execution time. **(FINRA Case #2007010304701)**

Goldman Sachs Execution & Clearing, L.P. (CRD #3466, Jersey City, New Jersey) 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 submitted route reports that OATS was unable to match to the corresponding new order the firm submitted because of inaccurate data. The findings stated that the firm incorrectly submitted a special handling code of "Not Held" to OATS, and submitted incorrect "NW," "RT" and "OR" reports. The findings also stated that the firm made a report available on the covered orders in national market system securities it received for execution from any person in which the firm made incorrect information available as to the average effective spread and average realized spread for execution of covered orders. The findings also included that the firm failed to report to the TRF the correct symbol indicating whether a transaction was a buy, sell, sell short, sell short exempt or cross for transactions in reportable securities. **(FINRA Case #2006005524101)**

H. Beck, Inc. (CRD #1763, Rockville, Maryland) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $17,500 and required to revise its written supervisory proceedings regarding OATS reporting. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to transmit required information to OATS. 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 FINRA rules concerning OATS reporting. **(FINRA Case #2007008928801)**

ITG Inc. (CRD #29299, New York, New York) 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 accepted short sale orders in an equity security from another person, or effected a short sale in an equity security for its own account, without borrowing the

security or entering into a bona fide arrangement to borrow the security; or having reasonable grounds to believe that the security could be borrowed so that it could be delivered on the date delivery is due; and documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. **(FINRA Case #2006005191701)**

Merrill Lynch Professional Clearing Corp. (CRD #16139, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $100,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to properly compute and maintain its proprietary account of an introducing broker (PAIB) customer reserve formula requirements, causing its Special Reserve Bank Account for the Exclusive Benefit for its customers to be underfunded. The findings stated that the firm filed inaccurate Financial and Operational Combined Uniform Single (FOCUS) reports with the New York Stock Exchange. The findings also stated that the firm failed to make and maintain accurate records identifying proprietary accounts necessary for computation of its PAIB reserve formula requirement. The findings also included that the firm failed to provide for reasonable supervision of certain business activities to detect and prevent these violations. **(FINRA Case #2007009473301)**

Pacific Growth Equities (CRD #24835, San Francisco, California) 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 published research reports about companies within 40 calendar days following the date of the subject company's initial public offering (IPO) when it had acted as the manager or co-manager of the IPO; or within 15 days prior to and after the expiration, waiver or termination of a lock-up agreement or any other agreement that it had entered into with a subject company or its shareholders that restricted or prohibited the sale of securities held by the company or its shareholders after the completion of a securities offering. The findings stated that the firm published research reports on various companies and failed to disclose whether it or any of its affiliates managed or co-managed a public offering for the company in the past 12 months, received compensation for investment banking services from the company in the past 12 months, or expected to receive compensation for investment banking services from the company within the following three months. The findings also stated that the firm published research reports on various companies and failed to disclose that it was making a market in the company's securities at the time the research report was published, and failed to establish and maintain adequate written supervisory procedures reasonably designed to achieve compliance with NASD Rule 2711. **(FINRA Case #2007007188601)**

Peacock, Hislop, Staley & Given, Inc. (CRD # 21477, Phoenix, Arizona) 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 sold (bought) corporate bonds to (from) public customers and failed to sell (buy) the bonds at a price that was fair, taking into consideration all relevant circumstances, including market conditions with respect to each bond at the time of the transaction, the expense involved and that the firm was entitled to a profit. **(FINRA Case #2006004983701)**

Stanford Group Company (CRD #39285, Houston, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $30,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to disclose in research reports that it had received compensation for investment services from the company during the 12-month period that preceded the publication of the research report. The findings stated that the firm failed to include required price charts in research reports, failed to disclose in research reports the valuation methods used to determine the stated price target and/or the risks that may impede achievement of the price target, and failed to disclose in research reports that it was making a market in the company's securities at the time the reports were published. The findings also stated that the firm failed to provide clear, comprehensive and prominent disclosures in published research reports regarding whether it or any of its affiliates, officers or employees held interests in the securities of the companies, or whether it had managed or co-managed a public offering of the companies' securities. The findings also included that the firm failed to adopt and implement written supervisory procedures reasonably designed to ensure that it and its employees reviewed and approved research reports prior to dissemination to the public. **(FINRA Case #2007007168001)**

Sterne, Agee & Leach, Inc. (CRD #791, Birmingham, Alabama) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $53,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to publish accurate order execution information in order type/size categories, failed to accurately classify orders for the purpose of calculating order execution information and to classify orders for calculating SEC Rule 605 data, failed to transmit required information to OATS, failed to transmit combined new order/order execution reports to OATS, and failed to transmit an execution report and new order reports to OATS.

The findings stated that the firm, when it acted as a principal, failed to provide written notification disclosing to its customers the commission equivalent, the reported price, that it was a market maker in each security, and that the transaction was executed at an average price. The findings also stated that the firm disclosed an incorrect capacity, incorrectly disclosed that the transaction was executed at an average price and failed to denote the correct price. The findings also stated that when the firm acted in an agency capacity, it failed to provide written notification separately disclosing commission and transaction fees. The findings also included that the firm transmitted reports to OATS that contained inaccurate execution times, failed to transmit cancel/replace events related to an OATS order and erroneously submitted a route report to OATS. FINRA found that the firm failed to report transactions in TRACE-eligible securities to TRACE within 15 minutes of execution time that the firm was required to report to TRACE, and reported to TRACE transactions in TRACE-eligible securities it was not required to report. FINRA also found that the firm failed to report information regarding purchase and sale transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS) within 15 minutes of time of trade. In addition, FINRA

determined that the firm failed to include the special capacity indicator when it reported transactions to the RTRS and improperly reported information it should not have when inter-dealer deliveries were "step outs" and, thus, were not inter-dealer transactions reportable to the RTRS. **(FINRA Case #2006004292701)**

Tradition Asiel Securities, Inc. (CRD #28269, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined $18,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it double-reported transactions in OTC equity securities to the OTCRF and double-reported transactions in eligible securities to the NNTRF. The findings stated that the firm failed to report to the NNTRF the cancellation of trades previously submitted to the NNTRF; failed to report the correct trade-through exemption modifier for transactions in eligible securities; and failed to submit, for the offsetting, "riskless" portion of "riskless" principal transactions in designated securities, either a clearing-only report with a capacity indicator of "riskless principal" or a non-tape, non-clearing report with a capacity indicator of "riskless principal." The findings also stated that the firm failed to provide written notification disclosing to its customers that transactions were executed at an average price. The findings also included that the firm failed to show the correct execution and entry times on brokerage order memoranda, and failed to preserve brokerage order memoranda for a period of not less than three years, the first two in an accessible place. **(FINRA Case #2007010654301)**

UBS Securities LLC (CRD #7654, Stamford, Connecticut) 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 transmitted to OATS Reportable Order Events (ROEs) that were rejected by OATS for context or syntax errors, and the firm failed to repair most of the rejected ROEs. **(FINRA Case #2006004145001)**

Wedbush Morgan Securities (CRD #877, Los Angeles, California) 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 timely report ROEs to OATS for secondary firm market participant identifiers. **(FINRA Case #2006007031101)**

Western International Securities, Inc. (CRD #39262, Pasadena, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined $12,500, ordered to pay $2,199, plus interest, in restitution to public customers, and required to revise its written supervisory procedures regarding fair prices and commissions. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it purchased or sold corporate bonds from or to customers and failed to purchase or sell the bonds at a price that was fair, taking into consideration all relevant circumstances, including market conditions with respect to each bond at the time of the transaction, the expense involved and that the firm was entitled to a profit. 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 FINRA rules concerning fair prices and commissions. **(FINRA Case #2006004976901)**

Westrock Advisors, Inc. (CRD #114338, New York, New York) 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 failed to establish and maintain an adequate supervisory system, in that the firm failed to assign a supervisor to a registered representative and producing branch office manager, and failed to include in its written report of an inspection and review of a branch office certain required topics, including the testing and verification of its supervisory policies and procedures regarding the transmittal of funds between customers and registered representatives. The findings stated that the firm failed to establish, maintain and enforce written supervisory control procedures relating to the analysis and determination of whether producing branch office managers should have been subjected to heightened supervision, and the requirement that firms review and monitor the transmittal of funds between customers and registered representatives. **(FINRA Case #2006006719102)**

Individuals Barred or Suspended

Stanley James Allen Jr. (CRD #1243941, Registered Principal, Scottsdale, Arizona) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $15,000 and suspended from association with any FINRA member in any principal capacity for one year. Without admitting or denying the findings, Allen consented to the described sanctions and to the entry of findings that he failed to reasonably supervise an individual and to review transactions of a branch office's representatives for suitability. The findings stated that, as a result, Allen failed to detect or prevent the representatives from making unsuitable recommendations to invest in inverse floaters to public customers with little to no investment experience and conservative risk profiles. The findings also stated that the customers lost millions of dollars from the unsuitable recommendations.

The suspension is in effect from December 1, 2008, through November 30, 2009. **(FINRA Case #2006005546006)**

Noah James Aulwes (CRD#1380136, Registered Representative, Cedar Rapids, Iowa) 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 one year. The fine must be paid before Aulwes reassociates with any FINRA member following his suspension, or prior to any application or request for relief from any statutory disqualification, whichever is earlier. Without admitting or denying the findings, Aulwes consented to the described sanctions and to the entry of findings that he engaged in outside business activity, for compensation, without prompt written notice to his member firm. The findings stated that Aulwes participated in private securities transactions without prior written notice to, and written approval or acknowledgement from, his member firm.

The suspension is in effect from December 1, 2008, through November 30, 2009. **(FINRA Case #2007009254101)**

Patrick Allen Bruns (CRD #3048724, Registered Principal, Champaign, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for six months. In light of Bruns' financial status, no monetary sanctions were imposed. Without admitting or denying the findings, Bruns consented to the described sanction and to the entry of findings that he engaged in private securities transactions, for compensation, without prior written notice to, or prior written approval from, his member firm.

The suspension is in effect from December 15, 2008, through June 14, 2009. **(FINRA Case #2007009303601)**

Raymond Michael Burghard (CRD #2546053, Registered Representative, Spring Hill, Tennessee) 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, Burghard consented to the described sanction and to the entry of findings that he engaged in unsuitable trading in public customer's accounts by engaging in purchases and sales of speculative securities without having reasonable grounds for believing that the recommendations were suitable in light of the customers' investment objectives, financial situation and needs. The findings stated that Burghard failed to respond to FINRA requests for information. **(FINRA Case #2007009157201)**

Laird Quincy Cagan (CRD #1605236, Registered Principal, Los Altos, California) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $5,000 and suspended from association with any member firm in any capacity for 10 business days. Without admitting or denying the findings, Cagan consented to the described sanctions and to the entry of findings that he failed to inform his member firm of securities accounts he maintained at other member firms. The findings stated that Cagan failed to provide written notice of his association with a member firm to the member firms where he maintained accounts.

The suspension was in effect from December 15, 2008, through December 29, 2008. **(FINRA Case #2007007144401)**

Gino Nick Chiappetta (CRD #2105561, Registered Principal, Northwood, Ohio) 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 five business days. Without admitting or denying the findings, Chiappetta consented to the described sanctions and to the entry of findings that, while associated with a member firm, he loaned $14,222.45 to public customers in violation of the firm's written procedures that prohibited its registered representatives from borrowing or lending to customers unless the customer is an immediate family member of the representative. The public customers were not related in any way to Chiappetta.

The suspension was in effect from December 15, 2008, through December 19, 2008. **(FINRA Case #2007009850501)**

Jun M. Chiu (CRD #2730745, Registered Representative, Ridgewood, New Jersey) 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 10 business days. The fine must be paid either immediately upon Chiu'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, Chiu consented to the described sanctions and to the entry of findings that she paid $3,125 to a public customer to settle a complaint the customer made, without her member firm's knowledge or approval.

The suspension was in effect from December 1, 2008, through December 12, 2008. **(FINRA Case #2007010948901)**

Joseph A. DeFini (CRD #1612289, Registered Representative, Fort Lauderdale, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for 45 days. In light of DeFini's financial status, no monetary sanctions were imposed. Without admitting or denying the findings, DeFini consented to the described sanction and to the entry of findings that, without the public customer's knowledge or consent, he instructed a colleague to sign the customer's name to a replacement stock power form that removed the restrictive legend from shares of stock that the customer's spouse had already signed.

The suspension was in effect from December 1, 2008, through January 14, 2009. **(FINRA Case #2008012630201)**

Justin F. Ficken (CRD #4059611, Registered Representative, Boston, Massachusetts) submitted an Offer of Settlement 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 Ficken'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, Ficken consented to the described sanctions and to the entry of findings that he failed to respond to a FINRA request to appear and continue an on-the-record interview.

The suspension is in effect from November 17, 2008, through November 16, 2010. **(FINRA Case #C1120040006)**

Avidan Danny Fishman (CRD #2614469, Registered Principal, Encino, California) was fined $2,500 and suspended from association with any FINRA member in any capacity for six months for willful failure to disclose information, and was fined $2,500 and suspended from association with any FINRA member in any capacity for one month for failure to disclose outside business activities. The suspensions are to run concurrently. The fines are payable upon re-entry into the securities industry. The sanctions were based on findings that Fishman willfully failed to disclose material information on his Form U4 and his member firm's annual compliance forms. The findings stated that Fishman engaged in an outside business activity, for compensation, and failed to provide prompt written notice to his member firm.

The suspensions are in effect from November 17, 2008, through May 17, 2009. **(FINRA Case #2007008812801)**

Elena Dumitra Grigoropol (CRD #2546855, Registered Representative, Bensalem, Pennsylvania) 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 two months. The fine must be paid either immediately upon Grigoropol'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, Grigoropol consented to the described sanctions and to the entry of findings that she affixed a public customer's signature on insurance forms without his authorization or consent.

The suspension is in effect from December 15, 2008, through February 14, 2009. **(FINRA Case #2008012569301)**

Stephen Colley Harris (CRD #4016919, Registered Representative, Tuscaloosa, Alabama) 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, Harris consented to the described sanction and to the entry of findings that he falsified an annuity distribution request form by cutting signatures from another document and taping them to the form, then transmitting or causing it ot be transmitted to the insurance company for payment. The findings stated that Harris forged a customer's initials without his knowledge, authorization or consent on a Subscription Agreement that the customer had previously signed, and then submitted it to the issuer. The findings also stated that Harris failed to respond to FINRA requests for information and to appear for an on-the-record interview. **(FINRA Case #2007010303601)**

Alan Lawrence Jacobs (CRD #1032488, Registered Principal, Boca Raton, Florida) 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 principal capacity for 30 business days. Without admitting or denying the findings, Jacobs consented to the described sanctions and to the entry of findings that he failed to properly supervise the private securities transactions of registered representatives at his member firm and failed to ensure that the transactions were recorded on the firm's books and records.

The suspension was in effect from December 1, 2008, through January 13, 2009. **(FINRA Case #2006004949203)**

Bobby Glenn James (CRD #1311728, Registered Representative, Parker, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined $20,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon James' 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, James consented to the described sanctions and to the entry of findings that he participated in private securities transactions outside the regular course and scope of his employment relationship with his member firms and did not provide written notice to, or obtain written approval from, his firms prior to engaging in the offer and sale of limited partnerships.

The suspension is in effect from December 1, 2008, through May 31, 2009. **(FINRA Case #2007007663902)**

James Jhun (CRD #5340474, Associated Person, Alta Loma, California) 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 Jhun'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, Jhun consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4.

The suspension is in effect from December 15, 2008, through February 12, 2009. **(FINRA Case #2007009278101)**

Dennis Jordan (CRD #1420210, Registered Principal, Chipley, Florida) was fined $60,000 and barred from association with any FINRA member firm in any principal capacity. The fine is due and payable if and when Jordan reassociates with a member firm in any capacity. The sanctions were based on findings that Jordan failed to establish, maintain and enforce an adequate supervisory system and written supervisory procedures with respect to the business conducted in a branch office; failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with the recordkeeping requirements of SEC Rule 17a-4 as it pertains to preserving electronic communications; failed to develop and implement adequate AML procedures to achieve and monitor its obligations under the Bank Secrecy Act and related U.S. Treasury regulations; and failed to report customer complaints to FINRA. **(FINRA Case #E072005005701)**

Michael D. Kirk (CRD #4299057, Registered Representative, Las Vegas, Nevada) 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 10 business days. The fine must be paid either immediately upon Kirk'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, Kirk consented to the described sanctions and to the entry of findings that he guaranteed a public customer against loss in connection with a securities transaction.

The suspension is in effect from January 5, 2009, through January 16, 2009. **(FINRA Case #2007010653301)**

Richard Francis Kresge (CRD #729077, Registered Principal, Bay Shore, New York) was barred from association with any FINRA member in any capacity. The NAC imposed the sanction in response to an SEC decision remanding the case for re-determination of sanctions. The sanction was based on previously established findings that Kresge failed to establish or maintain a system of supervision reasonably designed to achieve compliance with applicable securities laws, and failed to register an individual, either as a principal or a representative, who was actively engaged in the management of the firm's securities business as either a principal or representative of his member firm. The findings also included that Kresge failed to report customer complaints to FINRA.

The NAC considered Kresge's violations as a whole and imposed the sanction of a bar in response to the totality of the misconduct. The NAC weighed each violation, in addition to Kresge's "highly troubling" disciplinary history, and found a bar necessary "to protect investors." **(FINRA Case #CMS20030182)**

John Keith Kutsche (CRD #2634388, Registered Representative, Woodstock, Georgia) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Kutsche engaged in outside business activities without prompt written notice to his member firm. The findings stated that Kutsche failed to respond to FINRA requests for information and to appear for an on-the-record interview. **(FINRA Case #2006006913501)**

Madeline Marie Langlois (CRD #4799218, Registered Representative, Austin, Texas) submitted an Offer of Settlement in which she was fined $5,000, suspended from association with any FINRA member in any capacity for two years, and required to retake and pass the Series 66 examination prior to again functioning in a capacity requiring such examination. The fine must be paid either immediately upon Langlois' 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 allegations, Langlois consented to the described sanctions and to the entry of findings that, contrary to the instructions given her, she left the testing center during the course of the Series 66 examination, reviewed written notes that contained material relevant to the examination, returned to the testing center and completed the examination.

The suspension is in effect from December 1, 2008, through November 30, 2010. **(FINRA Case #2007009761301)**

John Gilbert Marshall Jr. (CRD #2219233, Registered Representative, Mill Valley, California) 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 capacity for six months. Without admitting or denying the findings, Marshall consented to the described sanctions and to the entry of findings that he engaged in a private securities transaction despite his member firm's denial of authorization because the size of the investment would concentrate too much of a trust's assets in a single investment. The findings stated that Marshall requested his firm to wire the transaction amount to an outside bank account where it was invested in the hedge fund through Marshall's partner, knowing it was an unapproved private securities transaction. The findings also stated that Marshall failed to provide an accurate and complete response to his firm when asked why the trust was moving funds out of the firm.

The suspension is in effect from December 15, 2008, through June 14, 2009. **(FINRA Case #2006006717101)**

Shane David Mispel (CRD #4497514, Registered Representative, Grand Isle, Vermont) 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 30 days. The fine must be paid either immediately upon Mispel'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, Mispel consented to the described sanctions and to the entry of findings that, without his member firm's knowledge or consent, he borrowed $20,000 from a public customer in contravention of his firm's procedures prohibiting the borrowing and lending money between a registered person and the firm's customers.

The suspension was in effect from December 1, 2008, through December 30, 2008. **(FINRA Case #2007008745801)**

Scott Louis Nazarino (CRD #2323480, Registered Representative, Sammamish, Washington) submitted an Offer of Settlement in which he was fined $35,283.27, which includes disgorgement of $25,283.37 in commissions received, and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Nazarino'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, Nazarino consented to the described sanctions and to the entry of findings that he engaged in unsuitable and excessive trading in a public customer's account. The findings stated that Nazarino recommended and effected the transactions in the account without reasonable grounds for believing that the transactions were suitable in view of the size of the transactions, the nature of the securities, the transaction costs incurred, the nature of the account, and the customer's financial situation, investment objectives and needs.

The suspension is in effect from December 1, 2008, through May 31, 2009. **(FINRA Case #2006004766701)**

David Randall Paul (CRD #4438776, Registered Representative, Woodinville, Washington) 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 30 days. The fine must be paid either immediately upon Paul'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, Paul consented to the described sanctions and to the entry of findings that he engaged in outside business activities without prompt written notice to his member firm.

The suspension was in effect from December 15, 2008, through January 13, 2009. **(FINRA Case #2007011115801)**

Miles Frederick Price (CRD #1707468, Registered Principal, Little Rock, Arkansas) 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, Price consented to the described sanction and to the entry of findings that he exercised discretionary power in two public customers' brokerage accounts without their prior written authorization and without his member firm's acceptance of one of the accounts as discretionary. The findings stated that, in order to conceal his exercise of discretionary power in one customer's account, Price created a false record indicating that the customer had authorized the transactions on the date when they were effected. The findings also stated that Price thereby knowingly entered false information in his firm's records to conceal his exercise of discretionary authority. **(FINRA Case #2007007748701)**

James Jay Robinson Jr. (CRD #1579422, Registered Representative, Elgin, Illinois) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Robinson failed to respond to FINRA requests for information. The findings stated that Robinson participated in private securities transactions without prior written notice to, and prior written approval from, his member firm. **(FINRA Case #2006006624301)**

Ruben Mariano Silva (CRD #1272907, Registered Principal, Santa Rosa, California) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Silva received $5,302.40 from his insurance firm's customers, deposited the funds into his general business account and wrote checks on his account to make insurance premium payments for the customers. The findings stated that Silva failed to maintain sufficient funds in his account to cover the checks he forwarded to the firm. The findings also stated that Silva failed to apply the customers' insurance premium payments in a timely and proper manner, and used the funds to pay his own expenses by commingling customers' funds with his own. **(FINRA Case #2006007109801)**

Jeffrey Michael Stebbins (CRD #2575152, Registered Representative, Mesa, Arizona) 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, Stebbins consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests to appear for an on-the-record interview and to provide information and documents. The findings stated that Stebbins knowingly provided false and/or misleading information in response to FINRA requests for information. The findings also stated that Stebbins engaged in his member firm's investment banking and securities business in capacities requiring registration as a representative and principal, but he was not registered in those capacities. There were also findings that Stebbins engaged in an outside business activity, for compensation, without prior written notice to his member firm. FINRA found that Stebbins had a beneficial interest in securities accounts maintained at other member firms and failed to disclose to the carrying broker-dealers that he was associated with FINRA members, and also failed to give his member firms written notification that he had a financial interest in securities accounts with the carrying broker-dealers. **(FINRA Case #2006004969703)**

Heidi Tabet-Goke (CRD #4689196, Registered Representative, Albuquerque, New Mexico) was barred from association with any FINRA member in any capacity. The sanction was based on FINRA's findings that Tabet-Goke misused $3,102 in insurance premiums that she received from public customers. The findings stated that the funds were to be applied to payment of insurance premiums, and Tabet-Goke neither transmitted the funds to the insurance carrier nor returned them to the customers. The findings also stated that Tabet-Goke failed to respond to FINRA's requests for information. **(FINRA Case #2007008871101)**

Yvonne Thomas (CRD #1353826, Registered Representative, New York, New York) submitted an Offer of Settlement in which she was suspended from association with any FINRA member in any capacity for two years. In light of Thomas' financial status, no monetary sanctions were imposed. Without admitting or denying the allegations, Thomas consented to the described sanction and to the entry of findings that she willfully failed to disclose material information on her Forms U4.

The suspension is in effect from November 17, 2008, through November 16, 2010. **(FINRA Case #2006004375701)**

Salvatore Anthony Tiano (CRD #1867558, Registered Representative, Palm Beach Gardens, Florida) 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 20 business days. The fine must be paid either immediately upon Tiano'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, Tiano consented to the described sanctions and to the entry of findings that he exercised discretion in customer accounts without written authorization, and contrary to his member firm's policy that prohibited exercising discretion in customer accounts without written authorization.

The suspension was in effect from December 15, 2008, through January 13, 2009. **(FINRA Case #2007009452701)**

Jeffrey Eugene Tipton (CRD #3271659, Registered Representative, Fresno, California) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Tipton failed to appear for a FINRA on-the-record interview. The findings stated that Tipton engaged in an outside business activity, for compensation, without prompt written notice to his member firm. The findings also stated that Tipton loaned $600 to a public customer in breach of his firm's procedures that prohibited borrowing and lending transactions with customers. **(FINRA Case #2007008715001)**

Peter Edward Vallejo (CRD #4086813, Registered Representative, Gilbert, Arizona) 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, Vallejo consented to the described sanction and to the entry of findings that he failed to respond to FINRA requests for information. **(FINRA Case #2008013265201)**

Brian Mark Wacik (CRD #1667489, Registered Principal, Allentown, Pennsylvania) was barred from association with any FINRA member firm in any capacity, and ordered to pay $40,842.78, plus interest, in restitution to a public customer. The sanctions were based on findings that Wacik borrowed $45,000 from a public customer, contrary to his member firm's policy prohibiting registered representatives from borrowing from a customer, and concealed the loan from his member firm by falsifying a response on an annual compliance questionnaire, and failed to repay $40,000 of the loan. The findings stated that Wacik willfully failed to disclose material information on his Form U4. **(FINRA Case #2006006537201)**

Derek Michael Whitley (CRD #4854389, Registered Representative, Sierra Vista, Arizona) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Whitley misused $5,254.12 in insurance premiums he received from customers by failing to forward the funds to an insurance company or return the funds to the customers. The findings stated that Whitley failed to respond to FINRA requests for information. **(FINRA Case #2007009347101)**

Edward Darell Williams (CRD #5336232, Associated Person, Detroit, Michigan) submitted an Offer of Settlement in which he was fined $7,500 and suspended from association with any FINRA member in any capacity for 18 months. The fine must be paid either immediately upon Williams' 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, Williams consented to the described sanctions and to the entry of findings that he failed to disclose material information on his Form U4 and failed to respond timely to FINRA requests for information.

The suspension is in effect from December 1, 2008, through May 31, 2010. **(FINRA Case #2007009202401)**

Steven Edward Wisecarver (CRD #3199948, Registered Representative, Herrin, Illinois) 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, Wisecarver consented to the described sanction and to the entry of findings that he submitted false documentation to his member firm's insurance affiliate to change public customers' addresses to his residential address and submitted falsified documentation requesting loans and accumulated dividend payments on the customers' insurance policies, all without their knowledge or consent. The findings stated that Wisecarver received $58,000 total in checks payable to the customers, which he deposited into his bank account by forging the customers' signature endorsements, thereby converting the customers' funds to pay for his mortgage and personal bills, and not for the customers' benefit. **(FINRA Case #2007010935701)**

Lance Jeffrey Ziesemer (CRD #2342087, Registered Supervisor, Waconia, Minnesota) 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 20 business days. Without admitting or denying the findings, Ziesemer consented to the described sanctions and to the entry of findings that, without permission or authorization from his member firm, he paid $29,000 to public customers in an attempt to prevent them from filing a complaint against him with his firm.

The suspension was in effect from December 15, 2008, through January 13, 2009. **(FINRA Case #2007008964901)**

Decisions Issued

The Office of Hearing Officers (OHO) issued the following decisions, which have been appealed to or called for review by the NAC as of November 30, 2008. The NAC may increase, decrease, modify or reverse the findings and sanctions imposed the decisions. Initial decisions whose time for appeal have not yet expired will be reported in the next *FINRA Notices*.

CMG Institutional Trading, LLC (CRD #47264, Chicago, Illinois) and Shawn Derrick Baldwin (CRD #4281564, Registered Principal, Chicago, Illinois). The firm was expelled from FINRA membership and Baldwin was barred from association with any FINRA member in any capacity. The sanctions were based on findings that the firm, acting through Baldwin, participated in securities-related activities without employing a qualified financial and operations principal (FINOP), and failed to maintain the minimum net capital of an underwriter. The findings stated that the firm, acting through Baldwin, failed to prepare accurate books and records; failed to prepare an accurate general ledger, accurate trial balances and accurate net capital computations; and filed an annual audit report and a quarterly FOCUS report late. The findings also stated that the firm, acting through Baldwin, had an inadequate AML compliance program, in that it failed to verify customer identification information obtained from customers, failed to have any independent testing of its AML program, did not contain a procedure for designating an AML compliance officer or for transmitting contact information to FINRA, and did not provide for AML training on at least an annual basis. The findings also included that the firm, acting through Baldwin, failed to file an application for approval of a material change in its business operations, although it participated in formal commitment underwritings that increased its minimum net capital requirement; disseminated advertising and sales literature that was false, misleading or had not been approved by a registered principal; and failed to create and maintain an adequate business continuity plan. FINRA found that the firm allowed Baldwin to actively engage in its securities business although his registration was inactive for failure to comply with FINRA's continuing education requirements. FINRA also found that the firm, acting through Baldwin, participated in municipal securities offerings without a registered municipal securities principal; failed to appoint such a principal as the Primary Electronic Mail Contact with the MSRB; failed to establish,

maintain and enforce adequate written supervisory procedures to ensure compliance with MSRB rules; failed to timely file a list of issuers with which it had engaged in municipal securities business with the MSRB; and failed to establish and implement an AML compliance program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #2006006890801)**

Sam Aubrey Foreman Jr. (CRD #833002, Registered Representative, Pensacola, Florida) was fined $10,000 and suspended from association with any FINRA member in any capacity for 30 business days. The sanctions were based on findings that Foreman settled a customer complaint away from his member firm and guaranteed the customer against loss.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. **(FINRA Case #2007009445401)**

Complaints Filed

FINRA issued the following complaints. 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 these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding these allegations in the complaint.

Julianna Marie Shadinger (CRD #3215505, Registered Representative, South Bend, Indiana) was named as a respondent in a FINRA complaint alleging that, by use of the instrumentalities of interstate commerce or the mails, she made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, to public customers. The complaint alleges that Shadinger induced public customers to purchase high-yield money market funds with check-writing privileges when, in fact, the funds were invested in Class A shares of a front-end load mutual fund, which incurred fees against the accounts and Shadinger misrepresented the reason for the fees. The complaint also alleges that Shadinger negligently misled the customers to believe that they were investing in high-yield money market funds when they were actually purchasing Class A shares of a mutual fund. The complaint further alleges that Shadinger failed to establish and maintain available cash balances in the customers' accounts from which they could have written checks to cover expenses, but instead, she liquidated mutual fund shares positions to cover the checks, thereby exercising discretion over their accounts, without the customers' written authorization nor did her member firm accept the accounts as discretionary. **(FINRA Case #2006006045301)**

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

Walt Becker & Associates, Inc.
Fresno, California
(November 17, 2008)

Firm Suspended for Failing to Pay an Arbitration Award Pursuant to NASD Rule 9554

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

Vision Securities Inc.
Melville, New York
(July 23, 2008 – November 5, 2008)

Firms Suspended for Failure to Pay Annual Assessment Fees Pursuant to NASD Rule 9553

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

Ashton Capital Management, Inc.
San Diego, California
(November 12, 2008)

Axiom Management Partners LLC
New York, New York
(November 12, 2008)

Omni Financial Group, L.L.C.
Houston, Texas
(November 12, 2008)

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

(If the revocation has been rescinded, the date follows the revocation date.)

Michael Joseph Becker
Farmingville, New York
(November 26, 2008)

Kevin Kreig Herridge
Somerville, New Jersey
(November 13, 2008)

Dexter Sinclair Johnson
Mt. Vernon, New York
(November 19, 2008)

Jordan Dean Main
Northville, Michigan
(November 14, 2008)

Robert Franklyn Malin
New York, New York
(November 13, 2008)

Individuals Barred Pursuant to NASD Rule 9552(h)

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

George Nickos Gounelas
Shirley, New York
(November 10, 2008)

Hsialoan Sharon Hsu
Wellesley, Massachusetts
(November 17, 2008)

Derek Joonbeom Kim
Diamond Bar, California
(November 19, 2008)

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.)

Stayka G. Doljeva
Glenview, Illinois
(August, 11, 2008 – October 10, 2008)

Wanda Latrice Gilmer
Berkeley, Illinois
(November 3, 2008)

Shawn C. Gorell
Jenks, Oklahoma
(November 7, 2008)

Hantao Mai
College Park, Maryland
(November 10, 2008)

Philip John Powers
Framingham, Massachusetts
(November 10, 2008)

Laryssa Danielle Summers
Muskegon, Michigan
(November 17, 2008)

Aaron Michael Thomas
Pomona, California
(November 24, 2008)

John Edward Underwood
Jonesboro, Georgia
(November 24, 2008)

Susan Marie Yuninger
Lititz, Pennsylvania
(November 10, 2008)

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

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

Louis M. Gaudio
Lake Worth, Florida
(November 12, 2008)

Herbert Tyrone Hunt
Lyndhurst, Ohio
(November 12, 2008)

Mark Anthony Kern
Plantation, Florida
(November 6, 2008)

Brent Steven Lemons
Tyler, Texas
(November 12, 2008)

Juan Javier Maldonado
Cabo Rojo, Puerto Rico
(November 26, 2008)

Robert Joseph Mitchell
Glendale, New York
(November 6, 2008)

William Todd Rexrode
Houston, Texas
(November 19, 2008)

Jeffery Peter Torrice
Grosse Pointe Woods, Michigan
(April 18, 2005 – November 10, 2008)

James Byongmin Yim
Sparks, Nevada
(November 26, 2008)

Citigroup Global Markets Fined $300,000 for Failing to Supervise Commissions Charged to Customers on Stock and Option Trades

Firm to Voluntarily Reimburse Affected Customers

FINRA has fined Citigroup Global Markets, Inc. of New York $300,000 for failing to reasonably supervise the commissions its brokers charged on stock and option trades. Although not part of the formal sanctions, the firm has offered to reimburse affected customers.

One registered representative, Juan Carlos Hernandez, was barred by FINRA earlier this year in connection with the unreasonable commissions.

"Firms have an obligation to supervise with a view to compliance with FINRA rules as well as the firms' own policies and procedures, including those governing commissions on customer orders," said Susan Merrill, FINRA Executive Vice President and Chief of Enforcement. "In this case, Citigroup failed to instruct its brokers and supervisors as to the appropriate factors to take into consideration when they chose to compute commission charges that varied from the firm's commission schedule. The firm also lacked adequate controls to prevent its brokers from charging more than what the firm had determined should be the reasonable commission for a trade."

FINRA found that between 2002 and 2007, Citigroup utilized a "Commission Calculator" that computed commission charges on stock and options trades, taking into account certain factors such as the price of the security and the number of shares or options in the transaction. But FINRA found that prior to October 2007, Citigroup did not formally communicate the existence of its calculated commission rates to its brokers, nor did it ever communicate that the firm generally did not permit brokers to charge commissions that exceeded the rates the firm determined to be reasonable. In addition, there was effectively no firm-imposed limitation on the commissions a registered representative could charge for options trades. A sample of trading, including options trades, revealed commissions in excess of 20 percent for a small number of option trades.

In the case of those commissions which exceeded the firm's calculated rates, Citigroup had no policies or procedures to identify and determine the appropriateness of the commissions pursuant to FINRA rules regarding the factors to consider in determining the fairness of commissions. Those factors include the price of the security and the amount of money involved in the transaction.

Citigroup also had no related supervisory procedures for its branch or regional supervisory employees. Branch management at the three branches investigated by FINRA Enforcement did not supervise for excessive commissions on individual trades on a regular basis.

As a consequence of the firm's inadequate supervision, during the period from April 2002 to January 2006, representative Hernandez charged approximately 27 customers commissions that were substantially in excess of the firm's calculated rate for appropriate charges. He overcharged one customer approximately $1.2 million. In February 2006, the firm terminated Hernandez's employment. In March 2008, in a separate action by FINRA, Hernandez consented, without admitting or denying the charges, to findings against him and he was barred. Two other registered representatives in different branch offices also overcharged commissions on a repeated basis, but on a smaller scale.

In concluding this settlement, Citigroup neither admitted nor denied the charges, but consented to the entry of FINRA's findings.