

Notices

Regulatory Notices

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Disciplinary and Other FINRA Actions

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Unlisted REITs and DPPs

Customer Account Statements and Due Diligence Requirements for Unlisted Real Estate Investment Trusts (REITs) and Direct Participation Programs (DPPs)

Executive Summary

FINRA is issuing this *Notice* to address certain requirements that apply to the per-share customer account statement values and dividend distributions of REITs and DPPs (collectively, “real estate investment programs”) that are sold through broker-dealers, invest in real estate and do not trade on a national securities exchange.¹

Questions regarding this *Notice* may be directed to:

- Joseph E. Price, Vice President, Corporate Financing, at (240) 386-4642;
- Gary L. Goldsholle, Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8104; or
- Lisa Jones Toms, Counsel, Corporate Financing, at (240) 386-4661.

Background and Discussion

Responsibility of Firms Concerning “Par Value”

NASD Rule 2340 (Customer Account Statements) requires a general securities member firm to include in a customer’s account statement an estimated value for a real estate investment trust (REIT) or direct participation program (DPP) security if the annual report of the security that is held in the customer’s account includes a per-share estimated value (and provided certain conditions set forth in the rule are met).² The rule permits a firm to use an estimated value disclosed in the program’s annual report, and in practice, that is the value typically used. During the offering period, the estimated value included in the annual report usually is the value at which securities are being offered to the public, commonly known as “par value.”

February 2009

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Senior Management

Key Topic(s)

- Customer Account Statements
- Due Diligence
- Unlisted Real Estate Investment Trusts (REITs)
- Direct Participation Programs (DPPs)

Referenced Rules & Notices

- NASD Rule 2340
- NASD Rule 2810

NASD Rule 2340(c)(2) prohibits a firm from using a per-share estimated value that has been developed from data that is as of a date more than 18 months prior to the customer account statement's date. The 18-month requirement was designed to ensure that investors are provided with reasonably current valuations of these illiquid securities. In addition, by providing firms with an 18-month window in which to rely on the data, the rule ensures that either they or the sponsors have adequate time to appraise the program's assets and operations and calculate an estimated value.

During the offering period, it may be reasonable to determine that the estimated value is the value at which the shares are being offered to the public. However, 18 months after the conclusion of the offering, that value would be aged data and should not be the basis for the valuation provided on a customer's account statement. Thus, in accordance with NASD Rule 2340(c)(2), firms must not use par value in a customer account statement more than 18 months following the conclusion of an offering, unless an appraisal of the program's assets and operations yields the same value.

Responsibility of Firms Concerning Expected Dividend Distributions³

NASD Rule 2810 (Direct Participation Programs) regulates public offerings of real estate investment programs. Rule 2810(b)(3) requires that firms, prior to participating in a public offering of a real estate investment program, have reasonable grounds to believe that all material facts are adequately and accurately disclosed and provide a basis for evaluating the program.⁴ To determine the adequacy of the disclosed facts, a firm shall obtain information on material facts relating to, among other things, the financial stability and experience of the sponsor and the program's risk factors. Analysis of these factors should include an inquiry into the amount or composition of a real estate investment program's dividend distributions.⁵ As part of its inquiry, a firm should determine the amount of the distributions that represents a return of investors' capital and whether that amount is changing.⁶ In addition, firms should consider whether there are impairments to the real estate investment program's assets or other material events that would affect the distributions and whether disclosure regarding dividend distributions needs to be updated to reflect these events.

For example, firms should obtain information regarding whether there have been unscheduled cancellations of existing leases that impair or materially affect a real estate investment program's operating cash flows. If operating cash flows decline substantially, the program may decide to lower the dividend distributions or try to maintain historic dividend payments by borrowing funds or returning investors' capital. Paying dividend distributions that are unsustainable over the long term due to cash flow difficulties presents a significant risk to investors' future returns and to the long-term viability of the program.

Endnotes

- 1 Generally, REITs are pass-through entities governed in part by Section 856 of the U.S. Internal Revenue Code that offer investors an equity interest in a pool of real estate assets, including land, buildings, shopping centers, hotels and office properties. Some DPPs also invest in real estate. Similar to REIT investments, these DPPs typically offer investors an equity interest in an entity such as a limited partnership that provides flow-through tax consequences and distributes income generated from underlying real estate assets.
- 2 See *Notice to Members 01-08* (January 2001) and “DPP and REIT Valuations on Customer Account Statements,” *Regulatory & Compliance Alert* (Summer 2001). See also generally *Regulatory Notice 08-77* (December 2008) (providing guidance on estimated annual income and estimated yield on customer account statements for certain products, including REITs and DPPs).
- 3 As used in this *Notice*, “dividend distributions” or “distributions” refer to the periodic distributions by the real estate investment program to shareholders or limited partners in the form of cash or securities. These distributions generally consist of dividend income, and may include capital gains and some return of capital. Distributions to shareholders are declared by the REIT’s board of directors and usually paid on a monthly or quarterly basis.
- 4 “Participating” in a best-efforts offering includes participation in each offer or sale made pursuant to a registration statement. Accordingly, the Rule 2810(b)(3) requirements apply prior to participating in every sale in which prospectus delivery is required. See also, *In re Worldcom, Inc.* 346 F. Supp. 2d 628, 670 (S.D.N.Y. 2004) (noting that in adopting rules relating to shelf offerings the SEC stressed the use of “anticipatory and continuous due diligence programs” to augment underwriters’ fulfillment of their due diligence obligations); and Securities Act Rule 430B (providing that the effective date for a shelf registration statement for liability purposes for takedowns is the date a prospectus supplement is filed in connection with each takedown).
- 5 FINRA recently reminded firms of their sales practice obligations and related requirements regarding sales of securities in a high-yield environment. See *Regulatory Notice 08-81* (December 2008). The *Notice* generally addresses firms’ sale practice obligations with regard to the sale of securities in a high-yield environment and provides comparable guidance to firms concerning other fixed income and other securities products.
- 6 Many factors may influence the degree to which a distribution comprises a return of capital. For example, in a newer program a high proportion of the distributions to shareholders may consist of a return of capital until the proceeds raised from the real estate investment program’s initial public offering are generating cash flows from operations.

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Market Letters

SEC Approves Rule Relating to Supervision of Market Letters

Effective Date: February 5, 2009

Executive Summary

Effective February 5, 2009, firms may supervise “market letters” as correspondence rather than sales literature, unless the letters are distributed to 25 or more existing retail customers within any 30-calendar-day period and make a financial or investment recommendation or otherwise promote the firm’s product or service.

The amendment to NASD Rules 2210 (Communications with the Public) and 2211 (Institutional Sales Material and Correspondence) and Incorporated NYSE Rule 472 (Communications with the Public)¹ also eliminates the requirement under Incorporated NYSE Rule 472 for market letters to be approved in advance by a supervisory analyst or qualified person. Market letter is defined as a communication that is excepted from the definition of “research report” under NASD Rule 2711(a)(9)(A) and Incorporated NYSE Rule 472.10(2)(a).

The text of the amendment is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- Joseph P. Savage, Vice President and Counsel, Investment Companies Regulation, at (240) 386-4534; or
- Thomas A. Pappas, Vice President and Director, Advertising Regulation, at (240) 386-4553.

February 2009

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Operations
- Research
- Sales
- Senior Management
- Trading

Key Topic(s)

- Market Letters
- Correspondence
- Communications with the Public
- Sales Literature
- Supervision

Referenced Rules & Notices

- NASD Rule 2210
- NASD Rule 2211
- NASD Rule 2711
- NASD Rule 3010
- NYSE Rule 472

Background & Discussion

NASD Rule 2210 requires a registered principal of a firm to approve prior to use any item of sales literature. The term “sales literature” excludes any item distributed or made available only to institutional investors.² Prior to this rule change, sales literature was defined to include market letters. Incorporated NYSE Rule 472 similarly required a registered principal or other qualified person to approve in advance of distribution any market letter, but contained no exception for market letters sent only to institutional investors. FINRA has been concerned that the pre-use approval requirements in some circumstances may have inhibited the flow of information to traders and other investors who base their investment decisions on timely market analysis.

To address this concern, FINRA has amended the definition of sales literature in NASD Rule 2210 to exclude market letters that qualify as “correspondence.” FINRA also has correspondingly amended the definition of correspondence in NASD Rule 2211 to include market letters (as well as any written letter or electronic mail message) distributed by a firm to one or more of its existing retail customers and fewer than 25 prospective retail customers within any 30-calendar-day period. Pursuant to NASD Rule 2211(b)(1)(A), correspondence does not require approval by a registered principal prior to use, unless such correspondence is distributed to 25 or more existing retail customers within any 30-calendar-day period and makes a financial or investment recommendation or otherwise promotes a product or service of the member firm. The rule change also would amend Incorporated NYSE Rule 472 to eliminate the requirement that a qualified person approve market letters in advance of distribution.

Thus, all FINRA member firms may distribute market letters to institutional investors (as defined in NASD Rule 2211(a)(3)) without requiring prior approval by a registered principal or qualified person. In addition, a firm may distribute without prior approval by a registered principal a market letter that is sent only to existing retail customers and fewer than 25 prospective retail customers within a 30-calendar-day period. However, prior principal approval is required if the market letter both (1) is sent to 25 or more existing retail customers and (2) makes a financial or investment recommendation or otherwise promotes a product or service of the firm. In addition, similar to the manner in which other forms of correspondence (*i.e.*, written letters and electronic mail messages) are addressed by NASD Rules 2210 and 2211, if a market letter is sent to 25 or more prospective retail customers within a 30-calendar-day period, the market letter would fall within the definition of sales literature and have to be supervised as such, including approval by a registered principal prior to use.

As correspondence, market letters remain subject to the supervision and review requirements of NASD Rule 3010, which requires each firm to establish written procedures that are appropriate to its business, size, structure and customers for the review of outgoing correspondence. If these procedures do not require review of all correspondence prior to use or distribution, they must provide for the education and training of associated persons as to the firm’s procedures governing correspondence, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

The rule change also creates a new definition of the term “market letter” in NASD Rule 2211—and modifies the existing definition in Incorporated NYSE Rule 472—to mean any communication specifically excepted from the definition of “research report” under NASD Rule 2711(a)(9)(A) and Incorporated NYSE Rule 472.10(2)(a), respectively. This exception consists of:

- discussions of broad-based indices;
- commentaries on economic, political or market conditions;
- technical analyses concerning the demand and supply for a sector, index or industry based on trading volume and price;
- statistical summaries of multiple companies’ financial data, including listings of current ratings;
- recommendations regarding increasing or decreasing holdings in particular industries or sectors; and
- notices of ratings or price target changes (subject to certain disclosure requirements).

Firms may not supervise as correspondence communications that fall within the definition of “research report” under NASD Rule 2711 and Incorporated NYSE Rule 472.

Effective Date

The changes to NASD Rules 2210 and 2211 and Incorporated NYSE Rule 472 become effective on February 5, 2009.

Endnotes

- 1 See Securities Exchange Act Release No. 59096 (December 12, 2008), 73 FR 77085 (December 18, 2008)(SR-FINRA-2008-044).
- 2 Pursuant to NASD Rule 2211(a)(2), communications of any kind sent only to institutional investors (as defined in NASD Rule 2211(a)(3)) are considered to be “institutional sales material.” NASD Rule 2210 does not require approval of institutional sales material by a registered principal prior to use. However, institutional sales material remains subject to the supervision and review requirements of NASD Rule 2211(b)(1)(B).

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ATTACHMENT A

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

NASD Rules

2210. Communications with the Public

(a) **Definitions.** For purposes of this Rule and any interpretation thereof, “communications with the public” consist of:

(1) No change.

(2) “Sales Literature.” Any written or electronic communication, other than an advertisement, independently prepared reprint, institutional sales material and correspondence, that is generally distributed or made generally available to customers or the public, including circulars, research reports, [market letters,] performance reports or summaries, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article, and press releases concerning a member’s products or services.

(3) through (6) No change.

(b) through (e) No change.

2211. Institutional Sales Material and Correspondence

(a) Definitions

For purposes of Rule 2210, this Rule, and any interpretation thereof:

(1) “Correspondence” consists of any written letter or electronic mail message and any market letter distributed by a member to:

(A) one or more of its existing retail customers; and

(B) fewer than 25 prospective retail customers within any 30 calendar-day period.

(2) through (4) No change.

(5) “Market Letter” means any written communication excepted from the definition of “research report” pursuant to Rule 2711(a)(9)(A).

(b) through (e) No change.

Incorporated NYSE Rules

Rule 472. Communications with the Public

(a) Approval of Communications and Research Reports

(1) Each advertisement, [market letter,] sales literature or other similar type of communication which is generally distributed or made available by a member organization to customers or the public must be approved in advance by an allied member, supervisory analyst, or qualified person designated under the provisions of Rule 342(b)(1).

(2) No change.

(b) through (m) No change.

Supplementary Material

.10 Definitions

(1) through (3) No change

(4) **Market letter[s]**. “Market letter[s]” [are]is defined as[, but are not limited to, any written comments on market conditions, individual securities, or other investment vehicles that are not defined as research reports. They may also include “follow-ups” to research reports and articles prepared by member organizations which appear in newspapers and periodicals.] any written communication excepted from the definition of “research report” pursuant to Rule 472.10(2)(a).

(5) No change.

.20 through .140 No change.

SEC Approves New Consolidated FINRA Rule

SEC Approval and Effective Date for New Consolidated FINRA Rule on Trading Ahead of Research Reports

Effective Date: April 20, 2009

Executive Summary

Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA established a process to develop a new consolidated rulebook (Consolidated FINRA Rulebook), which FINRA has discussed in previous *Information Notices*.¹ FINRA is proposing new consolidated rules in phases for SEC approval as part of the Consolidated FINRA Rulebook.² In January 2009, the SEC approved a new consolidated FINRA Rule relating to trading ahead of research reports, which will take effect on April 20, 2009.

Questions regarding this *Notice* should be directed to:

- Philip Shaikun, Associate Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728- 8451; or
- Matthew E. Vitek, Counsel, OGC, at (202) 728-8156.

Discussion

In January 2009, the SEC approved FINRA Rule 5280 (Trading Ahead of Research Reports) as part of the Consolidated FINRA Rulebook.³ The attachment to this *Notice* sets forth additional information regarding this new consolidated rule and includes a hyperlink to the related rule filing. The filing provides, among other things, FINRA's statement of the purpose of the rule changes and an exhibit showing the changes between the new rule text and the text of the NASD Interpretive Material as it exists in the Transitional Rulebook. Also, the text of the new FINRA Rule is available in the online *FINRA Manual* at www.finra.org/finramanual.⁴

February 2009

Notice Type

- Rule Approval
- Consolidated Rulebook

Suggested Routing

- Compliance
- Legal
- Research
- Senior Management
- Trading

Key Topics

- Effective Dates of Consolidated Rules
- FINRA Manual
- Research Reports
- Rulebook Consolidation
- Trading Ahead

Referenced Rules & Notices

- FINRA Rule 5200 Series
- FINRA Rule 5280
- Information Notice 03/12/08
- Information Notice 10/06/08
- Regulatory Notice 08-57

Rule Conversion Chart

As discussed in *Information Notice 10/06/08* and *Regulatory Notice 08-57*, FINRA has posted a Rule Conversion Chart on FINRA's Web site to help firms become familiar with the new rules and show how the new rules relate to the NASD and/or Incorporated NYSE Rules in the Transitional Rulebook that they will replace.

Firms should be aware that the chart is intended as a reference aid only. FINRA reminds firms that the chart does not in any way serve as a substitute for diligent review of the relevant new rule language. The Rule Conversion Chart is located at www.finra.org/ruleconversionchart.

Endnotes

- 1 See *Information Notice 10/06/08* (Rulebook Consolidation Process: Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart); see also *Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 The current FINRA rulebook includes (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. As the Consolidated FINRA Rulebook expands with the SEC's approval and with the new FINRA Rules taking effect, the rules in the Transitional Rulebook that address the same subject matter of regulation will be eliminated. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.
- 3 See Exchange Act Release No. 59254 (January 15, 2009), 74 FR 4271 (January 23, 2009) (Order Approving Proposed Rule Change; File No. SR-FINRA-2008-054).
- 4 FINRA updates the rule text on its online *Manual* within two business days of SEC approval of changes to the rule text.

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Attachment A

Approved FINRA Rule (and Related Rule Filing)

The SEC approved the following new FINRA Rule in January 2009. The effective date is April 20, 2009.

FINRA Rule Filing SR-FINRA-2008-054

www.finra.org/rulefilings/2008-054

The rule change adopts, with certain modifications, NASD Interpretive Material (IM) 2110-4 (Trading Ahead of Research Reports) as FINRA Rule 5280.

NASD IM-2110-4 states that it is conduct inconsistent with just and equitable principles of trade for a member firm to establish or adjust an inventory position in an exchange-listed security traded over-the-counter or a derivative of such security in anticipation of the issuance of a research report on that security.

The rule change amends the IM in three respects. First, it extends the application of the IM to cover inventory positions with respect to any security—including debt—or derivative thereof, irrespective of whether the security is exchange-listed. Second, the rule change applies the rule only to circumstances where a firm establishes or adjusts its inventory based on non-public advance knowledge of the content or timing of a research report in that security. Finally, the rule change eliminates the option to establish internal controls to manage the flow of information between the research and trading departments, and instead mandates that firms establish policies and procedures reasonably designed to restrict or limit the information flow between research department personnel, or other persons with knowledge of the content or timing of a research report and trading personnel.

Rule/Series No.	Rule Title
Rule 5000 Series	Securities Offering and Trading Standards and Practices
Rule 5200 Series	Quotation and Trading Obligations and Practices
Rule 5280	Trading Ahead of Research Reports

Auction Rate Securities

Reporting Requirements for Settlements of Customer Disputes Involving Auction Rate Securities

Executive Summary

FINRA reminds firms that reach settlements of claims related to the sale of auction rate securities that, in determining the settlement amount for the purpose of potential reporting obligations pursuant to NASD Rule 3070 and Incorporated NYSE Rule 351 (Reporting Requirements) and Forms U4 and U5, firms must include the full dollar amount that was refunded to the customer as part of a repurchase agreement, plus any other damages identified in the settlement.¹

Questions/Further Information

Questions concerning this *Notice* may be directed to:

- ▶ Philip Shaikun, Associate Vice President and Associate General Counsel, Office of General Counsel (OGC), at (202) 728-8451; or
- ▶ Erika L. Lazar, Senior Attorney, OGC, at (646) 315-8512.

February 2009

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registration
- ▶ Senior Management
- ▶ Technology

Key Topic(s)

- ▶ Arbitration
- ▶ Auction Rate Securities
- ▶ Central Registration Depository (CRD®)
- ▶ Customer Complaints
- ▶ Form U4
- ▶ Form U5
- ▶ Reporting Requirements

Referenced Rules & Notices

- ▶ NASD Rule 3070
- ▶ NYSE Rule 351

Background & Discussion

FINRA has reached final settlements with certain firms to resolve charges of misrepresentation in connection with the sale of auction rate securities (ARS).² More specifically, the agreements settle allegations that these firms misled investors regarding the liquidity risks associated with ARS. FINRA's investigation found evidence that these firms misrepresented to their customers that ARS were liquid investments that were equivalent to cash and failed to disclose the increasing risks associated with ARS, including the firms' reduced ability to support the auctions in early 2008.³

These firms have agreed, among other things, to offer to repurchase at par ARS that were purchased by individual investors and some institutions between May 31, 2006, and February 28, 2008. The firms have also agreed to make whole individual investors who sold ARS below par after February 28, 2008.⁴ Additionally, firms involved in the settlements have agreed to a special arbitration procedure to resolve investor claims for any consequential damages (*i.e.*, damages they may have suffered from their inability to access funds invested in ARS).⁵

The Securities and Exchange Commission and certain states have reached similar settlements for ARS-related misconduct.⁶ FINRA expects more settlements as ARS investigations continue. In addition, certain firms are similarly settling other ARS-related arbitration claims and customer complaints, not in relation to a regulatory settlement, by repurchasing the securities at par.

ARS Settlement Reporting

Depending on the nature of the claim being settled—civil litigation, arbitration or other claim for damages, such as a customer complaint—and the settlement amount, firms may have reporting or disclosure obligations pursuant to NASD Rule 3070 and NYSE Rule 351 and the requirements of Forms U4 and U5.⁷ When determining the dollar amount for reporting an ARS settlement, firms must include the full dollar amount that was refunded to the customer as part of a repurchase agreement, plus any other damages identified in the settlement.⁸ ARS settlement amounts may not be reduced by the actual (if it can be determined) or estimated market value of ARS.

The nature of the allegations in these circumstances is that customers were misled to believe that their purchases in ARS were cash equivalents. When those instruments could no longer be redeemed for full value on demand, those customers lost the entire value of the investment for which they had bargained (*i.e.*, that the funds in question would be available on a cash-equivalent basis). As such, the entire dollar amount refunded to a customer must be considered for the purpose of determining settlement reporting thresholds. For example, a firm that agrees to repurchase \$100,000 ARS at par from a customer would report \$100,000 as the settlement amount on this claim.

Endnotes

- 1 While this *Notice* speaks to reporting obligations of member firms, in the case of the Forms U4 and U5, the reporting obligation resides with the member firm and its registered person(s) involved in the matter. FINRA further notes that firms may have additional reporting obligations under the Form BD.
- 2 For information on auction rate securities, see www.finra.org/Investors/InvestmentChoices/AuctionRateSecurities/index.htm.
- 3 The investigation additionally found evidence that firms failed to establish and maintain supervisory systems reasonably designed to achieve compliance with the securities laws and FINRA rules with respect to the marketing and sale of ARS. As part of the settlements, the firms neither admitted nor denied the charges, but consented to the entry of FINRA's findings.
- 4 For the latest developments and a detailed description of the FINRA ARS cases and settlements, see www.finra.org/ArbitrationMediation/P116972.
- 5 See www.finra.org/ArbitrationMediation/P117440.
- 6 For information on SEC and state ARS cases and settlements, see, respectively, www.sec.gov and www.nasaa.org/issues__answers/enforcement__legal_activity/9431.cfm.
- 7 See *Regulatory Notice 08-17* (Reporting of Customer Complaints Relating to Auction Rate Securities) (April 2008). FINRA added three new product categories for use by firms in reporting customer complaints relating to ARS.
- 8 See *Notice to Members 96-85* (Customer Complaint Reporting Rule Update) (December 1996), Interpretive Questions and Answers, Question #5.

Threshold for Single Arbitrator Cases

SEC Approves Amendments Raising the Threshold for Single Arbitrator Cases to \$100,000

Effective Date: March 30, 2009

Executive Summary

Effective March 30, 2009, FINRA will raise the threshold for appointing a single chair-qualified arbitrator.¹ The SEC approved amendments to FINRA Rule 12401 of the Code of Arbitration Procedure for Customer Disputes and FINRA Rule 13401 of the Code of Arbitration Procedure for Industry Disputes to raise the amount in controversy for appointing a single chair-qualified arbitrator to \$100,000.²

The text of Rules 12401 and 13401 is set forth in Attachment A. The rules will apply to arbitration cases filed on or after March 30, 2009.

Questions concerning this *Notice* should be directed to:

- ▶ Richard W. Berry, Vice President and Director of Case Administration, FINRA Dispute Resolution (DR), at (212) 858-4307 or richard.berry@finra.org; or
- ▶ Margo A. Hassan, Counsel, FINRA DR, at (212) 858-4481 or margo.hassan@finra.org.

Background & Discussion

FINRA is amending Rules 12401 and 13401 to raise the amount in controversy for appointing a single arbitrator to \$100,000, exclusive of interest and expenses.³ The arbitrator will be selected from the roster of arbitrators who are qualified to serve as chairpersons. This means that investors' claims for up to \$100,000 will be heard by a single public, chair-qualified arbitrator.⁴

February 2009

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal

Key Topic(s)

- ▶ Arbitration
- ▶ Code of Arbitration Procedure
- ▶ Dispute Resolution
- ▶ Number of Arbitrators

Referenced Rules & Notices

- ▶ FINRA Rule 12401
- ▶ FINRA Rule 13401

Currently, if the amount of a claim is \$25,000 or less, a single arbitrator is appointed to resolve the matter. If the amount of a claim is more than \$25,000, but not more than \$50,000, a single arbitrator is appointed, unless a party asks for three arbitrators in its initial pleading. A panel of three arbitrators hears claims for over \$50,000.

As amended, Rules 12401 and 13401 provide that if the amount of a claim is \$25,000 or less, a single arbitrator is appointed to resolve the matter. If the amount of a claim is more than \$25,000, but not more than \$100,000, a single arbitrator is appointed unless the parties agree in writing to three arbitrators. If the claim is more than \$100,000, unspecified, or does not request monetary damages, the panel will consist of three arbitrators unless the parties agree in writing to one arbitrator.

The amendments streamline the dispute resolution process and decrease costs for users of the forum. Parties should experience reduced case processing times because of the efficiencies associated with scheduling conference calls and hearing dates with one arbitrator as opposed to three. Moreover, they will save time in the arbitrator selection process because they will receive one list of eight names from which to choose their arbitrator, rather than three lists of eight names (*i.e.*, they will only need to research the disclosures and histories of eight proposed arbitrators instead of 24).

The amendments become effective on March 30, 2009, and will apply to arbitration cases filed on or after the effective date.

Endnotes

- 1 FINRA is making the rule amendments effective on March 30, 2009, to coordinate with the implementation of changes to FINRA's arbitration and mediation case management system.
- 2 Exchange Act Release No. 59340 (February 2, 2009), 74 Federal Register 6335 (February 6, 2009) (File No. SR-FINRA-2008-047).
- 3 The \$100,000 threshold will be applied to claimants' claims in the aggregate and to respondents' claims in the aggregate. FINRA will not combine claimants' claims with respondents' claims in determining whether the \$100,000 threshold has been met.
- 4 Industry disputes are resolved by a public panel or a non-public panel depending upon the parties to the controversy and the nature of the claims asserted.

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Attachment A

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

* * *

(Deletions are Bracketed; Additions are Underlined)

Customer Code

12401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 12800.

(b) Claims of More Than \$25,000 Up To [\$50,000] \$100,000

If the amount of a claim is more than \$25,000 but not more than [\$50,000] \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] unless the parties agree in writing to three arbitrators.

(c) Claims of More Than [\$50,000] \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than [\$50,000] \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

Industry Code

13401. Number of Arbitrators

(a) Claims of \$25,000 or Less

If the amount of a claim is \$25,000 or less, exclusive of interest and expenses, the panel will consist of one arbitrator and the claim is subject to the simplified arbitration procedures under Rule 13800.

(b) Claims of More Than \$25,000 Up To [\$50,000] \$100,000

If the amount of a claim is more than \$25,000 but not more than [\$50,000] \$100,000, exclusive of interest and expenses, the panel will consist of one arbitrator [unless any party requests a panel of three arbitrators in its initial pleading] unless the parties agree in writing to three arbitrators.

(c) Claims of More Than [\$50,000] \$100,000; Unspecified or Non-Monetary Claims

If the amount of a claim is more than [\$50,000] \$100,000, exclusive of interest and expenses, or is unspecified, or if the claim does not request money damages, the panel will consist of three arbitrators, unless the parties agree in writing to one arbitrator.

* * *

Trade Reporting Notice

FINRA Announces Two New Trade Reporting Modifiers Related to Regulation NMS

Effective Date: July 1, 2009

Executive Summary

Effective Wednesday, July 1, 2009, firms are required to use two new trade reporting modifiers when reporting to FINRA facilities the “error correction” and “print protection” exemptions to the Order Protection Rule (Rule 611 of SEC Regulation NMS).

Questions regarding this *Notice* may be directed to:

- Dave Chapman, Market Regulation, at (240) 386-4995;
- Scott Trilling, Market Regulation, at (240) 386-5113; or
- Office of General Counsel, at (202) 728-8071.

Discussion

In *Notice to Members 07-23* (May 2007), FINRA announced the adoption of trade reporting modifiers that firms must use to indicate on trade reports submitted to FINRA facilities (the Alternative Display Facility or a Trade Reporting Facility), whether the transaction qualified for an exception or exemption to Rule 611 of SEC Regulation NMS (SEC Rule 611) at the time of the trade and provided guidance on the proper use of those trade reporting modifiers. FINRA stated that, where appropriate, it may prescribe additional modifiers and will provide at least 30-days advance written notice of any such additional modifiers to ensure that firms have sufficient time to make necessary systems changes.

February 24, 2009

Key Topics

- Alternative Display Facility
- ADF Trading Centers
- Order Protection Rule
- Regulation NMS
- Trade Reporting
- Trade Reporting Facilities

Referenced Rules & Notices

- FINRA Rule 6282
- FINRA Rule 6380A
- FINRA Rule 6380B
- NTM 07-23
- SEC Regulation NMS
- SEC Rule 611

FINRA is announcing the adoption of two additional trade reporting modifiers for purposes of reporting exemptions from SEC Rule 611 for:

- certain transactions to correct bona fide errors in the execution of customer orders, in accordance with the SEC's Order Exempting Certain Error Correction Transactions from Rule 611 of Regulation NMS (see www.sec.gov/rules/exorders/2007/34-55884.pdf); and
- certain transactions that offer print protection to displayed customer orders when trades are reported at prices inferior to such orders, in accordance with the SEC's Order Exempting Certain Print Protection Transactions from Rule 611 of Regulation NMS (see www.sec.gov/rules/exorders/2007/34-55883.pdf).

Firms must use the new trade reporting modifiers in Trade Modifier Field 2 (Reason for SEC Rule 611 Exception or Exemption) (described more fully in *NTM 07-23*), in accordance with the applicable technical specifications for the FINRA facility to which the firm is reporting.

The updated Trade Reporting Modifier Chart on page 3 demonstrates generally how firms should use the modifiers when reporting a transaction that meets a recognized SEC Rule 611 exception or exemption. This chart provides the uniform methodology for reporting trade modifiers; however, the specific data entries used to report trades may vary depending upon the specific platform or system used. Therefore, the chart should be read in conjunction with the applicable system specifications.¹

As mentioned in *NTM 07-23*, the facts and circumstances of the particular trade dictate the appropriate modifier that firms must report in each field. Accordingly, the reporting firm must include in the transaction report all of the information that is pertinent to a particular transaction. To determine what modifiers firms must include in a particular transaction report, firms should analyze each column individually in the Trade Reporting Modifier Chart to determine what, if any, modifier is applicable for the transaction that is being reported.

Effective July 1, 2009, use of the "error correction" and "print protection" modifiers is mandatory under FINRA trade reporting rules.² Depending on the facility, firms may be able to begin reporting with the new modifiers prior to the effective date and should check the applicable technical specifications.

Trade Reporting Modifier Chart

(Updated information appears in italics below.)

Applicable Regulation NMS Exception/Exemption	Trade Reporting Information to be Entered by Reporting Firm				
	SEC Rule 611 Exception/Exemption/Trade-Through Flag	Settlement Type Field 1 ³	Reason for SEC Rule 611 Exception/Exemption Field 2	Extended Hours/Sold Field 3 ⁴	SRO Required Detail Field 4 ⁵
SEC Rule 611(b)(1) (Self Help)	If applicable indicate Yes	Enter applicable settlement modifier	Self Help (Note: for SRO audit trail only-will not be disseminated)	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(2) (Not Regular Way)	If applicable indicate Yes	Cash, Next Day or Seller	If applicable, enter other SEC Rule 611 exception/exemption modifier for transaction	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(4) (Crossed Market)	If applicable indicate Yes	Enter applicable settlement modifier	If applicable, enter other SEC Rule 611 exception/exemption modifier for transaction	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(5) (Intermarket Sweep Order (inbound))	If applicable indicate Yes	Enter applicable settlement modifier	Inbound Intermarket Sweep Order (Note: This will be disseminated generically as an ISO)	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(6) (Intermarket Sweep Order (outbound))	If applicable indicate Yes	Enter applicable settlement modifier	Outbound Intermarket Sweep Order (Note: This will be disseminated generically as an ISO)	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(b)(7) (Benchmark/ Derivatively Priced)	If applicable indicate Yes	Enter applicable settlement modifier	Derivatively Priced	Enter modifier if applicable	Prior Reference Price, Weighted Average Price or other modifier as applicable for transaction
SEC Rule 611(b)(9) (Stopped Stock)	If applicable indicate Yes modifier	Enter applicable settlement	Derivatively Priced	Enter modifier if applicable	Stopped Stock (Note: for SRO audit trail only – this will be disseminated as Weighted Average Price)
SEC Rule 611(d) (Qualified Contingent Trades)	If applicable indicate Yes	Enter applicable settlement modifier	Qualified Contingent Trade (Note: for SRO audit trail only – will not be disseminated)	Enter modifier if applicable	Enter modifier if applicable
SEC Rule 611(d) (Sub-Penny Trade-Throughs)	If applicable indicate Yes	Enter applicable settlement modifier	Sub-Penny Trade Through (Note: for SRO audit trail only – will not be disseminated)	Enter modifier if applicable	Enter modifier if applicable
<i>SEC Rule 611(d) (Error Correction)</i>	<i>If applicable indicate Yes</i>	<i>Enter applicable settlement modifier</i>	<i>Error Correction (Note: for SRO audit trail only – will not be disseminated)</i>	<i>Enter modifier if applicable</i>	<i>Enter modifier if applicable</i>
<i>SEC Rule 611(d) (Print Protection)</i>	<i>If applicable indicate Yes</i>	<i>Enter applicable settlement modifier</i>	<i>Print Protection (Note: for SRO audit trail only – will not be disseminated)</i>	<i>Enter modifier if applicable</i>	<i>Enter modifier if applicable</i>

Endnotes

- 1 ADF and TRF technical specifications are available at: www.finra.org/Industry/Compliance/MarketTransparency/index.htm.
- 2 See FINRA Rules 6282(a)(4)(K), 6380A(a)(5)(K) and 6380B(a)(5)(K).
- 3 The full universe of settlement type modifiers that can be used, as appropriate, in the "Settlement Type - Field 1" are found in the applicable technical specifications.
- 4 The full universe of trade type modifiers that can be used, as appropriate, in the "Extended Hours/Sold – Field 3" are found in the applicable technical specifications.
- 5 The full universe of trade type modifiers that can be used, as appropriate, in the "SRO Required Detail – Field 4" are found in the applicable technical specifications.

Election Notice

NAC Election

Notice of Contested Election and Ballot for Small Firm National Adjudicatory Council Member Seat

Executive Summary

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

Small firms are urged to vote in the election of a Small Firm NAC member. In order for a ballot to be considered valid, the executive representative of a small firm eligible to vote in the election must sign it. Ballots must be postmarked on or before March 9, 2009.

Small firms that are FINRA members as of the close of business on February 4, 2009, will be eligible to vote.

Note: FINRA distributed this *Notice* electronically to the executive representative of each FINRA firm and posted it on FINRA's Web site at www.finra.org/Notices/Election/020509.

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

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

February 5, 2009

Suggested Routing

- Executive Representatives
- Senior Management

Background

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

On November 6, 2008, the SEC approved a proposed rule change to amend FINRA Regulation's By-Laws to restructure the industry representation on the NAC to parallel the firm-size criteria for industry representation on the FINRA Board of Governors.¹ Instead of appointing industry representatives to the NAC by region, FINRA now appoints representatives based on firm size.² The Nominating and Governance Committee of the FINRA Board of Governors now identifies candidates for all NAC seats, including the five industry seats that are based on firm size.

Candidates for Small Firm NAC Member

In December 2008, the Nominating and Governance Committee nominated the FINRA candidate for the open Small Firm NAC member.³

FINRA Nominee for Small Firm NAC Member

- ▶ **James Stephen Jones** – President and Chief Compliance Officer, Crews & Associates, Inc., Little Rock, Arkansas

In January 2009, one candidate successfully petitioned to have his name added to the ballot.⁴

Petition Candidate for Small Firm NAC Member

- ▶ **Alan L. Davidson** – CEO, Zeus Securities Inc., Hauppauge, New York

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

Uncontested Nominee for Large Firm NAC Member

The Nominating and Governance Committee also nominated Pamela K. Cavness, Chief Compliance Officer of Edward D. Jones & Co. in St. Louis, Missouri as FINRA's nominee for the vacant Large Firm NAC member seat. The Large Firm seat was not contested, and Ms. Cavness will begin her term upon appointment by the FINRA Board.⁵

Ms. Cavness' profile is included in Attachment B.

Term of Office

In general, each NAC member holds office for a term of three years. Terms of office commence and expire on a staggered, annual basis. The three-year terms of office for the open Small Firm and Large Firm NAC member seats will expire in December 2011.

Voting Eligibility

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

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

Firm Contact Information

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

Pursuant to NASD Rule 1160, firms must update their contact information promptly, but in any event not later than 30 days following any change in such information, as well as review and, if necessary, update the information within 17 business days after the end of each calendar year. Additionally, firms must comply with any FINRA request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.⁶

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

Voting Methods

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

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

Endnotes

- 1 *See FINRA Election Notice 12/8/08.*
- 2 The five regional industry members of the 14-member NAC will be replaced with two small firm, one mid-size firm, and two large firm industry representatives during the next three years. (The other members of the NAC are two at-large industry members and seven non-industry members, three of whom are public).
- 3 *See FINRA Election Notice 12/8/08.*
- 4 Pursuant to Section 6.2 of the FINRA Regulation By-Laws, a person who has not been nominated by the Nominating and Governance Committee may be included on a ballot if he or she is eligible to hold an open seat, and obtains the requisite number of petitions in support of his or her nomination from members entitled to vote (based on firm size classification) for such nominee's election.
- 5 Pursuant to Sec. 6.4 of the FINRA Regulation By-Laws, if the Nominating and Governance Committee proposes a candidate for nomination and no additional candidate successfully petitions pursuant to Section 6.2, the Nominating and Governance Committee shall nominate its candidate to the FINRA Board for appointment.
- 6 *See NASD Rule 1160 and FINRA Regulatory Notice 07-42 (Sept. 2007).*

Attachment A – Profiles of Candidates for Small Firm NAC Member Seat

Petition Candidate for Small Firm NAC Member

Alan L. Davidson is President and founder, Zeus Securities, Inc., Hauppauge, NY, a small business NASD member since 1988. He has been in the securities industry since 1964.

Mr. Davidson is also founder and President of the Independent Broker-Dealer Association, Inc. with 250 investment firm members across the United States.

A former elected member of the NASD District 10 Business Conduct Committee, he originated the District 10 News, a publication informing and alerting NASD members to potential compliance problems.

Mr. Davidson testified before the Securities and Exchange Commission and the NASD's Rudman Commission for constructive reforms. The Rudman Commission and NASD adopted his suggestion to create an NASD Ombudsman.

He was elected to the NASD Board of Governors in December 1998.

Mr. Davidson is a graduate of C.W. Post College where he served as President of the Alumni Association.

FINRA Nominee for Small Firm NAC Member

James Stephen (Jim) Jones is one of the original founders of Crews & Associates, Inc., the Arkansas-based broker-dealer specializing in fixed income securities. Mr. Jones currently serves as Crews' president, chief compliance officer and member of the Board of Directors. Mr. Jones began his career as a retail and institutional broker. During his tenure at Crews, he has headed the general market underwriting department and currently participates in all aspects of the company, which includes sales, trading, public finance, compliance/legal and management. Mr. Jones has been active on various NASD/FINRA committees, serving as chairperson of the District 5 Committee and Advisory Council in 2000. He has participated on the Small Firm Advisory Board (SFAB), FINRA Fixed Income Committee and the recently completed New Account Form Task Force. He has served as an arbitrator for over 10 years. Mr. Jones received a Bachelor of Arts in Communications from the University of Arkansas (Fayetteville) in 1976, a Master of Arts in Communications from the University of Oklahoma in 1978, and his Certified Regulatory and Compliance Professional (CRCP) designation from the FINRA Institute-Wharton Certificate Program in 2005.

Attachment B - FINRA Nominee for Large Firm NAC Member Seat

Pamela K. Cavness has been registered with Edward D. Jones & Co., in St. Louis, Missouri since 1989, and has served as the chief compliance officer since 1997. Ms. Cavness serves as a member of the firm's Preferred Fund Family Committee, Preferred Insurance Vendor Committee, Best Execution Oversight Committee, U.K. Advisory Board Regulatory Subcommittee and co-chairs the Compliance Advisory Committee, a group of key leaders within Edward Jones and prominent industry securities law experts who provide guidance to the firm. Ms. Cavness serves on the FINRA Compliance Advisory Committee, the FINRA Investment Company Securities Committee, and the SIFMA Compliance and Legal Division Executive Committee. In addition, Ms. Cavness has served as a member of the Securities Industry Association's Self-Regulation and Supervisory Practices Committee and has chaired its Ad Hoc Committee on the Regulatory Impact of Demutualization. Ms. Cavness earned a bachelor's degree in economics from the University of Illinois in 1985. In 1994, Ms. Cavness obtained an MBA from the University of Missouri – St. Louis.

Election Notice

District Elections

Nominees for the District Committees and District Nominating Committees

Executive Summary

The purpose of this *Election Notice* is to announce the nominees for the District Committees and the District Nominating Committees.¹ The individuals identified in this *Notice* have been nominated for the District Committees and District Nominating Committees for terms beginning in June 2009. The term of office for District Committee members is three years, unless an individual is selected to complete an existing term.² Each District Nominating Committee member serves a one-year term. The length of the term of each nominee and the Committee for which they are being nominated are specified in Attachment A.

These nominees will be considered duly elected on April 8, 2009, to terms beginning June 1, 2009, unless an election is contested in accordance with the procedures summarized below.

Note: FINRA distributed this *Notice* electronically only to the Executive Representative of each FINRA member firm and it is posted on FINRA's Web site at www.finra.org/Notices/Election/022309. Executive Representatives should circulate this *Notice* to their firm's branch managers.

Questions concerning this *Notice* may be directed to:

- The District Office contact noted in Attachment A; or
- Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949 or CorporateSecretary@finra.org.

February 23, 2009

Suggested Routing

- Compliance
- Executive Representatives
- Legal
- Operations
- Registration
- Senior Management

Additional Candidates

If a person meets the qualifications, is eligible to serve,³ has not been nominated by a District Nominating Committee as a candidate or alternate, and wants to be considered for election to a District Committee or the District Nominating Committee, he or she must deliver a written notice to the District Director or Regional Director within 14 calendar days of the date of this *Notice*—**March 9, 2009**.

Petition Process

If an additional candidate or candidates come forward by March 9, 2009, the Corporate Secretary will provide each such candidate with a list of firms eligible to vote in their District. The list will include the name of the Executive Representative and the mailing address for each firm.

To be considered for nomination, an additional candidate must submit a petition to the District Nominating Committee with signatures from at least 10 percent of Executive Representatives of firms eligible to vote in the District within 30 calendar days of receipt of the list of members. If an additional candidate submits a petition with the requisite number of valid signatures by April 8, 2009, he or she will be considered nominated and the election will be contested.

Contested Election Procedures

If an election is contested, the Corporate Secretary of FINRA will send an *Election Notice* and ballot to the Executive Representatives of the FINRA firms eligible to vote in the District listing the names of the candidates nominated by the District Nominating Committee, the candidates who have petitioned to be on the ballot and the contested election procedures with instructions on how to vote.

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

Endnotes

- 1 In addition to nominating a slate of candidates for each of these committees, each District Nominating Committee may nominate one alternate candidate for each committee. The nomination of alternate candidates is permitted under Section 8.17 of the By-Laws of FINRA Regulation. Attachment A identifies each District Nominating Committee's slate of nominees, plus alternate candidates (if any).
- 2 Some nominees are filling existing vacancies and therefore may serve less than a three-year term, as indicated on Attachment A.
- 3 To be eligible to serve, an individual must (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 Committee or District Nominating Committee. See Sections 8.2 or 8.9 of FINRA Regulation's By-Laws, as applicable.

Attachment A—District Committee and District Nominating Committee Nominees

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 Nominating Committee Chair: William A. Evans

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
Total Number of Candidates Considered: 17
- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2010: 5
Total Number of Candidates Considered: 6

District Committee Nominees for Terms Expiring May 31, 2012

Nancy A. Mullally	Alamo Capital	Walnut Creek, CA
Robert J. Zamecki	Lighthouse Capital Corporation	Monterey, CA
Vincent M. Faughnan	Banc of America Securities, LLC	San Francisco, CA

Alternate Candidate

Douglas C. Heske	Nollenberger Capital Partners, Inc.	San Francisco, CA
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Christopher D. Charles	Wulff, Hansen & Co.	San Francisco, CA
Kevin T. Kitchin	Wachovia Securities, LLC	San Francisco, CA
Bruce W. Nollenberger	Nollenberger Capital Partners, Inc.	San Francisco, CA
Daniel W. Roberts	Roberts & Ryan Investments, Inc.	San Francisco, CA
Edward M. Stephens	FSC Securities Corporation	San Francisco, CA

Alternate Candidate

Howard A. Bernstein	Pacific Growth Equities, LLC	San Francisco, CA
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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) 613-2634
(213) 613-1401 fax

District Nominating Committee Chair: Valorie Seyfert

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
District Committee member to be elected to term expiring May 31, 2010: 1
Total Number of Candidates Considered: 15
- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2010: 5
Total Number of Candidates Considered: 5

District Committee Nominees for Terms Expiring May 31, 2012

S. Kendrick Dunn, Jr.	Pacific Select Distributors, Inc.	Newport Beach, CA
Peter K. Vonk	CUSO Financial Services, L.P.	San Diego, CA
Steven L. Thornton	Valtus Capital Group, LLC	Tarzana, CA

District Committee Nominee for Term Expiring May 31, 2010

Mitchell W. Howard	First Wilshire Securities Management, Inc.	Pasadena, CA
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Alternate Candidate

Bardea C. Huppert	Farmers Financial Solutions, LLC	Agoura Hills, CA
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Valorie A. Seyfert	CUSO Financial Services, L.P.	San Diego, CA
Kenneth R. Hyman	Partnervest Securities, Inc.	Santa Barbara, CA
Steven K. Klein	Farmers Financial Solutions, LLC	Agoura Hills, CA
Gary A. Martino	brokersXpress, LLC	Thousand Oaks, CA
M. LaRae Bakerink	WBB Securities, LLC	San Diego, CA

District 3

Arizona, Colorado, New Mexico, Utah and Wyoming

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

4600 S. Syracuse, 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 (206) 624-0790
(206) 623-2518 fax

District Nominating Committee Chair: Gregory R. Anderson

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
District Committee member to be elected to term expiring May 31, 2010: 1
Total Number of Candidates Considered: 22
- ▶ District Nominating Committee members to be elected to terms expiring
May 31, 2010: 5
Total Number of Candidates Considered: 7

District Committee Nominees for Terms Expiring May 31, 2012

Paul T. Amsbury	Morgan Stanley & Co.	Portland, OR
Kay A. Johnson	National Securities Corporation	Seattle, WA
Bruce J. Maranda	Canaccord Capital Corporation USA, Inc.	Vancouver, BC

District Committee Nominee for Term Expiring May 31, 2010

Steven S. Iversen	NEXT Financial Group, Inc.	Albuquerque, NM
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Alternate Candidate

Patrick H. McEvoy	Multi-Financial Securities Corporation	Denver, CO
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Louis H. (Hoyt) DeMers	Wells Fargo Investments, LLC	Seattle, WA
Russell R. Diachok	Geneos Wealth Management, Inc.	Centennial, CO
David J. Director	McAdams Wright Ragen, Inc.	Seattle, WA
Craig A. Jackson	Financial Network Investment Corp.	Roseburg, OR
Harry L. Striplin	Strand, Atkinson, Williams & York, Inc.	Portland, OR

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 Nominating Committee Chair: Joe Fleming

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
Total Number of Candidates Considered: 23
- ▶ District Nominating Committee members to be elected to terms expiring May 31, 2010: 5
Total Number of Candidates Considered: 7

District Committee Nominees for Terms Expiring May 31, 2012

Jennifer Relien	Thrivent Investment Management	Minneapolis, MN
Dana Bjornson	George K. Baum & Company	Kansas City, MO
Amy Webber	Cambridge Investment Research, Inc.	Fairfield, IA

Alternate Candidate

Craig Markham	Walnut Street Securities	St. Louis, MO
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Andrew Small	Scottrade, Inc.	St. Louis, MO
Patricia Bartholomew	Craig-Hallum Capital Group, LLC	Minneapolis, MN
Pamela Ziermann	Dougherty & Company, LLC	Minneapolis, MN
Allen Moore	Smith Hayes Financial Services, Corp.	Lincoln, NE
Mino Spellerberg	Princor Financial Services	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

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

District Nominating Committee Chair: Henry M. Fyfe, III

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
Total Number of Candidates Considered: 12
- ▶ District Nominating Committee members to be elected to terms expiring
May 31, 2010: 5
Total Number of Candidates Considered: 6

District Committee Nominees for Terms Expiring May 31, 2012

LeRoy "Lee" Paris, II	InvestLinc Securities, LLC	Jackson, MS
Mark Sheridan	Johnson Rice & Company, LLC	New Orleans, LA
James F. Dixon, III	Sterne, Agee & Leach, Inc.	Birmingham, AL

Alternate Candidate

William E. Hopkins, II	Silver Oak Securities, Inc.	Jackson, TN
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

J. French Hill	Delta Trust Investments, Inc.	Little Rock, AR
Michaela Myers	NAFA Capital Markets	Oklahoma City, OK
Jefferson G. Parker	Howard Weil, Inc.	New Orleans, LA
Jennifer C. Scola	Carty & Company, Inc.	Memphis, TN
F. Eugene Woodham	Sterne, Agee & Leach, Inc.	Birmingham, AL

Alternate Candidate

James S. Jones	Crews & Associates, Inc.	Little Rock, AR
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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 Nominating Committee Chair: Cynthia E. Besek

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
Total Number of Candidates Considered: 14
- ▶ District Nominating Committee members to be elected to terms expiring
May 31, 2010: 5
Total Number of Candidates Considered: 6

District Committee Nominees for Terms Expiring May 31, 2012

Adan Araujo	First Command Financial Planning	Fort Worth, TX
William Cathriner	BBVA Investments, Inc.	Houston, TX
Kelly Welker	LPL Financial Corporation	San Antonio, TX

Alternate Candidate

Rebecca Starling-Platt	Invesco AIM Distributors, Inc.	Houston, TX
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Bryan Emerson	Starlight Investments, LLC	Houston, TX
Sennett Kirk	Kirk Securities Corp.	Denton, TX
John Christopher Melton	Coastal Securities, Inc.	Houston, TX
William H. Lowell	Lowell & Company, Inc.	Lubbock, TX
Alan Goldfarb	Weaver Tidwell Capital LLC	Dallas, TX

Alternate Candidate

Michael A. Pagano	1st Global Capital Corp.	Dallas, TX
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District 7

Georgia, North Carolina and South Carolina

Daniel J. Stefek, Associate Vice President and District Director

Suite 500, 3490 Piedmont Road, NE, Atlanta, GA 30305 (404) 239-6100
One Securities Centre (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 (561) 443-8000
2500 N. Military Trail, Suite 302, Boca Raton, FL 33431 (561) 443-7995 fax

District Nominating Committee Chair: Kenneth W. McGrath

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
District Committee members to be elected to terms expiring May 31, 2010: 1
Total Number of Candidates Considered: 15
- ▶ District Nominating Committee members to be elected to terms expiring
May 31, 2010: 5
Total Number of Candidates Considered: 5

District Committee Nominees for Terms Expiring May 31, 2012

Ruth A. Burgess	INVEST Financial Corporation	Tampa, FL
Donald K. Runkle	Raymond James Financial Services, Inc.	St. Petersburg, FL
Caroline (Carrie) Wisniewski	Bridge Capital Associates, Inc.	Norcross, GA

District Committee Nominee for Term Expiring May 31, 2010

John T. Rhett, III	SunTrust Investment Services, Inc.	Atlanta, GA
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Alternate Candidate

Kenneth S. Bell	ING Financial Partners, Inc.	Atlanta, GA
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Susan J. Hechtlinger	SunTrust Investment Services, Inc.,	Atlanta, GA
William G. McMaster	Scott & Stringfellow, Inc.,	Columbia, SC
Charles F. O'Kelley	Atlantic Coast Securities Corporation,	Tampa, FL
Roark (Rocky) A. Young	Young, Stovall and Company,	Miami, FL
Landrum H. Henderson	Banc of America Investments Services, Inc.,	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 Nominating Committee Chair: Mari Buechner

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
Total Number of Candidates Considered: 20
 - ▶ District Nominating Committee members to be elected to terms expiring May 31, 2010: 5
Total Number of Candidates Considered: 6
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District Committee Nominees for Terms Expiring May 31, 2012

Timothy P. Byrnes	Morgan Stanley & Co. Incorporated	Barrington, IL
Anthony C. LaRosa	JJB Hilliard WL Lyons, LLC	Indianapolis, IN
Joseph R.V. Romano	Romano Brothers & Co.	Evanston, IL

Alternate Candidate

Jeffrey V. Gery	NRP Financial, Inc.	Bryan, OH
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Richard M. Arceci	ValMark Securities, Inc.	Akron, OH
Stephen F. Anderson	Waterstone Financial Group, Inc.	Itasca, IL
Eric A. Bederman	Bernardi Securities, Inc.	Chicago, IL
Thomas M. McDonald	Thomas McDonald Partners, LLC	Cleveland, OH
Barbara A. Turner	The O.N. Equity Sales Co.	Cincinnati, 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, Vice President and District Director

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

District Nominating Committee Chair: A. Louis Denton

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
District Committee member to be elected to term expiring May 31, 2011: 1
Total Number of Candidates Considered: 21
- ▶ District Nominating Committee members to be elected to terms expiring
May 31, 2010: 5
Total Number of Candidates Considered: 7

District Committee Nominees for Terms Expiring May 31, 2012

Irene A. Feeley	Capital Analysts, Incorporated	Horsham, PA
Mark Gomez	NYLife Distributors, LLC	Parsippany, NJ
Michael K. Kauffelt, II	Bill Few Associates, Inc.	Pittsburgh, PA

District Committee Nominee for Term Expiring May 31, 2011

Kenneth I. Schindler	Prudential Investment Management Services, LLC	Newark, NJ
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Alternate Candidate

David S. Berkowitz	Lincoln Financial Advisors	Philadelphia, PA
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Michael T. Corrao	Knight Equity Markets, LP	Jersey City, NJ
John M. Ivan	Janney Montgomery Scott, LLC	Philadelphia, PA
W. Dean Karrash	Burke, Lawton, Brewer & Burke, LLC	Ambler, PA
John P. Meegan	Hefren-Tillotson, Inc.	Pittsburgh, PA
Thomas T. Wallace	Johnston, Lemon & Co., Inc.	Washington, DC

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) 858-4180
(212) 858-4078 fax

District Nominating Committee Chair: Judith R. MacDonald

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 4
District Committee member to be elected to term expiring May 31, 2011: 1
Total Number of Candidates Considered: 6
- ▶ District Nominating Committee members to be elected to terms expiring
May 31, 2010: 5
Total Number of Candidates Considered: 6

District Committee Nominees for Terms Expiring May 31, 2012

Evan Charkes	Citigroup Global Markets, Inc.	New York, NY
Craig B. Jampol	Sterne, Agee & Leach, Inc.	New York, NY
Paul C. McClung	NYLIFE Securities LLC	New York, NY
David V. Shields	Shields & Company	New York, NY

District Committee Nominee for Term Expiring May 31, 2011

Robin A. Oliver	Raymond James Financial Services, Inc.	New York, NY
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Clifford H. Goldman	Marco Polo Securities, Inc.	New York, NY
Raymond C. Holland, Sr.	Triad Securities Corp.	New York, NY
Allen Meyer	Credit Suisse First Boston LLC	New York, NY
Howard Spindel	Integrated Management Solutions	New York, NY
Tom M. Wirtshafter	American Portfolio Financial Services, Inc.	Holbrook, NY

Alternate Candidate

Jennifer A. Connors	E*Trade Securities LLC	New York, NY
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District 11

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

Elizabeth F. Page, District Director

99 High Street, Suite 900, Boston, MA 02110

(617) 532-3401

(617) 451-3524 fax

District Nominating Committee Chair: Thomas J. Horack

Positions Being Filled in This Election:

- ▶ District Committee members to be elected to terms expiring May 31, 2012: 3
Total Number of Candidates Considered: 19
 - ▶ District Nominating Committee members to be elected to terms expiring
May 31, 2010: 5
Total Number of Candidates Considered: 6
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District Committee Nominees for Terms Expiring May 31, 2012

Michael J. Mahoney	John Hancock Funds, LLC	Boston, MA
John A. Vaccaro	MML Investors Services, Inc.	Springfield, MA
Edward J. Wiles, Jr.	Genworth Financial Securities Corp.	Stamford, CT

Alternate Candidate

James D. McCarron	U.S. Wealth Advisors, LLC	Braintree, MA
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District Nominating Committee Nominees for Terms Expiring May 31, 2010

Martin W. Courage	J.P. Morgan Securities, Inc.	Boston, MA
John I. Fitzgerald	Leerink Swann, LLC	Boston, MA
Joseph J. Gritzer, Jr.	USI Securities, Inc.	Glastonbury, CT
Moira C. Lowe	Sun Life Financial Distributors, Inc.	Wellesley Hills, MA
Robert J. Reilly	Barclays Capital, Inc.	Boston, MA

Disciplinary and Other FINRA Actions

Firm Fined, Individual Sanctioned

Fifth Third Securities, Inc. (CRD #628, Cincinnati, Ohio) and Cynthia Lynn Davenport (CRD #2484400, Registered Principal, Norwood, Ohio) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$20,000, \$5,000 of which was jointly and severally with Davenport. Davenport was also suspended from association with any FINRA member in any capacity for two months. Without admitting or denying the findings, the firm and Davenport consented to the described sanctions and to the entry of findings that the firm, acting through Davenport and other individuals, failed to obtain written consent to conduct Web CRD searches pertaining to individuals not seeking registration or assignment with the firm, and falsely certified that written consent had been obtained from the individuals whose CRD records were searched. The findings stated that the firm failed to establish and maintain adequate written procedures to supervise the use of Web CRD, and failed to adequately train and supervise all of the employees who were permitted access to Web CRD to ensure that the requisite written consents were obtained prior to conducting all Web CRD searches.

The suspension is in effect from January 5, 2009, through March 4, 2009. (FINRA Case #2007007333001)

Firms and Individuals Fined

First New York Securities, L.L.C. (CRD #16362, New York, New York), Larry Chachkes (CRD #4132788, Registered Representative, New York, New York) and Joseph Eric Edelman (CRD #2115413, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm, Chachkes and Edelman were censured; the firm was fined \$170,000; Chachkes was fined \$30,000 and Edelman was fined \$50,000. The firm was also ordered to disgorge \$171,504.44 of unlawful profits and required to revise its written supervisory procedures to achieve compliance with, and prevent violations of, Securities and Exchange Commission (SEC) Rule 105, and to include the supervisory steps to be taken by the responsible person in connection with SEC Rule 105 supervision.

Reported for February 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).

Without admitting or denying the findings, the firm, Chachkes and Edelman consented to the described sanctions and to the entry of findings that the firm, acting through Chachkes, Edelman and others, sold securities short during the five business days before the pricing of public offerings and then engaged in covering transactions with shares from public offerings in violation of SEC Rule 105. The findings stated that the firm's supervisory system failed to provide for adequate and reasonable supervision of the individual representatives' activities, and its supervisory system and written procedures did not provide for supervision reasonably designed to achieve compliance with and prevent violations of SEC Rule 105. The findings also stated that the firm's supervisory system did not include written supervisory procedures providing for a statement of the steps to be taken by the responsible person in connection with SEC Rule 105 supervision. The findings also included that the firm provided inaccurate information in response to a FINRA inquiry, which was caused by its failure to have in place adequate supervisory procedures reasonably designed to ensure that the firm provided responsive information to regulatory inquiries. FINRA found that the firm failed to make and preserve books and records, in conformity with SEC and FINRA rules; order tickets did not reflect the correct price, lacked time stamps or contained inaccurate time stamps. FINRA also found that the firm failed to preserve brokerage order memoranda for a period of not less than three years, the first two in an accessible place. (FINRA Case #2005000796001)

G.C. Andersen Partners Capital, LLC (CRD #44631, New York, New York) and Bruce Neal Orr (CRD #1708096, Registered Principal, St. Augustine, Florida) submitted Letters of Acceptance, Waiver and Consent in which the firm was censured and fined \$65,000, and Orr was censured and fined \$15,000. Without admitting or denying the findings, the firm and Orr consented to the described sanctions and to the entry of findings that the firm, acting through Orr, participated in private placements that were contingent upon receiving a minimum and/or a maximum of investor funds and during the offering periods, the firm failed to transmit investor funds to a bank that had agreed, in writing, to hold such funds in escrow for the investors until the offering contingency was met but, instead, investor funds were held in an account over which Orr had control as escrow agent. The findings stated that, as a result of the firm's control over the funds held in connection with the private placements, it was deemed to be in control of customer funds, which resulted in an increase in its net capital requirement, but the firm was found to be deficient in its net capital while conducting a securities business. The findings also stated that Orr, on the firm's behalf, failed to maintain a Cash/Checks Received and Forwarded Blotter, or an equivalent record to reflect the receipt and/or forwarding of funds as required by SEC Rule 17a-3. The findings also included that the firm did not have an adequate email retention system and therefore failed to adequately preserve emails as required. FINRA found that the firm failed to establish and maintain a supervisory system reasonably designed to ensure compliance with applicable laws, rules and regulations in connection with the private placements conducted by the firm, and the firm failed to retain a written record of the dates upon which reviews and branch office inspections were conducted. (FINRA Cases #2007007256801/#2007007256802)

Firms Fined

Access Securities, Inc. (CRD #22455, Stamford, Connecticut) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,000. 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 short sales in an equity security for its own account, without documenting compliance with SEC Rule 203(b)(1) of Regulation SHO. The findings stated that the firm failed to report to the NASDAQ Market Center (NMC) the correct symbol indicating whether a transaction was a buy, sell, sell short, sell short exempt or cross for transactions in reportable securities, and failed to report to the NMC the correct symbol indicating whether it executed transactions in reportable securities in a principal or agency capacity. The findings also stated that the firm transmitted reports to the Order Audit Trail System (OATS) that contained inaccurate, incomplete or improperly formatted data by failing to submit the “not held” handling code and submitting an incorrect account type code. The findings also included that the firm executed short sale orders and failed to properly mark the order tickets as short. FINRA found that the firm failed to show the following: the correct order receipt time on brokerage order memoranda, the correct order receipt time and the execution time for each partial execution on a brokerage order memoranda, the correct execution time on brokerage order memoranda, and the correct execution time and the share amount for each partial execution on brokerage order memoranda. **(FINRA Case #2006004229801)**

Agency Trading Group, Inc. (CRD #108887, Wayzata, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$20,000 and required to revise its written supervisory procedures regarding trade reporting. 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 Trade Reporting Facility (TRF) last sale reports of transactions in designated securities that it was required to report to the TRF. The findings stated that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and NASD rules concerning trade reporting. The findings also stated that the firm failed to report the correct execution time to the NMC in late last sale reports of transactions in eligible securities, and failed to create brokerage order memoranda. **(FINRA Case #2007008286101)**

AXA Advisors, LLC (CRD #6627, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$350,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it did not adequately retain and archive back-up tapes, permitted representatives to change their desktop computer settings to stop outgoing emails from being retained automatically, and did not prevent representatives from deleting emails or moving incoming emails to their desktops prior to daily backups so that emails would not be retained automatically. The findings stated that the firm’s email system overwrote email back-up tapes that contained emails employees sent or

received every three or four weeks. The findings also stated that the firm permitted representatives to use, or failed to prevent them from being able to use, public instant messaging and other means of electronic communications without retaining the communications. The findings also included that the firm implemented a new email retention system, but the system malfunctioned and the firm did not have adequate systems and procedures in place to detect and prevent the malfunctions. FINRA found that the deficiencies did not result in the firm's failure to produce emails that were material to any regulatory investigation or legal proceeding. **(FINRA Case #EAF0401030001)**

Cambria Capital, LLC (CRD #133760, Salt Lake City, Utah) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$40,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it conducted sales of unregistered securities that were not exempt from registration. The findings stated that the firm failed to establish a supervisory system or establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with Section 5 of the Securities Act of 1933 to detect or prevent the sale of securities that were neither registered, exempt from registration by the firm or its representatives or to determine that securities received into customer accounts could be sold without restriction. The findings also stated that the firm failed to fully implement its customer identification program in connection with new non-individual customer accounts by failing to obtain complete information to verify the identity of the accounts. The findings also included that the firm's independent testing of its Anti-Money Laundering (AML) program for compliance did not comply with NASD Rule 3011 because the tester did not qualify as independent at the time it was conducted. FINRA found that the firm failed to properly investigate information received from its clearing firm identifying customers opening new accounts that had securities disciplinary histories and/or other characteristics warranting review. FINRA also found that the firm failed to enforce its Suspicious Activity Report (SAR) procedures, in that it failed to file SARs in connection with questionable activities in customer accounts involving \$5,000 or more, although activities appeared to lack a lawful purpose and the firm was not aware of any reasonable explanation for the transactions. **(FINRA Case #2007007402901)**

Commonwealth Church Finance, Inc. dba Charter Financial Services (CRD #11768, McDonough, Georgia) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$10,000, \$5,000 of which was jointly and severally. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it conducted a securities business while failing to maintain its required minimum capital. The findings stated that the firm maintained inaccurate books and records that did not reflect accrued liabilities. **(FINRA Case #2007011288401)**

David A. Noyes & Company (CRD #205, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$22,500 and required to revise its supervisory system regarding the misuse of material, nonpublic information by the firm or any person associated with it; maintaining separation between its sales and investment banking departments to prevent communication of material, non-public information and establishing “Grey List” and “Restricted List” procedures. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to enforce written supervisory procedures, in that it failed to maintain separation between its sales and investment banking departments to prevent communication of material, non-public information concerning investment activity to anyone outside the investment banking department without the prior approval of designated managers; to establish “Grey List” procedures to be implemented when the firm is about to obtain, or has obtained, material, non-public information concerning a security; and to establish a “Restricted List” procedure designed to prohibit insider trading violations and appearances of impropriety. The findings stated that the firm failed to enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the firm or any person associated with it. **(FINRA Case #2005000219101)**

E*Trade Clearing, LLC (CRD #25025, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,500 and required to revise its written supervisory procedures regarding Contrary Exercise Advice (CEA) filings. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it accepted CEA filings after the 5:30 p.m. deadline on the business day immediately prior to the contract’s expiration date. The findings stated that the firm failed to prepare a memorandum of exercise instructions from a customer showing the receipt time. The findings also stated that the firm’s supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning CEAs. **(FINRA Case #2006004395001)**

First Southwest Company (CRD #316, Dallas, Texas) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$300,000 and required to submit a buyback offer to purchase at par auction rate securities (ARS) subject to auctions that have not been successful as of mid-September and are not subject to current calls or redemptions (Eligible ARS) from all investors who purchased eligible ARS between May 31, 2006, and February 28, 2008 (Relevant Class). No later than six months from the date of this AWC, the firm shall make its best efforts to provide liquidity to all other investors not in the Relevant Class but who purchased Eligible ARS from the firm. The firm shall reasonably identify investors who sold Eligible ARS below par between February 28, 2008, and September 15, 2008, and pay them the difference between par and the price at which they sold the ARS. The firm shall arbitrate claims for consequential damages filed by investors in the Relevant Class relating to Eligible ARS through a Special Arbitration Program (SAP) and provide FINRA with a report following

the completion of the buyback concerning compliance with the settlement. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it violated FINRA rules relating to communications with the public in its marketing and sale of ARS, and failed to maintain adequate supervisory procedures concerning its sales and marketing activities regarding ARS. The findings stated that the firm used advertising and marketing materials for ARS that were not fair and balanced, and did not provide a sound basis for evaluating the facts in regard to purchases of ARS, in that the materials did not contain adequate disclosure of the risks of ARS, including that ARS auctions could fail, that investments in ARS could become illiquid, and that customers might be unable to access funds invested in ARS for substantial periods of time. The findings also stated that the firm failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA rules in the marketing and sale of ARS. The findings also included that the firm failed to provide adequate training to registered representatives regarding the features and characteristics of ARS, specially those effecting liquidity. FINRA found that the firm failed to establish and maintain procedures reasonably designed to ensure that the written materials it used in connection with the marketing and sale of ARS complied with appropriate disclosure standards. **(FINRA Case #2008014569701)**

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$600,000 to be paid jointly to FINRA and the New York Stock Exchange. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit last sale reports of transactions in eligible securities to NASDAQ, and failed to report last sale reports of transactions in eligible securities to NASDAQ. The findings stated that the firm failed, within 90 seconds after execution, to transmit last sale reports of transactions in NASDAQ securities through the NMC or the Trade Reporting and Comparison Service (TRACS), and failed to report last sale reports of transactions in NASDAQ securities to the NMC. The findings also stated that the firm failed to report the correct symbol indicating that a transaction was a short sale for transactions in reportable securities to the NMC. The findings also included that the firm failed to show the time of entry or execution times on brokerage order memoranda, failed to notate a short sale indicator on the order ticket, failed to notate a capacity of agent or principal on order tickets, and was unable to produce order tickets for transactions. FINRA found that the firm did not have in place a system reasonably designed to monitor and review the proprietary dividend yield enhancement transactions of its equity finance group (EFG) to ensure compliance with securities laws, regulations, FINRA rules and the firm's guidelines. FINRA also found that the firm failed to establish procedures reasonably designed to detect potentially improper proprietary yield enhancement transactions executed by the EFG's New York trading desk and thereby failed to adequately supervise its business activities. In addition, FINRA determined that the firm failed to establish written supervisory procedures reasonably designed to achieve compliance with NASD Rules 3110, 5430, 6130 and 6420, and SEC Rules 17a-3 and 17a-4. **(FINRA Case #2005000121901)**

Goldman, Sachs & Co. (CRD #361, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$17,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to report the contra party identifier for inter-dealer transactions effected in municipal securities to the Real-time Transaction Reporting System (RTRS). **(FINRA Case #2008012105501)**

Investors Capital Corp. (CRD #30613, Lynnfield, Massachusetts) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$12,000 and ordered to pay \$1,558.23, plus interest, in restitution to investors. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that, in transactions, it either bought corporate bonds from customers and failed to buy the bonds at a price that was fair, or sold corporate bonds to customers and failed to 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 failed to show the time of entry on brokerage order memoranda. **(FINRA Case #2005002246301)**

Kern, Suslow Securities, Inc. (CRD #24755, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$22,500. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to develop and implement a customer identification program. The findings stated that the firm's Checks Received and Forwarded Blotter or an equivalent record was inadequate in that the firm failed to record checks received. The findings also stated that the firm failed to develop and maintain a continuing and current education program for its covered registered persons for one year, in that it failed to develop a written training plan outlining the Firm Element program and failed to maintain records documenting the content and completion of the Firm Element by its covered registered persons. **(FINRA Case #2007007314701)**

Mesirow Financial, Inc. (CRD #2764, Chicago, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$55,000, ordered to pay \$216, plus interest, in restitution to investors, and required to revise its written supervisory procedures regarding firm personnel registration and supervisory qualifications, best execution, trade reporting, order marking, short sale requirements, quotation requirements, order handling, trading halts, books and records, anti-intimidation and coordination, OATS and Chinese walls. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to register persons acting in a supervisory capacity. The findings stated that the firm failed to contemporaneously or partially execute customer limit orders in exchange-listed securities after it traded each security for its own market-making account at a price that would have satisfied each customer's limit order. The findings also stated that the firm failed to report the correct symbol indicating whether it executed transactions in reportable securities in a principal or agency capacity to the NMC. The findings also included that the firm executed short sale transactions and

failed to report each of the transactions to the NMC with a short sale modifier and transmitted reports to OATS that contained inaccurate, incomplete or improperly formatted data. FINRA found that the firm failed to show the correct execution time on memoranda of securities transactions for the firm; execution time on brokerage order memoranda; and receipt time on memoranda of securities transactions for the firm account executed with a customer other than a broker or dealer. FINRA also found that the firm failed to immediately display customer limit orders in a listed security in its public quotation when each order was at a price that would have improved the firm's bid or offer in the security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer for the security, and the order size represented more than a *de minimis* change in relation to the size associated with its bid or offer in the security. In addition, FINRA determined that the firm failed to use the "W" modifier for a riskless principal transaction reported at an average price to the TRF and also over-reported the same riskless principal transaction to the TRF by incorrectly separately reporting last sale reports of the individual transactions comprising the average priced report at the transaction prices specific to those disaggregated transactions. Moreover, FINRA found that the firm reported to the OTC Reporting Facility last sale reports of transactions in OTC equity securities it was not required to report. Furthermore, 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 concerning firm personnel registration and supervisory qualifications, best execution, trade reporting, order marking, short sale requirements, quotation requirements, order handling, trading halts, books and records, anti-intimidation and coordination, OATS and Chinese walls. (FINRA Case #2006004237701)

Meyers Associates, L.P. (CRD #34171, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$60,000. 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 a system to retain for more than 30 days its electronic communications related to the firm's business, including emails firm employees sent or received, and failed to retain a record of supervisory review of those electronic communications for production to FINRA upon request. (FINRA Case #2007007254002)

New Castle Financial Services LLC (CRD #102380, Melville, 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 transmit Reportable Order Events (ROEs) for more than a year. (FINRA Case #2006006631301)

Nexcore Capital, Inc. (CRD #31893, San Diego, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$35,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to preserve business-related instant messages its associated persons sent or received, and failed to establish and maintain a supervisory system reasonably designed to achieve compliance with securities laws, regulations and FINRA rules applicable to the preservation of business-related instant

messages. The findings stated that the firm's membership agreement with FINRA precluded it from holding customer securities and, without filing an application for approval of a material change in business operations, the firm held customer securities on numerous dates within an eight-month period. The findings also stated that the firm conducted a securities business without maintaining its required net capital and maintained materially inaccurate computations of its excess net capital in its books and records for several months. **(FINRA Case #2007007379601)**

Pershing, LLC (CRD #7560, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$30,000 and required to revise its written supervisory procedures regarding SEC Rules 200(g), 203(a), 203(b)(1) and 203(b)(3). Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it had a failed to deliver position at a registered clearing agency in threshold securities for 13 consecutive settlement days and failed to immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity, and in some instances, failed to borrow the security or enter in a *bona fide* arrangement to borrow the security before executing proprietary short sales. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules concerning SEC Rules 200(g), 203(a), 203(b)(1) and 203(b)(3). The findings also included that the firm, an Intermarket Trading System/ Computer Assisted Execution System (ITS/CAES) market maker, purchased or sold ITS/CAES securities, whether in a principal capacity or as an agent, at a price that was lower than the bid or higher than the offer displayed from an ITS participant exchange or ITS/CAES market maker. **(FINRA Case #2005002489301)**

Stonehurst Securities, Inc. (CRD #138218, Folsom, 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 distributed a mailing referencing private placements offered by the firm that were represented to be exempt from registration pursuant to SEC Rule 506 of Regulation D, which requires compliance with SEC Rule 502 that prohibits general solicitations. The findings stated that because individuals who received the mailing lacked a pre-existing business relationship with the firm; the mailing was considered a general solicitation in contravention of SEC Rule 502 and therefore, the firm's transactions did not qualify for an exemption under SEC Rule 506. The findings also stated that no other exemption was available and the securities were not registered. The findings also included that individuals made investments in the offerings and the transactions constituted the sale of unregistered securities. FINRA found that the firm's supervisory system and its written supervisory procedures addressed private placements but were not reasonably designed to achieve compliance with the registration requirement of Section 5 of the Securities Act of 1933 or the eligibility requirements for Regulation D exemptions. FINRA also found that the system and procedures did not provide adequately for the detection and prevention of general solicitations by firm personnel. **(FINRA Case #2007007190601)**

WaMu Investments, Inc. (CRD #599, Irvine, California) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured, fined \$250,000 and required to submit a buyback offer to purchase at par auction rate securities (ARS) subject to auctions that have not been successful as of mid-September and are not subject to current calls or redemptions (Eligible ARS) from all individual investors and certain entities who purchased eligible ARS from the firm between May 31, 2006, and February 28, 2008 (Relevant Class). Commencing no later than six months from the date of this AWC, the firm shall make its best efforts to provide liquidity to all other investors not in the Relevant Class but who purchased Eligible ARS from the firm. The firm shall reasonably identify investors in the Relevant Class who sold Eligible ARS below par between February 28, 2008, and September 12, 2008, and pay them the difference between par and the price at which the investor sold the ARS. The firm agreed to arbitrate claims for consequential damages filed by investors in the Relevant Class relating to Eligible ARS through a Special Arbitration Program (SAP) and provide FINRA with reports following the completion of the buyback concerning compliance with the settlement.

Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it violated FINRA rules relating to communications with the public in its marketing and sale of ARS, and failed to maintain adequate supervisory procedures concerning its sales and marketing activities regarding ARS. The findings stated that the firm used advertising and marketing materials for ARS that were not fair and balanced and did not provide a sound basis for evaluating the facts in regard to purchases of ARS, in that the materials did not contain adequate disclosure of the risks of ARS, including that ARS auctions could fail, that investments in ARS could become illiquid, and that customers might be unable to access funds invested in ARS for substantial periods of time. The findings also stated that the firm failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with FINRA rules in the marketing and sale of ARS. The findings also included that the firm failed to provide adequate training to registered representatives regarding the features and characteristics of ARS. FINRA found that the firm failed to establish and maintain procedures reasonably designed to ensure that the written materials it used in connection with the marketing and sale of ARS complied with appropriate disclosure standards. **(FINRA Case #2008013057401)**

Woodbury Financial Services, Inc. (CRD #421, Oakdale, Minnesota) submitted a Letter of Acceptance, Waiver and Consent in which the firm was censured and fined \$50,000. Without admitting or denying the findings, the firm consented to the described sanctions and to the entry of findings that it failed to establish an adequate supervisory system and failed to implement adequate supervisory procedures to review the suitability of variable life insurance business applications to achieve compliance with federal securities laws, regulations and FINRA rules. **(FINRA Case #2006006901101)**

Individuals Barred or Suspended

Dale Robert Aldieri (CRD #1230340, Registered Representative, Middletown, Connecticut) 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 capacity for six months. The fine must be paid either immediately upon Aldieri'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, Aldieri consented to the described sanctions and to the entry of findings that he performed certain supervisory functions requiring principal registration without being registered with FINRA in that capacity.

The suspension is in effect from December 15, 2008, through June 14, 2009. (FINRA Case #2006003806201)

Gerrod Anderson (CRD #850696, Registered Representative, Fort Worth, Texas) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for two months. The fine must be paid either immediately upon Anderson'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, Anderson consented to the described sanctions and to the entry of findings that he falsified customers' signatures to insurance application-related forms without the customers' knowledge or consent, and submitted the forms to his member firm.

The suspension is in effect from January 5, 2009, through March 4, 2009. (FINRA Case #2008012782501)

Ward Byron Anderson (CRD #5640, Registered Representative, Aurora, Colorado) 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, Anderson consented to the described sanction and to the entry of findings that he misappropriated money from public customers' pension plans. The findings stated that Anderson's company was a third-party administrator for a number of pension plans, and Anderson received monthly checks from one customer and deposited the funds into his company's account, but failed to forward the funds to the company in which the customer's pension plan was invested and, instead, used the funds, which totaled to \$222,700, for his own benefit. The findings also stated that Anderson removed \$250,000 from another customer's pension plan by using signed blank withdrawal/transfer forms to cover up the \$222,700 he had misappropriated from his other customer and used the remaining funds for his own benefit. The findings also included that, following the withdrawal, Anderson created and provided to the second customer falsified statements containing information that would have applied if the \$250,000 had not been withdrawn. FINRA found that Anderson used the remaining blank forms to further withdraw funds totaling \$62,288 from the customer's account for his own benefit. FINRA also found that because of the falsified statements,

Anderson was able to prevent the customer from discovering the misappropriation in excess of \$312,000 for about 14 years. In addition, FINRA determined that Anderson failed to respond to a FINRA request for information and documents and to appear for an on-the-record interview. **(FINRA Case #2008013164901)**

Iqbal Ashraf (CRD #1158662, Registered Principal, Pasadena, California) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for six months. The fine must be paid either immediately upon Ashraf'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, Ashraf consented to the described sanctions and to the entry of findings that he willfully failed to disclose material information on his Uniform Application for Securities Industry Registration or Transfer (Form U4).

The suspension is in effect from January 5, 2009, through July 4, 2009. **(FINRA Case #2007007372701)**

Ching Yang Aul (CRD #4608307, Registered Representative, San Gabriel, California) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Aul created and submitted falsified Letters of Authorization (LOAs) to his member firm that bore forged customer signatures requesting that the firm transfer funds from the customers' accounts to the accounts of people unknown to the customers but known to Aul. The findings stated that Aul's acquaintances transferred the funds to Aul, who used the funds for personal expenses including paying off large gambling debts. The findings also stated that Aul converted more than \$1.5 million of customer funds. The findings also included that Aul failed to respond to FINRA requests for information. **(FINRA Case #2007009347901)**

Joseph Nicholas Bellavia (CRD #2145440, Registered Representative, Monmouth Beach, New Jersey) 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 20 business days. Without admitting or denying the findings, Bellavia consented to the described sanctions and to the entry of findings that he exercised discretion in public customers' accounts without written authorization and without his member firm's acceptance of the accounts as discretionary.

The suspension was in effect from January 5, 2009, through February 2, 2009. **(FINRA Case #2007010762001)**

Dick Eugene Blakeley (CRD #854748, Registered Representative, Mountain View, California) 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 15 business days. Without admitting or denying the findings, Blakeley consented to the described sanctions and to the entry of findings that he exercised discretion in public customers' accounts designated as non-discretionary by his member firm and without the customers' written authorization.

The suspension was in effect from January 5, 2009, through January 26, 2009. **(FINRA Case #2007009361401)**

James Albert Blue (CRD #1511776, Registered Representative, Plattsmouth, Nebraska) 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, Blue consented to the described sanction and to the entry of findings that he completed firm financial documents for customers containing their confidential financial information, which he provided to a third party, without the customers' knowledge, approval or consent, causing his member firm to violate Rule 10 of Regulation S-P. The findings stated that Blue's member firm was unaware of his misconduct and failed to update its initial and annual privacy disclosures in violation of Rules 4 and 5 of Regulation S-P. **(FINRA Case #2007007722801)**

Ann Jones Bowman (CRD #5118902, Registered Representative, Hickory, North Carolina) 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 one year. The fine must be paid either immediately upon Bowman'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, Bowman consented to the described sanctions and to the entry of findings that she accepted cash and checks totaling \$11,078.20 from public customers to purchase fixed annuities and invest in 529 plans. The findings stated that Bowman failed to forward the customers' funds to her member firm and, instead, converted the cash to cashier's checks. The finding stated that Bowman misplaced both the cashiers checks and the checks, thereby improperly using customer funds.

The suspension is in effect from January 5, 2009, through January 4, 2010. **(FINRA Case #2008012199201)**

Troy Eric Brown (CRD #2145769, Registered Representative, Davenport, Florida), Larry Michael Cole (CRD #4374086, Registered Representative, Windermere, Florida) and Jeffrey David Swanson (CRD #2385161, Registered Representative, Jacksonville Beach, Florida) submitted Letters of Acceptance, Waiver and Consent in which Brown and Cole were fined \$5,000 and suspended from association with any FINRA member in any capacity for 10 business days. Swanson was fined \$5,000 and suspended from association with any FINRA member in any capacity for 30 days. The respective fines must be paid either immediately upon their respective reassociation with a FINRA member firm following the 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, Brown, Cole and Swanson consented to the described sanctions and to the entry of findings that they allowed a subordinate client associate to complete the Firm Element training programs for them by completing the modules and taking the applicable proficiency tests using their user IDs and passwords.

Brown's and Cole's suspensions were in effect from January 5, 2009, through January 16, 2009. Swanson's suspension was in effect from January 5, 2009, through February 3, 2009. **(FINRA Cases #2006004155203/#2006004155202/#2006004155201)**

Gabriela Frances Burse (CRD #1910360, Registered Principal, Orlando, Florida) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Burse consented to the described sanction and to the entry of findings that she participated in private securities transactions involving a fraudulent pyramid scheme in the form of investment contracts, without prior written notice to, or written permission from, her member firm. **(FINRA Case #2007009262301)**

Michael Alvin Callaway (CRD #828720, Registered Representative, Ponte Vedra Beach, 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 three months. The fine must be paid either immediately upon Callaway'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, Callaway consented to the described sanctions and to the entry of findings that he allowed a subordinate client associate to complete firm training programs, including Firm Element training, for him by completing the modules and taking the applicable proficiency tests using his User ID and password. The findings stated that Callaway condoned allowing client associates to complete firm training, including Firm Element training, for members of his business unit.

The suspension is in effect from January 5, 2009, through April 4, 2009. **(FINRA Case #2006004155204)**

Kaleen Abdul Cooper (CRD #4471537, Registered Representative, Arlington, Virginia) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Cooper converted \$12,017.51 from customers, without their authorization or consent, by forging their signatures on forms to cause unauthorized redemptions or withdrawals from their mutual funds or variable life insurance accounts, and transferred the funds to his bank account for his own purposes. The findings stated that Cooper failed to respond to FINRA requests to testify at an on-the-record interview. **(FINRA Case #2007008636401)**

Anita Carol Cordill (CRD #852565, Registered Representative, Dallas, Texas) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Cordill consented to the described sanction and to the entry of findings that she failed to respond to FINRA requests for information. **(FINRA Case #2007010637101)**

Edward Desilver Crary Jr. (CRD #2225349, Registered Principal, Phoenix, Arizona) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Crary failed to appear and testify at a FINRA disciplinary hearing and at on-the-record interviews. **(FINRA Case #2007009702901)**

Matthew D. DeCamp (CRD # 5247443, Registered Representative, Vicksburg, Michigan) 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, DeCamp consented to the described sanction and to the entry of findings that he failed to respond fully to FINRA requests for information. **(FINRA Case #2007011081201)**

Dennis Dean Dorn (CRD #4145635, Registered Representative, Henderson, Nevada) 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 15 months. The fine must be paid either immediately upon Dorn'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, Dorn consented to the described sanctions and to the entry of findings that he signed customers' names to insurance-related documents in violation of his firm's policy prohibiting registered representatives from signing or initialing documents on customers' behalf, without exception. The findings stated that some customers had authorized Dorn to sign their names, but others had not. The findings also stated that Dorn signed a customer's name to a letter representing that the customer had removed a wire-transfer machine from his business premises so that an insurance company would renew the customer's policy, even though Dorn knew that the machine had not been removed and the customer had not authorized Dorn to sign his name on the letter.

The suspension is in effect from January 5, 2009, through April 4, 2010. **(FINRA Case #2007011414701)**

Israel I. Echi (CRD #5416372, Associated Person, Mount Vernon, New York) was fined \$5,000 and suspended from association with any FINRA member in any capacity for one year for willful failure to disclose information, and was fined \$2,500 and suspended from association with any FINRA member in any capacity for two months for failure to timely respond to requests for information. The suspensions shall run concurrently. The fines shall be payable upon re-entry into the securities industry. The sanctions were based on findings that Echi willfully failed to disclose material information on his Form U4 and failed to timely respond to FINRA requests for information.

The suspensions are in effect from January 5, 2009, through January 4, 2010. **(FINRA Case #2007010774001)**

Randle Wayne Farrar Jr. (CRD #4028776, Registered Representative, Cedar Hill, Texas) 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, Farrar consented to the described sanction and to the entry of findings that he forged his supervisor's signature on checks made payable to Farrar or to his creditors, and misappropriated \$14,739.03 from his supervisor's business checking account. The findings stated that Farrar refused to provide a signed written statement and supporting documents FINRA requested regarding the circumstances surrounding the termination of his employment by his member firm. **(FINRA Case #2008014199301)**

John Walter Fisher (CRD #2828203, Registered Representative, Arlington, Texas) 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 business days. The fine must be paid either immediately upon Fisher'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, Fisher consented to the described sanctions and to the entry of findings that he solicited and accepted a \$48,500 loan from a public customer without seeking or obtaining his member firm's written permission.

The suspension was in effect from December 15, 2008, through January 28, 2009. **(FINRA Case #2007009485801)**

Eric Andy Fiszer (CRD #4381776, Registered Representative, Poplar Grove, Illinois) submitted a Letter of Acceptance, Waiver and Consent in which he was suspended from association with any FINRA member in any capacity for 30 days. In light of Fiszer's financial status, no monetary sanctions were imposed. The sanction was based on findings that Fiszer engaged in outside business activities, for compensation, and failed to give prompt written notice to his member firm.

The sanction was in effect from January 5, 2009, through February 3, 2009. **(FINRA Case #2007010577101)**

Daniel Alan Fowler (CRD #3008473, Registered Representative, Snellville, Georgia) 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, Fowler consented to the described sanctions and to the entry of findings that he exercised discretion in public customers' accounts without the customers' prior written authorization and his member firm's acceptance of the accounts as discretionary.

The suspension was in effect from January 5, 2009, through January 9, 2009. **(FINRA Case #2007010750201)**

Zenaida Rita Garcia (CRD #5429943, Associated Person, Nashua, New Hampshire) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Garcia failed to respond to FINRA requests for documents and information. The findings stated that Garcia willfully failed to disclose material information on her Form U4. **(FINRA Case #2007010993901)**

James Stanley Gossett (CRD #4574668, Registered Representative, Plano, Texas) 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, Gossett consented to the described sanction and to the entry of findings that he made unsuitable investment recommendations to public customers, in that they were inconsistent with each customer's financial situation, investment objective, circumstances and needs. The findings stated that Gossett, in verbal and written communications with customers, made misleading or unwarranted claims about his

investment strategy, particularly regarding investment risks, and made predictions or projections of the future performance of the strategy without providing a sound basis for evaluating his assertions. The findings also stated that Gossett prepared and distributed to prospective customers sales literature about his investment strategy that failed to include risk disclosures and provided misleading information about past performance; provided incomplete and/or misleading information to customers about the performance of their investments and/or the account balance; and prepared an account statement for a customer in which he did not report all of the customer's account holdings and thus reported an account balance that was greater than actual. The findings also included that Gossett exercised discretion in firm customer accounts without the customers' prior written authorization and his member firm's prior written acceptance.

FINRA found that Gossett enlisted the service of a non-registered individual to solicit investors to open accounts with Gossett, promote Gossett's investment strategy, assist customers with completing application forms and serve as Gossett's primary point of contact. FINRA also found that, as compensation for the services, Gossett agreed to pay the individual half of the commissions he generated from trades in the customers' accounts. In addition, FINRA determined that Gossett opened a securities brokerage account with another FINRA member without providing written notice to his member firm and without advising the other firm of his association with a member firm; failed to disclose the account to his member firm after he opened the account; and failed to provide written notice to his member firm that he was engaged in an outside business activity. FINRA also found that, in response to a request for information, Gossett knowingly provided false and misleading information. **(FINRA Case #2007008653501)**

Arthur Kevin Gotzmer (CRD #4277144, Registered Representative, Melbourne, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Gotzmer consented to the described sanction and to the entry of findings that he signed customers' names to account documents without authorization to enroll their accounts in a fee-based program his member firm offered. The findings stated that Gotzmer entered unauthorized trades in customer accounts, and did not have reasonable grounds to believe that trades in the accounts were suitable. The findings also stated that Gotzmer failed to timely respond to FINRA requests for information. **(FINRA Case #2007009357801)**

Jeffrey David Guckert (CRD #3097226, Registered Representative, South Boston, Massachusetts) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Guckert failed to respond to FINRA requests for information. The findings stated that Guckert promised in an oral agreement to provide a financial service plan to a customer for two years and, instead of complying with the terms of the agreement and forwarding the customer's funds to his member firm's corporate office, Guckert endorsed the check and deposited it in an unknown account. The findings also stated that Guckert provided some financial planning advice to his customer over a short time period, but resigned from his firm without notifying the customer that he would not be providing further services, and failed to return any of the funds paid by the customer for the agreed-upon services. **(FINRA Case #2007008174801)**

Khaldoun Akram Hejazi (CRD #2550737, Registered Representative, Morrison, Colorado) 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, Hejazi consented to the described sanction and to the entry of findings that he erroneously deposited \$149,800.00 of funds belonging to a customer into a bank account which he controlled. The findings stated that Hejazi transferred the funds to his personal bank account and applied the funds to his personal use. The findings also stated that the customer had intended for the funds to be deposited into a trust or credit union account in her name. The findings also included that Hejazi later repaid the funds that he had misused. **(FINRA Case # 2007011266701)**

Amalia Lillian Helton (CRD #4633432, Registered Representative, Wyandotte, Michigan) submitted a Letter of Acceptance, Waiver and Consent in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Helton consented to the described sanction and to the entry of findings that she owed a bank \$533 in overdraft charges and other charges to her checking account; wrote a check from another checking account for \$533, knowing she had inadequate funds in the account and submitted the check to the first bank, but the check was returned for non-sufficient funds. The findings stated that Helton failed to respond to FINRA requests for additional information. **(FINRA Case #2007011017001)**

Paul Gerard Hitchcock (CRD #2047398, Registered Representative, San Rafael, California) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Hitchcock failed to respond to FINRA requests for information and documents, and to provide on-the-record testimony. **(FINRA Case #2007009414901)**

Jennifer R. Huelsmann (CRD #4125761, Registered Representative, Avon, Indiana) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Huelsmann obtained blank checks used for the collection and transmittal of insurance customers' premium payments from an account her insurance supervisor maintained, and forged her supervisor's signature on checks totaling \$1,050 made payable to herself. The findings stated that Huelsmann endorsed the checks, cashed them and used the proceeds for some purpose other than the benefit of her supervisor or his customers, without the supervisor's knowledge. The findings also stated that Huelsmann failed to respond to FINRA requests for information. **(FINRA Case #2006007057301)**

Jeffery David Hunt (CRD #3220610, Registered Representative, Defiance, Ohio) 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, Hunt consented to the described sanction and to the entry of findings that he failed to disclose an outside business activity to his member firm; and failed to respond to FINRA requests for information. **(FINRA Case #2007008946401)**

Clifford Michael Jensen (CRD #4362723, Registered Representative, Fort Lauderdale, 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 capacity for three months. The fine must be paid either immediately upon Jensen'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, Jensen consented to the described sanctions and to the entry of findings that he exercised control over a customer's account, and made excessive and unsuitable securities transactions in the account in a manner inconsistent with the customer's objectives, financial situation and needs. The findings stated that Jensen's trading in the account resulted in losses of \$32,000 to the customer and generated gross commissions of \$49,000. The findings also stated that Jensen's trading in the account was excessive and unsuitable based on the volume of transactions and the substantial fees associated with such trading.

The suspension is in effect from January 5, 2009, through April 4, 2009. **(FINRA Case #2007008490101)**

Danny Lynn Kimbrough (CRD #2337326, Registered Representative, Decatur, Alabama) submitted a Letter of Acceptance, Waiver and Consent in which he was fined \$5,000 and suspended from association with any FINRA member in any capacity for three months. The fine must be paid either immediately upon Kimbrough'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, Kimbrough consented to the described sanctions and to the entry of findings that he borrowed \$10,000 from a public customer and the loan document was re-executed in the loan amounts of \$10,600 and \$7,200. The findings stated that Kimbrough borrowed the funds without his member firms' written pre-approval. The findings also stated that Kimbrough signed a firm annual certification form in which he represented that he understood that borrowing from a customer was prohibited.

The suspension is in effect from December 15, 2008, through March 14, 2009. **(FINRA Case #2007011202001)**

Matthew John King Jr. (CRD #270014, Registered Representative, New Rochelle, New York) 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. Without admitting or denying the findings, King consented to the described sanctions and to the entry of findings that he falsified variable annuity policy applications for customers by representing that the customers had signed the applications in the proposed state of issue when they had not, and by representing that the customers had accounts with his member firm for at least six months when they did not. The findings stated that King submitted the falsified applications to his firm, which then submitted the applications to the issuer of the policies.

The suspension is in effect from January 20, 2009, through January 19, 2010. **(FINRA Case #2006003892301)**

Barry Michael Kornfeld (CRD #1490377, Registered Principal, Parkland, Florida) submitted a Letter of Acceptance, Waiver and Consent in which he was barred from association with any FINRA member in any capacity. Without admitting or denying the findings, Kornfeld consented to the described sanction and to the entry of findings that he failed to appear to give sworn testimony in connection with a FINRA investigation. **(FINRA Case #2007009594001)**

Stephen Charles Langhofer (CRD #302086, Registered Principal, Wichita, Kansas) 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, Langhofer consented to the described sanction and to the entry of findings that he failed to appear for a FINRA on-the-record interview. **(FINRA Case #2008011612601)**

Vernon A. Lochtefeld (CRD #1885676, Registered Principal, Duluth, Georgia) 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 Lochtefeld'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, Lochtefeld consented to the described sanctions and to the entry of findings that he engaged in outside business activities, for compensation, and failed to give prompt written notice to his member firm.

The suspension was in effect from January 5, 2009, through February 3, 2009. **(FINRA Case #2007010964101)**

Fred Luther May III (CRD #3193207, Registered Principal, San Antonio, Texas) 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, May consented to the described sanction and to the entry of findings that he misappropriated \$437,000 from a trust account for which an individual at his member firm acted as trustee. The findings stated that May transferred the funds to his own bank account by forging transfer requests with the trustee's signature, without having provided May with authority to sign his name or to effect the transfers. **(FINRA Case #2007010954301)**

Glenn James Meyer (CRD #2674576, Registered Principal, Mt. Sinai, New York) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Meyer failed to appear for a FINRA on-the-record interview. The findings stated that Meyer participated in a private securities transaction, for compensation, and failed to give prior written notice to, and receive written approval from, his member firm. **(FINRA Case #2007009571601)**

Norman Vernon Montgomery II (CRD #4693626, Registered Representative, St. Charles, Missouri) submitted an Offer of Settlement in which he was fined \$7,500 and suspended from association with any FINRA member in any capacity for two years. The fine must be paid either immediately upon Montgomery'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, Montgomery consented to the described sanctions and to the entry of findings that he willfully failed to timely amend his Form U4 with material information. The findings stated that Montgomery failed to timely respond to FINRA requests for documents and information.

The suspension is in effect from January 5, 2009, through January 4, 2011. **(FINRA Case #2007009882301)**

Tamra Renee Morrison (CRD #2778559, Registered Representative, Summersville, West Virginia) submitted an Offer of Settlement in which she was barred from association with any FINRA member in any capacity. Without admitting or denying the allegations, Morrison consented to the described sanction and to the entry of findings that she engaged in outside business activities without her member firm's prior written notice. The findings stated that Morrison failed to comply with FINRA requests for information and documents, and failed to appear for a FINRA on-the-record interview. **(FINRA Case #2007010598501)**

Kenneth Stuart Nierenberg (CRD #1596132, Registered Principal, Central Valley, New York) 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, Nierenberg consented to the described sanction and to the entry of findings that, without authorization or consent, he converted elderly public customers' funds totaling \$92,469.22 for his own benefit. The findings also stated that Nierenberg willfully failed to disclose material information on his Form U4. **(FINRA Case #2006006630101)**

Louis Michael Nolfo (CRD #2439250, Registered Principal, Boca Raton, Florida) 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, Nolfo consented to the described sanction and to the entry of findings that, while exercising control over customers' accounts, he recommended securities transactions without having reasonable grounds for believing the transactions were suitable in view of the size and frequency of the transactions, the nature of the account and the customers' financial situation, investment objectives and needs. The findings stated that the effected transactions were excessive, utilized unsuitable margin and generated excessive commissions. The findings stated that Nolfo, in connection with the purchase or sale of securities, directly or indirectly, by the use of the means or instrumentalities of interstate commerce, or of the mails, or any facility of any national securities exchange, knowingly or recklessly: employed devices, schemes or artifices to defraud; made untrue statements of material facts or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; engaged in acts, practices or courses of business which operated, or would operate, as a fraud or deceit upon any person; or effected transactions in, or induced the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance. The findings also stated that Nolfo failed to supervise a registered representative who effected excessive securities transactions in a customer's account, using unsuitable levels of margin, in a manner inconsistent with the customer's objectives. **(FINRA Case #2005001698202)**

Brian Robert Nord (CRD #2759032, Registered Representative, Deer Park, 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, Nord consented to the described sanction and to the entry of findings that he loaned to or borrowed from firm customers amounts ranging from \$4,000 to \$500,000, sometimes on more than one occasion, without his member firm's written approval in accordance with the firm's written procedures. The findings stated that Nord engaged in an outside business activity, for compensation, without prompt notice, written or otherwise, to his member firm, and failed to respond to a FINRA request to appear for an on-the-record interview. **(FINRA Case #2007007609901)**

Jeff Yuejian Pan (CRD #3141317, Registered Principal, Suwanee, Georgia) 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 18 months. The fine must be paid either immediately upon Pan'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, Pan consented to the described sanctions and to the entry of findings that he completed and submitted to his member firm variable universal life insurance applications for public customers on which he falsified the customers' states of residence in order to circumvent state registration requirements because Pan was not registered in the states in which the customers resided. The findings also stated that Pan provided false financial information on an insurance application in connection with the purchase of a life insurance policy by a corporation he owned in order to obtain approval of the policy.

The suspension is in effect from January 20, 2009, through July 19, 2010. **(FINRA Case #2007010636701)**

Joseph M. Porter (CRD #5183272, Registered Representative, Cleves, 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 six months. The fine must be paid either immediately upon Porter'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, Porter consented to the described sanctions and to the entry of findings that he falsified the signatures of a registered representative and a company's president on account documents, without the knowledge or authorization of the registered representative or the company president.

The suspension is in effect from December 15, 2008, through June 14, 2009. **(FINRA Case #2007011201901)**

Michael James Redmon (CRD #4455900, Registered Representative, El Sobrante, California) was barred from association with any FINRA member in any capacity. The sanction was based on findings that Redmon failed to respond to FINRA requests to provide information and documentation. **(FINRA Case #2007008657201)**

Daniel Joseph Roberts (CRD #4588649, Registered Representative, Tampa, 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 capacity for 100 days. The fine must be paid either immediately upon Roberts' 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, Roberts consented to the described sanctions and to the entry of findings that he borrowed \$10,000 from a public customer without written approval in accordance with his firm's written procedures, and engaged in an outside business activity with the expectation of compensation without prompt notice, written or otherwise, to his member firm.

The suspension is in effect from January 5, 2009, through April 14, 2009. **(FINRA Case #2007008016201)**

Yvonne Yulienne Russell (CRD #1863146, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver and Consent in which she was fined \$10,000 and suspended from association with any FINRA member in any capacity for 30 business days. Without admitting or denying the findings, Russell consented to the described sanctions and to the entry of findings that she loaned \$150,830 to a firm customer. The findings stated that Russell's member firm had policies prohibiting this activity, and she neither had permission to loan the funds, nor did she make her firm aware of the loans to the customer. The findings also stated that Russell engaged in an outside business activity, for compensation, without providing verbal or prompt written notice to her firm.

The suspension is in effect from January 20, 2009, through March 3, 2009. **(FINRA Case #2007010844301)**

Leo James Ryan Jr. (CRD #2953421, Registered Representative, Natick, Massachusetts) 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 one year. The fine must be paid either immediately upon Ryan'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, Ryan consented to the described sanctions and to the entry of findings that he signed customer names on various forms relating to transactions they had authorized, without their authorization or consent.

The suspension is in effect from December 15, 2008, through December 14, 2009. **(FINRA Case #2007008735401)**

Diane Jo Savage (CRD #1006815, Registered Representative, Pittsburgh, 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 30 days. The fine must be paid either immediately upon Savage'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, Savage consented to the described sanctions and to

the entry of findings that she altered a subscription agreement by signing a customer's initials on the agreement after the customer had failed to initial one section of the agreement. The findings stated that Savage's firm had both a specific policy prohibiting the alteration of subscription agreements and a more general policy requiring that firm records be truthful and accurate. The findings also stated that Savage acknowledged that she was aware of the firm's policy against alteration of documents and knew it was a violation when she initialed the paperwork on the customer's behalf.

The suspension is in effect from January 20, 2009, through February 18, 2009. **(FINRA Case #2007011172601)**

Michael Frederick Siegel (CRD #1001893, Registered Representative, Beverly Hills, California) was fined \$20,000 and suspended from association with any FINRA member in any capacity for six months for private securities violations, and fined \$10,000 and suspended from association with any FINRA member in any capacity for six months for suitability violations. The suspensions are to be served concurrently. Siegel was also ordered to pay \$400,300 in restitution to public customers. The SEC sustained FINRA's disciplinary action following an appeal of a NAC decision. The sanctions were based on findings that Siegel engaged in private securities transactions without prior written notice to his member firm. The findings stated that Siegel recommended and effected the sale of securities to public customers without reasonable grounds for believing that the recommendations and resultant sales were suitable for the customers.

The U.S. Court of Appeals was petitioned for review, and the sanctions are not in effect pending consideration of the petition. **(FINRA Case #C0520020055)**

Michael Slusher (CRD #5175006, Registered Representative, Rhinebeck, New York) 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, Slusher consented to the described sanction and to the entry of findings that without a bank customer's authorization or consent, he transferred \$4,000 from the customer's account to an account he had opened in a fictitious customer's name, then withdrew \$300 from that account for his own use and benefit. The findings stated that Slusher also failed to respond to FINRA requests for information. **(FINRA Case #2007009836601)**

Anthony J. Trimboli (CRD #4734730, Registered Representative, Norwalk, Connecticut) 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 12 months. Without admitting or denying the findings, Trimboli consented to the described sanctions and to the entry of findings that he falsified information on a form related to a customer's application for non-variable life and disability insurance to facilitate approval of the application, and did not disclose to the customer that he had falsified the form.

The suspension is in effect from December 15, 2008, through December 14, 2009. **(FINRA Case #2007010575901)**

Charles William Wannan III (CRD #2453110, Registered Representative, Hicksville, New York) submitted an Offer of Settlement in which he was suspended from association with any FINRA member in any capacity for six months. In light of Wannan's financial status, no monetary sanctions were imposed. Without admitting or denying the allegations, Wannan consented to the described sanction and to the entry of findings that he engaged in a pattern of unsuitable and excessive trading in customer accounts, including customers' individual retirement accounts (IRAs). The findings stated that in connection with the accounts, Wannan filed false and inaccurate information on the new account forms for the customers without their knowledge, authorization or consent, causing his member firm's books and records to be false.

The suspension is in effect from January 20, 2009, through July 19, 2009. (FINRA Case #ELI2004035403)

Decision Issued

The Office of Hearing Officers (OHO) issued the following decision, which has been appealed to or called for review by the NAC as of December 31, 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*.

Denis William Kraemer Jr. (CRD #2795687, Registered Representative, West Babylon, New York) was fined \$5,000 and suspended from association with any FINRA member in any capacity for nine months. The sanctions were based on findings that Kraemer willfully failed to disclose material information on his Form U4.

This decision has been appealed to the NAC, and the sanctions are not in effect pending consideration of the appeal. (FINRA Case #2006006192901)

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.

Bill Q. Chen (CRD #4442892, Registered Representative, Arcadia, California) was named as a respondent in a FINRA complaint alleging that he engaged in unethical conduct when he transferred \$10,000 from a bank customer's account to a third person's account to whom Chen owed money, without the bank customer's knowledge, authorization or consent, in violation of NASD Conduct Rule 2110. The complaint further alleges that Chen reversed the transaction after the bank's operations personnel detected the transaction. (FINRA Case #2007011324501)

Eun Hee Choi (CRD #4464366, Registered Representative, Flushing, New York) was named as a respondent in a FINRA complaint alleging that she converted \$444 given to her by a public customer to pay for the customer's life insurance policy for her personal use, without the customer's knowledge, consent or authorization. **(FINRA Case #2008012158801)**

Thomas Joseph Downs (CRD #4297709, Registered Representative, Pleasantville, New York) was named as a respondent in a FINRA complaint alleging that he effected an unauthorized purchase transaction in a public customer's account. The complaint alleges that Downs failed to respond to FINRA requests for information. **(FINRA Case #2007011819401)**

James Stephen Eckes (CRD #4158141, Registered Principal, Parrish, Florida) was named as a respondent in a FINRA complaint alleging that he effected an unauthorized securities transaction in a public customer's account. The complaint alleges that Eckes communicated with a customer from an outside email account without his member firm's permission to use this account, and failed to respond to FINRA requests for information and to appear for an on-the-record interview. **(FINRA Case #2007008401901)**

Steven Jones (CRD #2737948, Registered Principal, Baldwin, New York) was named as a respondent in a FINRA complaint alleging that he engaged in a pattern of trading in customer accounts that was excessive in size and frequency, and was unsuitable in light of the customers' objectives, financial situation and needs, and, in fact, one of the accounts was comprised of IRA funds. The complaint alleges that Jones paid \$1,600 in connection with the settlement of a customer complaint without his member firm's knowledge or consent. **(FINRA Case #2006005683901)**

Jon Hadland Josephson (CRD #2959512, Registered Representative, Vancouver, Washington) was named as a respondent in a FINRA complaint alleging that he engaged in unauthorized transactions in a relative's variable annuity account by submitting surrender or withdrawal requests through his member firm to the issuer of the variable annuity, which caused the liquidation of \$48,716.81 from the variable annuity account without the relative's knowledge or consent, and in the absence of written or oral authorization to exercise discretion in connection with the variable annuity. The complaint alleges that Josephson received checks payable to his relative in the total amount of \$45,230.15 as a result of the unauthorized partial liquidations of the relative's variable annuity account, negotiated the checks and spent the funds without the relative's knowledge or consent and in a manner not intended or authorized by the relative. The complaint also alleges that Josephson, without his relative's knowledge and consent, affixed, or caused to be affixed, her signature to surrender or withdrawal request forms and as endorsements to checks payable to the relative. The complaint further alleges that Josephson failed to appear for a FINRA on-the-record interview. **(FINRA Case #2007008238101)**

Firms Expelled for Failure to Pay Fines and/or Costs Pursuant to Rule 8320**Maximum Financial Investment Group, Inc.**

Southfield, Michigan
(December 5, 2008)

Morgan Peabody, Inc.

Sherman Oaks, California
(December 22, 2008)

Tripp & Co., Inc.

New York, New York
(December 5, 2008)

Firm Expelled for Failure to Supply Financial Information Pursuant to Rule 9553**NMP Capital, LLC**

Kansas City, Missouri
(December 11, 2008)

Firm Suspended for Failure to Supply Financial Information Pursuant to Rule 9552

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

Cummins Financial Corporation

New York, New York
(November 26, 2008)

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

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

Ruben Francisco Augusta

Brooklyn, New York
(December 11, 2008)

Timothy Behany

Bernardsville, New Jersey
(December 15, 2008)

Charles James Cuzzo Jr.

Verona, New Jersey
(December 15, 2008)

Stephen Ira Golden

Livingston, New Jersey
(December 15, 2008)

Kyle Timothy Holland

Austin, Texas
(December 22, 2008)

Richard Francis Kresge

Bayshore, New York
(December 15, 2008)

Robert Alan Uhr

Boca Raton, Florida
(December 15, 2008)

Edward Martin Vangrouw

Fairlawn, New Jersey
(December 15, 2008)

Individuals Barred Pursuant to Rule 9552(h)

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

Carlton Canty
Detroit, Michigan
(December 12, 2008)

Clint Andrew Chick
Bend, Oregon
(December 23, 2008)

Eric Richard Fronczek
Naperville, Illinois
(December 8, 2008)

William Leo Peckempaugh
Louisville, Kentucky
(December 8, 2008)

Anthony Gerard Russo
Corona, California
(December 1, 2008)

Jimmy Eduardo Villarreal
Queens Village, New York
(December 3, 2008)

Alan David Weiner
Delray Beach, Florida
(December 26, 2008)

Matthew Bryan Wilson
St. Augustine, Florida
(December 15, 2008)

Individuals Suspended Pursuant to 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.)

Richard Wendell Babich
San Francisco, California
(December 26, 2008)

Elijah Dean Bennett
Tampa, Florida
(December 29, 2008)

John Vincent Genna Jr.
Boca Raton, Florida
(December 26, 2008)

Stephen Joel Glantz
Bentleyville, Ohio
(December 18, 2008)

Joseph William Hughes
Stewartville, Minnesota
(December, 8 2008)

Donald Richard Marshall
Sun City West, Arizona
(December 1, 2008)

Kevin P. Paris
Dallas, Texas
(December 1, 2008)

Jean Y. Shick
Staten Island, New York
(December 29, 2008)

Stephen M. Strauss
Calabasas, California
(December 1, 2008)

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

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

Peter Earle Brown
San Francisco, California
(December 10, 2008)

Paul Jude Casella
Woodbury, New York
(December 3, 2008)

Christopher Anthony Corso Sr.
Garland, Texas
(December 22, 2008)

Joshua Standish Fortin
Cincinnati, Ohio
(December 16, 2008)

Pablo A. Guerrero
New York, New York
(December 3, 2008)

William Joseph Hamilton
Miamisburg, Ohio
(August 20, 2008 – December 3, 2008)

Holt Earle Harris
Dallas, Texas
(December 3, 2008)

Louis John Liberatore Sr.
Bluepoint, New York
(December 19, 2008)

Munir Henry Mrkulic
Bloomfield, New Jersey
(December 19, 2008)

Jorge Leon Naval
Melville, New York
(December 3, 2008)

Arthur Leo Ogbogu
New York, New York
(December 3, 2008)

David William Riggleman
Dunedin, Florida
(December 22, 2008)

Anthony Charles Russo
Highlands Ranch, Colorado
(December 3, 2008)

Stanley I. Szymczyk
Lake Elsimore, California
(December 10, 2008)

Scott Ryan Tischler
Richmond, Virginia
(December 3, 2008)

E*Trade Units Fined \$1 Million for Inadequate Anti-Money Laundering Program

Firms Failed To Adequately Monitor For Suspicious Trading Activity

The Financial Industry Regulatory Authority (FINRA) has imposed a \$1 million fine against E*Trade Securities, LLC and E*Trade Clearing, LLC, collectively, for failing to establish and implement anti-money laundering (AML) policies and procedures that could reasonably be expected to detect and cause the reporting of suspicious securities transactions.

“Brokerage firms’ AML programs must be tailored to their business models,” said Susan L. Merrill, Executive Vice President and Chief of Enforcement. “In this case, while E*Trade provides its customers with on-line, self-directed electronic access to the securities markets, its AML program lacked automated electronic systems specifically designed to detect potentially manipulative trading activity in customer accounts.”

FINRA requires brokerage firms to establish and implement AML procedures that address a number of areas, including monitoring the trading in customer accounts as well as the flow of money into and out of these accounts. Firms are required to monitor trading in customers’ accounts for certain types of suspicious trading activity and file with Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) “a report of any suspicious transaction relevant to a possible violation of law or regulation.”

FINRA has further instructed each broker/dealer that its AML program must be tailored to its business. A firm needs to consider factors such as its size, location, business activities, the types of accounts it maintains and the types of transactions in which its customers engage. One of the factors that brokerage firms are instructed to consider generally is the technological environment in which the firm operates. On-line firms such as E*Trade specifically have been instructed to “consider conducting computerized surveillance of account activity to detect suspicious transactions and activity.”

FINRA found that between Jan.1, 2003, and May 31, 2007, E*Trade did not have an adequate AML program based upon its business model. Because E*Trade did not have separate and distinct monitoring procedures for suspicious trading activity in the absence of money movement, its AML policies and procedures could not reasonably be expected to detect and cause the reporting of suspicious securities transactions. The firm relied on its analysts and other employees to manually monitor for and detect suspicious trading activity without providing them with sufficient automated tools. FINRA determined that this approach to suspicious activity detection was unreasonable given E*Trade’s business model.

In concluding this settlement, E*Trade neither admitted nor denied the charges, but consented to the entry of FINRA’s findings.