

# Notices

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## Annual Audit Reports

### FINRA to Require Electronic Submission of Annual Audit Reports

**Effective Date: November 8, 2011, for all annual audit reports with a fiscal year end on or after September 30, 2011**

#### Executive Summary

FINRA is revising the process by which member firms submit to FINRA the annual audited financial statements required pursuant to Securities Exchange Act (SEA) Rule 17a-5(d) (annual audit reports). Specifically, pursuant to NASD Rule 3170, FINRA is requiring, effective November 8, 2011, that firms submit their annual audit report in electronic form.<sup>1</sup> This requirement is applicable to annual audit reports with a fiscal year end on or after September 30, 2011.

This *Notice* discusses the electronic submission process, which will replace the current submission of annual audit reports in hard copy form to FINRA. Once FINRA has completed the transition to electronic submission of annual audit reports, as described in this *Notice*, FINRA will no longer accept annual audit reports filed in hard copy form.

Questions concerning this *Notice* may be directed to your firm's Regulatory Coordinator.

#### Background & Discussion

SEA Rule 17a-5(d) requires, among other things, that every broker or dealer registered pursuant to SEA Section 15 must file an annual audit report at the principal office of the firm's Designated Examining Authority (DEA).<sup>2</sup> Pursuant to NASD Rule 3170, FINRA will, effective November 8, 2011, require member firms for which it is the DEA to submit annual audit reports in electronic form.<sup>3</sup> Accordingly, annual audit reports for any fiscal year ending on or after September 30, 2011, must be submitted electronically.

#### October 2011

##### Notice Type

- ▶ Guidance

##### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Regulatory Reporting
- ▶ Senior Management

##### Key Topics

- ▶ Annual Audit Report

##### Referenced Rules & Notices

- ▶ NASD Rule 3170
- ▶ SEA Rule 17a-4
- ▶ SEA Rule 17a-5
- ▶ Regulatory Notice 08-11
- ▶ Notice to Members 06-61

Firms are required to submit their annual audit report in electronic form via FINRA's Firm Gateway. The required format of the filing is Portable Document Format (PDF). The electronic submission screen on the Firm Gateway will include a list of documents that, if applicable, are required in the audit filing. This list will assist the firm in ensuring that all required schedules are included in its submission. Firms should refer to SEA Rule 17a-5 for information regarding broker-dealer annual audit report requirements.

In addition to the annual audit report, SEA Rule 17a-5 requires that an oath and affirmation page be completed. Specifically, SEA Rule 17a-5(e)(2) states that there must be attached to the annual audit report an oath or affirmation that, to the best knowledge and belief of the person making such an oath or affirmation, (i) the financial statements and schedules are true and correct and (ii) neither the broker or dealer, nor any partner, officer, or director, as the case may be, has any proprietary interest in any account classified solely as that of a customer. The rule requires that the oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer. Firms must submit the oath and affirmation electronically with their annual audit, *and* must also maintain the oath and affirmation page with an original manual signature (including raised notary seal, where applicable) as part of their books and records under SEA Rule 17a-4(a), along with the accompanying annual audit report in hard copy form.

In the new annual audit electronic filing platform in Firm Gateway, if a firm wishes (or is required by FINRA)<sup>4</sup> to submit an amended annual audit report, when the original audit report was submitted to FINRA electronically, the firm's assigned Regulatory Coordinator will open a "re-file" window in Firm Gateway to permit the firm to submit the amended filing. If a firm needs to amend an annual audit report that was previously filed in hard copy form, the amendment must also be submitted in hard copy form. In all cases, amended audit reports must be submitted in their entirety (*i.e.*, an amended filing must include all schedules and information required pursuant to SEA Rule 17a-5, including the oath and affirmation, whether or not such schedules and information have been amended). FINRA will retain the original audit report filed, as well as all amended filings. Consistent with FINRA's current practice for hard copy filings, FINRA will treat electronically filed annual audit reports as confidential.<sup>5</sup>

Firms must use their current FINRA entitlement user ID and password to access the Firm Gateway and submit their annual audit report. Firm personnel should contact their firm's Super Account Administrator (SAA) with any questions regarding how to access Firm Gateway. For Firm Gateway technical questions, contact FINRA's Technical Support Group at (301) 869-6699.

## Endnotes

1. NASD Rule 3170 gives FINRA authority to require firms to file or submit electronically any regulatory notice or other document that a member firm is required to file with or otherwise submit to FINRA. In an earlier *Notice*, FINRA listed 10 additional financial notifications (and 11 related SEC Rules) to which NASD Rule 3170 applies. See [Regulatory Notice 08-11](#) (March 2008) (Electronic Filing) and [Notice to Members 06-61](#) (November 2006) (Electronic Filing Requirements).
2. Specifically, Rule 17a-5(d)(6) provides that one copy of the annual audit report must be filed at the regional office of the SEC for the region in which the broker or dealer has its principal place of business and at the principal office of the DEA for said broker or dealer. Two copies must be filed at the SEC's principal office in Washington, DC. Further, copies must be provided to all self-regulatory organizations of which the broker or dealer is a member.
3. Firms must continue to file annual audit reports in hard copy form with the SEC.
4. FINRA may require a firm to submit an amended annual audit report to cure inadequacies contained in the original submission. Pursuant to Section 4(g) of Schedule A to FINRA's By-Laws, an annual audit report that contains material inaccuracies or is filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.
5. Notwithstanding that FINRA will treat the electronically filed annual audit reports as confidential, as commonly understood, FINRA may release such filings pursuant to government or compulsory legal process. In addition, FINRA understands that the SEC will continue to make all statements filed pursuant to SEA Rule 17a-5(d) available to the public, subject to specified exceptions. See SEA Rule 17a-5(e)(3).

## Continuing Education

### Securities Industry/Regulatory Council on Continuing Education Issues Firm Element Advisory Update

The Securities Industry/Regulatory Council on Continuing Education (Council) has released its [Fall 2011 Firm Element Advisory](#) (FEA). The Council produces the FEA to identify regulatory and sales practice topics that firms should consider in their Firm Element training plans. Topics updated or added since the prior FEA are indicated as such in the document.

FEA topics are not exhaustive and are intended as a guide to firms when they determine what to include in their training plans. Firms should consider the specific nature of their business, clients, products and services when creating their training plans.

[Previous editions](#) of the FEA, as well as a [matrix](#) indicating the topics covered in those editions, are available at the Council's website at [www.cecouncil.com](http://www.cecouncil.com).

Questions concerning this *Notice* should be directed to:

- ▶ [cecounciladmin@finra.org](mailto:cecounciladmin@finra.org); or
- ▶ Roni Meikle, Director, Continuing Education, FINRA, at (646) 315-8688.

October 2011

#### Notice Type

- ▶ Guidance

#### Suggested Routing

- ▶ Compliance
- ▶ Continuing Education
- ▶ Legal
- ▶ Registration
- ▶ Senior Management

#### Key Topics

- ▶ Continuing Education
- ▶ Firm Element

## Books and Records

### FINRA Requests Comment on a Proposed New Rule Requiring Carrying/Clearing Member Firms to Maintain and Keep Current Certain Records in a Central Location

Comment Period Expires: December 9, 2011

#### Executive Summary

FINRA is requesting comment on a proposed new rule that would require each carrying or clearing member firm to maintain and keep current certain records in a central location to facilitate a more rapid and orderly transfer of customer accounts to another broker-dealer as well as a more orderly liquidation in the event the member firm can no longer continue to operate due to financial or operational problems.

The text of proposed FINRA Rule 4516 (Readily Identifiable and Accessible Records) is set forth in Attachment A.

Questions regarding this *Notice* should be directed to:

- ▶ Marshall J Levinson, Vice President, Member Regulation, at (646) 315-8453; and
- ▶ Adam H. Arkel, Assistant General Counsel, Office of General Counsel, at (202) 728-6961.

#### Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by December 9, 2011.

### October 2011

#### Notice Type

- ▶ Request for Comment

#### Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management

#### Key Topics

- ▶ Books and Records

#### Referenced Rules & Notices

- ▶ FINRA Rule 4370
- ▶ FINRA Rule 4523
- ▶ NASD Rule 1160
- ▶ NASD Rule 3110
- ▶ SEA Rule 15c3-3
- ▶ SEA Rule 17a-3
- ▶ SEA Rule 17a-4

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

- ▶ Emailing comments to [pubcom@finra.org](mailto:pubcom@finra.org); or
- ▶ Mailing comments in hard copy to:  
Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

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

**Important Notes:** The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.<sup>1</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.<sup>2</sup>

## Background & Discussion

If a carrying or clearing member firm can no longer continue to operate due to financial or operational problems, it is essential that regulators be able to take prompt action to protect investors. Regulators may need, among other things, to identify a clearing firm that would be able to take all customer accounts of the liquidating member firm in an expedited manner. In order for regulators to act in a timely fashion, certain documents and information must be readily identifiable and accessible. To aid in this process, FINRA believes it is critical that a carrying or clearing member firm maintain and keep current certain documents and information in one central location.<sup>3</sup>

To that end, FINRA is proposing new FINRA Rule 4516. Paragraph (a) of the new rule would require that, unless otherwise permitted by FINRA, in writing, each carrying or clearing member firm must maintain, and keep current, in a manner readily identifiable as such, records containing the information set forth in paragraph (b) of the rule at an area within its principal office that the member firm must specially designate. For purposes of compliance with the new rule, member firms may maintain the records in electronic form.<sup>4</sup> Specifically, under paragraph (b) of the rule, the records must contain the following:

1. description of all accounts and ranges on the general ledger including the names of the associated persons assigned primary and supervisory responsibility for each such account pursuant to Rule 4523(b);
2. mapping of the general ledger accounts and ranges to the trial balance, including a list of all affiliated accounts;
3. description of all mission critical systems as defined in FINRA Rule 4370(g),<sup>5</sup> including recordkeeping systems and the names of contact persons for each;
4. list of all bank accounts, authorized signatories, copies of executed agreements with such banks and “no lien” letters where applicable;
5. identification of all accounts and ranges on the stock record;
6. identification of all foreign and domestic control locations pursuant to SEA Rule 15c3-3 with the names of contact persons at each institution;
7. copies of all executed subordination agreements and nonconforming subordination agreements;
8. copies of all executed agreements with any clearing agencies, clearing banks and custodians;
9. copies of all executed agreements relating to the outsourcing of any significant activities or functions that are critical to the transfer of customer accounts and the liquidation of the member firm; and
10. most recent copy of the member firm’s business continuity plan.

The proposed rule requires that these records be immediately available to and accessible by representatives or designees of FINRA, the SEC and Securities Investor Protection Corporation (SIPC). Further, a member firm subject to the rule would be required to enter into an agreement with any clearing agency, clearing bank or custodian with which the member firm does business that requires, upon the commencement of a liquidation of the member firm, that any electronic systems provided to the member firm by the clearing agency, clearing bank or custodian will be made available, on a read only basis, to representatives or designees of FINRA, the SEC and SIPC.<sup>6</sup>

The rule would require that all records maintained pursuant to the rule must indicate the date the records were last updated. Lastly, the rule would also require that all member firms subject to the rule must designate a contact person responsible for maintaining and keeping current the records required under the rule. The member firm would be required to report the contact information for the designated contact person to FINRA and to update the contact information pursuant to NASD Rule 1160.<sup>7</sup>

## Request for Comment

While FINRA is interested in receiving comments on all aspects of proposed FINRA Rule 4516, FINRA seeks specific comment on whether any adjustments are appropriate as to the list of records that would be subject to the proposed requirement as set forth in paragraph (b) of the rule, and as to the anticipated costs of compliance with the proposed rule.

The comment period expires December 9, 2011.

## Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
2. *See* Section 19 of the Securities Exchange Act of 1934 (SEA) and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. The inability to locate certain documents and information was identified as a concern in connection with the Lehman Brothers Inc. liquidation during the recent credit crisis. *See, e.g., In re Lehman Brothers Inc., Trustee's Preliminary Investigation Report and Recommendations* (August 25, 2010), pages 112 *et seq.* (Trustee's Report).
4. The proposed rule provides that if the member firm maintains the records by means of electronic storage media, such records must be uniquely tagged and appropriately indexed so as to be readily identifiable as such and accessible from the member firm's principal office. Member firms are reminded that they remain subject to the books and records requirements set forth in SEA Rules 17a-3 and 17a-4 and NASD Rule 3110.
5. FINRA Rule 4370(g) defines "mission critical system" as "any system that is necessary, depending on the nature of a member's business, to ensure prompt and accurate processing of securities transactions, including, but not limited to, order taking, order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, access to customer accounts and the delivery of funds and securities."
6. FINRA is including this provision in large part based on the experience of the Lehman liquidation. *See, e.g., Trustee's Report*, pages 60-63, 91-92 and 124-25.
7. NASD Rule 1160 requires, among other things, each member firm to (1) report to FINRA all contact information required by FINRA; (2) update its required contact information promptly, but in any event not later than 30 days following any change in such information; and (3) review and, if necessary, update its required contact information within 17 business days after the end of each calendar year.

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## Attachment A

Below is the text of proposed FINRA Rule 4516.

### FINRA Rule 4516. Readily Identifiable and Accessible Records

- (a) Unless otherwise permitted by FINRA, in writing, each carrying or clearing member shall maintain, and keep current, in a manner readily identifiable as such, records containing the information set forth in paragraph (b) of this Rule at an area within its principal office that the member shall specially designate. If the member maintains such records by means of electronic storage media, the records shall be uniquely tagged and appropriately indexed so as to be readily identifiable as such and accessible from the member's principal office.
- (b) Pursuant to paragraph (a) of this Rule, each carrying or clearing member shall maintain and keep current records containing the following:
  - (1) Description of all accounts and ranges on the general ledger including the names of the associated persons assigned primary and supervisory responsibility for each such account pursuant to Rule 4523(b);
  - (2) Mapping of the general ledger accounts and ranges to the trial balance, including a list of all affiliated accounts;
  - (3) Description of all mission critical systems as defined in Rule 4370(g), including recordkeeping systems and the names of contact persons for each;
  - (4) List of all bank accounts, authorized signatories, copies of executed agreements with such banks and "no lien" letters where applicable;
  - (5) Identification of all accounts and ranges on the stock record;
  - (6) Identification of all foreign and domestic control locations pursuant to SEA Rule 15c3-3 with the names of contact persons at each institution;
  - (7) Copies of all executed subordination agreements and nonconforming subordination agreements;
  - (8) Copies of all executed agreements with any clearing agencies, clearing banks and custodians;
  - (9) Copies of all executed agreements relating to the outsourcing of any significant activities or functions that are critical to the transfer of customer accounts and the liquidation of the member; and
  - (10) Most recent copy of the member's business continuity plan.

- (c) Every record maintained pursuant to this Rule shall be immediately available to and accessible by representatives or designees of FINRA, the SEC and SIPC.
- (d) All members subject to this Rule shall enter into an agreement with any clearing agency, clearing bank or custodian with which the member does business that requires, upon the commencement of a liquidation of the member, that any electronic systems provided to the member by the clearing agency, clearing bank or custodian will be made available, on a read only basis, to representatives or designees of FINRA, the SEC and SIPC.
- (e) All records maintained pursuant to this Rule shall indicate the date such records were last updated.
- (f) All members subject to this Rule shall designate a contact person responsible for maintaining and keeping current the records required pursuant to this Rule. The member shall report the contact information for such person to FINRA and shall update such information pursuant to NASD Rule 1160.

## Advertising Regulation

### FINRA Provides Guidance on Advertising Regulation Issues

#### Executive Summary

FINRA is providing guidance to firms on certain issues related to the application of NASD Rule 2210 and the filing of communications for review with FINRA's Advertising Regulation Department. FINRA intends to periodically issue guidance to the industry concerning significant interpretive issues or other issues related to FINRA rules governing communications with the public.

Questions concerning this *Notice* should be directed to:

- ▶ Thomas A. Pappas, Vice President, Advertising Regulation, at (240) 386-4553; or
- ▶ Amy C. Sochard, Director, Advertising Regulation, at (240) 386-4508.

#### Background and Discussion

In order to inform firms of recent developments regarding the application of the rules governing communications with the public, FINRA is providing the following guidance to firms on selected communications with the public issues.

#### Exchange-Traded Products

NASD Rule 2210(c)(2)(A) requires a firm to file advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds and unit investment trusts) with FINRA within 10 business days of first use or publication. This filing requirement applies to any advertisement or sales literature concerning an exchange-traded fund that is registered under the Investment Company Act of 1940 (1940 Act ETF).

### October 2011

#### Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Executive Representatives
- ▶ Investment Companies
- ▶ Legal
- ▶ Mutual Funds
- ▶ Senior Management

#### Key Topics

- ▶ Advertising
- ▶ Exchange-Traded Funds
- ▶ Mutual Funds
- ▶ Treasury Inflation-Protected Securities

#### Referenced Rules & Notices

- ▶ NASD Rule 2210
- ▶ NASD IM-2210-4
- ▶ Securities Act Rule 482

Firms are reminded that these filing requirements apply to all advertisements and sales literature concerning 1940 Act ETFs, including research reports. Accordingly, firms must file research reports on these 1940 Act ETFs that fall within the definition of “advertisement” or “sales literature” within 10 business days of first use or publication.

Similarly, NASD Rule 2210(c)(2)(B) requires a firm to file advertisements and sales literature concerning public direct participation programs with FINRA within 10 business days of first use or publication. FINRA reminds firms that they must file advertisements and sales literature concerning exchange-traded products that are organized as grantor trusts and that meet the definition of “direct participation program” under FINRA Rule 2310(a)(4) within 10 business days of first use or publication.<sup>1</sup>

### Treasury Inflation-Protected Securities Funds

Treasury Inflation-Protected Securities (TIPS) are marketable Treasury securities whose par value is adjusted based upon changes in the Consumer Price Index (CPI). With inflation (a rise in the CPI), the par value of TIPS increases; with deflation (a drop in the CPI), the par value decreases.

A number of mutual funds and 1940 Act ETFs invest primarily in TIPS (TIPS funds). Often, firms will advertise a TIPS fund’s current yield as permitted by Securities Act Rule 482.<sup>2</sup> Generally speaking, a fund’s current yield is a percentage return expressed on an annualized basis that reflects the dividends and interest earned by the fund net of expenses for the 30-day period named in the communication.

Because TIPS have an inflation adjustment component that is not specifically addressed in SEC rules governing calculation of a mutual fund’s current yield, firms have adopted various treatments of the inflation adjustment when calculating a TIPS fund’s yield. Some firms have included the inflation adjustment in a TIPS fund’s current yield calculation, while other firms have not. This discrepancy in the calculation method has led to significant differences in the yield advertised by similar TIPS funds for the same periods. FINRA is concerned that investors may not understand that these differences in advertised yield are largely attributable to the different methods used to calculate current yield, rather than differences in performance of the funds themselves.

Due to this concern, FINRA has interpreted NASD Rule 2210(d) to require certain disclosures in advertisements and sales literature that include a TIPS fund’s current yield. Specifically, if the fund’s current yield is adjusted monthly based on changes in the rate of inflation, then the communication must explain that these changes can cause the yield to vary substantially from one month to the next. If an advertisement or item of sales literature includes an exceptionally high current yield for a TIPS fund, the material must disclose that the yield is attributable to the rise in the inflation rate, which might not be repeated.

### Use of FINRA in Firm Trademarks

NASD Interpretive Material 2210-4 places strict limits on how firms may indicate their FINRA membership. Firms may do so only in one of three ways:

- (1) in a communication with the public that complies with the standards of NASD Rule 2210 and neither states nor implies that FINRA or any other corporate name or facility owned by FINRA, or any other regulatory organization, endorses, indemnifies or guarantees the firm's business practices, selling methods, the class or type of securities offered, or any specific security;
- (2) in a confirmation statement for an over-the-counter transaction that includes a specified legend; or
- (3) on a firm's website, so long as the firm provides a hyperlink to the homepage of FINRA's website in close proximity to the firm's indication of FINRA membership.

Recently, FINRA has observed that some firms have filed applications to register trademarks with the U.S. Patent and Trademark Office that include the FINRA® trademark and a reference to membership in the proposed trademark. Firms and their associated persons may not include the FINRA® trademark or references to FINRA membership in any trademark of the firm or associated person, as such usages violate IM-2210-4 and are likely to cause confusion and to infringe upon FINRA's trademark rights.

### Identification of Related Prior Filings When Submitting New Filings for Review

FINRA reminds firms when filing material for review by Advertising Regulation staff to identify the reference number of any communication previously submitted by the firm and already reviewed by FINRA that is similar to the current communication filing. This information will assist staff in providing a more consistent and efficient review process. For example, firms should identify a past different filing that FINRA staff reviewed that includes the same or similar marketing content as the current filing. Or, if a firm files a revised version of an advertisement that the firm previously filed in order to address prior FINRA staff comments, the firm should identify the reference number of the prior filing so that prior staff comments can be addressed.

## Endnotes

1. FINRA Rule 2310(a)(4) defines “direct participation program” as “a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution, including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, Subchapter S corporate offerings and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof.” The definition excludes real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403(a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, tax sheltered annuities pursuant to the provisions of Section 403(b) of the Internal Revenue Code, and any company, including separate accounts, registered pursuant to the Investment Company Act.
2. See 17 C.F.R. 230.482(d)(1).

# Election Notice

## District Elections and Ballots

### Notice of FINRA District Committee Election and Ballots

#### Executive Summary

The purpose of this *Notice* is to inform firms of the upcoming election to fill vacancies on the FINRA District Committees and distribute ballots to the firms eligible to vote in this election. Firms that are members of FINRA as of the close of business on Tuesday, October 18, 2011, are eligible to vote for the seat corresponding to their district and firm size.

Firms are urged to vote in this election using one of the methods described in this *Notice*. In order for a ballot to be considered valid, the executive representative of the firm eligible to vote in the election must sign it. Ballots are due by Friday, November 18, 2011.

The candidates running for election are listed in Attachment A to this *Notice*. Information about each candidate is available at [www.finra.org/notices/DistrictElection/101911](http://www.finra.org/notices/DistrictElection/101911).

The elected committee members will take office in January 2012.

A list of the current District Committee members is available at [www.finra.org/districtcommittees](http://www.finra.org/districtcommittees).

Note: This *Notice* was distributed electronically to the executive representative of each FINRA member firm and is posted on FINRA's website.

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

- ▶ Marcia Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949, or via email to [CorporateSecretary@finra.org](mailto:CorporateSecretary@finra.org); or
- ▶ Chip Jones, Senior Vice President, Member Relations, at (240) 386-4797, or via email to [chip.jones@finra.org](mailto:chip.jones@finra.org).

**October 19, 2011**

#### Suggested Routing

- ▶ Executive Representatives
- ▶ Senior Management

## Background

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

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

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

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

Committee members also must adhere to the following prohibitions and restrictions:

- ▶ being sensitive to conflicts, such as those that can arise from firm-related work and service on industry committees, or as an expert witness, hearing panelist or arbitrator, and refraining from participating in a particular matter when a conflict exists;
- ▶ refraining from using membership on the District Committee for commercial purposes, for qualifying as an expert or suggesting special access to FINRA; and
- ▶ keeping sensitive, non-public or proprietary information confidential.

## Changes to District Committee Composition

On May 4, 2011, the SEC approved amendments to FINRA Regulation's By-Laws to, among other things, adjust the size and composition of District Committees to align more closely with the industry representation on the FINRA Board of Governors and replace District Nominating Committees with a process of direct nomination and election based on firm size.<sup>1</sup>

## Candidate Nomination Process and Eligibility

All candidates who submitted their names and met the qualifications set forth in Article VIII, Section 8.2 of the FINRA Regulation By-Laws were included on their district's ballot.

In this election, the District Committees for Districts 1, 2, 3, 4, 5, 6, 7, 8, 9 and 11 each have three seats to fill: one representing small firms, one representing mid-sized firms and one representing large firms.<sup>2</sup> District 10 has five seats to fill: two representing small firms, one representing mid-sized firms and two representing large firms.

Firm size categories are:

- ▶ **small firm**—a firm that employs at least one and no more than 150 registered persons;<sup>3</sup>
- ▶ **mid-size firm**—a firm that employs at least 151 and no more than 499 registered persons;<sup>4</sup> and
- ▶ **large firm**—a firm that employs 500 or more registered persons.<sup>5</sup>

Only one eligible candidate per vacancy submitted his or her name for consideration for the following seats:

- ▶ District 1 Small Firm Representative
- ▶ District 1 Mid-Size Firm Representative
- ▶ District 2 Small Firm Representative
- ▶ District 4 Mid-Size Firm Representative
- ▶ District 5 Mid-Size Firm Representative
- ▶ District 6 Mid-Size Firm Representative
- ▶ District 7 Small Firm Representative
- ▶ District 8 Mid-Size Firm Representative
- ▶ District 10 Small Firm Representative (two vacancies)

Therefore, because the candidates listed in the attachment for the above-listed seats are running unopposed, FINRA will not distribute ballots and the candidates will take office in January 2012.

Additionally, no candidates self-nominated for the following seats:

- ▶ District 3 Mid-Size Firm Representative
- ▶ District 9 Mid-Size Firm Representative
- ▶ District 10 Mid-Size Firm Representative
- ▶ District 11 Mid-Size Firm Representative

Therefore, in accordance with the by-laws, FINRA will not distribute ballots for these positions and individuals will be appointed to fill those slots.<sup>6</sup> The committee members will be announced once the appointments have been made.

Ballots will be distributed for the following seats:

- ▶ District 1 Large Firm Representative
- ▶ District 2 Mid-Size Firm Representative
- ▶ District 2 Large Firm Representative
- ▶ District 3 Small Firm Representative
- ▶ District 3 Large Firm Representative
- ▶ District 4 Small Firm Representative
- ▶ District 4 Large Firm Representative
- ▶ District 5 Small Firm Representative
- ▶ District 5 Large Firm Representative
- ▶ District 6 Small Firm Representative
- ▶ District 6 Large Firm Representative
- ▶ District 7 Mid-Size Firm Representative
- ▶ District 7 Large Firm Representative
- ▶ District 8 Small Firm Representative
- ▶ District 8 Large Firm Representative
- ▶ District 9 Small Firm Representative
- ▶ District 9 Large Firm Representative
- ▶ District 10 Large Firm Representative
- ▶ District 11 Small Firm Representative
- ▶ District 11 Large Firm Representative

## Terms of District Committee Members

The term for District Committee members is three years. There is no limit on the number of terms that a member of a District Committee may serve, except that a District Committee member may not serve two full terms consecutively. Terms of District Committee members will terminate if they do not remain eligible for the seat for which they were elected.

Those individuals elected or appointed in this election will serve three-year terms beginning on January 1, 2012.

## Voting Eligibility

Firms that are members of FINRA as of the close of business on Tuesday, October 18, 2011, are eligible to vote for candidates running for the seat corresponding to their firm size in the district in which it has its principal office or one or more registered branch offices as indicated in the Central Registration Depository®.

Ballots have been mailed, along with a copy of this *Notice*, to the executive representatives of those firms eligible to vote in this election. Detailed voting instructions are included on the ballots.

## Voting Methods

Firms will be able to vote by telephone, the Internet or by U.S. mail. The ballot sent to eligible firms contains detailed instructions on the submission procedures. Ballots are due on Friday, November 18, 2011.

## 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 the FINRA Contact System. This will ensure 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.

To update an executive representative name, mailing address and email address, firms may access the FINRA Contact System, via the Firm Gateway, at <https://firms.finra.org/fcs>. For assistance updating FCS, contact FINRA's Call Center at (301) 590-6500 or the Office of Corporate Secretary at (202) 728-8949.

## Endnotes

1. See Securities Exchange Act Release No. 64363 (April 28, 2011), 76 FR 25397.
2. The By-Law change adjusts the composition of the District Committees over a three-year transition period to align more closely with the industry representation by firm size on the Board of Governors. All District Committees except District 10 (New York) are adjusted from nine to seven members and District 10 is adjusted from 12 to 14 members. All currently serving District Committee members will serve out their original terms. Vacancies since the last election will not be filled because they entail partial terms that were not elected based on firm size.
3. See Article I (jj) of the FINRA Regulation By-Laws.
4. See Article I (aa) of the FINRA Regulation By-Laws.
5. See Article I (y) of the FINRA Regulation By-Laws.
6. See Article VIII, Sec. 8.8 of the FINRA Regulation By-Laws.
7. Under NASD Rule 1160, firms must 1) update their contact information promptly, but in any event not later than 30 days following any change in such information, as well as 2) 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 agreed to by FINRA staff. See NASD Rule 1160 and *Regulatory Notice 07-42* (September 2007).

## Attachment A—Candidates for District Committee Seats

Information about each candidate is available at [www.finra.org/notices/DistrictElection/101911](http://www.finra.org/notices/DistrictElection/101911).

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**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*

### **Small Firm Representative Candidate**

- Alan Carlisle, Director of Supervision, Hanson McClain

### **Mid-Size Firm Representative Candidate**

- Stephen Chipman, President & CEO, Foothill Securities, Inc.

### **Large Firm Representative Candidates**

- Bill Hatcher, PCG Regional President, Wells Fargo Advisors, LLC
- Scott D. Rash, Sr. Vice President /Complex Manager, Morgan Stanley Smith Barney

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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*

### **Small Firm Representative Candidate**

- Cynthia Aragon, Chief Compliance Officer/General Counsel, WestPark Capital, Inc.

### **Mid-Size Firm Representative Candidates**

- Houston A. Goddard, Chief Compliance Officer and General Counsel, Girard Securities, Inc.
- Ann M. Doty-Mitchell, Operations Manager/Compliance, Crowell Weedon & Co.
- Dennis DeYoung, CFP, Branch Manager, Financial West Group

### **Large Firm Representative Candidates**

- David Altshuler, Marketing Manager, Wells Fargo Advisors, LLC
- Frank W. Epinger, Senior Vice President/ Complex Manager, Morgan Stanley Smith Barney
- Kathleen D. VanNoy-Pineda, Executive Vice President and Brokerage Chief Compliance Officer, LPL Financial

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**District 3:** *Alaska, Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington and Wyoming*

**Small Firm Representative Candidates**

- Adam M. Carmel, President, Larimer Capital Corporation
- Chester Hebert, President & CEO, Colorado Financial Service Corporation
- Sabine Koenig, Compliance, Operations, Martin Nelson & Co., Inc.
- Paige W. Pierce, CEO, RW Smith & Associates, Inc.

**Large Firm Representative Candidates**

- Bernard A. Breton, VP and Chief Compliance Officer, Multi-Financial Securities Corp.
- Mary K. Simonson, Vice President, Chief Compliance Officer, SagePoint Financial, Inc.
- Lance Wells, Compliance Director, Metropolitan Life Insurance Company

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**District 4:** *Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota*

**Small Firm Representative Candidates**

- J. Daniel Stepp, Managing Director—CEO, Central States Capital Markets, LLC
- Michelle Timm, Operations Team Lead, DeWaay Financial Network

**Mid-Size Firm Representative Candidate**

- Chad Estep, Chief Compliance Officer, Century Securities Associates, Inc.

**Large Firm Representative Candidates**

- Chris Cokinis, Vice President and Chief Compliance Officer, ING Financial Partners
- Diane Gabriel, Managing Director, Wells Fargo Advisors, LLC
- Terry L. Lister, Senior Vice President and Chief Regulatory Officer, Waddell & Reed, Inc.
- Ann C. McCague, Managing Director—Chief Compliance Officer, Piper Jaffray & Co.
- Jeremy Michelman, Principal/Compliance, Edward Jones

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**District 5:** *Alabama, Arkansas, Louisiana, Mississippi, Oklahoma and Tennessee*

**Small Firm Representative Candidates**

- Carolyn May, CCO/Advisory Director, Simmons First Investment Group, Inc.
- Phillip H. Palmer, President / Owner, First Independent Financial Services, Inc. and Affiliates
- Sarah Sherck, Managing Director, Equity Research and Chief Compliance Officer, Avondale Partners

**Mid-Size Firm Representative Candidate**

- Rush F. Harding III, Chief Executive Officer, Crews & Associates, Inc.

**Large Firm Representative Candidates**

- Andrew C. Black, Jr., Senior Vice President/Complex Manager, Morgan Stanley Smith Barney
- Patrick Dogan, Chief Compliance Officer, Sterne, Agee & Leach, Inc.
- Jay Hoyle, Market Manager, Wells Fargo Advisors, LLC

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**District 6:** *Texas*

**Small Firm Representative Candidates**

- Darla K. Bartkowiak, SVP/Chief Compliance Officer, Amherst Securities Group, LP
- Glenn S. Martini, OSJ Manager, VFG Securities, Inc.

**Mid-Size Firm Representative Candidate**

- David W. Stringer, President, Prospera Financial Services, Inc.

**Large Firm Representative Candidates**

- Trip Bomar, Market Manager, Wells Fargo Advisors, LLC
- Mitzi Hallmark, Vice President/Compliance Manager, Merrill Lynch, Pierce, Fenner & Smith, Incorporated
- Daniel J. Hughes, Senior Vice President, Complex Manager, Morgan Stanley Smith Barney
- Christine L. Staib, Branch Manager/President—Staib Wealth Management, LPL Financial

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**District 7:** *Georgia, North Carolina and South Carolina, Florida, Puerto Rico, Panama and the Virgin Islands*

**Small Firm Representative Candidate**

- Jim R. Webb, President/CEO, Cape Securities Inc.

**Mid-Size Firm Representative Candidates**

- Richard K. Bryant, President & CEO, Capital Investment Group, Inc.
- Beth E. Burns, Director of Compliance, Synovus Securities, Inc.
- Fred G. Fram, Executive Vice President, Compliance and Operations, Summit Brokerage Services
- Brian Kovack, Esq., President, Kovack Securities, Inc.

**Large Firm Representative Candidates**

- Michael Higgins, Complex Manager, Morgan Stanley Smith Barney
- Ken Muraoka, Senior Vice President, Compliance, Advisor Group/FSC Securities

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**District 8:** *Illinois, Indiana, Kentucky, Michigan, Ohio and Wisconsin*

**Small Firm Representative Candidates**

- Gina Bokios, Senior Vice President and General Counsel, Regal Securities, Inc.
- Joseph Novak, Esq., CAO, Incapital LLC
- J. Lawrence Taunt, President, Regulus Advisors LLC

**Mid-Size Firm Representative Candidate**

- Lynn Goebel, Chief Compliance Officer, ValMark Securities, Inc.

**Large Firm Representative Candidates**

- Erwin J. Dugasz, Jr., Managing Counsel, Nationwide Investment Services Corporation
- Robert Samson, Market Manager, Wells Fargo Advisors, LLC
- Norman R. Sherman, Chief Compliance Officer, Horace Mann Investors, Inc.
- Enrique M. Vasquez, President and CEO, Genworth Financial Securities Corp.

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**District 9:** *New Jersey and New York (except for the counties of Nassau and Suffolk, and the five boroughs of New York City) Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia*

**Small Firm Representative Candidates**

- Victoria Bach-Fink, CEO/CFO, Wall Street Financial Group, Inc.
- Robert L. Palleschi, Chief Compliance Officer, Sumridge Partners, LLC
- Terri F. Rumans, Chief Compliance Officer, Sage Ruddy & Co., Inc.

**Large Firm Representative Candidates**

- Mark R. Hastings, Chief Compliance Officer, Prudential Investment Management Services LLC
- Nancy L. Heffner, Director of Compliance, Lincoln Investment Planning, Inc.
- John M. Powers, SVP/ Complex Manager, Morgan Stanley Smith Barney

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**District 10:** *New York (the counties of Nassau and Suffolk, and the five boroughs of New York City)*

**Small Firm Representative Candidates**

- Myles J. Edwards, General Counsel and Chief Compliance Officer, Constellation Wealth Advisors LLC
- David M. Sobel, Esq., EVP/CCO, Abel/Noser Corp.

**Large Firm Representative Candidates**

- John R. Campbell, Complex Manager, Morgan Stanley Smith Barney
- Joseph Neary, Chief Compliance Officer, Royal Alliance Associates, Inc.
- Douglas G. Preston, SVP, Compliance Executive, Merrill Lynch, Pierce, Fenner & Smith, Incorporated

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**District 11:** *Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont*

**Small Firm Representative Candidates**

- Leonid Berline, Executive Vice President and Chief Compliance Officer, Winslow, Evans & Crocker, Inc.
- John I. Fitzgerald, Managing Director—Legal and Compliance, Leerink Swann LLC

**Large Firm Representative Candidates**

- John Cataldo, Chief Compliance Officer, Investors Capital Corporation
- James Connors, Market Manager, Wells Fargo Advisors, LLC
- Gary Klein, Executive Vice President and Deputy General Counsel, LPL Financial
- Robert Malenfant, Complex Manager, Morgan Stanley Smith Barney
- Victoria Olson, Compliance Officer, Prudential Annuities Distributors
- Paul J. Tolley, Chief Compliance Officer, Commonwealth Financial Network

# Election Notice

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

### Executive Summary

The purpose of this *Election Notice* is to notify small firms of a contested election for the open National Adjudicatory Council (NAC) Small Firm seat and to distribute to eligible FINRA small firm members 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 this election. In order for a ballot to be considered valid, it must be signed by the executive representative of the small firm eligible to vote in the election. Small firms that are members of FINRA as of the close of business on October 18, 2011, are eligible to vote.

Ballots must be returned no later than November 18, 2011.

**Note:** This *Notice* was distributed electronically to the executive representative of each FINRA member firm and it is posted on FINRA's website at [www.finra.org/notices/NACElection/101911](http://www.finra.org/notices/NACElection/101911).

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

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

### Background

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

### Composition of the NAC

The NAC comprises 14 members—seven industry and seven non-industry members. The seven industry members of the NAC include two Small Firm, one Mid-Size Firm, two Large Firm and two At-Large Industry Members. Of the seven Non-Industry NAC Members, at least three are Public Members.

**October 19, 2011**

### Suggested Routing

- ▶ Executive Representatives
- ▶ Senior Management

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

## Candidates for Small Firm NAC Member

In July 2011, FINRA's Nominating and Governance Committee nominated the following individual to fill the upcoming small firm vacancy on the NAC:

- ▶ **David M. Sobel**—Executive Vice President and Chief Compliance Officer, Abel/Noser Corp.

One candidate successfully petitioned to have her name added to the ballot as an additional Small Firm NAC Member candidate:<sup>1</sup>

- ▶ **Karen Z. Fischer**—Financial and Operations Principal and Compliance Principal, Hunter Scott Financial, LLC

Profiles of each candidate are included in Attachment A.

## Nominee for Large Firm NAC Member

The Nominating and Governance Committee also nominated Jill W. Ostergaard, Managing Director and Chief Compliance Officer of Morgan Stanley & Co. Incorporated, as FINRA's nominee for the vacant Large Firm NAC Member seat. The Large Firm NAC Member nomination was not contested, and Ms. Ostergaard will begin her term upon appointment by the FINRA Board.<sup>2</sup>

Ms. Ostergaard's profile is included in Attachment B.

## Term of Office

NAC members hold office for three-year terms. The elected Small Firm NAC Member and the uncontested Large Firm NAC Member will be appointed to three-year terms, beginning January 1, 2012.

## 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.

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

## Firm Contact Information

Firms are reminded to accurately maintain their executive representative's name and email address, as well as their firm's main postal address, in FINRA's records. This will ensure that important mailings, such as election information, will be properly directed. A firm's failure to keep this information accurate may jeopardize the firm's ability to participate in elections.<sup>3</sup>

To update an executive representative's name, mailing address and email address, firms may access the FINRA Contact System via the Firm Gateway at <https://firms.finra.org/fcs>. For assistance updating information, please contact the FINRA Office of the Corporate Secretary at (202) 728-8949.

## Voting Methods

Small firms may submit ballots by U.S. mail. The ballot sent to eligible small firms contains detailed instructions on the submission procedures. Ballots must be postmarked on or before November 18, 2011.

## Endnotes

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

## **Attachment A—Profiles of Candidates for Small Firm NAC Member Seat**

### Petition Candidate for Small Firm NAC Member Seat

**Karen Z. Fischer**  
**Financial and Operations Principal, Compliance Officer, Registered Rep.**  
**Hunter Scott Financial, LLC**

Karen Fischer has been based in Boca Raton, Florida, since 1984 and has 23 years of industry experience. Karen holds Series 7, 27, 79 and 24 licenses. She also has significant hands-on industry experience as a Financial and Operations Principal and Compliance Officer. Currently, she is registered with five small broker-dealers. Ms. Fisher's additional credentials include being a graduate accountant from Long Island University in Brooklyn, New York, with a practice that has spanned 40 years plus. She has also been a State of Florida Certified Mediator for thirteen years. She is completely familiar with and assists firms through the arduous 1017 start up process, supervisory manual updates and AML procedure manuals. It is noted that 1017 appeals are heard by the NAC. Clients and attorneys have often requested her to research compliance issues. She is a frequent commentator on Membership issues.

Ms. Fischer is an active participant in many District functions, including a District 7 focus group that meets with FINRA top management to discuss membership issues. Over her 23-year career, she has had extensive experience interacting directly and frequently with FINRA, the SEC and other regulators including the FBI and the IRS. As an outside accountant and compliance consultant for several, small business broker-dealers, she has acquired a wealth of practical knowledge of the different FINRA Districts across the nation and the various state regulators.

Ms. Fischer currently serves, and has served as a FINRA Industry Arbitrator for 15 years. Karen currently serves on the Board of Directors of the Independent Broker-Dealer Association, an organization committed to FINRA-membership reform.

## FINRA Nominee for Small Firm NAC Member Seat

**David M. Sobel**  
**Executive Vice President and Chief Compliance Officer**  
**Abel/Noser Corp.**

David M. Sobel, Esq. is currently Executive Vice President, General Counsel and Chief Compliance Officer of Abel/Noser Corp., a FINRA/NYSE member broker-dealer. He was previously a partner at The Goldstein Law Group, P.C. where he concentrated in the areas of broker-dealer compliance/regulation, securities litigation, including arbitration and mediation and disciplinary/enforcement matters at the SEC, NYSE, AMEX and FINRA. Mr. Sobel was a Floor Member of the New York Stock Exchange from 1982 through 1991 as a floor broker for both H.A. Brandt & Co. and First Options of Chicago, and President of his own NYSE member firm, Ampro Securities, Inc. After leaving the NYSE floor, he was a Senior Equity Trader/Market Maker for Trimark Securities.

Mr. Sobel has a Master of Science Degree from Brooklyn College and a Law Degree from Pace Law School where he was an Editor of the International Law Review and recipient of the Dean's Award. He has served as a FINRA arbitrator, on FINRA's District 10 Committee and on FINRA's Small Firm Advisory Board. He has also served on the Board of Directors of the National Society of Compliance Professionals and as Chairman of the Board of the NAIBD.

Mr. Sobel has been quoted in or interviewed by *Compliance Reporter*, *WSJ.com*, *Complanet*, *Trader's Magazine*, *Wall Street Letter*, *BD Week*, *Op/Risk and Compliance Magazine*, *Institutional Investor News* and the Dow Jones Newswire, and is a frequent speaker at securities conferences for SIFMA, NSCP, NRS, NAIBD, FMW and Strategy Institute. Recent conference topics include managing risk at small BDs, internal audits, supervisory responsibility, financial responsibility, fraud prevention in portfolio management, social networking, foundations of compliance, best practices and forensic compliance.

Mr. Sobel is admitted to practice before the Supreme Courts of New York and Connecticut, the U.S. District Courts for the Southern and Eastern Districts of New York and the Second Circuit Court of Appeals. He is a member of the New York County Lawyers Association, the New York State Bar Association and the American Bar Association.

## FINRA Nominee for Large Firm NAC Member

**Jill W. Ostergaard**  
**Managing Director and Chief Compliance Officer**  
**Morgan Stanley & Co. Incorporated**

Jill W. Ostergaard is a Managing Director and Chief Compliance Officer for Morgan Stanley & Co. Incorporated, covering all of the firm's institutional businesses in the United States, Canada and Latin America.

Ms. Ostergaard is a member of SIFMA's Compliance and Regulatory Policy Committee (formerly Self-Regulatory and Supervisory Practices Committee) and served as co-chair from 2006 through 2008; she also was a member of the working group that drafted the *Whitepaper on the Role of Compliance*. Ms. Ostergaard is a member of FINRA's Compliance Advisory Committee and previously served on the Electronic Communications Task Force. She has spoken on a variety of topics, including: market structure, institutional trading, detecting and preventing fraud, supervisory control rules, new products, gifts and entertainment, best execution, and trading desk supervision.

Prior to joining Morgan Stanley in 1998, Ms. Ostergaard was vice president and counsel providing legal coverage to the sales and trading desks for the Pershing Division of Donaldson, Lufkin & Jenrette Securities Corporation. She started her career as an attorney with the SEC's Division of Market Regulation and studied the then-potential effects of decimalization on the U.S. securities markets for Commissioner Steven M.H. Wallman. Ms. Ostergaard graduated *cum laude* from Hope College and received her J.D. from Loyola University of Chicago.

# Election Notice

## Notice of FINRA Small Firm Advisory Board Election and Ballots

### Executive Summary

The purpose of this *Notice* is to distribute to eligible FINRA small firm members<sup>1</sup> the ballots to elect Midwest and South Region members of the Small Firm Advisory Board (SFAB). Small firm members of FINRA in the Midwest and South Regions as of the close of business on October 18, 2011, are eligible to vote in this election.

Ballots are due by Friday, November 18, 2011, and the newly elected SFAB members will take office in January 2012. Firms are urged to vote in the election of SFAB members.

Attachment A lists the candidates certified by the Corporate Secretary of FINRA as satisfying requirements for each regional SFAB seat. Information about each candidate is available at [www.finra.org/notices/SFAB Election/101911](http://www.finra.org/notices/SFAB Election/101911).

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

- ▶ Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949;
- ▶ T. Grant Callery, Executive Vice President and General Counsel (Corporate), at (202) 728-8285; or
- ▶ Chip Jones, Senior Vice President, Member Relations, at (240) 386-4797.

### SFAB Election

#### Composition of the FINRA Small Firm Advisory Board

The SFAB comprises 10 members as follows:

- ▶ five regional members elected by small firms in the five FINRA regions (one from each region); and
- ▶ five at-large members appointed by FINRA.

Additionally, the FINRA Board's Small Firm Governors<sup>2</sup> serve as ex-officio members of the SFAB.

**October 19, 2011**

### Suggested Routing

- ▶ Executive Representatives
- ▶ Senior Management

The five regional members represent the following geographic regions:

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

As mentioned above, the Midwest and South Region seats are currently up for election.

## Candidate Eligibility

Any senior member of a small firm whose primary place of business and whose firm has its main office (as indicated in FINRA records) in the Midwest and South regions was eligible to have his or her name placed on the ballot for the appropriate region in this election. SFAB members must also continue to meet their qualifications for election at all times during their terms of office.

Attachment A lists the candidates certified by the Corporate Secretary of FINRA as satisfying requirements for each regional SFAB seat. Information about each candidate is available at [www.finra.org/sfab/candidateprofiles](http://www.finra.org/sfab/candidateprofiles).

## Terms of SFAB Members

The successful candidate will be the individual who receives the most votes and will be elected to serve a three-year term.

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

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

## Voting Eligibility

As mentioned above, FINRA small firms are eligible to vote for candidates running for the SFAB seat representing the region corresponding to the district to which they are assigned in the Central Registration Depository®.

Ballots have been mailed, along with a copy of this *Notice*, to the executive representatives of small firm members in the Midwest and South regions to elect their SFAB representative. Firms may vote for only one candidate listed on the ballot.

## Voting Methods

Firms may vote by telephone, the Internet or by U.S. mail. The ballot sent to eligible small firms contains detailed instructions on the voting procedures.

It is important that all eligible member firms vote. Ballots are due on Friday, November 18, 2011.

## Endnotes

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

## Attachment A: SFAB Candidates

### South Region Seat Candidates

Jerome A. Borzello	President, Chief Compliance Officer, FINOP	American Wealth Management, Inc.
Marcus D. Kindley	CEO/CCO	Intercarolina Financial Services
Nicholas P. Salas	CCO	InterBolsa Securities, LLC
Bruce Karl Snell	Managing Director, Southeast Region	JHS Capital Advisors
David W. Wiley III	President	Wiley Bros.—Aintree Capital, LLC
Carrie Wisniewski	President, CEO	Bridge Capital Associates, Inc.

### Midwest Region Seat Candidates

Eric A. Bederman	Chief Operating & Compliance Officer	Bernardi Securities, Inc.
Gina Bokios	Senior Vice President and General Counsel	Regal Securities, Inc.
Edward A. Horwitz	President	Horwitz & Associates, Inc.

Information about each candidate is available at [www.finra.org/sfab/candidateprofiles](http://www.finra.org/sfab/candidateprofiles).

# Information Notice

## Continuing Education Planning

### Executive Summary

On October 14, 2011, the Securities Industry/Regulatory Council on Continuing Education (the Council) released the semi-annual Firm Element Advisory (FEA) (see [Regulatory Notice 11-47](#)). The Council suggests that firms consult the FEA when developing their Firm Element training needs analysis.

FINRA offers the following online training resources that address many of the topics that the Council has outlined in the FEA:

- ▶ **E-Learning Courses:** Online training featuring assessment tests, scenarios, real-time completion tracking and certificates of completion (see [www.finra.org/elearning](http://www.finra.org/elearning)).
- ▶ **Podcasts:** Short audio recordings on specific targeted topics, which can be heard online or downloaded to a portable media player (see [www.finra.org/podcasts](http://www.finra.org/podcasts)).

Send questions regarding this Notice to [education@finra.org](mailto:education@finra.org).

October 14, 2011

### Suggested Routing

- ▶ Compliance
- ▶ Continuing Education
- ▶ Legal
- ▶ Training

### Key Topics

- ▶ Continuing Education
- ▶ Firm Element

### Referenced Rules & Notices

- ▶ Notice 11-47

FIRM ELEMENT ADVISORY TOPICS	FINRA TRAINING
Consolidated FINRA Rulebook	Rulebook Consolidation Series ( <a href="#">Podcast</a> )
Alternative Investments	Reverse Exchangeable Securities (Reverse Convertibles) <ul style="list-style-type: none"><li>• Reverse Convertibles (<a href="#">Podcast</a>)</li></ul>
	Sales Practice Obligations for Commodity Futures-Linked Securities <ul style="list-style-type: none"><li>• Commodity Futures-Linked Securities (<a href="#">Podcast</a>)</li><li>• Understanding Commodity Futures-Linked Securities (<a href="#">E-Learning</a>)</li></ul>

FIRM ELEMENT ADVISORY TOPICS	FINRA TRAINING
Anti-Money Laundering	<ul style="list-style-type: none"> <li>• Anti-Money Laundering Series (<a href="#">Podcast</a>)</li> <li>• Anti-Money Laundering Series (<a href="#">E-Learning</a>)</li> </ul>
Arbitration Rules	<ul style="list-style-type: none"> <li>• Arbitration Panel Composition (<a href="#">Podcast</a>)</li> </ul>
Business Continuity	<ul style="list-style-type: none"> <li>• FINRA's Business Continuity Planning Template (<a href="#">Podcast</a>)</li> <li>• Pandemic Preparedness – Parts I and II (<a href="#">Podcast</a>)</li> </ul>
Communications With the Public	<ul style="list-style-type: none"> <li>• Electronic Communications Series (<a href="#">Podcast</a>)</li> <li>• Social Media and Personal Electronic Devices Series (<a href="#">Podcasts</a>)</li> <li>• Social Networking (<a href="#">Podcast</a>)</li> <li>• Use of Social Media for Business Purposes (<a href="#">E-Learning</a>)</li> <li>• Communications With the Public Series (<a href="#">E-Learning</a>)</li> </ul>
Customer Accounts	<ul style="list-style-type: none"> <li>• Consolidated Account Reports (<a href="#">Podcast</a>)</li> </ul>
FACT Act Red Flags Rule	<ul style="list-style-type: none"> <li>• FTC's Red Flags Rule Template (<a href="#">Podcast</a>)</li> <li>• FACT Act Red Flags Rule (<a href="#">Podcast</a>)</li> </ul>
Finance and Operations	<p><b>Verification of Assets at a Non-Member Financial Institution</b></p> <ul style="list-style-type: none"> <li>• Independent Verification of Assets (<a href="#">Podcast</a>)</li> </ul> <p><b>Funding and Liquidity Risk Management Practices</b></p> <ul style="list-style-type: none"> <li>• Funding and Liquidity Risk Management – Parts I and II (<a href="#">Podcast</a>)</li> </ul>
Insurance and Annuities	<ul style="list-style-type: none"> <li>• Deferred Variable Annuities (<a href="#">Podcast</a>)</li> <li>• Variable Annuities Series (<a href="#">E-Learning</a>)</li> </ul>
Municipal Securities	<ul style="list-style-type: none"> <li>• Municipal Continuing Disclosure Report (<a href="#">Podcast</a>)</li> <li>• Municipal Securities Series (<a href="#">Podcast</a>)</li> </ul>

FIRM ELEMENT ADVISORY TOPICS	FINRA TRAINING
Registration and Disclosure	<p><b>BrokerCheck</b></p> <ul style="list-style-type: none"> <li>• BrokerCheck (<a href="#">Podcast</a>)</li> </ul> <p><b>Forms U4 and U5</b></p> <ul style="list-style-type: none"> <li>• Uniform Forms Electronic Filing Requirements (<a href="#">Podcast</a>)</li> <li>• What to Expect: The U4 and U5 Filing Process (<a href="#">Podcast</a>)</li> </ul> <p><b>Operations Professional Registration Category</b></p> <ul style="list-style-type: none"> <li>• Operations Professional Registration Category Series (<a href="#">Podcast</a>)<sup>1</sup></li> </ul>
Sales Practices and Supervision	<ul style="list-style-type: none"> <li>• Suitability and Know Your Customer Rules (<a href="#">Podcast</a>)</li> <li>• Suitability Guidance Series (<a href="#">Podcast</a>)</li> <li>• Outside Business Activities Series (<a href="#">E-Learning</a>)</li> <li>• Senior Investors Suitability Considerations (<a href="#">E-Learning</a>)</li> <li>• Suitability and Know Your Customer Obligations: FINRA Rules 2111 and 2090 (<a href="#">E-Learning</a>)<sup>2</sup></li> </ul>
Transaction Reporting and Data Dissemination	<p><b>Trade Reporting and Compliance Engine (TRACE)</b></p> <ul style="list-style-type: none"> <li>• TRACE Expansion (<a href="#">Podcast</a>)</li> </ul> <p><b>FINRA Expands the Order Audit Trail System (OATS) to All NMS Stocks</b></p> <ul style="list-style-type: none"> <li>• OATS Expansion (<a href="#">Podcast</a>)</li> </ul> <p><b>Trading Halts</b></p> <ul style="list-style-type: none"> <li>• Trading-Pause Pilot Program (<a href="#">Podcast</a>)</li> </ul>

## Endnotes

1. Available October 17, 2011.
2. Available October 19, 2011.

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# Information Notice

## FINRA Entitlement User Account Certification

### Executive Summary

FINRA is introducing a mandatory annual online certification process for the FINRA Entitlement Program. Super Account Administrators (SAAs) for organizations<sup>1</sup> with more than one user must certify that users are entitled only to those applications and privileges necessary to perform their job responsibilities. During the fourth quarter of each year, beginning this year, FINRA will designate a 30-day period during which SAAs must review their organizations' user accounts and complete the certification.

Questions concerning this *Notice* should be directed to Mary Ann Shaw, Senior Director, Information Operations, at (240) 386-4806.

Questions regarding the SAA or Entitlement Program should be directed to the Gateway Call Center at (301) 869-6699.

### Background and Discussion

This certification process is part of FINRA's ongoing efforts to protect the integrity and confidentiality of regulatory, proprietary and personal information maintained by FINRA. Additionally, the certification requirement supports each organization's compliance with the management of authorized user accounts on FINRA systems.<sup>2</sup>

SAAs are responsible for ensuring that users in their organizations who, in order to perform their job responsibilities, require access to applications in the FINRA Entitlement Program—and the sensitive data that those applications may contain—are properly entitled to those applications.

The certification process requires SAAs of organizations that have more than one user to review their user accounts to verify that the individuals are entitled to only the applications, and privileges within those applications, necessary to perform their current job responsibilities. FINRA will contact SAAs in November 2011 to inform them that the 30-day certification period has begun and will provide detailed instructions for completing the certification process.

October 28, 2011

### Suggested Routing

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

### Key Topics

- ▶ Entitlement Program

### Referenced Notices

- ▶ Information Notice 3/24/2010

During this 30-day certification period, SAAs must review their organizations' user accounts to determine that:

- ▶ each user has a continuing need to access FINRA application(s) on the organization's behalf;
- ▶ each user is entitled only to the applications and privileges needed to perform current job responsibilities; and
- ▶ only users who require access to sensitive data (*e.g.*, Criminal History Record Information, Social Security or tax identification numbers, dates of birth) are entitled to access this type of data.

If an SAA does not complete the online certification within the designated 30-day period, FINRA will disable the capability to create, edit and clone accounts for all administrators at the organization until the SAA completes the certification process, and will contact the organization.

While the mandatory online certification is performed once a year, organizations are encouraged to review their user accounts more frequently based upon factors such as company size, number of FINRA-entitled systems and staff turnover.

For additional details, see the [FINRA Entitlement Program – Super Account Administrator](#) page and [FINRA Entitlement User Accounts Certification Process FAQ](#).

## Endnotes

1. For purposes of this *Notice*, "organization" refers to any FINRA Entitlement Program participant, including FINRA member firms and regulators.
2. Refer to the [FINRA Entitlement Program Agreement and Terms of Use](#) for complete information.