



Securities Industry Continuing Education Program

Firm Element Advisory

The Securities Industry/Regulatory Council on Continuing Education (the “Council”) publishes the Firm Element Advisory (“FEA”) to identify current regulatory and sales practice issues for possible inclusion in Firm Element training plans. The topics have been taken from a review of industry regulatory and self-regulatory organization (“SRO”) publications and announcements of significant events.

As announced in November 2006, the Council now issues the FEA on a semi-annual basis. Every FEA contains new material, denoted by a “[New]” next to the title, as well as preexisting material that has been updated, denoted by an “[Updated]” next to the title. Issues appearing in prior FEAs that are no longer deemed to be current are removed from the current FEA.

The Council suggests that firms use the FEA as an aid in developing their Firm Element Needs Analysis. Firms are reminded that the FEA should not be relied on as a comprehensive list of all areas to be considered for a firm’s Needs Analysis. Firms should review the FEA and determine which topics would be relevant for inclusion in Firm Element training based on the firm’s product offerings, structure and business line(s). Firms are encouraged to review prior FEAs and consider topics noted in the prior Advisories that have since been removed from the current FEA should they continue to be relevant to the firm’s business, structure or product offerings.

The FEA is designed to identify each topic briefly and then provide links to relevant documents issued on the specified subjects. Although the FEA is now designed for use on the web, the document can be printed. Be advised that separate printing would need to be conducted for each link to encompass the full document and subjects covered.

In addition to the FEA material, the Firm Element Organizer is an additional resource that can assist with developing Firm Element training plans. This is an easy-to-use software application that enables the search of an extensive database of regulatory resources related to specific investment products or services. The results of a search can then be edited into a document that may assist in developing a Firm Element training plan.

For more information, log on to www.cecouncil.com, or contact **Joseph Sheirer**, Director, Continuing Education, FINRA, at (212) 656-5917, or **Roni Meikle**, Director, Continuing Education, FINRA, at (212) 656-2156.



Please Note: On July 30, 2007, the Financial Industry Regulatory Authority, FINRA, began operations. FINRA was formed through the consolidation of NASD and the enforcement, member regulation and arbitration operations of NYSE Regulation. The FINRA rulebook currently consists of both NASD Rules and certain NYSE Rules that FINRA has incorporated (Incorporated NYSE Rules). The Incorporated NYSE Rules apply solely to dual members of FINRA and the NYSE. In certain instances, the FEA continues to use legacy references to NASD and NYSE member regulation.

[Updated] Anti-Money Laundering

[New] Addressing Common Errors in Suspicious Activity Reports

On October 10, 2007, the Financial Crimes Enforcement Network (FinCEN) issued suggestions for addressing common errors noted in suspicious activity reports (SARs).

[*FinCEN Memorandum: Suggestions for Addressing Common Errors Noted in Suspicious Activity Reporting \(October 10, 2007\)*](#)

[New] Section 312 of the USA PATRIOT Act

On August 9, 2007, FinCEN published a final rule to implement the enhanced due diligence requirements for correspondent accounts for certain foreign banks set forth in section 312 of the USA PATRIOT Act.

[*FinCEN Final Rule: Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts, 72 FR 44768 \(August 9, 2007\)*](#)

[New] PHLX Rule 757 (Anti-Money Laundering Compliance Program)

On March 23, 2007, the Philadelphia Stock Exchange issued guidance for member firms regarding the independent testing of Anti-Money Laundering (“AML”) Compliance Programs and AML Compliance Person requirements of PHLX Rule 757.

[*PHLX Memorandum No. 726-07 PHLX Rule 757 – Anti-Money Laundering Compliance Program \(March 2007\)*](#)

[New] AML Resources

Information and guidance relating to AML rules, regulations and compliance are issued regularly from a number of sources. Firms are reminded to maintain current AML programs and train staff appropriately.

[*FINRA Issue Center: Anti-Money Laundering
Anti-Money Laundering \(AML\) Source Tool*](#)

[*NASD Notice to Members 06-07 SEC Approves Amendments to Anti-Money Laundering Compliance Program Rule and Adoption of Interpretive Material \(January 2006\)*](#)

[*NYSE Information Memo 06-04 Amendments to Rule 445 \(“Anti-Money Laundering Compliance Program”\) \(February 2006\)*](#)



[Updated] Business Continuity Plans

Guidance pertaining to business continuity planning and contingency plans relating to a potential pandemic has been issued. It is important that firms maintain adequate business continuity and contingency plans and ensure that employees are aware of and understand these plans.

[FINRA Issues Center - Business Continuity Planning](#)

[NASD Notice to Members 06-74](#) *Member Business Continuity Experiences regarding Hurricanes Katrina and Rita (December 2006)*

[NASD Notice to Members 06-31](#) *NASD Requests Comment on Regulatory Relief that Should Be Granted in Response to a Possible Pandemic or Other Major Business Disruption (June 2006).*

[NYSE Information Memo 06-30](#) *Guidance Pertaining to Business Continuity and Contingency Plans Relating to a Potential Pandemic (May 2006)*

[NYSE Information Memo 05-80](#) *Business Continuity and Contingency Plans (Oct 2005)*

[NASD Notice to Members 04-37](#) *SEC Approves Rules Requiring Members to Create Business Continuity Plans and Provide Emergency Contact Information (May 2004).*

Communications

[Updated] Approval of Correspondence

NASD amended Rule 2211 to require a registered principal to approve correspondence sent to 25 or more existing retail customers within any 30 calendar-day period if the correspondence makes any financial or investment recommendation or otherwise promotes a product or service of the member.

[NASD Notice to Members 06-45](#) *SEC Approves Amendments to NASD Rule 2211 to Require Principal Pre-Use Approval of Certain Member Correspondence Sent to 25 or More Existing Retail Customers within a 30 Calendar-Day Period (August 2006).*

[Updated] Electronic Communications

NASD and NYSE recently requested comment on proposed guidance relating to the review and supervision of electronic communications. Firms also are reminded to maintain and preserve all required communications, comply with record keeping requirements regarding external and internal communications relating to their “business as such” and address supervision, maintenance, retrieval and production issues, especially in light of the ever increasing volume of data and methods of communication.

[NASD Notice to Members 07-30](#) *NASD and NYSE Request Comment on Proposed Joint Guidance Regarding the Review and Supervision of Electronic Communications (June 2007)*



[NYSE Information Memo 07-54](#) *Proposed Joint Guidance Regarding the Review and Supervision of Electronic Communications (June 2007)*

[NYSE Information Memo 07-48](#) *Amendments to Rule 440A (“Telephone Solicitations”) Pertaining to “Facsimile Advertisements” (May 2007)*

[FINRA Issue Center: Advertising, “Guide to the Internet for Registered Representatives”](#)

[Updated] Member Web Sites

Members of FINRA and persons associated with a member firm that refer to their FINRA membership on a Web site must provide a hyperlink to FINRA’s home page. The amendments become effective on November 17, 2007.

[FINRA Regulatory Notice 07-47](#) *Amendments to NASD IM 2210-4: Web Site References to FINRA Membership and Limitations on the Use of FINRA’s Name and Other Corporate Names Owned by FINRA (October 2007)*

Mutual Fund Performance Advertising

The SEC approved amendments to NASD Rules 2210 and 2211 that impose certain disclosure and presentation requirements on member communications with the public, other than institutional sales material and public appearances, which present non-money market mutual fund performance data (performance sales material). The amendments became effective on April 1, 2007.

[NASD Notice to Members 06-48](#) *SEC Approves Amendments to NASD Rules 2210 and 2211 to Require Disclosure of Fees and Expenses in Mutual Fund Performance Sales Material (September 2006)*

Providing SIPC Information to Customers

Effective November 6, 2007, new NASD Rule 2342 requires all FINRA members – unless they are excluded from membership in SIPC and are not SIPC members, or they exclusively sell investments that are ineligible for SIPC protection – to inform all new customers that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. Members must also provide SIPC’s Web site address and telephone number. Members must provide customers with the same information in writing, at least once each year. Firms that are members of both FINRA and NYSE must also comply with comparable NYSE Rule 409A (SIPC Disclosures).

[NASD Notice to Members 07-29](#) *SEC Approves Rule 2342 Setting Forth Requirements for Providing SIPC Information to Customers (June 2007)*



Customer Accounts

[Updated] Customer Account Transfers

The fast and efficient transfer of customer accounts is critically important to both the industry and investors. Recent rule amendments have changed the required timeframes in which customer account transfers must occur. In addition, recent publications have provided industry and investors with considerations and information about the transfer of customer accounts.

[FINRA Regulatory Notice 07-50](#) *SEC Approves Amendments to NASD Rule 11870 and NYSE Rule 412 to Confirm with NSCC's ACATS Transfer Cycle Time Frames (October 2007)*

[Report of the Customer Account Transfer Task Force \(September 2006\)](#)

[NYSE Informed Investor Series: Moving Financial Assets - What Every Customer Should Know](#)

[NYSE Informed Investor Series: If Your Broker Changes Firms, What Do You Do?](#)

DVP/RVP Customer Accounts

NASD and NYSE rules relating to customer account statements have been amended to permit customers whose accounts are carried solely for the purpose of execution on a DVP/RVP (Delivery Versus Payment/Receive Versus Payment) basis to opt out of receiving customer account statements.

[NASD Notice to Members 06-68](#) *SEC Approves Amendments to Rule 2340 to Allow DVP/RVP Customers to Elect Not to Receive Account Statements (November 2006)*

[NYSE Information Memo 06-80](#) *Permitting DVP/RVP Customers to Opt Out of Receiving Statements (November 2006)*

Finance and Operations

[Updated] Responsibilities of Principals

Brokers and dealers and their registered principals, including compliance as well as financial and operations principals (FINOPs), are reminded of various duties and responsibilities in the below referenced materials. Also, a notice containing answers to frequently asked questions on financial and operational matters has been issued.

[NASD Notice to Members 07-16](#) *Frequently Asked NASD Financial and Operational Questions (April 2007)*

[NASD Notice to Members 06-23](#) *NASD Reminds FINOPs of their Obligations under NASD Rule 1022 and Issues Guidance to FINOPS who Work Part-Time, Work Off-Site or Hold Multiple Registrations (May 2006)*

[NYSE Information Memo 06-22](#) *Executive Responsibilities (April 2006)*



Gifts and Business Entertainment

Charitable Contributions

The solicitation of substantial charitable contributions by employees or agents of a customer acting in a fiduciary capacity raises potential conflicts of interest that deserve careful consideration by member firms. NASD and NYSE jointly issued guidance to suggest some of the policies and procedures that firms should consider adopting to address these conflicts.

[NASD Notice to Members 06-21](#) *NASD and NYSE Issue Joint Guidance on Charitable Contributions (May 2006)*

[NYSE Information Memo 06-27](#) *Charitable Contribution Solicitations from Fiduciaries (May 2006)*

[Updated] Gifts and Gratuities

NASD issued the below referenced notice as an aid to member firms. The notice focuses on the more common compliance weaknesses relating to the application of NASD Rule 3060.

[NASD Notice to Members 06-69](#) *NASD Issues Additional Guidance on Rule 3060 (Influencing or Rewarding Employees of Others (December 2006)*

On October 3, 2005, the SEC approved amendments to MSRB Rule G-20, on gifts, gratuities and non-cash compensation, and the related recordkeeping provisions of MSRB Rule G-8.

[MSRB Notice 2005-52](#) *SEC Approves Amendments to Rule G-20, on Gifts and Gratuities, and Rule G-8, on Books and Records (October 5, 2005)*

[Updated] Influencing or Rewarding Employees of Others

NASD proposed interpretive material (IM) to Rule 3060 (Influencing or Rewarding Employees of Others) and the NYSE proposed new Rule 350A (Business Entertainment) to more explicitly outline the policies and procedures a member must adopt in connection with its business entertainment practices with employees of a customer. The proposed rules would expand on and supersede prior staff guidance in this area.

[SR-NASD-2006-044](#) *Proposal to Adopt New IM-3060 to Require Members to Adopt Written Policies and Procedures Concerning Business Entertainment (Amendment No. 2 to Proposed Rule Change) (Amendment No. 2 in May 2007)*

[NYSE Rule 350](#) *(Compensation or Gratuities to Employees of Others)*

[SR-NYSE-2006-06](#) *Proposal for New Rule 350A to Regulate "Business Entertainment" Provided by Member Organizations to Representatives of Customers and Potential Customers (February 2006) (Amendment No. 1 replacing the original filing in its entirety, April 2007)*



[SR-NYSE-2004-60](#) *Proposed Amendment to Rule 350 (Compensation or Gratuities to Employees of Others (October 2004))*

Insurance/Annuities

[Updated] Life Settlements

Sales of existing life insurance policies to third parties, often referred to as "life settlements," have grown exponentially in recent years, and that trend appears likely to continue. Member firms and associated persons are reminded that life settlements involving variable insurance policies are securities transactions, and firms and associated persons involved in such transactions are subject to applicable NASD rules.

[NASD Notice to Members 06-38](#) *Member Obligations with Respect to the Sale of Existing Variable Life Insurance Policies to Third Parties (August 2006)*

[NASD Investor Alert](#) *Seniors Beware: What You Should Know About Life Settlements (February 2007)*

Sales of Unregistered Equity-Indexed Annuities

NASD addressed the responsibility of firms to supervise the sale, by their associated persons, of equity-indexed annuities ("EIAs") that are not registered under the federal securities laws.

[NASD Notice to Member 05-50](#) *Member Responsibilities for Supervising Sales of Unregistered Equity-Indexed Annuities (August 2005)*

Margin and Margin Accounts

[New] Portfolio Margin Pilot Program

The CBOE, NASD and NYSE have issued notices announcing rule changes permitting members, on a pilot basis, to margin certain products according to a prescribed portfolio margin methodology. The disclosure statement and written acknowledgement for use with the proposed portfolio margin program must be furnished to customers using a portfolio margin account. In addition, in connection with these recent amendments, firms are advised of the suitability determination obligations surrounding portfolio margining.

[NYSE Information Memo 07-75](#) *Portfolio Margining Suitability (July 2007)*

[NYSE Information Memo 07-71](#) *One Year Extension of Customer Portfolio Margining Pilot Program (July 2007)*



[NYSE Information Memo 07-27](#) *Sample Portfolio Margining Risk Disclosure & Acknowledgement Statements (March 2007)*

[NASD Notice to Members 07-14](#) *Portfolio Margin Risk Disclosure Statement and Written Acknowledgement to be Furnished to Customers Using a Portfolio Margin Account (March 2007)*

[NASD Notice to Members 07-11](#) *Amendment to Margin Rules to Establish a Portfolio Margin Pilot Program (February 2007)*

[NYSE Information Memo 06-86](#) *Amendments to NYSE Rules 431 and 726 That Expand Customer Portfolio Margining (December 2006)*

[CBOE Regulatory Circular RG06-128](#) *Margin Requirements, Expansion and Revisions of Rules Related to Portfolio Margining of Customer Accounts (December 2006)*

[New] Disclosure of Voting Loss and Dividend Status in Margin Accounts

Member organizations must provide effective disclosure to customers regarding the possibility of their losing proxy voting rights for securities held in margin accounts. A similar issue is raised where margin customers are at risk of receiving payments-in-lieu of dividends where their shares are lent past the ex-dividend date. Good business practice compels effective disclosure of this risk in plain English which can be understood by affected customers.

[NYSE Information Memo 07-08](#) *Disclosure of Voting Loss and Dividend Status in Margin Accounts (January 2007)*

[NYSE Informed Investor Series: Margin Customers: Know Your Shareholder Rights on Proxies and Dividends](#)

[Revised] Markups/Markdowns

The SEC recently approved an interpretation regarding debt mark-ups. NASD IM-2440-2 supplements Rule 2440, "Fair Prices and Commissions," which requires broker-dealers to charge customers fair mark-ups and commissions, and IM-2440-1, "Mark-Ups."

[NASD Notice to Members 07-28](#) *SEC Approves Additional Mark-Up Policy for Transactions in Debt Securities, Except Municipal Securities (June 2007)*



Municipal Securities

[New] Dealer Payments in Connection with the Municipal Securities Issuance Process

The MSRB has published a notice reminding dealers of the application of MSRB Rule G-17, on fair dealing, and Rule G-20, on gifts, gratuities and non-cash compensation, in connection with certain payments made and expenses reimbursed during the municipal securities issuance process.

[*MSRB Notice 2007-06 Dealer Payments in Connection with the Municipal Securities Issuance Process \(January 29, 2007\)*](#)

Municipal Fund Securities

Dealers are reminded that all advertisements of municipal fund securities (including 529 college savings plans) containing performance data submitted or caused to be submitted for publication by a dealer on or after December 1, 2005 must comply fully with MSRB Rule G-21, on advertising. The disclosure requirements are consistent with those required for mutual fund performance under SEC Rule 482.

[*MSRB Notice 2005-58 Reminder: New Requirements Relating to Performance Data in Advertisements of 529 College Savings Plans and Other Municipal Fund Securities Become Effective on December 1, 2005 \(November 30, 2005\)*](#)

On August 7, 2006, interpretive guidance regarding the marketing of 529 college savings plans became effective. The guidance is intended to ensure that dealers effecting transactions in the 529 college savings plan market fully understand their fair practice and disclosure obligations to their customers.

[*MSRB Notice 2006-23 Interpretation on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans Becomes Effective \(August 7, 2006\)*](#)

[*MSRB Notice 2006-16 SEC Approves Interpretive Notice on Customer Protection Obligations Relating to the Marketing of 529 College Savings Plans \(June 15, 2006\)*](#)

On May 30, 2007, the MSRB published a notice reminding dealers of their customer protection obligations – specifically the application of Rule G-17, on fair dealing, and Rule G-19, on suitability – in connection with their municipal securities sales activities, including but not limited to situations in which dealers offer sales incentives.

[*MSRB Notice 2007-17 Reminder of Customer Protection Obligations in Connection with Sales of Municipal Securities \(May 30, 2007\)*](#)



Also on May 30, 2007, the SEC approved amendments to MSRB Rule G-21, on advertising, and Rule G-27, on supervision, and an MSRB interpretation on general advertising disclosures, blind advertisements and annual reports relating to municipal funds securities. The amendments and interpretive notice generally became effective on June 5, 2007, and certain provisions regarding disclosure of maximum sales charges and total annual operating expenses became effective on July 15, 2007.

[*MSRB Notice 2007-18*](#) *MSRB Advertising Amendments and Interpretation Relating to Municipal Fund Securities Approved by SEC (June 5, 2007)*

[*MSRB Notice 2007-23*](#) *Reminder: Disclosure Requirements Relating to Maximum Sales Load and Total Operating Expense Ratio in Performance Advertisements of Municipal Fund Securities Have Become Effective (July 16, 2007)*

[Updated] Political Contributions and Solicitation of Municipal Securities Business

On June 8, 2006, the SEC approved an interpretive notice of the MSRB relating to the definition of solicitation for purposes of Rules G-37 and G-38 (the “Solicitation Guidance”). The Solicitation Guidance, among other matters, makes clear that the key element in determining whether a communication is considered a solicitation is whether the communication occurs with the purpose of obtaining or retaining municipal securities business.

[*MSRB Notice 2006-15*](#) *SEC Approves Interpretive Notice on the Definition of Solicitation under Rules G-37 and G-38 and Withdrawal of Q & A Guidance (June 15, 2006)*

[New] Transaction Reporting

With limited exceptions, MSRB Rule G-14 requires the reporting of municipal securities transactions within fifteen minutes of the execution of the trade. There are certain specified exceptions to this requirement. The rule allows transactions on a when, as and if issued basis to be reported within three hours; however, this exception will expire on December 31, 2007. Transactions should be reported in an accurate and timely manner, and only transactions in municipal securities should be submitted to the MSRB’s Real-time Transaction Reporting System (“RTRS”).

[*www.msrb.org*](http://www.msrb.org), the MSRB has a special section on its Web site that offers detailed information on transaction reporting.

[*MSRB Notice 2007-07*](#) *New RTRS Error Messages to be Applied to “Other Tax-Exempt” Transactions: Rule G-14 (February 2, 2007)*

[*MSRB Notice 2006-35*](#) *Real-time Transaction Reporting Update: Upcoming Changes in Rule G-14 and RTRS and Reminders on Existing Requirements under Rule G-14 (December 6, 2006)*

[*MSRB Notice 2006-34*](#) *Notice Concerning Changes to the Comparison Eligibility of Certain Inter-Dealer Transactions: Rules G-12(f) and G-14 (December 5, 2006)*



[MSRB Notice 2006-30](#) *Reminder of Upcoming RTRS Changes: LOP/TD Indicator and Three-Hour Exception (October 31, 2006)*

[MSRB Notice 2006-28](#) *Amendments Approved to Rule G-14 RTRS Procedures Relating to “List Offering Price” and “Takedown” Transactions (October 19, 2006)*

[New] New Issues

FINRA has amended Rule 2790 to prohibit issuer-directed allocations of new issues to broker-dealers and to provide an exemption for issuer-directed, non-underwritten offerings.

[FINRA Regulatory Notice 07-34](#) *SEC Approves Amendments Relating to the Issuer Directed Provisions of Rule 2790 (August 2007)*

[New] Options Disclosure Document

The SEC recently approved several amendments to the Options Disclosure Document regarding, among other things, credit default options, rate modified and non-rate modified cash-settled foreign currency options, and an amendment of the term “fund shares.”

[CBOE Regulatory Circular RG07-69](#) *Supplement to the Options Disclosure Document (June 2007)*

[NYSE Information Memo 07-57](#) *Updated Supplement to the Options Disclosure (June 2007)*

[FINRA Member Alert](#) *Supplement to the Options Disclosure Document (June 2007)*

[CBOE Regulatory Circular RG07-51](#) *Supplement to the Options Disclosure Document (May 2007)*

[NYSE Information Memo 07-49](#) *Updated Supplement to the Options Disclosure (May 2007)*

[FINRA Member Alert](#) *Supplement to the Options Disclosure Document (May 2007)*

[CBOE Regulatory Circular RG07-45](#) *Supplement to the Options Disclosure Document (April 2007)*

[NYSE Information Memo 07-36](#) *Updated Supplement to the Options Disclosure (April 2007)*

[FINRA Member Alert](#) *Supplement to the Options Disclosure Document (April 2007)*

[Updated] Research Analysts and Research Reports

NASD and NYSE previously codified certain interpretations pertaining to research analysts, research reports, distribution of third-party research through soft-dollar arrangements, and the supervisory requirements with respect to the distribution of both member research and third-party research, including many that previously were set forth in two joint interpretive



memoranda. FINRA since has filed a proposed rule change with the SEC related to a firm's disclosure and supervisory review obligations when it distributes or makes available third-party research. In addition, firms are reminded of their obligations with respect to fixed income research.

[SR-FINRA-2007-11](#) *Proposed Rule Change to Amend NASD Rule 2711 and NYSE Rule 472 (September 2007)*

[NASD Notice to Members 07-04](#) *Codification of Interpretations to Rule 2711 (January 2007)*

[NYSE Information Memo 07-11](#) *Codification of Interpretations to Rule 472 (Communications with the Public) (January 2007)*

[SR-NYSE-2006-78](#) *Proposed Amendments to Rules 344 and 472 Incorporating SRO Report Recommendations to Research Analyst Conflict Rules (December 2006)*

[SR-NASD-2006-113](#) *Proposed Rule Change to Amend NASD Rules 1050 and 2711 Relating to Research Analyst Conflicts of Interest (September 2006)*

[Amendment No. 1 to Proposed Rule Change SR-NASD-2006-113](#) *(November 2006)*

[NASD Notice to Members 06-36](#) *NASD and NYSE Joint Interpretive Guidance on Fixed Income Research (July 2006)*

[NYSE Information Memo 06-55](#) *Joint Guidance on Fixed Income Research from NYSE and NASD (November 2006)*

[Updated] Sales Practices

[Updated] Market Indexed/Linked Certificates of Deposit

Sales practice reviews have raised regulatory concerns relating to the marketing of certificates of deposit ("CDs") that are linked to market indices. Of particular concern is the adequacy of disclosure materials used in connection with the sale of these instruments to customers and whether registered representatives and customers fully understand the product and how it differs from conventional CDs.

[NYSE Information Memo 06-12](#) *Disclosures and Sales Practices Concerning Market Indexed/Linked Certificates of Deposit (March 2006)*

[Updated] Mutual Fund/Variable Annuity Sales Practice and Supervision

On September 7, 2007, the SEC approved new NASD Rule 2821, which will be effective on May 5, 2008. The rule includes suitability, disclosure, principal review, supervisory and training requirements, all tailored specifically to transactions in deferred variable annuities.

[FINRA Regulatory Notice 07-53](#) *SEC Approves New NASD Rule 2821 Governing Deferred Variable Annuity Transactions (November 2007)*



Disclosures made in connection with retail sales of investment company shares (mutual funds) and variable annuities have raised ongoing regulatory concerns, particularly with respect to the recently prohibited practice of directed brokerage, as well as issues involving revenue sharing and suitability. The NYSE has released an information memo clarifying requirements for disclosures and sales practices and to remind member organizations and associated persons of their disclosure obligations under existing NYSE and/or SEC rules.

[*NYSE Information Memo 06-38 Directed Brokerage Arrangements \(June 2006\)*](#)

[*NYSE Information Memo 05-54 Disclosures and Sales Practices Concerning Mutual Funds and Variable Annuities \(August 2005\)*](#)

[Updated] New Products

An increasing number of complex products are being introduced to the market in response to the demand for higher returns or yields. Several communications have been issued that discuss the proactive approach firms should take to review and improve their procedures for developing and vetting these new products.

[*CBOE Regulatory Circular RG07-73 Credit Default Options Product Review \(July 2007\)*](#)

[*NASD Notice to Members 05-50 Member Responsibilities for Supervising Sales of Unregistered Equity Indexed Annuities \(August 2005\)*](#)

[*NASD Notice to Members 05-26 NASD Recommends Best Practices for Reviewing New Products \(April 2005\)*](#)

[*NYSE Information Memo 05-11 Customer Account Sweeps To Banks \(February 2005\)*](#)

[*NASD Notice to Members 03-71 NASD Reminds Members of Obligations When Selling Non-Conventional Investments \(November 2003\)*](#)

[*NYSE Informed Investor Series: The Cash Sweep Account: What Deal Are You Getting?*](#)

[New] Senior Investors

Firms are urged to review and, where warranted, enhance their policies and procedures for complying with FINRA sales practice rules, as well as other applicable laws, regulations and ethical principles, in light of the special issues that are common to many senior investors. Two specific areas of concern are the suitability of recommendations to, and communications with, senior investors. Communications include both “free lunch” seminars, and the use of professional designations that suggest expertise in retirement planning or working with senior investors.

[*FINRA Regulatory Notice 07-43 FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve These Customers \(September 2007\)*](#)

[*FINRA Issues Center: Senior Investors*](#)



[Updated] Short Sales – Regulation SHO

The elimination of SEC Rule 10a-1 and amendments to Regulation SHO became effective on July 3, 2007. The amendments to the Regulation SHO delivery requirements became operative on October 15, 2007. Conforming amendments to SRO rules have been made. In addition, PHLX reminds members of the requirements of Regulation SHO, primarily with respect to the trading of option market makers.

[*FINRA Regulatory Notice 07-45 Amendments to NASD Rule 3210 to Conform with Amendments to the SEC's Regulation SHO Delivery Requirements \(September 2007\)*](#)

[*Federal Register 72 \(July 3, 2007\): 36348 -36359 Regulation SHO and Rule 10a-1, Final Rule*](#)
[*NASD Notice to Members 07-31 NASD Rule Changes to Conform with Amendments to SEC Rule 10a-1 and Regulation SHO \(July 2007\)*](#)

[*NYSE Information Memo 07-76 SEC and NYSE Amendments Concerning Short Sale Rules \(July 2007\)*](#)

[*NYSE Information Memo 07-63 SEC Repeal of the Short Sale Tick Test \(June 2007\)*](#)

[*PHLX Memorandum 2167-07 Applicability of Regulation SHO to Certain Market Maker Transactions \(August 2007\)*](#)

Supervision

Customer Complaints

SROs have made technical changes to the requirements for the reporting of customer complaints received. Firms are reminded of their obligations to timely submit required reporting information.

[*NASD Notice to Members 06-34 NASD Rule 3070 System Requirements \(July 2006\)*](#)

[*NYSE Information Memo 06-28 NYSE Rule 351\(d\) – Reports of Customer Complaint Statistics \(May 2006\)*](#)

[New] Designation of Co-CEOs and Multiple CCOs to Carry out CEO Certification Obligations

FINRA member firms may designate co-chief executive officers (co-CEOs) and multiple chief compliance officers (co-CCOs) to carry out CEO Certification obligations.

[*NASD Notice to Members 07-32 NASD Amends Rule 3013 and Interpretive Material 3013 to Permit Members to Designate Co-Chief Executive Officers and Multiple Chief Compliance Officers \(July 2007\)*](#)



[NYSE Information Memo 07-51](#) *CO-CCO and CO-COO Designations (June 2007)*

[New] Individual Retirement Accounts

NYSE members are reminded of their supervisory responsibilities with respect to rollover IRAs. In addition, NYSE suggests examples of sound practices for monitoring and reviewing such accounts.

[NYSE Information Memo 06-79](#) *Reminder Concerning Supervisory Obligations with Respect to Rollover Individual Retirement Accounts (November 2006)*

[New] Supervising Recommendations of Newly Associated Registered Representatives

Registered representatives with an established customer base may, from time to time, change their association from one firm to another. Any recommendation by the firm or its associated persons to sell a product and to replace it with another may be made only after fully assessing the suitability of the transaction for the customer and determining that the transaction is in the best interests in view of all considerations.

[NASD Notice to Members 07-06](#) *Special Considerations When Supervising Recommendations of Newly Associated Registered Representatives to Replace Mutual Funds and Variable Products (February 2007)*

[FINRA Regulatory Notice 07-36](#) *FINRA Clarifies Guidance Relating to Regulation S-P under Notice to Members 07-06 (Special Considerations When Supervising Recommendations of Newly Associated Registered Representatives to Replace Mutual Funds and Variable Products) (August 2007)*



To Obtain More Information

For more information about publications, contact the SRO(s) at the listed website address:

Self-Regulatory Organization	Online Address
American Stock Exchange	www.amex.com
Chicago Board Options Exchange	www.cboe.com
FINRA	www.finra.org
Municipal Securities Rulemaking Board	www.msrb.org
NYSE Regulation	www.nyse.com
Philadelphia Stock Exchange	www.phlx.com