



Securities Industry Continuing Education Program

Firm Element Advisory - Spring 2009

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

The Council issues the FEA semi-annually. The FEA contains new material, denoted by a “**New**” next to the appropriate title, as well as preexisting material that has been updated, denoted by an “**Updated**” next to the appropriate title. Material appearing in previously published FEAs that is no longer deemed to be current is removed from the current FEA.

The Council suggests that firms use the FEA as an aid in developing and updating their Firm Element needs analysis and training plan. However, firms are reminded that the FEA should not be relied on as a comprehensive list of all areas to be considered. 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).

The FEA briefly identifies each topic and provides links to relevant documents issued on the specified subjects. The FEA is designed for Internet use; however, it can be printed. Be advised that each link must be printed separately in order to encompass the full document and subjects covered.

In addition to the FEA, the Firm Element Organizer is an additional resource that can assist with developing Firm Element training plans. The [Firm Element Organizer](#) is a web-based tool that can be used to search an extensive database of regulatory resources related to specific investment products or services, and provides links to the identified resources.

For more information, e-mail cecounciladmin@finra.org, or call Roni Meikle, Director, Continuing Education, FINRA, at (646) 315-8688.



Anti-Money Laundering

AML Compliance

SROs have issued guidance for member firms regarding the independent testing of Anti-Money Laundering (“AML”) Compliance Programs and AML Compliance Person requirements.

[*CBOE Regulatory Circular RG08-14 Revisions to CBOE Rule 4.20 – Anti-Money Laundering Compliance Program \(January 2008\)*](#)

[*PHLX Memorandum 0726-07 PHLX Rule 757 – Anti-Money Laundering Compliance Program \(March 2007\)*](#)

Information and guidance relating to AML rules, regulations, and compliance is 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*](#)

[*SEC Anti-Money Laundering \(AML\) Source Tool*](#)

SEC SAR Alert Message Line

The Securities and Exchange Commission (“SEC”) maintains a Suspicious Activity Report (“SAR”) Alert Message Line that securities firms can use to voluntarily report the filing of a SAR that may require immediate attention by the SEC. Placing a call to the SEC SAR Alert Message Line does not alleviate a firm's obligation to file a SAR or notify an appropriate law enforcement authority.

[*SEC Anti-Money Laundering \(AML\) Source Tool*](#)

Business Continuity

Business Continuity Planning

Business continuity remains a priority for members and their associated persons. 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*](#)



Communications

Approval of Filed Sales Material

FINRA amended NASD Rule 2210 to except from the advertising rules' principal approval requirements sales material that another member has filed with FINRA and for which FINRA has issued a review letter finding that the material appears to be consistent with applicable standards. The rule change went into effect on March 26, 2008.

[FINRA Regulatory Notice 08-12](#) *SEC Approves Amendment to NASD Rule 2210 to Create an Exception to the Principal Approval Requirements for Certain Filed Sales Material (March 2008)*

Designations

Several regulatory organizations have sought to address concerns relating to the proliferation of professional designations, including those that require no meaningful training or specialized knowledge but suggest an expertise in retirement planning or financial services for seniors.

[NASAA Model Rule](#) *on the Use of Senior-Specific Certifications and Professional Designations (March 2008)*

[FINRA Press Release](#) *FINRA Announces Major Regulatory Sweeps at Seniors Summit (September 2007)*

[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 Investor Information](#) *Understanding Professional Designations*

Electronic Communications

SROs have issued guidance relating to electronic communications. Firms are reminded to maintain and preserve all required communications, comply with record keeping requirements regarding external and internal communications and address supervision, maintenance, retrieval and production issues, especially in light of the ever increasing volume of data and methods of communication.

[PHLX Memorandum 0368-08](#) *Books and Records Informational (February 2008)*

[FINRA Regulatory Notice 07-59](#) *FINRA Provides Guidance Regarding the Review and Supervision of Electronic Communications (December 2007)*

[FINRA Issue Center: Advertising](#) *"Guide to the Internet for Registered Representatives"*



FINRA Member Web Sites

Members of FINRA and persons associated with a member firm that maintain an internet Web site and refer to their FINRA membership on that Web site must provide a hyperlink to FINRA's home page, www.finra.org.

[**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)*

“Free Lunch” Seminars

Regulatory examinations have disclosed that “free lunch” seminars are conducted on a widespread basis and oftentimes are not necessarily educational, but are in fact sales pitches. Members must ensure that such seminars comply with FINRA sales practice and communications with the public rules.

[**FINRA Investor Alert**](#) *“Free Lunch” Seminars – Avoiding the Heartburn of a Hard Sell (September 2007)*

[**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)*

[**SEC Press Release**](#) *“Free Lunch” Investment Seminar Examinations Uncover Widespread Problems, Perils for Older Investors (September 2007)*

[**SEC Joint Exam Report**](#) *Protecting Senior Investors: Report of Examinations of Securities Firms Providing “Free Lunch” Sales Seminars (September 2007)*

New Market Letters

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

[**FINRA Regulatory Notice 09-10**](#) *SEC Approves Rule Relating to Supervision of Market Letters (February 2009)*



Misleading Communications

FINRA is concerned that some representatives are misrepresenting their investment acumen by using ghostwritten communications that mislead investors. FINRA reminds firms of their obligation to supervise representatives' communications with the public used to establish their expertise.

[*FINRA Regulatory Notice 08-27*](#) *The Obligation of Firms When Supervising their Registered Representatives' Use of Marketing Materials to Establish Expertise (May 2008)*

New Revisions to Options Communications Rules

In October 2008, the SEC approved amendments to NASD Rule 2220 (Options Communications) to achieve greater consistency with FINRA's general communications rule (NASD Rule 2210) and the options communications rules of other SROs. Subsequently, the SEC approved similar changes to CBOE Rule 9.21, Communications to Customers.

[*FINRA Notice 08-73*](#) *SEC Approves Amendments to NASD Rule 2220 to Update the Standards for Options Communications, effective 3/4/09 (December 2008).*

[*CBOE Regulatory Circular RG08-155*](#) *Revisions to Options Communications Rules (November 2008)*

SIPC Information to Customers

Members of FINRA are required to provide information regarding SIPC to customers in writing at the time of account opening, as well as on an annual basis. Firms must inform customers that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC. They also must provide SIPC's Web site address and telephone number.

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

[*SIPC Website*](#) *Securities Investor Protection Corporation*

Temporary Guarantee Program for Money Market Mutual Funds

On September 19, 2008, the U.S. Treasury Department announced the establishment of a temporary guarantee program for registered U.S. money market mutual funds. Under the program, the Treasury will guarantee the stable net asset value of shares of participating money market mutual funds held by investors as of the close of business on September 19, 2008. The program will expire on September 18, 2009. FINRA expects a firm that refers to the program in its communications to do so in a manner consistent with FINRA rules.



[FINRA Regulatory Notice 08-58](#) *Temporary Guarantee Program for Money Market Mutual Funds (October 2008)*

[U.S. Department of Treasury Website](#) *Treasury's Temporary Guarantee Program for Money Market Funds*

Corporate Finance and Institutional Business

Fairness Opinions

NASD Rule 2290 (Fairness Opinions) requires specific disclosures and procedures addressing conflicts of interest when member firms provide fairness opinions in change of control transactions, such as a merger or sale or purchase of assets. FINRA recently adopted NASD Rule 2290 as FINRA Rule 5150 (Fairness Opinions) in the Consolidated FINRA Rulebook, effective December 15, 2008.

[FINRA Regulatory Notice 08-57](#) *FINRA Announces SEC Approval and Effective Date for New Consolidated FINRA Rules; Effective December 15, 2008 (October 2008)*

[FINRA Regulatory Notice 07-54](#) *SEC Approves New NASD Rule 2290 Regarding Fairness Opinions (November 2007)*

New Issue Municipal Securities

The SEC approved changes to various MSRB rules to require underwriters of municipal securities to submit information about a new issue of municipal securities to the Depository Trust and Clearing Corporation's ("DTCC's") New Issue Information Dissemination System ("NIIDS"). The rule change became effective September 30, 2008. The amendments to MSRB Rule G-34 on CUSIP numbers and new issue requirements, MSRB Rule G-8 on books and records, and MSRB Rule G-9 on preservation of records, are designed to accelerate the timing of the assignment of CUSIP numbers for new issues to improve new issue trade reporting.

[MSRB Notice 2008-41](#) *Reminder of Effective Date of MSRB Rules Relating to DTCC's NIIDS System (September 2008)*

The American Recovery and Reinvestment Act of 2009 added provisions to the Internal Revenue Code authorizing state and local governments to issue two types of "Build America Bonds" – "Build America Bonds (Tax Credit)" and "Build America Bonds (Direct Payment)." These bonds are municipal bonds, and dealers engaged in municipal securities business activities in connection with these bonds are subject to all MSRB rules, including appropriate professional qualifications and supervision, underwriting, reporting, confirmation of transactions to customers, political contributions, the payment of MSRB underwriting and transaction assessment fees, automated clearance and settlement, etc.

[MSRB Notice 2009-15](#) *Build America Bonds and Other Tax Credits (April 2009)*



The SEC approved amendments to MSRB Rule G-11, on new issue syndicate practices, MSRB Rule G-12, on uniform practice, and MSRB Rule G-8, on books and records. The amendments consolidate the syndicate practices provisions into MSRB Rule G-11, as well as the requirements for settlements and recordkeeping of joint and similar accounts in MSRB Rules G-12 and G-8. [**MSRB Notice 2008-32**](#) *Amendments Approved to Rules G-11, G-12 and G-8 (July 2008)*

SEC Rule 144 and TRACE Eligibility

The SEC adopted changes to SEC Rule 144 that shorten the holding period requirements for privately placed securities before they can be sold in the secondary market, subject to conditions of the rule. FINRA reminds firms that once a security is TRACE-eligible, all secondary market transactions in the security are “reportable TRACE transactions.” This includes securities that are TRACE-eligible securities because they were initially issued pursuant to Section 4(2) of the Securities Act of 1933 and subsequently purchased or sold pursuant to SEC Rule 144A. [**FINRA Regulatory Notice 08-42**](#) *Guidance on Transactions in TRACE-Eligible Securities Under SEC Rule 144 (August 2008)*

New Transparency of Auction Rate Securities and Variable Rate Demand Obligations

The SEC approved amendments to MSRB Rule G-34 that require brokers, dealers and municipal securities dealers to report the reset interest rate and other descriptive information regarding auction rate securities (“ARSs”) and variable rate demand obligations (“VRDOs”) to the MSRB using a new MSRB electronic system, the “Short Term Obligation Rate Transparency System” (SHORT).

On April 28, 2009, the MSRB filed a rule change for immediate effectiveness amending MSRB Rule G-8 that requires dealers involved in ARSs and VRDOs to keep specific additional records regarding such activities and SHORT reporting.

[**MSRB Notice 2009-04**](#) *SEC Approves Proposal to Increase Transparency of Auction Rate Securities and Variable Rate Demand Obligations (January 2009)*

[**MSRB Notice 2009-16**](#) *Notice of Filing of Amendment to Rule G-8, On Books and Records, Relating to Auction Rate Securities and Variable Rate Demand Obligations (April 2009)*

New Unregistered Resale of Restricted Securities

FINRA reminds firms of their responsibilities to comply with federal securities laws and FINRA rules when participating in unregistered resales of restricted securities.

[**FINRA Regulatory Notice 09-05**](#) *Unregistered Resales of Restricted Securities (January 2009)*



Customer Accounts

Customer Account Transfers

NASD Rule 11870 and NYSE Rule 412 regulate the transfer of customer accounts from one member (the carrying firm) to another (the receiving firm). Such transfers generally occur through the Automated Customer Account Transfer Service. Effective October 22, 2007, amendments to NASD Rule 11870 and NYSE Rule 412 changed the required timeframes within which customer account transfers must occur. Additionally, a number of other resources provide information and/or guidance regarding customer account transfer issues in general.

[**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)

[**FINRA Investor Information**](#): *Understanding the Brokerage Account Transfer Process*

[**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?*

Trading Ahead of Customer Limit Orders

Effective November 11, 2008, over-the-counter equity securities transactions are subject to the requirements of NASD Interpretive Material 2110-2 (Trading Ahead of Customer Limit Orders) and the minimum price-improvement standards under IM-2110-2 are based on tiered standards that vary according to the price of the customer limit order.

[**FINRA Regulatory Notice 08-49**](#) *FINRA Announces Effective Date for Expansion of NASD IM-2110-2 to OTC Equity Securities and Revised Minimum Price-Improvement Standards in IM-2110-2 (September 2008)*

Effective February 11, 2009, firms are permitted to use an alternative method for calculating the minimum price improvement obligation under NASD Interpretive Material 2110-2 (Trading Ahead of Customer Limit Orders) in cases where the firm receives a customer limit order in an OTC equity security that is priced below \$1.00 and where there is no current published inside spread in that security.

[**FINRA Regulatory Notice 09-14**](#) *SEC Approves Alternative Means for Calculating the Minimum Price-Improvement Obligations Under Certain Circumstances (February 2009)*

New Ethics and Business Conduct

New Acting Ethically

Embracing and promoting high ethical standards is important for all persons engaged in the securities business. In conducting the various activities of a broker-dealer, associated persons



must adhere to applicable laws, rules and regulations. Associated persons should also consider the ethical implications of their actions and should always act with integrity.

[**CBOE Regulatory Circular RG09-018**](#) *CBOE Permits the subject of an Exchange investigation to submit a videotaped presentation to the Business Conduct Committee in response to Exchange staff's notice given pursuant to CBOE Rule 17.2(d) (February 2009).*

[**FINRA Officer Speech**](#) *Ethics and Leadership Lecture, "The Road Ahead in Regulation" (October 2008)*

[**FINRA Targeted Examination**](#) *Request False or Misleading Rumors (July 2008)*

[**FINRA News Release**](#) *Self Regulators Warn Against Spreading False Rumors and Other Abusive Market Activity (March 2008)*

[**FINRA Rule 2010**](#) *Standards of Commercial Honor and Principles of Trade*

[**FINRA Rule 2020**](#) *Use of Manipulative, Deceptive or Other Fraudulent Devices*

New Certification of Compliance and Supervisory Processes

FINRA recently adopted, without substantive changes, NASD Rule 3013 as FINRA Rule 3130 (Certification of Compliance and Supervisory Processes) in the Consolidated FINRA Rulebook, effective December 15, 2008. As with the former NASD rule, FINRA Rule 3130 requires each member to designate in Schedule A of Form BD the Chief Compliance Officer (CCO or co-CCOs if applicable) and to have the member's CEO (or equivalent person) certify that they have processes to put in place supervisory procedures that are reasonably designed to achieve compliance with the federal securities laws and regulations and FINRA rules.

[**FINRA Regulatory Notice 08-57**](#) *FINRA Announces SEC Approval and Effective Date for New Consolidated FINRA Rules; Effective December 15, 2008 (October 2008)*

[**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)*

Finance and Operations

Recordkeeping Requirements

FINRA member firms can now rely on Web CRD to satisfy their record retention requirements with respect to certain Forms U4, U5 and BR filed in Web CRD, provided they adhere to the terms of the no-action relief granted by the staff of the SEC.

[**FINRA Information Notice February 21, 2008**](#) *FINRA Secures Relief for Member Firms for Certain Record Retention Requirements (February 2008)*



Responsibilities of Principals

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

[*PHLX Memorandum 0368-08 Books and Records Informational \(February 2008\)*](#)

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

Transaction Reporting and Data Dissemination

MSRB Rule G-14 requires the reporting of municipal securities transactions within fifteen minutes of the execution of the trade. The exception to this rule, which permitted certain transactions to be reported within three hours, expired on June 30, 2008. 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.

[*MSRB Notice 2008-27 Reminder of the Upcoming Sunset of the Three Hour Exception \(June 2008\)*](#)

[*MSRB Website Transaction Reporting and Transparency*](#)

FINRA announced amendments that broaden the definition of TRACE-eligible security, which were approved by the SEC on April 14, 2009. The amendment broadens “TRACE-eligible security” by deleting two requirements: (1) that TRACE-eligible securities be registered under the Securities Act; and (2) with respect to securities that are resold in a Securities Act Rule 144A transaction, that such securities initially be offered and sold under the exemption from registration in Securities Act Section 4(2). Effective June 15, 2009, transactions in such securities will be reported and subject to dissemination. A FINRA Regulatory Notice announcing June 15, 2009 as the effective date will be published shortly.

FINRA also announced other changes to transaction reporting requirements, modifications to the TRACE system, and changes to the disseminated TRACE data. Effective October 27, 2008, reporting and dissemination of all over-the-counter equity transactions, including domestic securities, foreign securities, and ADRs, are treated consistently, requiring reporting within 90 seconds of execution. Effective November 3, 2008, modifications have been made to TRACE rules to disseminate a standard yield, to not require the reporting of yield, to accept equity CUSIPs, and to disseminate information indicating whether a transaction was an inter-dealer or a customer transaction and whether the firm acted on the Buy or Sell side. In addition, FINRA reminds firms that they must report transactions to TRACE in securities that are “TRACE-eligible securities,” such as unlisted convertible debt, unlisted equity-linked notes and similar debt securities.



[**FINRA Regulatory Notice 08-52**](#) *SEC Approves Amendments to Eliminate Yield Reporting to TRACE and FINRA Will Disseminate Standard Yield in Real-Time TRACE Data (October 2008)*

[**FINRA Regulatory Notice 08-51**](#) *SEC Approves Amendments to FINRA's Transaction Reporting Rules to Require Prompt Last Sale Reporting of Transactions in Foreign Securities (September 2008)*

[**FINRA Regulatory Notice 08-43**](#) *SEC Approves Expanding Disseminated Real-Time TRACE Data (August 2008)*

[**FINRA Trade Reporting Notice**](#) *FINRA Extends Effective Date of Modification to the TRACE System to November 3, 2008 (July 2008)*

[**FINRA Trade Reporting Notice**](#) *FINRA Announces Modifications to the TRACE System Relating to Certain Securities with Equity CUSIPs and Reminds Firms of Their Reporting Obligations Regarding Equity-Linked Notes and Convertible Debt (February 2008)*

Gifts and Business Entertainment

Updated Gifts and Gratuities

CBOE issued a circular reiterating the limitations on gifts and gratuities to employees of the CBOE and employees of financial concerns.

[**CBOE Regulatory Circular RG08-156**](#) *Gratuities Policy – Rule 4.4 (November 2008)*

FINRA 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. FINRA recently adopted NASD Rule 3060 as FINRA Rule 3220 (Influencing or Rewarding Employees of Others) in the Consolidated FINRA Rulebook, effective December 15, 2008.

[**FINRA Regulatory Notice 08-57**](#) *FINRA Announces SEC Approval and Effective Date for New Consolidated FINRA Rules; Effective December 15, 2008 (October 2008)*

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

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 2007)*



Influencing or Rewarding Employees of Others

FINRA proposed NASD IM-3060 (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 proposal was published for comment. FINRA has subsequently filed a third amendment to the proposed rule change, which is pending with the SEC.

[*SR-NASD-2006-44 Proposal to Adopt New IM-3060 to Require Members to Adopt Written Policies and Procedures Concerning Business Entertainment \(Amendment No. 3 to Proposed Rule Change\) \(Amendment No. 3 in January 2008\)*](#)

[*NASD Notice to Members 06-06 NASD Requests Comment on Proposed Interpretive Material IM-3060 Addressing Gifts and Business Entertainment \(January 2006\)*](#)

Insurance/Annuities

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 FINRA rules.

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

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

Margin and Margin Accounts

Margin Rule Changes

The SEC approved rule amendments for NASDAQ OMX PHLX to streamline and make more efficient margin rules and procedures.

[*PHLX Memorandum 1604-08 Margin Rule Filing Approved Election of NYSE or CBOE Margin Rules \(September 2008\)*](#)



Portfolio Margin

The portfolio margin pilot programs, permitted under CBOE, NASD and NYSE rules, are now permanent and no longer operate under temporary pilot programs. In addition, the NASD and NYSE rules were amended to codify certain interpretations related to concentrated equity positions and day trading.

[*CBOE Regulatory Circular RG08-092 Portfolio Margining, -Rule Status Now Permanent, - Amendments to Rules \(August 2008\)*](#)

[*FINRA Regulatory Notice 08-41 FINRA Announces Amendments to Make Permanent Portfolio Margin Pilot Program \(August 2008\)*](#)

[*FINRA- Portfolio Margin Frequently Asked Questions*](#)

Processing of Regulation T and SEC Rule 15c3-3 Extensions of Time Request

FINRA has integrated the legacy NYSE Regulation and NASD extension of time processing system into one consolidated system. All requests for extension of time must be filed through the new system, known as the “Reg T” system, which is available through FINRA’s Firm Gateway.

[*FINRA Regulatory Notice 08-53 FINRA Revises the Effective Date to Collect and Process Certain CRD Numbers in Connection with Regulation T and SEC Rule 15c3-3 Extensions of Time Requests; Effective April 1, 2009 \(October 2008\)*](#)

[*FINRA Regulatory Notice 08-32 FINRA Consolidates the Collection and Processing of Regulation T and SEC Rule 15c3-3 Extension of Time Requests; Effective November 17, 2008 \(June 2008\)*](#)

Markups/Markdowns

Fair Prices and Commissions

Effective June 13, 2008, the requirements in NASD Rule 2440 and IM 2440-1 relating to fair prices and commissions expressly apply to all securities transactions involving member firms and their customers, whether executed over-the-counter or on an exchange.

[*FINRA Regulatory Notice 08-36 SEC Approves Amendments to Expand the Scope of NASD Rule 2440 and IM-2440-1 to All Securities Transactions \(July 2008\)*](#)

The SEC 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 \(June 2007\)*](#)



Options

Options Disclosure Document

The SEC approved a supplement to the Options Disclosure Document providing additional disclosures regarding variability and strategy-based index options. In addition, the supplement contains disclosures regarding the adjustment of stock option contracts to reflect cash dividends or distributions on the underlying securities.

[*CBOE Regulatory Circular RG08-123 Supplement to Options Disclosure Document \(October 2008\)*](#)

[*FINRA Information Notice, November 12, 2008 September 2008 Supplement to the Options Disclosure Document*](#)

Research

Disclosure and Supervision

The SEC approved amendments to NASD Rule 2711(h)(13) and NYSE Rule 472(k)(4) that modify a member's disclosure and supervisory review obligations when it distributes or makes available third-party research reports. The rule change creates a category of "independent third-party research" and eliminates certain supervisory review requirements when a member distributes or makes available such research.

[*FINRA Regulatory Notice 08-16 Member Firm Disclosure and Supervisory Review Obligations \(April 2008\)*](#)

New Trading Ahead of Research Reports

The SEC approved new FINRA Rule 5280 (Trading Ahead of Research Reports) as part of the Consolidated FINRA Rulebook. The new rule, which contains certain modifications to previous NASD Interpretive Material, became effective April 20, 2009.

[*FINRA Regulatory Notice 09-11 SEC Approves New Consolidated FINRA Rule 5280 Trading Ahead of Research Reports \(February 2009\)*](#)



Sales Practices & Supervision

Updated 529 College Savings Plans

Dealers that are effecting transactions in the 529 college savings plan market are reminded that they must fully understand their fair practice and disclosure obligations to their customers. Additionally, those effecting or soliciting 529 transactions should be aware that for calendar year 2009 only, the IRS will permit two investment strategy selection changes, instead of the one change typically permitted per year.

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

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

[IRS Notice 2009-1](#) *Section 529 Programs (January 2009)*

New Annual Reporting

CBOE reminds members and member organizations of the requirement to submit a written report by April 1 of each year that details the member organization's supervision and compliance effort and report on the member organization's ongoing compliance processes and procedures.

[CBOE Regulatory Circular RG08-168](#) *Annual Reporting Pursuant to CBOE Rule 9.8 – Supervision of Accounts (December 2008)*

Auction Rate Securities Transactions

In light of downgrades of municipal bond insurers, other short-term liquidity concerns creating extreme market volatility for municipal and other auction rate securities, an unprecedented number of "failed auctions," and several settlements, FINRA and the MSRB have issued several notices pertaining to disclosures, margin, transaction reporting, reporting of customer complaints, and suitability requirements as well as guidance regarding the allocation of redemptions in a partial redemption of an auction rate securities and other securities.

[FINRA Regulatory Notice 09-12](#) *Reporting Requirements for Settlements of Customer Disputes Involving Auction Rate Securities (February 2009)*

[MSRB Notice 2008-36](#) *Transaction Reporting of Dealer Buybacks of Auction Rate Securities: Rule G-14 (September 2008)*

[FINRA Regulatory Notice 08-21](#) *FINRA Issues Guidance to Broker-Dealers on Partial Redemptions of Auction Rate Securities (April 2008)*

[FINRA Regulatory Notice 08-17](#) *Reporting of Customer Complaints Relating to Auction Rate Securities (April 2008)*



[MSRB Notice 2008-14](#) *MSRB Files with SEC to Launch Pilot Electronic Municipal Market Access System (EMMA) (March 2008)*

Illiquid Investments

FINRA has provided guidance to firms on obligations that may arise in connection with customer requests to sell generally illiquid securities.

[FINRA Regulatory Notice 08-30](#) *Guidance Relating to Illiquid Investments (June 2008)*

Municipal Securities Supervisory Requirements

MSRB has issued guidance to assist dealers in preparing their supervisory systems to ensure full compliance with new supervisory requirements adopted into MSRB Rule G-27.

[MSRB Notice 2008-06](#) *Reminder: New Supervisory Requirements Under Rule G-27 Become Effective February 29, 2008 (February 2008)*

[MSRB Notice 2007-32](#) *Guidance on Implementation of New Supervisory Requirements Under Rule G-27; Technical Amendments Filed (November 2007)*

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.

[FINRA Regulatory Notice 08-54](#) *Guidance on Special Purpose Acquisition Companies (October 2008)*

[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)*

New Obligations with Regard to Cash Alternatives

FINRA has issued a notice to remind firms of their sales practice and disclosure obligations in the sale of investments as alternatives to cash holdings.

[FINRA Regulatory Notice 08-82](#) *FINRA Reminds Firms of Their Sales Practice Obligations with Regard to Cash Alternatives (December 2008)*



Options Sales Practice Rules

The SEC approved changes to the options rules eliminating the Senior Registered Options Principal (“SROP”) and Compliance Registered Options Principal (“CROP”) designations and allowing firms to incorporate the supervision and compliance responsibilities of a firm’s public customer options business into the firm’s overall supervisory structure. The SEC approved the consolidated FINRA options rule as FINRA Rule 2360 (formerly NASD Rule 2860) effective February 17, 2009. The supervisory amendments were transferred to the FINRA rule unchanged. [*FINRA Regulatory Notice 08-28 SEC Approves Amendments to Eliminate the Requirement for the Senior Registered and Compliance Registered Options Principals \(SROP and CROP\)\(May 2008\)*](#)

[*FINRA Regulatory Notice 08-78 SEC Approves New Consolidated FINRA Rules \(December 2008\)*](#)

[*CBOE Regulatory Circular RG08-16 Revision to Options Sales Practice Rules \(January 2008\)*](#)

Political Contributions

The MSRB has issued a reminder regarding the issues surrounding political contributions and prohibitions on municipal securities business pertaining to presidential campaigns and the application of these same concepts for an issuer official who campaigns for any federal office. [*MSRB Notice 2008-38 Reminder Regarding The Application of Rule G-37 To Federal Election Campaigns of Issuer Officials \(September 2008\)*](#)

Proprietary Trading

In the wake of several cases involving allegations of unauthorized or "rogue" trading resulting in substantial losses by firms both in the United States and abroad, many FINRA firms have undertaken a comprehensive review of their internal controls and risk management systems designed to prevent such trading activity. FINRA has issued a notice to highlight sound practices for firms to consider as they undergo that process.

[*FINRA Regulatory Notice 08-18 Sound Practices for Preventing and Detecting Unauthorized Proprietary Trading \(April 2008\)*](#)

Updated Public Offerings of DPPs and REITs

FINRA issued a Regulatory Notice to address certain requirements that apply to the per-share account statement values and dividend distributions of Real Estate Investment Trusts (REITs) and Direct Participation Programs (DPPs). The Notice explains that firms must not use par value in a customer account statement more than 18 months following the conclusion of an offering, unless an appraisal of the program’s assets and operations yields the same value. The Notice also explains that a firm’s obligation to determine that all material facts are adequately and



accurately disclosed includes an inquiry into the amount or composition of the dividend distributions.

[**FINRA Regulatory Notice 09-09**](#) *Customer Account Statements and Due Diligence Requirements for Unlisted Real Estate Investment Trusts (REITs) and Direct Participation Programs (DPPs) (February 2009)*

The SEC approved amendments to NASD Rule 2810 (Direct Participation Programs), which addresses the regulation of compensation, fees and expenses in public offerings of DPPs and unlisted REITs. Revised Rule 2810 went into effect on August 6, 2008.

[**FINRA Regulatory Notice 08-35**](#) *SEC Approves Amendments to NASD Rule 2810 (July 2008)*

New Sales of Securities in a High Yield Environment

FINRA reminds firms and their associated persons of the obligation to understand and present balanced information about the risks and returns of high yield securities such as bonds, bond funds, structured products and non-conventional investments, in a high-yield environment.

[**FINRA Regulatory Notice 08-81**](#) *FINRA Reminds Firms of Their Sales Practice Obligations with Regard to the Sale of Securities in a High Yield Environment (December 2008)*

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.

[**FINRA Issues Center – 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)*

Variable Annuities

NASD Rule 2821 regarding broker-dealers' compliance and supervisory responsibilities for deferred variable annuities was approved by the SEC in September 2007. The rule establishes recommendation requirements for associated persons (including suitability and disclosure obligations), principal review and approval requirements, supervisory requirements, and training requirements. However, only certain parts of the rule are currently effective. The general considerations discussion (paragraph (a) of Rule 2821), recommendation requirements (paragraph (b)) and training requirements (paragraph (e)) became effective on May 5, 2008. The SEC recently approved the principal review and approval requirements (paragraph (c)) and



supervisory requirements (paragraph (d)). FINRA will announce the effective dates for those requirements in an upcoming Regulatory Notice.

[**Federal Register 73 \(June 10, 2008\): 32771-32775**](#)

[**SR-FINRA-2008-019**](#) *Proposed Rule Change to Amend Certain Provisions of Rule 2821 (May 2008)*

[**SR-FINRA-2008-015**](#) *Proposed Rule Change to Delay the Effective Date of Certain FINRA Rule Changes Approved in SR-NASD-2004-183 (May 2008)*

[**Federal Register 73 \(February 6, 2008\): 7017 -7018**](#)

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

[**FINRA Issues Center: Variable Annuities**](#)

Short Sales - Regulation SHO

Regulation SHO Amendments

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

[**CBOE Regulatory Circular RG07-107**](#) *Elimination of Grandfather Provision of Regulation SHO (October 2007)*

[**CBOE Regulatory Circular RG07-89**](#) *Elimination of Grandfather Provision of Regulation SHO (August 2007)*

[**CBOE Regulatory Circular RG07-87**](#) *Short Sales, Regulation SHO Requirement to Close-out Short Positions in Threshold Securities (August 2007)*

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

[**Federal Register 72 \(August 14, 2007\): 45544 – 45557**](#) *Amendments to Regulation SHO*

[**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)*

On October 14, 2008, the SEC adopted an interim final temporary rule, Rule 204T of Regulation SHO, to address abusive “naked” short selling in all equity securities by requiring that participants of a clearing agency registered with the SEC deliver securities by settlement date, or



if the participants have not delivered shares by settlement date, immediately purchase or borrow securities to close out the fail to deliver position by no later than the beginning of regular trading hours on the settlement day following the day the participant incurred the fail to deliver position.

Failure to comply with the close-out requirement of the temporary rule is a violation of the temporary rule. In addition, a participant that does not comply with this close-out requirement, and any broker-dealer from which it receives trades for clearance and settlement, will not be able to short sell the security either for itself or for the account of another, unless it has previously arranged to borrow or borrowed the security, until the fail to deliver position is closed out. Rule 204T became effective on October 17, 2008 and is scheduled to terminate on July 31, 2009.

[SEC Release No. 34-58773](#) *Amendments to Regulation SHO (October 14, 2009)*

To Obtain More Information

Regulatory Organization	Website Address
Chicago Board Options Exchange	<u>www.cboe.org</u>
Financial Industry Regulatory Authority	<u>www.finra.org</u> ¹
Municipal Securities Rulemaking Board	<u>www.msrb.org</u>
North American Securities Administrators Association	<u>www.nasaa.org</u>
NYSE and NYSE Alternext US	<u>www.nyse.com</u>
NASDAQ OMX PHLX	<u>www.nasdaqtrader.com</u>

¹ See also <http://www.finra.org/Industry/Regulation/FINRARules/p085560> for a rule conversion chart that maps NASD and Incorporated NYSE Rules to new FINRA Rules and vice versa.



U.S. Securities and Exchange Commission	www.sec.gov
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