



## Securities Industry Continuing Education Program

### Firm Element Advisory - Spring 2008

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.

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 and enhancing 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 Internet use, 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. The Firm Element Organizer is a web-based tool that enables the search of 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 questions to [cecounciladmin@finra.org](mailto:cecounciladmin@finra.org), or call Joseph Sheirer, Director, Continuing Education, FINRA, at (646) 315-8691, or Roni Meikle, Director, Continuing Education, FINRA, at (646) 315-8688.



## Updated Anti-Money Laundering

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\*](#)

## Business Continuity Plans

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\*](#)

## Updated Communications

### Approval of Correspondence

FINRA amended NASD 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 \(August 2006\)\*](#)



## **New 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)*

## **New 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*

## **Updated 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](http://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)*

## **New "Free Lunch" Seminars**

Regulatory examinations have disclosed that "free lunch" seminars are conducted on a widespread basis and often times the seminars are not necessarily educational, but are sales pitches. Clear and appropriate communication with clients is an important consideration for all seminars conducted.

[\*\*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 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)*

## **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 effective date of the amendments is 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)*

### **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)*

## **New Corporate Finance and Institutional Business**

FINRA has amended Rule 2790 to clarify that issuer-directed allocations of new issues to broker-dealers are prohibited. In addition, the amendments codify interpretive guidance providing an exemption from the restrictions on allocations of new issues 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 Fairness Opinions**

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

### **New Municipal Securities**

The SEC recently approved changes to various MSRB rules to require underwriters of municipal securities to participate in the Depository Trust and Clearing Corporation's ("DTCC's") New Issue Information Dissemination System ("NIIDS"). The rule change becomes effective September 30, 2008. The amendments to MSRB Rule G-34, CUSIP Numbers and New Issue Requirements, MSRB Rule G-8, Books and Records, and MSRB Rule G-9, 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 2008-23](#) *Notice of Filing of Proposed Rule Change to Require Underwriter Registration and Testing With DTCC's NIIDS System (May 2008)*

[MSRB Notice 2008-22](#) *SEC Approves Rule Changes to Require Underwriter Participation With DTCC's NIIDS System (May 2008)*

## Customer Accounts

### Customer Account Transfers

The fast and efficient transfer of customer accounts is critically important to both the industry and investors. 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?](#)

## Updated Finance and Operations

### New 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)*

### 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.



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

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

[\*\*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)*

### **Updated Transaction Reporting**

MSRB Rule G-14 requires the reporting of most municipal securities transactions within fifteen minutes of the execution of the trade; however, transactions executed on a when, as and if issued basis are allowed to be reported within three hours. This exception will expire after 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 2008-01\*\*](#) *Reminder of Extension of Three-Hour Exemption (January 2008)*

[\*\*MSRB Notice 2007-36\*\*](#) *Notice of Filing of Proposed Rule Changes to Extend the Expiration of the Three-Hour Exemption and to Require Underwriter Participation with DTCC's NIIDS System (November 2007)*

[\*\*MSRB Notice 2007-07\*\*](#) *New RTRS Error Messages to be Applied to "Other Tax-Exempt" Transactions: Rule G-14 (February 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 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 2006)*

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

FINRA has announced that the TRACE System had been modified to accept equity CUSIPs. Also, 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 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)*



## Updated 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 RG07-129\*](#) *Gratuities Policy – Rule 4.4 (November 2007)*

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.

[\*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)*

### Updated Influencing or Rewarding Employees of Others

FINRA proposed interpretive material (IM) to Rule 3060 (Influencing or Rewarding Employees of Others) 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)*

[\*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)*

[\*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 NASD 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)*

### Sales of Unregistered Equity-Indexed Annuities

FINRA addressed the responsibility of firms to supervise the sale, by their associated persons, of equity-indexed annuities 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

### Updated Portfolio Margin Pilot Program

The CBOE, FINRA 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.

[\*CBOE Regulatory Circular RG08-049\*](#) *Portfolio Margin Accounts Risk Disclosure Statement and Acknowledgement for Customers (April 2008)*

[\*FINRA Regulatory Notice 08-09\*](#) *FINRA Revises Portfolio Margining Risk Disclosure Statement and Written Acknowledgement for Customers Using Portfolio Margin Accounts (March 2008)*

[\*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)*



[\*\*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)*

### **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*

### **Markups/Markdowns**

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)*

### **Updated Options Disclosure Document**

The SEC approved several amendments to the Options Disclosure Document regarding, among other things, binary or fixed return options and delayed start options.

[\*\*CBOE Regulatory Circular RG08-64\*\*](#) *Supplement to the Options Disclosure Document (May 2008)*

[\*\*FINRA Information Notice – May 15, 2008\*\*](#) *April 2008 Supplement to the Options Disclosure Document (May 2008)*



## Updated Research

### New Disclosure and Supervision

An amendment to NASD Rule 2711(h)(13) and NYSE Rule 472(k)(4) has been approved that modifies 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)*

## Updated Sales Practices & Supervision

### 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.

[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)*

### New Auction Rate Securities Transactions

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

[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)*

[FINRA Regulatory Notice 08-08](#) *FINRA Temporarily Increases Margin Maintenance Requirements on Auction Rate Securities Backed by Fixed Income Products (March 2008)*

[MSRB Notice 2008-09](#) *Application of MSRB Rules to Transactions in Auction Rate Securities (February 2008)*

[MSRB Notice 2008-04](#) *Bond Insurance Ratings—Application of MSRB Rules (January 2008)*



## **New Electronic Municipal Market Access System**

On March 31, 2008, the MSRB launched the pilot of its new Electronic Municipal Market Access system (EMMA). The pilot provides free web-based public access to the complete historical collection of official statements and advance refunding documents submitted to the MSRB under its Rule G-36, and all current submissions for new issues and advance refundings, as well as free public access to real-time transaction price information reported by dealers to the MSRB's Real-time Transaction Reporting System for current transactions and for transactions dating back to January 31, 2005. EMMA can be accessed through the MSRB's web page, [www.msrb.org](http://www.msrb.org), or [www.emma.msrb.org](http://www.emma.msrb.org).

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

## **New 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.

[\*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 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.



[\*\*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)*

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

### **New 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)*

### **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 and may wish to bring customer assets with them to the new firm. Any recommendation by the new 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 customer's best interests in view of all considerations.

[\*\*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)*

[\*\*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)*

### **New Variable Annuities**

New NASD Rule 2821 regarding broker-dealers' compliance and supervisory responsibilities for deferred variable annuities was approved by the SEC in September 2007. The new rule establishes recommendation requirements for associated persons (including suitability and disclosure obligations), principal review and approval requirements, supervisory requirements, and training requirements. The recommendation requirements (paragraph (b) of Rule 2821) and training requirements (paragraph (e)) became effective on May 5, 2008. The principal review and approval requirements (paragraph (c)) and supervisory requirements (paragraph (d)) will not



be effective until 180 days following the SEC's approval or rejection of a proposed amendment to Rule 2821 FINRA filed with the SEC on May 21, 2008. If approved, the proposed amendment would, among other things, limit the rule's application to *recommended* transactions and change the triggering event that begins the principal review period to receipt by the OSJ of a complete and correct application.

[\*\*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 SD-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*

## Updated 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)*

## Updated Short Sales – Regulation SHO

The elimination of SEC Rule 10a-1 and amendments to Regulation SHO became effective on July 3, 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.

[\*\*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)



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## To Obtain More Information

For more information about publications, contact the regulatory organizations listed at the applicable website address:

Regulatory Organization	Website Address
American Stock Exchange	<a href="http://www.amex.com">www.amex.com</a>
Chicago Board Options Exchange	<a href="http://www.cboe.com">www.cboe.com</a>
Financial Industry Regulatory Authority	<a href="http://www.finra.org">www.finra.org</a>
Municipal Securities Rulemaking Board	<a href="http://www.msrb.org">www.msrb.org</a>
North American Securities Administrators Association	<a href="http://www.nasaa.org">www.nasaa.org</a>
NYSE Regulation	<a href="http://www.nyse.com">www.nyse.com</a>
Philadelphia Stock Exchange	<a href="http://www.phlx.com">www.phlx.com</a>
U.S. Securities and Exchange Commission	<a href="http://www.sec.gov">www.sec.gov</a>