

**MEMO# 23493**

May 28, 2009

## **ICI Draft Comment Letter On FINRA Notice To Members On Reporting Of Personal Securities Transactions; Your Comments Requested By June 3rd**

[23493]

May 28, 2009

TO: SEC RULES COMMITTEE No. 27-09  
CLOSED-END INVESTMENT COMPANY COMMITTEE No. 8-09  
CHIEF COMPLIANCE OFFICER COMMITTEE No. 9-09  
SMALL FUNDS COMMITTEE No. 8-09  
INVESTMENT ADVISERS COMMITTEE No. 3-09 RE: ICI DRAFT COMMENT LETTER ON FINRA  
NOTICE TO MEMBERS ON REPORTING OF PERSONAL SECURITIES TRANSACTIONS; YOUR  
COMMENTS REQUESTED BY JUNE 3RD

The Institute has prepared the attached draft comment letter on a FINRA notice to members regarding reporting requirements for personal securities transactions. [\[1\]](#) Under the proposal, any associated person would be prohibited without the prior written consent of his or her employer (“employer member”), from establishing at another member firm (“executing member”), or at any other financial institution any account in which such associated person has a personal financial interest. The proposed rule further requires that, as a condition to granting prior written consent, the employer member instruct the associated person to have the executing member provide duplicate account statements and confirmations to the employer member. As a corollary, the executing member is required to carry out the associated person’s instructions. Under the proposed rule, duplicate account statements and confirmations would not be have to be provided to the employer member for transactions in unit investment trusts, variable contracts, mutual funds, or for accounts that are limited to transactions in such securities unless the employer member requests such duplicate account statements and confirmations. The draft letter is summarized below.

Comments on the proposal must be filed with FINRA by Friday, June 5th. Please provide your comments on the draft letter as soon as possible but no later than Wednesday, June 3rd to Dorothy Donohue by email ([ddonohue@ici.org](mailto:ddonohue@ici.org)) or phone at (202) 218-3563.

The draft letter recommends that for limited purpose broker-dealers whose sole purpose is to distribute mutual funds, unit investment trusts, and variable annuity contracts, duplicate account statements and confirmations be required with respect to the personal trading of their “access persons” [2] rather than their associated persons. It points out that unlike associated persons of other broker-dealer firms, associated persons of these firms do not make, participate in, or obtain information regarding the purchase or sale of securities by investment companies or for private client accounts. Nor do they make any recommendations with respect to such purchases or sales. Therefore, an employer member that is a limited purpose broker-dealer that receives account statements and confirmations from its associated persons would not have a basis on which to evaluate the legitimacy of the trading activity. It also points out that despite that, by having required the transmittal of this information, there would be a perceived obligation for compliance personnel to review this information. This review potentially would take compliance personnel’s time and attention away from areas where their oversight would be better spent.

The draft letter also makes the following recommendations.

- To make the rule more consistent with Rule 17j-1, FINRA should not require reporting with respect to: (i) transactions effected for, and securities held in, any account over which the person has no direct or indirect influence or control; or (ii) transactions in direct obligations of the United States government, bankers’ acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements.
- FINRA should expressly permit confirmations and account statements to be received in electronic or paper form or accessed through the Internet.
- FINRA should require the employer member to provide notice to the executing member and associated person and permit an opportunity to cure within a reasonable time period if an employer member does not receive duplicate account statements and confirmations required pursuant to proposed Rule 3210 in a timely manner (instead of requiring the account to be closed, as proposed).

While not incorporated in the draft letter, I would like your view on whether the Institute’s final letter filed with FINRA should recommend that FINRA define the meaning of “timely manner” and “promptly.” [3] If so, should we recommend seven days or some other period? Also, should the final letter recommend that FINRA more precisely define “personal financial interest”? If so, what should we recommend (in addition to spousal accounts) (e.g., employee named as beneficiary of an account, including transfer-on-death accounts)?

Dorothy M. Donohue

Senior Associate Counsel

[Attachment](#)

**endnotes**

[1] See [Memorandum](#) to Chief Compliance Officer Committee No. 8-09, Closed-End Company Committee No. 7-09, Investment Advisers Committee No. 1-09, SEC Rules Committee 21-09, and Small Funds Committee No. 7-09 [23427], dated April 30, 2009.

[2] The draft letter recommends incorporating in Rule 3210 a definition of “access person” based on the definition of access person in Rule 17j-1 under the Investment Company Act of 1940.

[3] Supplementary Material Item .04 states that “if an employer member does not receive the duplicate account statements and confirmations required by this Rule in a timely manner, the employer member shall revoke its consent to maintain the account .... The employer member should promptly obtain records from the executing member that the account was closed.” (Emphasis added.)

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