

## **Mark Menchel**

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These notes do not necessarily reflect the official position of NASD and therefore members are urged to review primary source documents such as rule, rule filings and Notices to Members.

### **1. 529 Plans**

-suitability issue

Firms do not need specific suitability rules for each product provided that a firm's suitability procedures wouldn't exclude application to a particular security OR that NASD rules do not impose particularized requirements that would need to be captured in a firm's suitability procedures.

NASD Fined Ameriprise

([http://www.nasd.com/web/idcplg?IdcService=SS\\_GET\\_PAGE&ssDocName=NASDW\\_015319](http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_015319)) Action was taken against Ameriprise for failure to have suitability standards in place. NASD said that this AWC should be read as requiring reasonable suitability procedures and not that firm's must recommend the "most" suitable 529 plan for a customer.

MSRB 2005-28 (<http://www.msrb.org/msrb1/whatsnew/2005-28.asp>)

There are specific 529 disclosures required, such as out-of-state disclosures.

MSRB G-19 (<http://ww1.msrb.org/msrb1/rules/notg19.htm>) suitability in connection with 529 Marketing

#### Suitability

Members must have reasonable grounds to make recommendations to clients.

Members must also make reasonable effort to obtain information from customers in order to make recommendations.

Members must make a reasonable analysis of a customer before making recommendations.

Tax benefits represent one important factor in influencing a customer's decision-making.

Although it is not necessary to have suitability standards for each product, it is necessary that suitability standards are tailored to a firm's security products. Where NASD rules mandate specific requirements, such as in the case of options, these requirements must be reflected in the firm's policies and procedures.

### **2. ACATS Task Force**

Customer complaints regarding inter-firm account transfers have increased dramatically. There is an error rate of ~11-13%.

There is an NASD industry task force that was put in place to address this issue as a part of the Ahead of the Curve initiative.

NASD Rule 11870

([http://www.nasd.com/web/idcplg?IdcService=SS\\_GET\\_PAGE&ssDocName=NASDW\\_001052](http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_001052)) Difference between hard and soft rejects: hard rejects restart the entire process, whereas soft rejects can be fixed in a much shorter time period. The NASD requires that member firms use soft rejects whenever possible. The transfer process begins with a Transfer Initiation Form (“TIF’s”), which the sending firm (the firm seeking to receive the customer’s assets) should keep.

NASD is endeavoring to standardize TIF’s and to educate customers who request account transfers.

The Committee will prepare a Draft Report and then there should be a Notice to Members issued.

### **3. Research Analyst Conflicts of Interest**

NASD and NYSE worked together to send a joint report to the SEC on the operation of these rules.

The report concluded that SRO rules have been effective and recommends some further modifications now that there has been substantial regulatory experience with the rule scheme. Some of these recommended changes would require the SEC to determine whether they are consistent with the requirements of Sarbanes-Oxley or elect to use the Commission’s powers to implement (for example, carving out from the definition of research analysts registered representatives who are not in the business of publishing research. Members can see the recommendations on the NASD website.

Recommendations from NASD:

- a. web-based disclosure for conflicts of interest if it is on the cover page of a research report with a web link to the disclaimer.
- b. registration: changes for individuals who are not in research for their primary jobs.
- c. relief pertaining to certain quiet period requirements.
- d. amend the definition of research report so mutual fund research, already subject to another rule scheme, is no longer included.

- e. prohibit investment banking from having any contact with the research department in the preparation of a report even for purposes of “fact checking”.
- f. extend anti-retaliation requirements to all employees.

#### **4. Credit Default Swaps**

NASD Notice to Members 05-77

[http://www.nasd.com/web/idcplg?IdcService=SS\\_GET\\_PAGE&ssDocName=NASDW\\_015516](http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_015516)) Trace reporting rules

Large defaults in the credit markets lead to massive settlements of credit default swaps (CDS). These settlements are reportable to TRACE, but since in most instances they settle at par when the bond in question is trading well below par, NASD will seek a rule change not to disseminate these settlements so that confusion is not caused in the marketplace.

Dissemination: 99% of transactions are disseminated. Certain large transactions and new issues are not disseminated.

#### **5. Trace Dissemination Rule Approval**

Reviewed Impact - No adverse affect on liquidity

NASD met with Firms to discuss the pending debt markup rule proposal at the SEC. Firms had concerns particularly with respect to structured debt because of the lack of transactions in the same or similar securities that would yield prices from which firms could markup/down a transaction, NASD indicated that in such cases it would be comfortable with firms using the modeling provisions in the proposed rule provided that firms tailor such models in good faith and do not manipulate a models metrics for a given transactions. NASD also noted that many firms seem to be doing a lot of work around its best execution responsibilities in the debt marketplace and recommended that all firms give serious consideration to these responsibilities.,

#### **6. Market Order Protection**

NASD 2111

[http://www.nasd.com/web/groups/rules\\_regs/documents/notice\\_to\\_members/nasdw\\_015833.pdf](http://www.nasd.com/web/groups/rules_regs/documents/notice_to_members/nasdw_015833.pdf)) Customers have an expectation that market orders will be promptly and fully execution, consequently the new rule provides protection for customers orders accepted and held. Once a customer order is accepted and held a member cannot trade on the same side of the market without filling all same-side customer orders accepted and held. The rule requires members to cross all customer orders against contra-side customer orders in such instances.

Member firms do not have to do crosses unless the order has been accepted and held.

The rule allows members to determine their own priority rules for executing accepted and held orders provided they are reasonable and do not favor certain “preferred clients” over other clients. The factors once determined should be objective based, e.g. time and size.