

# Information Memo

NYSE Regulation, Inc



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Number 09-50  
October 30, 2009

**TO:** ALL NYSE AND NYSE AMEX EQUITIES MEMBERS AND MEMBER ORGANIZATIONS

**SUBJECT:** Supervision of Trading in Proprietary, Employee and Employee-Related Securities and Commodities Accounts

## **I. Purpose**

NYSE Regulation is issuing this Information Memo to remind members and member organizations of, among other things, the obligations under NYSE Rule 407 and NYSE Amex Equities Rule 407 (collectively "Rule 407") as they relate to members, employees, and associated persons' trading in personal securities and commodities accounts. In addition, this Information Memo reminds members and member organizations of their related investigatory and reporting responsibilities under Rule 351(e).

## **II. Background**

One of the long-standing purposes of Rule 407 is to require members and member firms to have robust employee trading policies and related procedures so that firms (among other things) may deter and detect violations of applicable Exchange rules and federal securities laws and regulations including, but not limited to, insider trading, manipulative and deceptive devices (e.g., front running), and sales practice rules.

## **III. Requirements for Opening and Trading in Proprietary, Employee and Employee-Related Securities and Commodities Accounts and Transactions**

Rule 407 sets forth certain requirements that apply when a member or member organization maintains a securities or commodities account for an employee, member or associated person of another member or member organization or for an Exchange employee:

- Before opening any securities or commodities account in which another member, or employee of another member organization, or an Exchange employee, is directly or

indirectly interested, or before first executing transactions in such accounts, a member or member organization must obtain prior written consent from the member or member organization employer (or the Exchange).

- The member or member organization opening the account must arrange for duplicate confirmations and monthly statements to be sent to the employer.
- Before opening or maintaining any securities or commodities account in which a member or associated person of a member organization has a financial interest or the direct or indirect power to make investment decisions, the member or associated person establishing or maintaining the account must obtain written consent of another person designated by the initiating member or member organization under NYSE and NYSE Amex Rules 342(b)(1). Similarly, before first entering into any securities transaction in such account, the initiating member or associated person must obtain written consent of another person designated by the initiating member or member organization under NYSE and NYSE Amex Rules 342(b)(1). For purposes of the rule, the term “another member or member organization” includes a domestic or foreign non-member broker-dealer, investment advisor, bank, or other financial institution.
- Members or associated persons having accounts or executing transactions at another member or member organization must also arrange for duplicate confirmations and statements (or their equivalents) to be sent to the person that their own member organization designates under Rule 342(b)(1) to review such accounts and transactions. The member or member organization employer must periodically review any such accounts and transactions.<sup>1</sup>

#### **IV. Supervision of Proprietary, Employee and Employee-Related Securities and Commodities Accounts and Transactions**

Members and member organizations must maintain reasonable and effective written supervisory policies and procedures to monitor the opening of personal securities and commodities accounts maintained by members, employees, and associated persons, as well as to monitor all transactions in such accounts. These policies and procedures must include written procedures for pre-approving requests to open or effect a transaction in such accounts. In addition, the policies and procedures must include steps for the periodically reviewing the accounts and transactions pursuant to Rule 407 and NYSE and NYSE Amex Rule 342.21 (“Rule 342.21”).

Member organizations should note that, pursuant to Rule 342.21, they are specifically required to review proprietary, employee and employee-related trading in a securities and commodities account. If a transaction or series of transactions in such accounts indicates a possible violation of federal securities laws and rules prohibiting insider trading and manipulative and deceptive devices, the member organization must conduct an “internal investigation” of the transaction(s) and must report such internal

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<sup>1</sup> Rule 407.12 creates a limited carve out to the requirement related to duplicate confirmations and statements as follows: “The requirement to send duplicate confirmations and statements shall not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, as amended, or to accounts which are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the member or member organization employer requests receipt of duplicate confirmations and statements of such accounts.”

investigation to the NYSE pursuant to Rule 351(e). These steps are essential to effective compliance and monitoring of employee and related-person trading. Accordingly, members and member organizations must maintain appropriate policies and procedures designed to identify the particular potentially violative trades as to which members and member organizations are required to conduct internal investigations.

Finally, members are reminded the Financial Industry Regulatory Authority (“FINRA”) has an active and robust monitoring program in place to check for compliance with these rules and regularly conducts examinations for compliance with the rules.

**V. Staff Contacts**

Questions concerning this memorandum may be addressed to:

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Questions may also be directed to the On-Floor Surveillance Unit via the White Phone or in person at the OFSU Booth.