

Compliance Update

1st Quarter 2013

Action Required

- **New UIT Point of Sale form**

A new Point of Sale form has been developed for use when selling Unit Investment Trusts. The new form replaces the PCS Purchase Form for UIT sales only. Please review the attached form, and begin using the form in conjunction with the PCS New Account Form for all new UIT sales. The form is available on the PCS Network forms library and PCS website.

- **Timely Order Entry**

All customer orders should be entered immediately. If the internet is down, it is the representative's responsibility to call the trade into Pershing. The same applies to orders received from a client that are delayed entry due to the representative waiting for a check to clear in a brokerage account. If you want to wait for funds to clear in a brokerage account, tell the client you are waiting for available funds and that you will re-confirm any orders with the client prior to entry. If the representative delays inputting the trade and the customer is harmed (doesn't get the best price), the trade will be busted, a corrected confirm will be issued, the representative will be responsible for paying for the difference, and may be subject to disciplinary action.

Prohibited Practices

Recent disciplinary actions taken by FINRA are good reminders of the ramifications associated with engaging in prohibited practices in our industry. Examples are listed below:

- **Obtaining Signed, Blank Securities-Related Customer Forms**

FINRA settled a matter involving a registered representative who obtained and maintained blank securities-related forms that clients had previously signed, and securities-related documents containing photocopied client signatures and dates. The representative secured at least six clients' signatures on blank securities-related business forms and retained the documents in his office. The registered representative also photocopied customer signatures and dates onto securities-related customer business records. The representative's firm discovered a folder in the representative's desk that contained 17 blank pre-signed client securities-related business forms, five securities-related business documents that contained a photocopy of clients' signatures, and six securities-related business documents that contained a photocopy of the clients' signatures and dates. The registered representative's firm prohibited its staff from obtaining or retaining documents that had been pre-signed by a customer or using a photocopied customer signature as an original signature. FINRA concluded that the representative's conduct violated FINRA Rule [2010](#) (ethical standards). As such, FINRA *suspended the representative in all capacities for 90 days and fined him \$7,500.*

- **Improperly Exercising Time and Price Discretion**

FINRA settled a matter involving a registered representative who exercised time and price discretion in two customers' accounts beyond the limited allowable scope of discretion and without his employer firm's acceptance of the accounts as discretionary. The registered representative utilized time and price discretion in two customer accounts beyond the end of the business days for which the customers had granted time and price discretion. Neither customer had extended his grant of discretion, nor had the firm accepted either account for discretionary trading beyond the end of the business day. FINRA concluded that the representative's conduct violated NASD Rule [2510](#) (discretionary accounts) and FINRA Rule [2010](#) (ethical standards). FINRA *suspended the representative from associating in any capacity with a member firm for 10 business days and fined him \$2,500.*

Reminders

- **Disbursement Fraud**

FINRA has seen an increasing number of incidents of fraudulent transfer instructions emailed to firms from compromised customer email accounts. In many cases, the instructions direct the firm to transfer customer funds to third parties or to addresses that are not the address of record for the account. Last year, FINRA published [Regulatory Notice 12-05](#), which highlighted some of the risks associated with accepting instructions to transmit or withdraw funds via email and recommended that firms review their policies and procedures for protecting customer accounts from such risks. In light of the continued high volume of such incidents, FINRA reiterates the guidance contained in Regulatory Notice 12-05.

Representatives are reminded to never accept disbursement instructions or trade instructions via email. All transactions and disbursement instructions must be verified with the client telephonically or in-person prior to processing / order entry.

- **Complaints**

Representatives are reminded that they must forward any written customer complaint to their Managing Principal immediately upon receipt, who in turn must notify Compliance and Senior Management immediately.

- **U4 Registration Information**

Representatives are reminded that all registration information must remain current at all times. This includes information related to changes to name, address (business or personal), marital status, outside business activity, financial status such as liens, judgments, compromise with creditors, garnishments and other court orders, tax levies, wage withholdings, bankruptcies, etc. Any updates should be brought to the attention of your Managing Principal and the Compliance Department.

- **AML Customer Identification**

Representatives are reminded that when opening a new account with multiple account holders, all persons identity must be verified. For example, if you open a joint account with three owners, all owners must provide Patriot Act identification information, and the information must be listed on the new account form. This also applies to corporate accounts with multiple control persons listed, and any other multiple owner account.

Accounts involving minors (UTMA, UGMA, 529, etc.) require the custodian (adult) only provide the required identity verification information.

- **Blotter - Order Receipt Time**

To help securities regulators more efficiently determine whether certain individuals are engaged in sales practice violations, Rules 17a-3(a)(6) and 17a-3(a)(7) were amended to require that order tickets identify the time the order was received, even if subsequently executed, the identity of each associated person responsible for the account, if any, and any other person who entered or accepted the order on behalf of the customer, or, if applicable, a notation that a customer entered the order on an electronic system. PCS utilizes our daily transaction blotters as our “order ticket” and represents our original order entry record.

Additional information is available within the attached article:

<http://www.proskauer.com/files/uploads/broker-dealer/Recently-Expanded-Broker-Dealer-Books-Records-Requirements.pdf>

- **Manual Updates**

The “Variable Products / Suitability” section of the online NRS Registered Representative Manual has been recently updated, and all representatives are advised to review the changes.

The online NRS Written Supervisory Procedures Manual has also been updated with material changes specifically related to customer communications. What was previously identified by FINRA as “Advertising and Sales Literature” has been changed to “Retail Communication.” Please review the revised sections.

- **Anti-Virus Software**

All PCS associated persons are required to maintain updated anti-virus software on all computers used to access the PCS network and/or customer information. This requirement includes updating the software for the latest definitions. If you are unaware whether your current anti-virus software is up to date or approved by PCS, please contact the PCS IT Helpdesk.

- **Representative Designations – Senior / Retirement Titles**

Based on regulatory guidance and as a best practice, no PCS associate should use the words “senior” or “retirement” in their title, as it could be misleading under FINRA Rule 2210, unless they possess an industry related Retirement Certification conferring unique expertise in this area, are current with applicable CE requirements and in good standing with the issuing organization, and are included in FINRA’s database noted below:

<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p125092.pdf>

- **Privacy / Security**

The front doors to the PCS home office located at 2225 Lexington Road should remain secured (i.e., closed) at all times and should not be propped open. This applies both during regular business hours, and after-hours. When you have non-client guests in the office (including wholesalers) they should sign in/register and sign-out at the front-office with the receptionist, and always be escorted by a PCS associated person, and not permitted to move freely throughout the office. They should wear a Guest Tag clearly indicating their name. This practice is required to safeguard client information.

Managing Principal Information

- **Branch Office Registration / Changes**

Managing Principals are responsible for reviewing, minimally on an annual basis, all off-site locations to make a determination as to whether any of the currently exempt locations have begun to function in such a manner as to require Form BR registration. Managing Principals must advise Senior Management and/or Licensing & Registration Staff if the exemption under Rule 3010(g)(2) becomes unavailable due to changes in activity or other exemptive parameters. Managing Principals should also determine if currently registered branch office locations are eligible for exemption from registration due to any change in function or business.

Documentation as to such reviews will be maintained indicating date of review, scope of review, findings and actions taken. Refer to NRS WSP Manual section entitled, “Branch Office Definition” for additional information.

- **FINRA Rule 2210 Retail Communication (Formerly Advertising and Sales Literature)**

FINRA Rule 2210 became effective February 4, 2013 (FINRA Regulatory Notice 12-29 provides additional information). Managing Principals are responsible to train their designated Representative’s on the new rule. Although certain “communications with the public” go through the Montoya system for OSJ review and Compliance review, Managing Principals are responsible for supervising all communications with the public, including but not limited to electronic communications and seminars. Although a seminar script may be pre-approved for use, it is the responsibility of the Managing Principal to attend the seminar to ensure the script is actually followed, the attendee list is maintained for books and records, etc.

- **Written Supervisory Manual Updates**

PCS's Compliance Program is "evergreen," requiring ongoing review of WSP throughout the year. Due to numerous recent regulatory changes, the BD WSP were recently updated as follows;

1. New Sections Added (Communications With The Public-FINRA Rule 2210 Overview, Communications With The Public: Bond Mutual Fund Volatility Ratings, Communications With The Public: Collateralized Mortgage Obligations, Communication With The Public: Investment Companies Rankings in Retail Communications).
2. Amended Sections (Communications With The Public: Advertising Regulation Electronic Files/AREF, Communication With The Public: Electronic Messages, Communication With the Public: FINRA Approval, Communication With The Public: Independently Prepared Reprints, Communication With The Public: Institutional Communications, Communications With The Public: Public Appearances, Communications With The Public: Recommendations/FINRA Rule 2210, Correspondence, Retail: Incoming, Correspondence, Retail: Outgoing, Customer Accounts: Consolidated Financial Account Reports, Margin Accounts, OATS (Order Audit Tracking System), Regulation Form Filing, Retirement Plans: ERISA Rule 405a-5, Senior Investors: High-Pressure Sales Seminars Aimed at Seniors, Senior

Investors: Senior Designations and Credentials, Trade Report: "ACT", and Variable Products: Cash and Non-Cash Compensation.

3. Eliminated Sections (Communications With The Public: Sales Literature/Promotional Materials Overview, Communications With The Public: Seminars and Sales Meetings, Communication With The Public: Telemarketing Scripts, and Correspondence: Group E-Mail and Form Letters. PCS Managing Principals are responsible for providing training related to the updates.

- **Product Provider Presentations**

Vendor provided product training may not always be balanced in terms of full disclosure of advantages and disadvantages/risks. It is the responsibility of designated Supervisor to ensure that representatives understand vendor-provided product training limitations, and ensure that representatives are fully trained on product features, disadvantages/risks and suitability.

- **AML Red Flags**

Managing Principals are reminded that they are responsible for monitoring for AML Red Flags, including wash sales identified on the transaction blotter, email review, and/or low price securities trading review. Managing Principals should monitor for wash sales of identical securities transactions that occur in the same account and the trading activity after the initial deposit of shares to compare that activity with the representations made by customers on the PCS New Account opening documentation. Managing Principals should also consider whether the liquidation activity engaged in by the client occurred in conjunction with other red flags of distributions and market manipulations, including potentially "related- accounts" trading in the same security, or third-party transfers of shares.