Investment Services Regulatory Update

December 1, 2009

LITIGATION

U.S. Supreme Court Hears Jones v. Harris Associates

On November 2, 2009, the U.S. Supreme Court heard oral arguments in *Jones v. Harris Associates*, a closely-watched case concerning the appropriate standard for reviewing excessive fee claims arising under Section 36(b) of the 1940 Act. The *Jones* case was elevated to the U.S. Supreme Court after the Seventh Circuit, in May 2008, explicitly rejected the *Gartenberg* standard (from the Second Circuit) for evaluating advisory fees and adopted a new standard, which looks to market efficiency and trust law fiduciary duty rather than "reasonableness." Prior to the Seventh Circuit ruling, the *Gartenberg* standard had prevailed unchallenged for over 25 years.

While the bench appeared to have myriad questions, they all seemed to revolve around only a handful of themes. That is, the Court's questions seemed to focus on the nature of the fiduciary duty imposed on investment advisers by Section 36(b), whether investment advisers were justified in charging different fees to institutional clients and mutual funds, the appropriate role of the courts in reviewing investment advisory fees and the amount of deference that should be provided to a fund's board in negotiating and determining such fees.

Chief Justice Roberts and Justice Scalia seemed averse to the idea of a more rigorous judicial review of investment advisory fees and even suggested that investors may not need to rely on courts for protection from allegedly excessive fees. Chief Justice Roberts remarked that investors could very easily track the fees of a fund in which they invest and, in the event they are unhappy, could simply move their funds. "It takes 30 seconds," he added. Moments later, Justice Scalia went further, stating: "[W]hen investors leave the company that is charging excessive fees to go to other companies, the company that they are leaving sees that something is wrong and has to lower its compensation to its adviser."

Separately, Justice Breyer suggested that, in reviewing excessive fee cases arising under Section 36(b), it may be appropriate for judges to compare the fees charged by an investment adviser to its institutional clients and mutual funds, referring to such comparison as "a normal question to ask." Justices Kennedy's and Sotomayor's questions seemed to focus on the nature of the fiduciary duty imposed on investment advisers by Section 36(b) and whether the standard for investment advisers should be the same as or different from other fiduciaries.

Interestingly, none of the litigants embraced the Seventh Circuit approach in presenting their oral argument, as the respondent, *Harris Associates*, sought affirmance of the Seventh Circuit decision on alternative grounds. Both litigants, however, embraced the *Gartenberg* standard, albeit their respective versions of that standard.

The U.S. Supreme Court is expected to issue a decision in the *Jones* case in the first half of 2010.

NEW RULES, PROPOSED RULES AND GUIDANCE

Federal Regulatory Agencies Issue Model Privacy Notice Form

On November 17, 2009, eight federal regulatory agencies, including the SEC, released a final model privacy notice form that is designed to make it easier for consumers to understand how financial institutions collect and share nonpublic personal information. Since 2001, under rules adopted pursuant to the Gramm-Leach-Bliley Act, financial institutions, including funds and registered investment advisers, have been required to provide a privacy notice to their shareholders and clients initially when a relationship is formed and annually thereafter. Recognizing that privacy notices are often long and complex, Congress directed the regulatory agencies to develop a model form that would be succinct and easy for consumers to use and understand. Use of the model form issued by the agencies is optional, but those institutions that choose to use the model form will obtain a "safe harbor" and will be deemed to satisfy the disclosure requirements for privacy notices. Funds and advisers may begin using the model form on December 17, 2009.

SEC Adopts Regulation S-AM

Effective September 10, 2009, the SEC adopted Regulation S-AM, which addresses affiliate marketing through the use of consumer information. Regulation S-AM is designed to prevent registered investment advisers, investment companies, broker-dealers and registered transfer agents ("covered persons") from using certain consumer information provided by a covered person's affiliate to market products or services, unless a clear and conspicuous notice is provided to the consumer disclosing that the covered person may use such information and the consumer does not "opt out" of such marketing after receiving the notice. No specific form is required for the consumer notice, but it must include the names of the affiliate(s) providing the notice, the types of eligibility information that may be used in solicitations and the length of time that the "opt out" provision will remain effective, which must be at least five years. The appendix to the SEC's adopting release contains model forms that satisfy Regulation S-AM's requirement of a clear, conspicuous notice. The notice can be combined with other disclosures required by law (such as the initial and annual privacy notices required by Regulation S-P). Regulation S-AM also contains a number of exceptions to its notice and opt out requirements, including when an affiliate making a marketing solicitation has a pre-existing business relationship with a consumer or provides marketing material in response to a request by the consumer or in response to a communication initiated by the consumer.

The compliance date for Regulation S-AM has been extended from January 1, 2010 to June 1, 2010.

Massachusetts Publishes Final Information Security Program Regulations

In October 2009, the Massachusetts Office of Consumer Affairs and Business Regulation published the final version of the regulations that require persons (including funds) who own or license (which includes receiving, storing, maintaining, processing or otherwise accessing) personal information about a Massachusetts resident, such as a shareholder or employee, to develop, implement and maintain a comprehensive, written information security program, including a computer security system program. The revised regulations (1) define service provider to include any person that receives, stores, maintains, processes or otherwise has access to personal information as a result of providing services directly to a person subject to the regulations and (2) clarify that third-party service provider contracts entered into no later than March 1, 2010 have until March 1, 2012 to amend their terms to comply with the regulations. Otherwise, the compliance deadline continues to be March 1, 2010.

Implementation of Identity Theft Prevention Programs Further Delayed Until June 1, 2010

On October 30, 2009, the Federal Trade Commission announced that it would suspend enforcement of the red flags rule under the Fair and Accurate Credit Transactions Act of 2003, which imposes identity theft-related requirements on "financial institutions" and other specified entities, until June 1, 2010. This was the fourth time the FTC delayed implementation of the rule.

SEC Proposes Amendments to Rules Requiring Internet Availability of Proxy Materials

On October 14, 2009, the SEC proposed changes to the proxy rules to improve the notice and access model for furnishing proxy materials to shareholders. The SEC noted that preliminary data on issuers using the notice-only option under the notice and access model indicated that such issuers had lower shareholder response rates to their proxy solicitations. The proposed amendments would allow issuers additional flexibility in formatting and selecting language to be used in the Notice of Internet Availability of Proxy Materials sent to shareholders as part of the notice-only option. Under the proposed amendments, the proxy rules would identify certain topics required to be covered in the notice, but would not specify the exact language to be used. In addition, to improve shareholder understanding of the notice, the notice could be accompanied with an explanation of the notice and access model.

The proposed rule amendments also seek to make it easier for a soliciting person other than the issuer to use the notice-only option under the notice and access model. Under the current rules, a soliciting person who is not the issuer must send its notice to shareholders either 40 calendar days before the shareholder meeting or 10 calendar days after the issuer first sends its notice or proxy statement to shareholders. The SEC noted that a soliciting person may not be able to send its notice within 10 calendar days after the issuer first sends its notice or proxy statement due to the SEC staff's current

practice of reviewing and commenting on proxy materials. To address this issue, the SEC proposed to amend the proxy rules to allow a soliciting person other than the issuer using the notice-only option to timely deliver a notice to shareholders if the soliciting person files a preliminary proxy statement within 10 days of the issuer filing its definitive proxy statement and sends its notice to shareholders no later than the date on which it files its definitive proxy statement.

SEC Proposes Rules to Enhance Credit Ratings Disclosure

On October 7, 2009, the SEC proposed amendments to various rules and forms under the 1933 Act, the 1934 Act and the 1940 Act to require registrants to disclose information regarding credit ratings used in connection with a registered offering of securities. The proposed amendments would apply to closed-end funds that use a credit rating with respect to a class of securities issued by the fund. Specifically, the SEC proposed to amend Form N-2 to require additional disclosure about a credit rating used in connection with the offering of a class of securities of a closed-end fund, including disclosure of all material limitations on the scope of the credit rating and disclosure of potential conflicts of interest, including the source of payment for the credit rating. In addition to the disclosure regarding credit ratings included in Form N-2, closed-end funds would be required to disclose any changes to a credit rating that was used with respect to a class of securities issued by the fund. Under the proposed amendments, closed-end funds would be required to file a Form 8-K disclosing the credit rating changes unless substantially similar information as would be required in the Form 8-K was made publicly available through a press release.

Comments on the proposal are due by December 14, 2009.

SEC Removes Rule References to Nationally Recognized Statistical Rating Organizations

On October 5, 2009, the SEC adopted amendments to 1934 Act and 1940 Act rules to remove references to nationally recognized statistical rating organizations ("NRSROs"), as part of the SEC's effort to address concerns that references to NRSROs in SEC rules may have contributed to an undue reliance by market participants on the ratings issued by NRSROs. The changes most relevant for funds are to Rules 10f-3 and 5b-3 under the 1940 Act.

Rule 10f-3 permits a fund that is affiliated with a member of an underwriting syndicate to purchase securities from the syndicate if certain conditions are met. In the rule amendments, the SEC revised the criteria for municipal securities that may be purchased in reliance on the rule by removing references to NRSRO ratings in favor of criteria based upon a particular security's liquidity and credit quality. The process for fund boards approving appropriate procedures and reviewing 10f-3 purchases on a regular basis was not changed by the amendments.

Rule 5b-3 under the 1940 Act relates to Section 5(b)(1) of the Act, which limits the amount that a diversified fund may invest in the securities of any one issuer, other than the U.S. government. For purposes of diversification requirements, Rule 5b-3 equates the acquisition of "refunded securities" (i.e., debt securities whose principal and interest payments are to be paid by U.S. government securities placed in an escrow account) with the acquisition of the escrowed government securities, provided that certain conditions are met. One condition requires funds to obtain an independent accountant's certification relating to refunded securities to be purchased, unless the securities have received a debt rating in the highest category from an NRSRO. In the rule amendments, the SEC eliminated this NRSRO rating exception, and an independent accountant's certification must now be obtained regardless of a refunded security's rating.

The rule amendments became effective on November 12, 2009.

FINRA Requests Comments on Proposed Amendments to Rules Governing Communications With the Public

On September 21, 2009, FINRA issued for comment proposed new rules which would replace current NASD Rules 2210 and 2211, the Interpretive Materials that follow NASD Rule 2210 and portions of Incorporated NYSE Rule 472. In large part, the content of the proposed rules governing member communications with the public mirrors that of the existing rules; however, the six categories of communications provided for in the existing rules would be replaced by three new categories of communications. Furthermore, the proposed rules would revise certain approval, filing and content requirements.

Specifically, FINRA's proposed rules would consolidate the six categories of member communications in NASD Rule 2210 into the following three: (1) institutional communication, which would include communications that fall under the current definition of "institutional sales material," (2) retail communication, which would include any written communication that is distributed or made available to more than 25 existing or prospective retail investors (i.e., communications that currently qualify as advertisements or sales literature), and (3) correspondence, which would include any written communication distributed or made available to 25 or fewer existing or prospective retail customers.

Similar to the existing rules, the proposed rule would require a member firm's registered principal to approve each retail communication before the earlier of its use or filing with FINRA. However, the proposal eliminates the requirement in NYSE Rule 472 that a "qualified person" approve in advance each advertisement, sales literature or other similar type of communication by an NYSE member firm.

The proposed rule would modify the FINRA filing requirements in two respects. First, the requirement to file would cover all retail communications, rather than just advertisements. Second, the proposal would trigger the one-year filing requirement to begin on the effective date a firm becomes registered with FINRA, rather than on the date a communication is first filed with FINRA.

FINRA's proposed rules would expand the current pre-use filing requirements to require the following, among others, to be filed with FINRA at least 10 business days prior to first use: retail communications concerning any registered fund that includes self-created rankings and retail communications that include bond fund volatility ratings. Furthermore, such filings would be withheld from use until any revisions specified by FINRA staff were made. The proposal would also expand the filing requirements for materials relating to closed-end funds to include retail communications distributed after the fund's initial public offering.

FINRA's proposed Rule 2210(d) would reorganize, but essentially incorporate, the current content standards applicable to communications with the public, subject to certain revisions. The content standards that currently apply to advertisements and sales literature generally would apply to retail communications under FINRA's proposed rule. However, based largely on existing FINRA guidance, FINRA's proposal adds requirements concerning comparative illustrations of tax-deferred versus taxable compounding, which would apply to any illustration, regardless of whether it appears in a communication promoting variable insurance products or some other communication, such as one discussing the benefits of investing in a 401(k) plan or individual retirement account.

FINRA's proposal also would revise the current content standards relating to mutual fund performance data. Proposed Rule 2210(d)(5) would revise fund performance communications to require disclosure of the maximum sales charge and total operating expense ratio as reflected in a fund's prospectus or annual report, whichever is more current as of the date the communication is submitted for publication.

To better align with existing regulatory standards, proposed FINRA Rule 2210(d)(7)(C) would amend the current provisions governing communications that include past recommendations to mirror those found under the Advisers Act. In addition, proposed FINRA Rule 2210(d)(7)(D) would expressly exclude from its coverage communications that: (1) meet the definition of "research report" and that include certain disclosures and (2) recommend only registered funds or variable insurance products.

The FINRA proposal would extend the standards for communications that contain a recommendation to retail communications, correspondence and public appearances, and would extend the "fair and balanced" disclosure requirements to associated persons who recommend securities in public appearances (currently the rule only applies to research analysts making public appearances).

SEC Adopts Rule Requiring Disclosure of Certain Money Market Fund Portfolio Information

On September 18, 2009, the SEC adopted a new rule – effective immediately – requiring money market funds whose net asset value ("NAV") per share falls below $0.9975 to provide portfolio and valuation information to the SEC on a weekly basis for as long as a fund's NAV per share remains below that level. Interim temporary final Rule 30b1-6T,

issued in conjunction with the expiration of the Treasury Department's Temporary Guarantee Program for Money Market Funds ("Guarantee Program"), requires funds to provide substantially the same information as was required for funds participating in the Guarantee Program. Money market funds are required to provide detailed information about each security held by the fund no later than the next business day after a fund's NAV per share falls below $0.9975 and then must submit the same information as of the last business day of each week by no later than the second business day of the following week. Upon expiration of the rule, the SEC will consider whether to extend or amend the rule as part of its broader proposed money market reforms.

SEC Proposes Flash Order Ban

On September 17, 2009, the SEC proposed amendments to Regulation NMS that would eliminate the exception for use of flash orders by market participants. Flash orders, which are orders for immediate execution or withdrawal, are currently excepted from the requirement under Regulation NMS that exchanges publicly disseminate their best bids and offers in U.S.-listed equities. If adopted, the elimination of the exception for flash orders would require flash orders with non-marketable prices to be included in the publicly disseminated consolidated quotation data and would prohibit flashing orders with marketable prices only to certain market participants. The SEC's proposing release states that the benefits of flash orders for some market participants do not justify their costs to other market participants, the national market system and the public interest.

SEC Proposes Changes to NYSE Corporate Governance Standards

On September 11, 2009, the SEC published for comment proposed changes to certain of the corporate governance requirements in Section 303A of the NYSE's Listed Company Manual. The proposed changes clarify a number of provisions, including the time by which companies listing in conjunction with an initial public offering, spin-off or carve-out must comply with the audit committee requirements, that closed-end funds choosing to include a "Management's Discussion of Fund Performance" must have their audit committee meet to review and discuss it, and that closed-end funds are subject to the provision regarding shareholder approval of equity compensation plans. The changes would eliminate the required annual certification by CEOs that they are not aware of any violations by the company of NYSE listing standards. Instead, revised Section 303A.12(b) would require listed companies to notify the NYSE in writing after an executive officer becomes aware of any non-compliance with Section 303A. Currently, notification is only required for material non-compliance. The changes are proposed to take effect January 1, 2010.

NEW LEGISLATION

House Financial Services Committee Approves Investor Protection Act of 2009

On November 4, 2009, the House Financial Services Committee passed the Investor Protection Act of 2009 which would, among other things: (1) hold broker-dealers who

provide investment advice to the same standard of care as investment advisers and (2) authorize the SEC to assess a fee on federally-registered investment advisers to fund inspections and examinations. Senator Chris Dodd, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, recently introduced a bill with similar provisions.

Senator Introduces Mutual Fund Transparency Act of 2009

On October 28, 2009, Senator Daniel K. Akaka introduced the Mutual Fund Transparency Act of 2009, which would require broker-dealers to disclose in writing to their customers purchasing shares of registered funds the source and amount of compensation that such broker-dealers receive in connection with the sale of fund shares, including revenue sharing payments, as well as comparative data for comparable transactions. The Act also would require funds to include in any regulatory filings disclosing fees and expenses the amount of brokerage commissions paid by the funds during the previous five years. In addition to the disclosure requirements, the Act would require (1) 75% of a fund's directors to be independent, (2) a fund board to have an independent chairman and (3) the election of independent directors by shareholders at least once every five years.

House Financial Services Committee Approves Private Fund Adviser Registration

On October 27, 2009, the House Financial Services Committee passed the "Private Fund Investment Advisers Registration Act of 2009," which will require investment advisers of certain unregistered investment companies (i.e., 3(c)(1) and 3(c)(7) funds) to register with and provide information to the SEC. Similar legislation was introduced in the Senate and referred to the Committee on Banking, Housing, and Urban Affairs in June 2009.

OTHER NEWS

Director of SEC's Division of Investment Management Comments on Closed-End Fund Issues

In the keynote address at the IDC Investment Company Directors Conference on November 12, 2009, the Director of the Division of Investment Management, Andrew J. ("Buddy") Donohue, discussed various challenges faced by independent directors in exercising their oversight duties, focusing primarily on issues faced by closed-end fund independent directors when determining actions to take in response to fund takeover attempts. Mr. Donohue highlighted five specific actions that have been taken by fund boards in response to takeover attempts and stressed that, when considering such actions, directors must ultimately determine whether the action is in the best interests of the fund and its shareholders.

The actions discussed by Mr. Donohue were (1) the adoption of a shareholder rights plan, commonly known as a "poison pill," (2) the use of state law "control share" statutes

to restrict the ability of large shareholders to vote their shares at shareholder meetings, (3) delaying a fund's annual meeting, (4) requiring the affirmative vote of a majority of outstanding shares for the election of directors and (5) adopting a by-law that imposes certain requirements for director candidates, while exempting a fund's current directors (including those affiliated with fund management) from such requirements. In discussing these actions, Mr. Donohue stated that, although fund management may for various reasons advocate taking one or more of such actions in response to a takeover attempt, the fund's board must always consider whether the action is in the best interests of the fund and its shareholders. The full text of Mr. Donohue's speech is available on the SEC's website at http://www.sec.gov/news/speech/2009/spch111209ajd.htm.

ICI And IDC Issue Report on Intermediary Relationships

In September 2009, the Investment Company Institute and the Independent Directors Council issued a report entitled "Navigating Intermediary Relationships." The paper was developed primarily to provide fund directors with background information about intermediaries – such as broker/dealers, fund supermarkets and financial advisers – and the funds' relationships with them.

The report highlights the importance of intermediaries, noting that 86% of households owning funds do so through an intermediary. The paper discusses the following topics: (1) the types of intermediaries that participate in the mutual fund industry; (2) processing efficiencies developed by fund complexes and intermediaries; (3) the interaction points between fund complexes and intermediaries (e.g., NSCC automated services Fund/SERV and Networking); (4) tools used by fund management to oversee intermediary activities; and (5) methods by which intermediaries are compensated for servicing fund shareholders.

The publication provides lists of questions a fund's board might ask as part of its oversight responsibilities so that directors will have a general understanding of (i) the fund's system for distribution and shareholder servicing, (ii) the various intermediaries involved in distributing the fund's shares and servicing the fund's shareholders, and (iii) the compensation structures associated with such distribution and servicing activities.

The publication is available online at:
http://www.ici.org/pdf/ppr_09_nav_relationships.pdf.

IDC Issues Task Force Report on Board Oversight of Fund Compliance

On September 10, 2009, the Independent Directors Council issued a task force report entitled "Board Oversight of Fund Compliance." The report discusses the variety of ways in which funds have implemented their compliance programs, as required by Rule 38a-1 under the 1940 Act, and suggests certain core characteristics of a successful compliance function. The goal of the report is to provide a comparative tool, by

highlighting various alternatives and practices, that will assist boards in evaluating fund compliance programs.

The report discusses the following common themes amongst fund groups regarding the mission and philosophy of compliance: (1) a fund board can have a significant and immediate influence in defining the goals and priorities of the fund's compliance function; (2) compliance responsibility should be allocated to each business unit that makes up the fund's or adviser's compliance operation; (3) compliance should be structured as a collaborative function that enhances operations and controls, and not structured to punish outliers; and (4) compliance should be proactive, anticipatory and seek to educate all personnel who contribute to its effectiveness.

The report also discusses matters relating to the fund CCO, including considerations regarding the employment of the CCO (e.g., whether the fund CCO should be the same as the adviser's CCO), as well as the CCO's relationship with management and the fund board.

Finally, the report lists the following characteristics that the task force believes support a strong compliance regime: (1) a strong "tone from the top" (i.e., management and the fund's board); (2) the CCO operating in a collaborative manner allows the CCO to undertake his or her role and responsibilities professionally and effectively; (3) a continuous and thoughtful risk-based program; (4) transparency and candor in compliance disclosure between the CCO, the board and management; and (5) effective compliance personnel (including the CCO), armed with appropriate resources.

ENFORCEMENT ACTIONS

FINRA Fines Terra Nova Financial $400,000 for Improper Soft Dollar Payments

On November 23, 2009, FINRA announced that it fined Terra Nova Financial, LLC $400,000 for allegedly making more than $1 million in improper soft dollar payments to or on behalf of five hedge fund managers, failing to supervise its soft dollar program and failing to implement adequate supervisory procedures. FINRA also sanctioned the three Terra Nova employees who were primarily responsible for the implementation and oversight of Terra Nova's soft dollar program.

According to FINRA, Terra Nova made numerous soft dollar payments on behalf of five hedge funds between 2004 and 2005 which were not authorized by fund documents. The payments were used to pay for, among other things, various entertainment expenses and unauthorized employee salaries and consulting fees.

In addition to the fine, Terra Nova is required to retain an independent consultant to review and enhance its policies, systems and procedures relating to its soft dollar operations.

SEC Charges Investment Adviser and Two Senior Officers for $24 Million Fraudulent Scheme

On November 4, 2009, the SEC charged Value Line Inc. (an investment adviser), Jean Buttner, Value Line's CEO, David Henigson, Value Line's former chief compliance officer, and Value Line Securities, Inc., Value Line's affiliated broker-dealer, with defrauding the Value Line family of mutual funds by charging over $24 million in bogus brokerage commissions on mutual fund trades funneled through Value Line Securities.

The SEC alleged that, from 1986 to 2004, Value Line directed a portion of the funds' securities trades to Value Line Securities through a "commission recapture program." In the commission recapture program, Value Line arranged for one of three unaffiliated brokers to execute, clear and settle the funds' trades at a discounted commission rate. Instead of passing the discounted rate to the funds, the unaffiliated brokers allegedly billed the funds the standard rate and then "rebated" the difference between the standard rate and the discount rate to Value Line Securities. In total, Value Line Securities received over $24 million in brokerage commissions from the funds pursuant to this scheme; Value Line Securities did not perform any bona fide brokerage services for the funds on these trades.

The SEC also alleged that, through Ms. Buttner and Mr. Henigson, Value Line falsely represented to the Value Line funds' independent directors and shareholders that Value Line Securities provided bona fide brokerage services for the commissions it received and that Value Line Securities otherwise served the best interests of the funds and their shareholders. According to the SEC, Ms. Buttner directed the "commission recapture program" and monitored its profitability to Value Line Securities, and thus to Value Line, by receiving periodic updates from Mr. Henigson, who was responsible for implementing the scheme. Ms. Buttner and Mr. Henigson were also involved in structuring and negotiating the recapture arrangement with the unaffiliated rebate brokers.

As a result of these allegations, Value Line agreed to pay $24,168,979 in disgorgement, $9,536,786 in prejudgment interest and a $10 million penalty. Ms. Buttner and Mr. Henigson agreed to pay $1 million and $250,000 in penalties, respectively. In addition, Ms. Buttner and Mr. Henigson were each barred from association with any broker, dealer, investment adviser or investment company and were prohibited from acting as an officer or director of any public company.

FINRA Settles Auction Rate Securities Violations with Three Firms

On September 2, 2009, FINRA announced that it had entered into final settlement agreements with Northwestern Mutual Investment Services, LLC, City Securities Corporation and Fifth Third Securities to settle charges relating to the sale of Auction Rate Securities ("ARS"). Each of the firms agreed to initiate or complete offers to repurchase ARS sold to their customers in connection with failed ARS auctions.

According to FINRA, its investigation of the firms uncovered evidence that each firm employed the use of unfair and unbalanced advertising, marketing materials or other communications in its efforts to sell ARS, and did not provide investors with a sound basis on which to evaluate the benefits and risks of investing in ARS. Moreover, FINRA's investigation of the firms revealed that each firm failed to maintain adequate supervisory systems reasonably designed to achieve compliance with the securities laws and FINRA rules with respect to the marketing and sale of ARS.

Under the terms of the agreements, each firm will offer to repurchase at par value certain outstanding ARS purchased by investors between May 31, 2006 and February 28, 2008. As a result, a total of approximately $128 million of ARS are eligible for repurchase. Additionally, the firms have agreed to compensate individual investors who sold ARS below par after February 28, 2008 and pay fines totaling $600,000.

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This Regulatory Update is only a summary of recent information and should not be construed as legal advice.