

Dear Sir or Madam:

Subject: SEC Releases No. 34-60126, 34-62718 [File No. SR-FINRA-2010-039]

The SEC has published a number of releases in its mission to help regulate the securities' markets of the United States. This email is notification to the SEC of the impact that one of its prior releases had on a subsequent release.

FACTS:

On June 19, 2009, the SEC issued Release No. 34-60126, at the behest of the Chicago Board of Options Exchange that allowed the holders of vested employee stock options or VESOs to use same as collateral within brokerage accounts against the sale of listed, exchange-traded options ("LETOs") as covered calls against such collateral.

On August 13, 2010, the Commission published Release No. 34-62718 : File No. SR-FINRA-2010-039, dealing with a number of Rules changes within the broker-dealer community as to suitability requirements of broker-dealers towards their client investors. Without discussion from the Commission, its latter Release No. 34-62718 has profoundly altered the landscape of the suitability requirements of broker-dealers performing services within the employee stock options stock-plan services subset of broker-dealers providing such services.

DISCUSSION:

Broker-dealers provide a variety of services to the investing public to whom they are responsible for providing advice under the general "Know Your Customer" rule which has been in place for some years. Customers must be deemed to be suitable to receive the services that are being provided by the broker-dealers. A unique industry subset of many of the larger broker-dealers are employee stock option plan services provided by groups within these firms. These services are designed to assist employees holding VESOs in their exercise of same, facilitating the purchase and possible sale of the employer stock underlying the VESO. In the great majority of the cases, VESO exercise is accompanied by same-day-sale of the underlying common stock, where such sale is then netted against the VESO exercise or purchase price, as well as various taxes then due, with any remainder being due to the VESO employee holder. Such services usually include some very

basic tax, regulatory and investment planning provided by the broker-dealer to the VESO holders that deal with the actual exercise of the VESO and the sale of the stock so acquired in what has come to be known as cashless option exercise transactions or COE, also known as same-day-sale transactions.

The specialty service provided by broker-dealers has become competitive within the top 5-8 broker-dealers resulting in stock transaction commissions that are low by industry standards. The understanding is that broker-dealers are providing such services in anticipation of serving further as investment advisers to the employees cashing in their VESOs. There then is a built-in bias on the part of broker-dealers for client stock-plan participant employees to exercise their VESOs and sell the stock so acquired.

CONCLUSION:

An issue has arisen since the June 19, 2009 issuance of Release No. 34-60126 that speaks directly to the discussion found in Release No. 34-62718 and the SEC's concern about the issue of a suitability standard for investors. By specific action of the Securities and Exchange Commission, the June 17, 2009 issuance of SEC Release No. 34-60126, the SEC has created a DEFAULT suitability requirement to be followed by broker-dealers in providing employee stock option plan services. At a minimum, broker-dealers must now:

- Apprise employee stock option plan participants of the availability of covered call sales versus their employer VESOs, and
- Further apprise such employee stock option plan participants that a conflict of interest may exist within the services provided by the broker-dealer who might otherwise benefit financially in promoting the sale of employer common stock via COE by employee stock option plan participants rather than benefit from the sale of covered calls versus the employee's VESO position.

I look forward to any questions that you might have on this issue.

Very truly yours,

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