Legal Outline

BROKER DEALER ETHICS

CODE OF CONDUCT

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I. Overview

A. Legal representation conflicts in the compliance environment

1. Lawyers have duty to:
   (a) Maintain client confidences.
   (b) Disclose conflicts of interest in dual representation.
2. Proposed Regulation 21F (Exchange Act Release No. 34-63237, File No. S7-33-10 – ("Whistleblower Rules") for implementing whistleblower provisions of The Dodd-Frank Wall Street Reform and Consumer Protection Act enacted on July 21, 2010 (Dodd Frank).
   (a) Defines whistleblower program terms.
   (b) Outlines procedures for applying awards (bounties?).
   (c) Describes Securities and Exchange Commission's (SEC and or Commission).
   (d) Explains program in plain English to public and potential whistleblowers.
3. Legal tension between historical role, representation and impact of Whistleblower provisions
   (a) Dual representation.
   (b) Confidentiality.
   (c) Proposed release recognizes that monetary incentives may reduce the effectiveness of corporate compliance programs and undermine and or frustrate compliance structures and systems.

B. Code of Conduct

1. Why?
   (a) Sets expectations for associated persons.
   (b) Sets expectations for clients.
   (c) Provides strengthened framework for supervision.
2. Challenges in drafting a Code of Conduct in the current climate.
   (a) Conflict with the traditional notions of legal privilege and the work product privilege.
   (b) Proposed whistleblower rules.
   (c) Affect on litigation and regulatory exam process

3. Drafting tips for a Code of Conduct.

II. ABA and State Bar Requirements for Reporting Rule Violations

A. ABA Model Rules of Professional Conduct

1. Rule 1.6 Confidentiality Of Information

   (a) A lawyer shall not reveal information relating to the representation of a client ***unless the client gives informed consent***, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted under the rules.

   (b) Generally, a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary to:

      (1) Prevent reasonably certain death or substantial bodily harm.

      (2) Prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services.

      (3) Prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.

      (4) Comply with other law or a court order.

2. Rule 1.7 Conflict Of Interest: Current Clients

   (a) Except as provided in the rules, a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

      (1) The representation of one client will be directly adverse to another client; or

      (2) There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

   (b) Notwithstanding the existence of a concurrent conflict of interest set out above, a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; the representation is not prohibited by law; the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and ***each affected client gives informed consent, confirmed in writing.***

3. Informed consent. The term denotes the agreement by a person to a proposed course of conduct after the ***lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.***

B. Texas Disciplinary Rules of Professional Conduct

1. Preamble

(a) A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice … A consequent obligation of lawyers is to maintain the highest standards of ethical conduct … In all professional functions, a lawyer should zealously pursue clients' interests within the bounds of the law.

(b) In the nature of law practice conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from apparent conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest. The Texas Disciplinary Rules of Professional Conduct prescribe terms for resolving such tensions. They do so by stating minimum standards of conduct below which no lawyer can fall without being subject to disciplinary action.

2. Rule 1.05 Confidentiality of Information

(a) When a lawyer has confidential information clearly establishing that a client is likely to commit a criminal or fraudulent act that is likely to result in substantial injury to the financial interests or property of another, the lawyer shall promptly make reasonable efforts under the circumstances to dissuade the client from committing the crime or fraud.

(b) Confidential information includes both privileged information and unprivileged client information. Generally, a lawyer shall not knowingly:

(1) Reveal confidential information of a client or a former client to anyone, other than the client, the client's

representatives, or the members, associates, or employees of the lawyer's law firm.

(2) Use confidential information of a client to the disadvantage of the client unless the client consents after consultation.

(3) Use confidential information of a former client to the disadvantage of the former client after the representation is concluded unless the former client consents after consultation or the confidential information has become generally known.

(c) A lawyer may reveal confidential information:

(1) When the lawyer has been expressly authorized to do so in order to carry out the representation.

(2) ***When the client consents after consultation.***

3. Rule 1.06 Conflict of Interest: General Rule

(a) A lawyer shall not represent opposing parties to the same litigation. In other situations, generally a lawyer shall not represent a person if the representation of that person involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm; or reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or laws firm's own interests.

(b) A lawyer may represent a client in the circumstances described above if the lawyer reasonably believes the representation of each client will not be materially affected; and each affected or potentially affected ***client consents to such representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.***

4. Consultation. For purposes of the Texas Rules, consultation denotes communication of information and advice reasonably sufficient to permit the client to appreciate the significance of the matter in question.

C. ABA Model Rules and the Texas Rules

Both the ABA and Texas rules address the required consent, but the Texas obligation to "communicate" information and advice reasonably ***sufficient to permit the client to appreciate the significance of the matter*** place Texas attorneys under a broader obligation that the ABA Rules to communicate all the

issues related to the matter to all parties. New reporting requirements and whistleblower statutes, discussed herein further complicate the confidentiality of information available to lawyers and other compliance professionals.

III. Requirements for Self-Reporting

A. Proposed Rules for Implementing the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934

1. The Dodd-Frank Wall Street Reform and Consumer Protection Act enacted on July 21, 2010 ("Dodd-Frank") established a whistleblower program that requires the SEC to pay an award to eligible whistleblowers who voluntarily provide the SEC with **original** information about a violation of the federal securities laws that leads to the successful enforcement of a covered judicial or administrative action, or a related action.

2. Whistleblower Status

   (a) A whistleblower is an individual who, alone or jointly with others, voluntarily provides the SEC with information related to a potential violation of federal securities law

      (1) Whistleblower or employer cannot have received any request from a governmental authority or SRO, either formally or informally.

      (2) Person cannot have a clear, pre-existing duty to report the potential violation of the type at issue, including a duty tied to a contractual obligation.

   (b) Entitled to remain anonymous, although they must be represented by an attorney and disclose their identity before collecting the reward.

   (c) Need not qualify for a reward to receive anti-retaliation protection under the Whistleblower Rules.

3. Original Information

   (a) A whistleblower must submit original information to the SEC in accordance with the program procedures to be eligible for award. Original information means that which is:

      (1) Derived from the whistleblower's independent knowledge and or analysis;

      (2) Not already known by the SEC, and or

      (3) Not exclusively derived from publicly available information, such as an allegation made in the news media

or governmental hearing, report or investigation, unless the whistleblower was the source of that information.

(b) An employee may be deemed to have provided original information to the SEC if it is reported to the SEC within 90 days after being reported to the respective company.

4. Original Information – Exclusions

(a) Information gained in a manner that violates criminal law.

(b) Information gained as a result of an attorney-client or independent accountant relationship.

(c) Information that is communicated to a person with legal, compliance, audit, supervisory or governmental responsibilities for an entity with the reasonable expectation that they would use it to cause the entity to respond to the alleged activity or violation (*providing the entity discloses the information to the Commission within a "reasonable time" or does not proceed in bad faith*).

(d) Information obtained from or through an entities legal, compliance, audit or similar functions or processes for identifying, reporting, and addressing potential non-compliance with applicable law (*providing the entity discloses the information to the Commission within a "reasonable time" or does not proceed in bad faith).*

(e) Additional exclusion of information related to persons subject to other exclusions, i.e. tainted evidence and the fruit of the poisonous tree.

5. Awards Available

(a) Whistleblower may be entitled to between 10 and 30 percent of the total monetary sanctions collected in successful enforcement action (or certain other actions) by the SEC.

(1) SEC must obtain monetary sanctions of more than $1,000,000.

(2) Related actions must be based on same information.

(3) Related actions must be brought by governmental agency of SRO.

(4) Includes coordination with the Commodities Futures Trading Commission whistleblower program.

(b) Award determined by the Commission. Statutory factors considered include:

(1) Significance of the original information to the success of the action.

(2) Degree of assistance provided by the whistleblower.

6. People who would not be eligible for whistleblower awards:

(a) People who have a pre-existing legal or contractual duty to report their information.

(b) Attorneys who attempt to use information obtained from client engagements to make whistleblower claims for themselves (unless disclosure of the information is permitted under the SEC rules or state bar rules).

(c) Independent public accountants who obtain information through an engagement required under the securities laws.

(d) Foreign government officials.

(a) People who learn about violations through a company's internal compliance program or who are in positions of responsibility for an entity and the information is reported to them in the expectation that they will take appropriate steps to respond to the violation.

7. Related Issues

(a) Frustration of internal compliance structures and systems.

(1) Negative impact on companies who allow for anonymous reporting of alleged violations.

(2) Undermine level of trust between associated persons at broker-dealers.

(3) What should be reported to the SEC to forestall whistleblower reports?

(4) Potential to look the other way until violation falls within minimum thresholds for awards.

(b) Anti-Retaliation Protection.

(1) Doesn't require credible first hand evidence to obtain anti-retaliation protection.

(2) Spurious claims and low quality reports qualify for protection.

(3) Appears that they use the program and then participate in private litigation against company

(c) With potential receipt by the SEC of more information, of higher quality, all of which might result in more enforcement actions, how much more should broker dealers enhance their compliance departments?

(d) Clean Hands. Under the proposed Whistleblower Rules, person who is not convicted, but who engaged in related wrongdoing or had direct or indirect responsibility for causing violation or for failing to avoid the violation is entitled to an award and to anti-retaliation protection.

8. SIFMA Comment Letter on Whistleblower Rule

(a) SIFMA submitted a comment letter to the Whistleblower Rules dated December 17, 2010. In that letter, SIFMA recommendations included:

(b) SEC require individuals to report violations internally first to be eligible for an award.

(1) The company should have a reasonable opportunity to investigate before the whistleblowers go to the SEC.

(2) That the SEC to deem ineligible for an award any individual who refuses to cooperate with the company's internal investigation, or who provides inaccurate or incomplete information or otherwise hinders such an investigation.

(3) That the proposed rules exclude from whistleblower eligibility legal staff, other control function staff, and supervisory staff.

(c) SIFMA also urged the SEC to include strong financial disincentives against individuals who violate company rules.

(1) Report misconduct internally; or

(2) Who have falsely certified that they are unaware of any misconduct.

B. FINRA Rule 4350 – Reporting Requirements

1. FINRA Rule 4350 (the "Rule") was introduced with the filing of SR-FINRA-2010-034, which has been approved by the SEC. This Rule becomes effective on July 1, 2011.

2. Self Reporting Requirements. The Rule requires each member to promptly report to FINRA within 30 days from the time a member knows or should have known of the existence of any of the following:

(a) The member or an associated person of the member:

(1) Has been found to have violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, self-regulatory organization or business or professional organization;

(2) Is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

(3) Is named as a defendant or respondent in any proceeding brought by a domestic or foreign regulatory body or self-regulatory organization alleging the violation of any provision of the Exchange Act, or of any other federal, state or foreign securities, insurance or commodities statute, or of any rule or regulation thereunder, or of any provision of the by-laws, rules or similar governing instruments of any securities, insurance or commodities domestic or foreign regulatory body or self-regulatory organization;

(4) Is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry domestic or foreign regulatory body or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

(5) Is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to commit any of these offenses, or substantially equivalent activity in a domestic, military or foreign court;

(6) Is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company that was suspended, expelled or had its registration denied or revoked by any domestic or foreign regulatory body, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution that was

convicted of or pleaded no contest to, any felony or misdemeanor in a domestic or foreign court;

(7) Is a defendant or respondent in any securities- or commodities-related civil litigation or arbitration, is a defendant or respondent in any financial-related insurance civil litigation or arbitration, or is the subject of any claim for damages by a customer, broker or dealer that relates to the provision of financial services or relates to a financial transaction, and such civil litigation, arbitration or claim for damages has been disposed of by judgment, award or settlement for an amount exceeding $15,000. However, when the member is the defendant or respondent or is the subject of any claim for damages by a customer, broker or dealer, then the reporting to FINRA shall be required only when such judgment, award or settlement is for an amount exceeding $25,000; or

(8) Is, or is involved in the sale of any financial instrument, the provision of any investment advice or the financing of any such activities with any person who is, subject to a "statutory disqualification" as that term is defined in the Exchange Act. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification; or

(9) An associated person of the member is the subject of any disciplinary action taken by the member involving suspension, termination, the withholding of compensation or of any other remuneration in excess of $2,500, the imposition of fines in excess of $2,500 or is otherwise disciplined in any manner that would have a significant limitation on the individual's activities on a temporary or permanent basis.

(b) *After the member has concluded or reasonably should have concluded that an associated person of the member or the member itself has violated any securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body or self-regulatory organization.*

(c) Each member shall report to FINRA statistical and summary information regarding written customer complaints in such detail as FINRA shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member.

(d) Nothing contained in this Rule shall eliminate, reduce or otherwise abrogate the responsibilities of a member or person associated with

a member to promptly disclose required information on the Forms BD, U4 or U5, as applicable, to make any other required filings or to respond to FINRA with respect to any customer complaint, examination or inquiry. In addition, members are required to comply with the reporting obligations under paragraphs (a), (b) and (d) of this Rule, regardless of whether the information is reported or disclosed pursuant to any other rule or requirement, including the requirements of the Forms BD or U4. However, a member need not report an event otherwise required to be reported under paragraphs (a) or (b) of this Rule if the member discloses the event on the Form U5, consistent with the requirements of that form.

(e) Each member shall promptly file with FINRA copies of:

(1) Any indictment, information or other criminal complaint or plea agreement for conduct reportable under paragraph (a)(1)(E) of this Rule;

(2) Any complaint in which a member is named as a defendant or respondent in any securities- or commodities-related private civil litigation, or is named as a defendant or respondent in any financial-related insurance private civil litigation;

(3) Any securities- or commodities-related arbitration claim, or financial-related insurance arbitration claim, filed against a member in any forum other than the FINRA Dispute Resolution forum;

(4) Any indictment, information or other criminal complaint, any plea agreement, or any private civil complaint or arbitration claim against a person associated with a member that is reportable under question 14 on Form U4, irrespective of any dollar thresholds Form U4 imposes for notification, unless, in the case of an arbitration claim, the claim has been filed in the FINRA Dispute Resolution forum.

3. Reporting of Firms' Conclusions of Violations.

(a) FINRA expects a member to report conduct that has widespread or potential widespread impact to the member, its customers or the markets, or conduct that arises from a material failure of the member's systems, policies or practices involving numerous customers, multiple errors or significant dollar amounts.

(b) FINRA expects a member to report conduct that has widespread or potential widespread impact to the member, its customers or the markets, conduct that has a significant monetary result with respect

to a member(s), customer(s) or market(s), or multiple instances of any violative conduct.

(c) Paragraph (b) of the Rule is limited to situations where the member has concluded or reasonably should have concluded on its own that violative conduct has occurred. Paragraph (a)(1)(A) of the Rule is limited to situations where there has been a finding of violative conduct by an external body, such as a court, domestic or foreign regulatory body, self-regulatory organization or business or professional organization.

4. "Found." The term "found" as used in paragraph (a)(1)(A) of the Rule includes among other formal findings, adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include informal agreements, deficiency letters, examination reports, memoranda of understanding, cautionary actions, admonishments and similar informal resolutions of matters. For example, a Letter of Acceptance, Waiver and Consent or an Offer of Settlement is considered an adverse final action. The term "found" also includes any formal finding, regardless of whether the finding will be appealed. The term "found" does not include a violation of a self-regulatory organization rule that has been designated as "minor" pursuant to a plan approved by the SEC, if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine.

5. Reporting of Individual and Related Events. With respect to a reportable event under paragraphs (a) or (b) of the Rule, members should not report the same event under more than one paragraph or subparagraph. Members should report the event under the most appropriate paragraph or subparagraph. However, members should be aware that they may be required to report related events under more than one paragraph or subparagraph. For instance, if a member is named as a respondent in a proceeding brought by a self-regulatory organization alleging the violation of the self-regulatory organization's rules, the member would be required to report that event under paragraph (a)(1)(C) of the Rule. In addition, if the member subsequently is found to have violated the self-regulatory organization's rules, the member would be required to report that finding under paragraph (a)(1)(A) of the Rule.

6. Different Materiality Standard for Assessing Internal Findings

(a) The Rule differs from the NYSE's previous materiality standard because under the new Rule, reporting is triggered if violations are "widespread" and "material." In contrast, NYSE Rule 351(a) requires reporting if violations are "systemic," "numerous," "multiple," or "significant." Further, the new Rule does not limit reporting regarding employee misconduct to "recidivist or ongoing violative conduct."

(b) The Rule uses an expansive standard to address FINRA's concern that the standard set out in NYSE IM 06-11 is too narrow.

7. Other differences between the legacy NASD and NYSE Reporting Rules and the new Rule. The new Rule is based primarily on NASD Rule 3070, but incorporates concepts from NYSE Rule 351, and it introduces new reporting obligations as well. The major changes include:

(a) Introduction of a requirement for all members to report internal conclusions of violations pursuant to Rule 4530(b), a requirement which previously only applied to NYSE members subject to NYSE Rule 351.

(b) Limitation on reporting findings of external violations to violations of "securities-, insurance-, commodities-, financial- or investment-related laws, rules, regulations or standards of conduct of any domestic or foreign regulatory body, self-regulatory organization or business or professional organization," rather than the current requirement in 3070(a) to report findings of violations of "any provision of any securities laws or regulations or any rule or standards of conduct of any governmental agency, self-regulatory organization, or financial business or professional organization") (emphasis added).

(c) Adoption of the 30-day reporting period currently set forth in NYSE Rule 351(b), which represents an extension of the existing 10-day reporting period under NASD Rule 3070(b).

8. The Rule raises some interesting questions and issues for broker-dealers:

(a) For certain types of conduct, the new rule 4530 makes obligatory what previously had been voluntary. Will FINRA’s member firms still be able to receive credit, in terms of sanctions, for having reported violations prior to detection by any SRO?

(b) Regulatory Notice 08-07, FINRA provided guidance to member firms concerning the circumstances in which extraordinary cooperation by a firm or individual may directly influence the outcome of an investigation. In RN 08-07, FINRA characterized the types of extraordinary cooperation by a firm or individual that could result in credit as follows:

(1) Self-reporting before regulators are aware of the issue.

(2) Extraordinary steps to correct deficient procedures and systems.

(3) Extraordinary remediation to customers

(4) Providing substantial assistance to FINRA’s investigation.

(c) How will firm's decide what conduct to report, and which person will have the responsibility to report such conduct?

(1) According to RN 11-06, not every instance of noncompliant conduct needs to be reported but only such violative conduct that has widespread or potential widespread impact to the firm (underline added), its customers or the markets, or conduct that arises from a material failure of the firm's systems, policies or practices involving numerous customers, multiple errors or significant dollar amounts. Regarding violative conduct by an associated person, the new rule requires a firm to report only conduct that has widespread or potential widespread impact to the firm, its customers or the markets; conduct that has a significant monetary result on a member firm(s), customer(s) or market(s); or multiple instances of any violative conduct.

(2) The new rule could ostensibly require the reporting of very minor violative conduct, assuming that such conduct could potentially, over time, have a widespread impact on the member firm. Firms will need to have procedures which address escalation and threshold concepts. For example, An isolated instance of misconduct could be only the surface of a much larger problem. Compliance departments will have to be very diligent in identifying the entire scope of a problem before they decide to close an internal investigation. With this in mind:

(a) Selling away case, should a firm limit its investigation to only those customers who filed complaints, or should it contact all of the broker's customers to determine whether any other customers purchased investments away from the firm based on a recommendation from the broker.

(b) The conduct need not materialize for it to have "potential" widespread impact on a firm.

IV. Code of Conduct and Utilization in Evolving Regulatory Environment

A. Overview

1. A Code of Conduct for a broker-dealer is effective only where there is a strong compliance culture, and where there are other tools to help everyone understand the company's policies and procedures.

2. The Code of Conduct for a broker-dealer should be viewed as the further documentation and evolution of a firm's culture of compliance. As such, it should an evolving document that is meant to address not only the issues related to self-reporting, but also the creation of environment where both

clients and associated persons are provided a clear vision of the expectation of the company regarding the activities of its employees and or associated persons. To this end, it should

(a) Provide a framework for distributing information about the ethical principles, rules and regulations which govern the company and its employees.

(b) Provide an overview of the expectations the Company has for all of its employees.

(c) Provide explanations and or examples of the actions and issues that everyone should be aware of when carrying out their business activities.

(d) Be a resource for guiding the actions of employees and answering employees' questions.

B. General Observation

1. The Code of Conduct as a standalone document is not currently required. However, the Code of Conduct is analogous to Code of Ethics for registered investment advisors. Originally included in the written procedures of an adviser, based on statutory requirements it evolved into its own document.

2. The Code of Conduct is a compilation of policy and procedures that affect employees and associated persons, and as such that is the target market.

(a) The evolution to the utilization of a Code of Conduct will require revisions to the broker-dealers written supervisory procedures and prohibited acts.

(b) Should not have duplicate sections in Code of Conduct and the firm's written supervisory procedures.

(1) Increases the potential for conflicts between procedures and Code of Conduct.

(2) Increases resources to keep duplicate sections current.

C. Suggested Topics to include in a Code of Conduct

1. Description of:

(a) What the Code of Conduct is meant to achieve.

(b) How to use the Code of Conduct.

2. Issues currently addressed in Written Supervisory Procedures:

(a) Outside Employment.

(1) State general policy; list exceptions.

(2) Outside directorships - are usually prohibited unless prior approval has been obtained.

(b) Accepting or Offering Items of Value.

(1) Gifts and gratuities.

(2) MSRB – Pay to Play.

(3) Political Contributions.

(c) Personal Trading

(1) Statement of company policy.

(2) Representation of compliance with company procedures and annual certification.

(d) Conviction of Criminal Activities - emphasize right of company to suspend or dismiss employee following conviction for certain criminal activities.

(e) Confidentiality

(1) Address company and client information.

(2) Prevention of Identity Theft.

(f) Insider Information

(1) Define.

(2) Spell out obligation to maintain confidentiality until the information has been disclosed to the public.

3. Addressing ethical and new regulatory issues:

(a) Illegal or harmful activities (integrate new whistleblower rules).

(1) Emphasize duty to report; encourage reporting up in all circumstances.

(2) Provide a means for anonymous reporting.

(3) Emphasize that there will be no retaliation for good faith reporting of illegal or harmful activities.

(b) Dishonesty

(1) Emphasize company's expectation that all employees will do their jobs with honesty and integrity.

(2) Discuss penalties.

(c) Theft

(1) Define theft to include misappropriation of property, financial assets or information.

(2) Emphasize that all theft will be reported to appropriate regulatory agencies and law enforcement.

(d) Lobbying Activities

(1) Discuss the fact that some activities might require them or the Company to register as a lobbyist.

(2) Emphasize risks and complexities.

4. Ethical Concerns - set out the ways in which the employee can get assistance with ethical issues or report concerns. Highlight this area and give employee clear direction.

5. Issues related to employee activities and expectations:

(a) Conflicts of Interest.

(1) Emphasize need to avoid even the appearance of a conflict of interest.

(2) Emphasize consultation with others if conflict is suspected.

(b) Business Relationships

(1) Relationships must be based purely on business considerations, not on the personal interests of Company employees.

(2) Possibly give examples of business relationships that may cause a conflict of interest.

(c) Corporate Opportunity - employees may not derive personal gain from a business opportunity that comes to their attention as a result of their employment, unless certain conditions are met. Set out conditions.

(d) Civic/Political Activities - usual policy is to encourage employees to express their own opinions but to forbid them from using company logos or making representations that may be attributed to the Company.

(e) Investing in a Customer's Business - what is permissible and what is not.

(f) Acting as a Fiduciary.

(1) Explain the obligations of a fiduciary.

(2) Give examples of acceptable fiduciary relationships (family members, etc.).

(g) Accuracy/completeness of company records – set out expectations reading same.

6. Human Resource Issues:

(a) Commitment to a Safe and Harmonious Working Environment.

(b) Purchasing company-owned property - determine and state your company's policy.

(c) Personal conduct - discuss diversity, respect for others, and intolerance of discrimination.

(d) Personal Financial Responsibility.

(e) Drug/Alcohol Abuse.

D. See Model Code of Ethics/Conduct

V. Litigation and Investigations – Pros and Cons Your Code of Conduct

A. Pro

1. The company may use the Code of Conduct to evidence its environment of compliance

2. The company may use the Code of Conduct to show that an employee was acting outside the scope of his employment or in violation of company rules.

B. Con

1. The Code of Conduct may be used by regulators and opponents in litigation to argue that company did not enforce the standards of conduct by its employees.

2. The Code of Conduct may be used by opponents in litigation to argue that employees did not comply with acceptable standards of conduct.

3. Increased commitment to training is essential for effective role out of platform. Employees must review and understand the Code of Conduct. Otherwise in connection with any litigation or investigation, their inability to explain the impact of the Code of Conduct on their activities will be used against the company.