



The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the Commonwealth

August 4, 2011

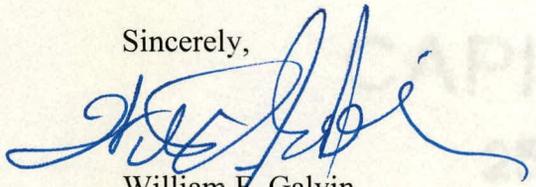
Bryan J. Lantagne, Director
Massachusetts Securities Division
Office of the Secretary of the Commonwealth
One Ashburton Place, Room 1701
Boston, MA 02108

Re: Approval of Filing of Regulations under M.G.L. c.110A, the Massachusetts Uniform Securities Act – Amendments to 950 CMR 12.200 and 950 CMR 14.400

Dear Mr. Lantagne:

Pursuant to Massachusetts General Laws, Chapter 110A, Section 412 and Chapter 950 of the Code of Massachusetts Regulations ("CMR"), Section 14.406, I hereby approve the filing of the attached amendments to 950 CMR 12.200 and 950 14.400 as being necessary and appropriate in the public interest and for the protection of investors in the Commonwealth of Massachusetts, and to carry out the statutory policy of Chapter 110A.

Sincerely,


William F. Galvin
Secretary of the Commonwealth

Enclosure

**LANGUAGE OF AMENDED REGULATIONS
OF THE MASSACHUSETTS SECURITIES DIVISION
August 4, 2011**

I. Investment Advisers Using Matching or Expert Network Services – Dishonest or Unethical Conduct in the Securities Business

Add the following new subsection (16) to 950 CMR 12.205(9)(c) (non-exclusive list of practices by an investment adviser which shall be deemed “dishonest or unethical conduct or practices in the securities business”):

16. a. To retain Investment Consulting Services, for compensation that is provided either directly to the consultant or indirectly through a Matching or Expert Network Service, unless the investment adviser obtains a written certification that:
 - (i) describes all confidentiality restrictions relevant to the potential consultation which the consultant has, or reasonably expects to have;
 - (ii) affirmatively states that the consultant will not provide any Confidential Information to the investment adviser; and
 - (iii) is signed and dated by the consultant, and is accurate as of the date of the initial, and any subsequent, consultation(s).
- b. Notwithstanding section (a), an investment adviser who comes into possession of material Confidential Information through a consultation is precluded from trading any relevant security until such time as the Confidential Information is made public.
- c. Definitions. For purposes of this section:
 - (i) “Confidential Information” means any non-public information, which one is bound by a confidentiality agreement or fiduciary (or similar) duty not to disclose.
 - (ii) “Matching or Expert Network Service” means a firm that for compensation matches consultants with investment advisers.
 - (iii) “Investment Consulting Services” means a consultation for the purposes of assisting the investment adviser’s decision as to whether to buy, sell, or abstain from buying or selling, positions in client accounts.

950 CMR 12.205(9)(c)16. shall become effective December 1, 2011.

II. Update References from the NASD to FINRA

In 950 CMR 12.202(1)(a)(1), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.202(1)(a)(2), delete “NASD,” “an NASD” and “the NASD” and replace with “a FINRA” and “FINRA.”

In 950 CMR 12.202(1)(a)(2)(c), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.202(1)(b)(1), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.202(1)(c), delete “the NASD” and replace with “FINRA.”

In the heading of 950 CMR 12.202(2)(a), delete “Non-NASD” and replace with “Non-FINRA.”

In 950 CMR 12.202(2)(a)(1), delete “non-NASD” and replace with “non-FINRA.”

In the heading of 950 CMR 12.202(2)(b), delete “NASD” and replace with “FINRA.”

In 950 CMR 12.202(2)(b)(1), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.202(2)(b)(3)(a), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.202(5)(a), delete “non-NASD” and replace with “non-FINRA.”

In 950 CMR 12.202(5)(b), delete “NASD” and “the NASD” and replace with “FINRA.”

In 950 CMR 12.202(6)(a), delete “non-NASD” and replace with “non-FINRA.”

In 950 CMR 12.202(6)(b), delete “NASD” and replace with “FINRA.”

In 950 CMR 12.202(8)(b), delete “NASD” and replace with “FINRA.”

In 950 CMR 12.202(9), delete “An NASD” and “NASD” and replace with “A FINRA” and “FINRA.”

In 950 CMR 12.203(3)(a), delete “the NASD’s Rules of Fair Practice” and replace with “FINRA member conduct rules.”

In 950 CMR 12.203(3)(b), delete “an NASD” and “the NASD” and replace with “a FINRA” and “FINRA.”

In 950 CMR 12.204(1)(a)(28), delete “NASD Rules of Fair Practice” and replace with “FINRA member conduct rules.”

In 950 CMR 12.204(3)(a), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.205(2)(a)(1), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.205(2)(b)(1), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.205(2)(c)(1), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.205(4)(a)(2), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.205(4)(a)(2)(i), delete “the NASD” and replace with “FINRA.”

In 950 CMR 12.205(8)(e)(3)(b), delete “the NASD” and replace with “FINRA.”

In 950 CMR 14.401, delete “NASD means the National Association of Securities Dealers, Inc.” and replace with “FINRA means the Financial Industry Regulatory Authority, Inc.”

In 950 CMR 14.412(A)(2), delete “the NASD” and replace with “FINRA.”

III. Update References to Forms U-4 and U-5 and to Sections of Form U-4

In 950 CMR 12.202(2)(a)2.a, delete “Question 23” and replace with “Disclosure Questions in Section 14.”

In 950 CMR 12.202(2)(b)3.a.iv, delete “Question 23” and replace with “Disclosure Questions in Section 14.”

In 950 CMR 12.202(3)(a)1., delete “Form U-4I” and replace with “Form U-4.”

In 950 CMR 12.202(6)(a), Delete “Form U-4 or U-4(I), respectively, with the Division” and replace with “Form U-4 with the Division.”

In 950 CMR 12.202(9), delete “Question 23” and replace with “Disclosure Questions in Section 14.”

In 950 CMR 12.203(5)(a)12, delete “Item 23” and replace with “Disclosure Questions in Section 14.”

In 950 CMR 14.412(A)(1)(f), delete “Form U-4(i)” and replace with “Form U-4.”

In 950 CMR 14.412(A)(1)(h), delete “Form U-5(i)” and replace with “Form U-5.”

IV. Update Fees to Match Sec. 178 of c.184 of Acts of 2002

In 950 CMR 12.202(1)(a)1.d., delete “\$300” and replace with “\$450”; delete “\$50” and replace with “\$75.”

V. Stock Exchanges

Delete the current section 950 CMR 12.201(3) (relating to inactive broker-dealer status of Boston Stock Exchange members), and replace it with "Reserved."

In 950 CMR 12.204(2)(f), delete "NASDAQ National Market System" and replace with "NASDAQ Global Market."

In 950 CMR 14.402(A)(8), delete "Philadelphia Stock Exchange" and replace with "NASDAQ OMX PHLX."

In 950 CMR 14.402(A)(8), delete ", and listing on the Pacific Coast Stock Exchange shall mean listing on the Pacific Exchange".

Add the following new sentence at the end of 950 CMR 14.402(A)(8) (to indicate that the NASDAQ OMX BX Venture Market is not an exchange for the purposes of Section 402(a)(8) of M.G.L. c.110A):

"The exemption provided under Section 402(a)(8) of M.G.L. c.110A is not available with respect to any security listed on the NASDAQ OMX BX Venture Market."

In 950 CMR 14.402(B)(13)(b)(2), delete "NASD Automated Quotation System" and replace with "NASDAQ Global Market."

Delete the current language of 950 CMR 14.402(B)(13)(h) and replace with:

"(h) **NASDAQ Global Market.** An offer or sale of a security designated or approved for designation upon notice of issuance on the NASDAQ Global Market, or any other security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so designated or approved, or any warrant or right to purchase or subscribe to any of the foregoing.

VI. Technical Correction to Fee Charts for Securities Exemptions and Notice Filings

a) Delete the following fee chart from 950 CMR 14.402(B)(9)(g)(10):

<u>Total Amount of Offering</u>	<u>Filing Fee</u>
0-\$500,000	\$150
\$500,001-\$2,000,000	\$250
\$2,000,001-\$7,500,000	\$500
\$7,500,001-plus	\$750

And replace it with this fee chart:

<u>Total Amount of Offering</u>	<u>Filing Fee</u>
\$0 to \$500,000	\$150

Over \$500,000 - \$2,000,000	\$250
Over \$2,000,000 - \$7,500,000	\$500
Over \$7,500,000	\$750

b) Delete the following fee chart form 950 CMR 14.402(B)(13)(i)(3)(d):

<u>Total Amount of Offering</u>	<u>Filing Fee</u>
0 - \$2,000,000	\$250
2,000,001 - 7,500,000	\$500
7,500,001 - plus	\$750

And replace it with this fee chart:

<u>Total Amount of Offering</u>	<u>Filing Fee</u>
\$0 to \$2,000,000	\$250
Over \$2,000,000 - \$7,500,000	\$500
Over \$7,500,000	\$750

c) Delete the following fee chart from 950 CMR 14.402(B)(13)(l)(3):

<u>Total Amount of Offering</u>	<u>Filing Fee</u>
0 - \$2,000,000	\$250
\$2,000,001 - \$7,500,000	\$500
\$7,500,001 - or more	\$750

And replace it with this fee chart:

<u>Total Amount of Offering</u>	<u>Filing Fee</u>
\$0 to \$2,000,000	\$250
Over \$2,000,000 - \$7,500,000	\$500
Over \$7,500,000	\$750

VI. Performance Based Fee

Add the following new subsection (17) to 950 CMR 12.205(9)(c) (non-exclusive list of practices by an investment adviser which shall be deemed "dishonest or unethical conduct or practices in the securities business"):

17. Receiving any compensation on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of a client unless such compensation is received in compliance with Rule 205-3 under the Investment Advisers Act of 1940 (17 CFR 275.205-3).