

Adopted. September 13, 2001, effective February 4, 2002 (99-25).

### **Rule 408. Discretionary Power in Customers' Accounts**

(a) No member or employee of a member organization shall exercise any discretionary power in any customer's account or accept orders for an account from a person other than the customer without first obtaining written authorization of the customer, the signature of the person or persons authorized to exercise discretion in the account (and of any substitute so authorized), and the date such discretionary authority was granted.

(b) No member or employee of a member organization shall exercise any discretionary power in any customer's account, without first notifying and obtaining the approval of another person delegated under Rule 342(b)(1) with authority to approve the handling of such accounts. Every order entered on a discretionary basis by a member, allied member or employee of a member organization must be identified as discretionary on the order at the time of entry. Such discretionary accounts shall receive frequent appropriate supervisory review by a person delegated such responsibility under Rule 342(b)(1), who is not exercising the discretionary authority. A written statement of the supervisory procedures governing such accounts must be maintained.

(c) No member or employee of a member organization exercising discretionary power in any customer's account shall (and no member organization shall permit any member or employee thereof exercising discretionary power in any customer's account to) effect purchases or sales of securities which are excessive in size or frequency in view of the financial resources of such customer.

(d) The provisions of this rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed. The authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written, contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account pursuant to valid Good-Till-Cancelled instructions issued on a "not-held" basis. Any exercise of time and price discretion must be reflected on the order ticket.

••• Supplementary Material: -----

.10 All discretionary orders in listed index warrants must be approved and initialed on the day entered by a Senior Registered Options Principal or Registered Options Principal.

.11 For purposes of this rule, an "institutional account" shall mean the account of (i) a bank (as defined in Section 3(a)(6) of the Securities Exchange Act of 1934), (ii) a savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, (iii) an insurance company (as defined in Section 2(a)(17) of the Investment Company Act of 1940), (iv) an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, (v) a state or a political subdivision thereof, (vi) a pension or profit sharing plan, subject to ERISA, with more than \$25,000,000 total assets under management, or of an agency of the United States or of a political subdivision thereof, (vii) any person that has a net worth of at least forty-five million dollars and financial assets of at least forty million dollars, or (viii) an investment adviser registered under Section 203 of the Investment Advisers Act of 1940.

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Amendments. December 19, 1968. April 3, 1975. June 26, 1990. June 17, 2004 (Effective December 17, 2004) (SR-NYSE-2002-36); September 15, 2008 (NYSE-2008-80).