

Regulatory Notice

08-47

Customer Complaint Reporting

Changes to Customer Complaint Reporting Procedures under NASD Rule 3070(c) and NYSE Rule 351(d)

Effective Date: October 1, 2008

Executive Summary

NASD Rule 3070(c) and Incorporated NYSE Rule 351(d) require all member firms to report on a quarterly basis statistical information regarding customer complaints.¹ Firms must file this information by the 15th calendar day of the month following the end of each quarter (e.g., by April 15 for the first quarter). The information reported by member firms provides FINRA with an important regulatory tool that assists us with the timely identification of potential sales practice and operational issues.

The following changes to the customer complaint reporting procedures under NASD Rule 3070(c) and NYSE Rule 351(d) will become effective on October 1, 2008, and therefore must be reflected in the fourth quarter 2008 customer complaint filing (due January 15, 2009).

Questions concerning this *Notice* should be directed to Dave Troutner, Deputy Director, Central Review Group, Member Regulation, at (240) 386-6404.

September 2008

Notice Type

- Guidance

Suggested Routing

- Chief Compliance Officer
- Legal and Compliance
- Operations
- Senior Management

Key Topic(s)

- Customer Complaint Reporting Code Changes

Referenced Rules & Notices

- NASD Rule 3070(c)
- NYSE Rule 351(d)



Financial Industry Regulatory Authority

Background and Discussion

FINRA is revising the problem and product codes used to report statistical information regarding customer complaints to better categorize complaints reported to FINRA. A significant number of complaints relating to the new and revised descriptions below had previously been reported under the miscellaneous codes for operational and sales practice complaints. These revisions and additions will better enable FINRA to identify potential sales practice and operational issues.

New Problem and Product Codes and Descriptions

Operational Problem Codes and Descriptions

Due to the increased number of complaints reported in the “Account Administration and Processing” problem category (Code #61), FINRA conducted a detailed review of the issues underlying these complaints. Based on this review, we divided the “Account Administration and Processing” category into three sub-categories, each with its own code number. The two new code categories are:

- **Account Administration and Processing — Account Opening — Code #65**
Allegations concerning problems establishing a new account (*e.g.*, delays in opening account, and issues with account type and documentation).
- **Account Administration and Processing — Account Maintenance — Code #66**
Allegations concerning non-transaction-related problems with existing accounts (*e.g.* address changes, investment objective changes, title changes and account closing issues).

We changed the title of Code #61 to more clearly distinguish it from Code #65 and Code #66. Its substance remains the same but for the substitution of the word “inaccurate” for the word “erroneous”:

- **Account Administration and Processing — Daily Activities — Code #61**
Allegations concerning daily activity in client accounts (*e.g.*, trade correction, journal entries, un-invested credit balances, and inaccurate or missing positions in an account).

The word “erroneous” has been changed to “inaccurate” to clarify the types of complaints that should be categorized as Account Administration and Processing — Daily Activities versus complaints involving errors which may need to be coded as sales practice.

In addition, we established a new “online” code to capture complaints relating to access and functionality of a firm’s online system. Since the current “Online Trading” problem category (Code #62) is primarily intended to capture execution-related complaints associated with online accounts (including non-execution, price discrepancy, delays in execution and delays in trade confirmation), firms have reported general complaints about online access and functionality in the “Miscellaneous” Non-Sales Practice problem category (Code #99). To capture these complaints more accurately, we added a new Non-Sales Practice problem category, “Online Issues”:

► **Online Issues – Code #67**

Allegations concerning access and functionality of a firm’s online system (connectivity and navigation).

We are retaining the “Online Trading” category (Code #62), which member firms should continue to use to report complaints primarily involving execution-related issues associated with online accounts.

Sales Practice Problem Code and Description

To reduce the number of complaints reported in the “Miscellaneous” Sales Practice category (#00), we added a new category titled “Poor Recommendation/Poor Advice” (Code #12):

► **Poor Recommendation/Poor Advice – Code #12**

Allegations that a recommendation to purchase, sell or exchange a security constituted poor advice.

Firms should continue to use the “Poor Performance” category (Code #23) for customer complaints about poor account performance that do not allege any sales practice violations against the registered person or attribute damages to a research analyst recommendation (not otherwise reportable under Problem Codes #20 (Research), #21 (Product Origination/Investment Banking), or #22 (Trading)).

Operational and Sales Practice Product Code and Description

We added a new product code to classify complaints relating to Structured Products:

► **Structured Products – Code #42**

Structured Products, which are defined as investment instruments designed to facilitate a particular risk-return objective, the performance of which is based on one or more referenced asset, index, interest rate, or other market measure. Some structured products offer full protection of the principal invested, whereas others offer limited or no protection of the principal. Structured Products may be listed on a securities exchange or traded in the over-the-counter market.

Endnotes

- 1 FINRA has incorporated into its rulebook certain rules of the NYSE, including NYSE Rule 351. The Incorporated NYSE rules apply solely to those members of FINRA that are also members of NYSE (“Dual Members”). In applying the Incorporated NYSE rules to Dual Members, FINRA also has incorporated the related interpretive positions set forth in the NYSE Rule Interpretations Handbook and NYSE Information Memos.