

# Information Notice

## Rulebook Consolidation Process

### Continuing Application of NASD Rules and Incorporated NYSE Rules

#### Executive Summary

Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA established a process to develop a new consolidated rulebook (Consolidated FINRA Rulebook), which FINRA has discussed in previous *Information Notices*.<sup>1</sup> FINRA recently announced that the first phase of new consolidated FINRA Rules,<sup>2</sup> approved by the SEC in August and September 2008, will take effect on December 15, 2008.<sup>3</sup>

FINRA is issuing this *Notice* to remind member firms of their compliance obligations with respect to NASD and Incorporated NYSE Rules (together, referred to as the Transitional Rulebook) for so long as such rules are in effect, irrespective of whether the rules' requirements are changed or eliminated at a future date. Conduct that was subject to any rule in the Transitional Rulebook at the time such rule was in effect remains subject to that rule for the purpose of regulatory examinations and disciplinary/enforcement proceedings.

Questions regarding this *Notice* should be directed to Patrice Gliniecki, Deputy General Counsel, Office of General Counsel (OGC), at (202) 728-8071; or Adam H. Arkel, Assistant General Counsel, OGC, at (202) 728-6961.

#### Discussion

As the Consolidated FINRA Rulebook expands with SEC approval and with the new FINRA Rules taking effect, the rules in the Transitional Rulebook that address the same subject matter of regulation will be eliminated.<sup>4</sup>

December 8, 2008

#### Suggested Routing

- Compliance
- Legal
- Senior Management

#### Key Topic(s)

- Disciplinary/Enforcement Proceedings
- Examinations
- FINRA Manual
- Rulebook Consolidation
- Transitional Rulebook

#### Referenced Rules & Notices

- Information Notice 03/12/08 (*Rulebook Consolidation Process*)
- Information Notice 10/06/08 (*Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart*)
- Regulatory Notice 08-57 (*October 2008*) (*SEC Approves New Consolidated FINRA Rules*)

Member firms remain subject to the rules remaining in the Transitional Rulebook until such rules are eliminated. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

FINRA will examine member firms for compliance with the rules in effect at the time conduct occurred, irrespective of whether the requirements of the rule that pertain to the matter being examined shall have changed or been eliminated. Consequently, conduct that was subject to any rule in the Transitional Rulebook at the time such rule was in effect remains subject to the rule for the purpose of regulatory examinations and disciplinary/enforcement proceedings. If a disciplinary/enforcement proceeding is deemed warranted in connection with any examination, then the rule in effect at the time of the conduct at issue will be the basis for such proceedings. It is not a defense, nor is it a mitigating factor, that a rule has been changed or eliminated after the date of the violative conduct. This principle is based on the policy reason that the public benefits by regulated entities adhering to the letter of regulations in effect at any given time. The scheme of regulation, intended to protect the interests of investors and to maintain fair and orderly markets, is compromised when regulated entities manage their affairs in anticipation that a regulation may be changed in the future.

## Endnotes

- 1 See *Information Notice 10/06/08 (Effective Dates of New Consolidated Rules; Introduction of Rule Conversion Chart)*; see also *Information Notice 03/12/08 (Rulebook Consolidation Process)*.
- 2 The current FINRA rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (Incorporated NYSE Rules). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those member firms of FINRA that are also member firms of the NYSE (Dual Members). The new FINRA Rules will apply to all member firms, unless such rules have a more limited application by their terms.
- 3 See *Regulatory Notice 08-57 (October 2008) (SEC Approves New Consolidated FINRA Rules)*.
- 4 The SEC must approve both the adoption of the new FINRA Rules and the elimination of any NASD and/or Incorporated Rules that relate to the same subject matter of regulation or that are otherwise being eliminated from the Transitional Rulebook.

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