

## Information and Data Reporting and Filing Requirements

### FINRA Requests Comment on Proposed Consolidated FINRA Rule Governing Information and Data Reporting and Filing Requirements

Comment Period Expires: February 20, 2009

#### Executive Summary

As part of the process of developing a new Consolidated FINRA Rulebook,<sup>1</sup> FINRA is requesting comment on proposed new FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements). The proposed rule:

1. establishes a new information reporting requirement;
2. requires member firms to report additional applicable contact information; and
3. consolidates, streamlines and modifies into one rule several separate reporting and filing requirements in the NASD and Incorporated NYSE Rules.

The proposed rule also supports FINRA's efforts to consolidate several existing electronic reporting platforms into a single electronic platform that all firms will use to report required information.

The text of the proposed rule is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

- Patricia Albrecht, Assistant General Counsel, Office of General Counsel (OGC), at (202) 728-8026; or
- Ann-Marie Mason, Counsel, Member Regulation, Sales Practice Policy, at (202) 728-8231.

#### January 2009

##### Notice Type

- Request for Comment
- Consolidated FINRA Rulebook

##### Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management
- Systems

##### Key Topic(s)

- Annual Form
- Contact Information
- Filing Requirements
- Reporting Requirements

##### Referenced Rules & Notices

- NASD IM-3011-2
- NASD-IM-3150-1
- NASD Rule 1120
- NASD Rule 1150
- NASD Rule 1160
- NASD Rule 3150
- NASD Rule 3170
- NASD Rule 3520
- NYSE Rule 416A
- Notice 08-57

## Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by February 20, 2009.

Member firms and other interested parties can submit their comments using the following methods:

- Emailing comments to *pubcom@finra.org*; or
- Mailing comments in hard copy to:

Marcia E. Asquith  
Office of the Corporate Secretary  
FINRA  
1735 K Street, NW  
Washington, DC 20006-1506

To help FINRA process and review comments more efficiently, persons should use only one method to comment on the proposal.

**Important Notes:** The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA Web site. Generally, FINRA will post comments on its site one week after the end of the comment period.<sup>2</sup>

Before becoming effective, a proposed rule change must be authorized for filing with the SEC by the FINRA Board of Governors, and then must be approved by the SEC, following publication for public comment in the *Federal Register*.<sup>3</sup>

## Background & Discussion

### A. Background

Currently, Dual Members and FINRA-only firms report and file information using different forms via separate electronic platforms. As part of the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA is creating a single electronic platform that will replace the existing electronic platforms. FINRA is also developing a standard form (Annual Form) to collect certain critical business information, such as number of accounts and total assets under management based on the type of customer involved and service being provided. Additionally, firms will be asked to verify whether they engage in certain business activities that are not enumerated on Form BD (*e.g.*, hedge fund management, prime brokerage). This information will enable FINRA to identify different firm types and business models (*e.g.*, institutional versus retail and full-service versus discount).

To the extent a firm clears for itself or others, it will also be asked to provide certain information pertaining to its clearing operations which will assist FINRA in, among other things, its examination and surveillance efforts. FINRA will also collect additional categories of contact persons beyond those currently required by specific regulatory rules. These contacts (*e.g.*, Chief Technology Officer and General Counsel, in cases where member firms maintain such positions) will better enable FINRA to quickly communicate critical information to key firm personnel responsible for specific business areas. Such capability would be particularly useful in time-sensitive or emergency situations.

## **B. Proposed FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements)**

FINRA is proposing new FINRA Rule 4540 (Member Information and Data Reporting and Filing Requirements) to, among other things:

1. establish the Annual Form reporting requirement;
2. require the reporting of additional applicable contact information; and
3. consolidate, streamline and modify certain NASD and Incorporated NYSE Rules governing reporting requirements.

### **1. Proposed FINRA Rule 4540(a)(1): Annual Form Reporting Requirements and Additional Contact Information**

Proposed FINRA Rule 4540(a)(1) requires each firm to report, update and review, in such format, time frame and manner as FINRA may require, all specified data or information. The proposed rule text is intentionally broad to provide FINRA the necessary flexibility to specify the data and information elements of the Annual Form. Firms will report the Annual Form data and information, review and, if necessary, update such data and information on an annual basis. FINRA intends to provide firms with advance notice through a *Regulatory Notice* (or similar guidance) of the Annual Form reporting requirement and of any future changes to the required data and information elements.

Also pursuant to this proposed provision, firms would report and update all applicable contact person information that is not currently required by a regulatory rule. For instance, a firm would be required to report its Chief Technology Officer and/or General Counsel if the firm has such positions. The proposed rule does not require a firm to create new positions for which it must then provide contact information.

Proposed FINRA Rule 4540(a)(1) also allows FINRA the flexibility to require member firms to report additional specified data and information, as necessary.<sup>4</sup> Barring exigent circumstances, FINRA generally will consult with firms regarding additional data and information required under the rule and will allow for a reasonable period of time for any necessary technology coding or reporting changes that firms may need to make to comply with the rule.

## **2. Proposed FINRA Rule 4540(a)(2): Mandatory Filing Requirements**

Proposed FINRA Rule 4540(a)(2) replaces nearly identical NASD Rule 3170 (Mandatory Electronic Filing Requirements), which requires each firm to file with (or otherwise submit to) FINRA, in such electronic format as FINRA may require, all regulatory notices or other documents required to be filed (or otherwise submitted) to FINRA, as specified by FINRA. Proposed FINRA Rule 4540(a)(2), however, permits FINRA to specify both the format and manner of the filing or submission and does not limit the format only to an electronic format. These changes will provide FINRA with the flexibility needed to use a variety of filing and submission tools, as well as electronic ones. FINRA will continue to let firms know which regulatory notice or document that firms are required to file with or submit to FINRA, the compliance date for these electronic filings or submissions and the requisite manner and format.

## **3. Proposed FINRA Rule 4540(a)(3): Contact Information Reporting Requirements**

Proposed FINRA Rule 4540(a)(3) replaces NASD Rule 1160 (Contact Information Requirements). Currently, NASD Rule 1160 supports firms' compliance with NASD Rules 1120 (Continuing Education Requirements), 1150 (Executive Representative), IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information) and 3520 (Emergency Contact Information), which all require firms to provide FINRA with designated contact person information.<sup>5</sup> The proposed rule provision requires each firm to report to FINRA this and any additional contact information applicable to the firm, via the Firm Gateway or such other means as FINRA may specify. In addition, related supplementary material extends NASD Rule 1160's requirements to update designated contact information promptly (but no later than 30 days following any change in the information) and verify the information annually (within 17 business days after the end of the calendar year) to all of a firm's contact information. As with the reporting obligation, FINRA would require firms to update and verify their contact information through the Firm Gateway unless otherwise specified by FINRA.

The supplementary material to Rule 4540 also retains, but extends to all contact information, NASD Rule 1160's requirement that each firm comply promptly with any FINRA request for such information. As with current NASD Rule 1160, the proposed rule change will not relieve firms from any separate requirements to update such information.<sup>6</sup>

#### **4. Proposed FINRA Rule 4540(b): Clearing Member Reporting Requirements**

Proposed FINRA Rule 4540(b)(1) is based on NASD Rule 3150(a) (Reporting Requirements for Clearing Firms) requiring that each clearing firm (both self-clearing and those that clear for other firms) electronically report to FINRA on a daily basis prescribed data pertaining to the firm and any firm for which it clears. This data is used as part of FINRA's examination program.<sup>7</sup> Additionally, proposed FINRA Rule 4540(b)(2), which is based on NASD Rule 3150(b), requires that each clearing firm report the prescribed data in a manner that enables FINRA to distinguish between data belonging to an introducing firm and data belonging to an introducing firm that acts as an intermediary in obtaining clearing services.

FINRA is also proposing to relocate as supplementary material to Rule 4540 NASD Rule 3150's provisions:

1. permitting a clearing firm to enter into third-party agreements to fulfill its reporting obligations; and
2. providing FINRA with general exemptive authority to exempt a firm in exceptional and unusual circumstances.

FINRA, however, proposes to delete NASD IM-3150 (Exemptive Relief), which provides specific grounds for which certain clearing firms may request exemptive relief pursuant to the FINRA Rule 9600 Series. Firms that might be affected by the deletion of this provision may still request a general exemption pursuant to the Rule 9600 Series based on the grounds currently identified in NASD IM-3150.

#### **C. Proposal to Eliminate NASD and Incorporated NYSE Rules**

As noted above, FINRA proposes to eliminate NASD IM-3150 in its entirety and also to eliminate NASD Rules 1160, 3150 and 3170 after incorporating their requirements into proposed FINRA Rule 4540 and supplementary material.

FINRA also proposes to delete Incorporated NYSE Rule 416A (Member and Member Organization Profile Information Updates and Quarterly Certifications Via the Electronic Filing Platform) requiring member organizations to report, update and review all of the profile information required by the NYSE Electronic Filing Platform (EFP). The provisions of this rule are, in large part, substantially similar to the Annual Form reporting and additional contact information requirements of proposed FINRA Rule 4540 discussed above. Incorporated NYSE Rule 416A also contains requirements that do not align with the recommended changes (*e.g.*, verifying contact information quarterly).

## Endnotes

- 1 The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The new FINRA Rules apply to all member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *FINRA Information Notice 03/12/08* (Rulebook Consolidation Process).
- 2 FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *NASD Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
- 3 Section 19 of the Securities Exchange Act of 1934 (Exchange Act) permits certain limited types of proposed rule changes to take effect upon filing with the SEC. The SEC has the authority to summarily abrogate these types of rule changes within 60 days of filing. See Exchange Act Section 19 and rules thereunder.
- 4 Firms would still be expected to provide information in compliance with any request made pursuant to FINRA Rule 8210. See *Regulatory Notice 08-57* (SEC Approves New Consolidated FINRA Rules) (October 2008).
- 5 The proposed rule change will also replace any references to NASD Rule 1160 in these rules with references to proposed FINRA Rule 4540. FINRA, however, proposes to delete NASD Rule 1150 (Executive Representative) as duplicative of provisions in Article IV, Section 3 of the FINRA By-Laws.
- 6 For example, a firm must identify, among others, its Chief Executive Officer and Chief Compliance Officer on Form BD, and promptly update such information by submitting an amendment whenever the information becomes inaccurate or incomplete for any reason. See also Article IV, Section 1(c) of the FINRA By-Laws, requiring each firm to ensure that its membership application is kept current at all times by supplementary amendments, and to file any such amendment no later than 30 days after learning of the facts or circumstances giving rise to the amendment.
- 7 Rule 3150 is designed to require firms to provide summaries of information that they already collect. FINRA intends to continue its practice of providing firms with advance notice through a *Regulatory Notice* (or similar guidance) of any changes to the required data elements.

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## Attachment A

Below is the text of proposed FINRA Rule 4540. Incorporated NYSE Rule 416A and NASD Rules 1160, 3150, 3170 and NASD IM-3150 would be deleted in their entirety.

\* \* \* \* \*

### **4540. Member Information and Data Reporting and Filing Requirements**

#### **(a) Reporting Requirements for All Members**

(1) Each member is required to report, update and review, in such format, time frame and manner as FINRA may require, all specified data or information.

(2) Each member is required to file with FINRA in such manner and format as FINRA may require, all regulatory notices or other documents required to be filed or submitted to FINRA.

(3) Each member shall report to FINRA all contact information via the Firm Gateway or such other means as FINRA may specify.

#### **(b) Reporting Requirements for Clearing Members**

(1) Each member that is a clearing firm or self-clearing firm shall be required to report to FINRA in such format as FINRA may require, specified data or information pertaining to the member and any member broker-dealer for which it clears.

(2) Each member that is a clearing firm is required to report specified data or information to FINRA in such a manner as to enable FINRA to distinguish between data or information pertaining to all proprietary and customer accounts of an introducing member and data or information pertaining to all proprietary and customer accounts of any member for which the introducing member is acting as an intermediary in obtaining clearing services from a clearing firm. The reporting requirements of this paragraph (b)(2) shall apply to the proprietary and customer accounts of members that have established an intermediary clearing arrangement with an introducing member on or after February 20, 2006.

••• Supplementary Material: —————

.01 Review and Update of Contact Information. For purposes of paragraph (a)(3):

(a) Each member shall update its contact information promptly, but in any event not later than 30 days following any change in such information. In addition, each member shall review and, if necessary, update its contact information within 17 business days after the end of the calendar year.

(b) Each member shall comply with any FINRA request for its contact information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by FINRA staff.

.02 Third-Party Agreements. A clearing firm or self-clearing firm may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the obligations of a clearing firm or self-clearing firm under paragraph (b) of this Rule. Notwithstanding the existence of such an agreement, each clearing firm or self-clearing firm remains responsible for complying with the requirements of paragraph (b) of this Rule.

.03 Exemptive Relief. Pursuant to the Rule 9600 Series, FINRA may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members unconditionally or on specified terms from any or all of the provisions of paragraph (b) of this Rule that it deems appropriate.

Any self-clearing firm that, due to a change in the facts pertaining to the operation and nature of its business or the operation and nature of the business of a firm for which it clears, as applicable, no longer qualifies for an exemption previously granted by FINRA from the reporting requirements of paragraph (b) of this Rule must promptly report such change in circumstances to FINRA, Department of Member Regulation, and commence compliance with the reporting requirements of paragraph (b) of this Rule.