

Retrospective Rule Review

FINRA Requests Comment on the Effectiveness and Efficiency of its Membership Application Rules

Comment Period Expires: May 14, 2015

Executive Summary

FINRA is conducting a retrospective review of the membership application rules to assess their effectiveness and efficiency. This *Notice* outlines the general retrospective rule review process and seeks responses to several questions related to firms' experiences with these specific rules.

Questions regarding this *Notice* should be directed to:

- ▶ Philip Shaikun, Vice President and Associate General Counsel, Regulatory Policy, at (202) 728-8451;
- ▶ Kosha Dalal, Associate Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-6903; or
- ▶ Tian Liang, Economist, Office of the Chief Economist, at (202) 728-8273.

Action Requested

FINRA encourages all interested parties to comment. Comments must be received by May 14, 2015.

Comments must be submitted through one of 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

March 2015

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Senior Management
- ▶ Systems

Key Topics

- ▶ Continuing Membership Application
- ▶ Membership Agreement
- ▶ Membership Application Process
- ▶ Membership Rules
- ▶ New Member Application
- ▶ Safe Harbor for Business Expansions

Referenced Rules & Notices

- ▶ NASD Rule 1010 Series
- ▶ NASD Rule 1011
- ▶ NASD IM-1011-1
- ▶ NASD Rule 1012
- ▶ NASD Rule 1013
- ▶ NASD IM-1013-1
- ▶ NASD IM-1013-2
- ▶ NASD Rule 1014
- ▶ NASD Rule 1015
- ▶ NASD Rule 1016
- ▶ NASD Rule 1017
- ▶ NASD Rule 1019

To help FINRA process comments more efficiently, persons should use only one method to comment.

Important Notes: All comments received in response to this *Notice* will be made available to the public on the FINRA website. In general, FINRA will post comments as they are received.¹

Background & Discussion

FINRA believes that it is appropriate, after a reasonable period of time, to look back at its significant rulemaking to determine whether a FINRA rule or rule set² is meeting its intended investor-protection objectives by reasonably efficient means. FINRA further believes that a retrospective review should include a review not only of the substance and application of a rule or rule set, but also FINRA's processes to administer the rules. FINRA intends to select relevant rules and to conduct retrospective rule reviews on an ongoing basis to ensure that its rules remain relevant and appropriately designed to achieve their objectives, particularly in light of environmental, industry and market changes.

The review process consists of two phases: (1) assessment and (2) action. During the assessment phase, FINRA will evaluate the efficacy and efficiency of the rule or rule set as currently implemented, including FINRA's internal administrative processes. FINRA also will seek input from affected parties and experts, including its advisory committees, subject-matter experts inside and outside of the organization, and other stakeholders, including industry members, investors, interested groups and the public. FINRA staff will assess issues including the existence of duplicative, inconsistent or ineffective regulatory obligations; whether market or other conditions have changed to suggest there are ways to improve the efficiency or effectiveness of a regulatory obligation without loss of investor protections; and potential gaps in the regulatory framework. Upon completion of this assessment, FINRA staff will report its findings to the Board of Governors and make a general staff recommendation as to whether the rule or rule set should be maintained as is, modified or deleted. The staff will also recommend an action plan that will, where appropriate, include recommendations as to how a rule or rule set should be modified, the need for updated or additional guidance, or the need for additional research or information gathering. However, FINRA does not intend the assessment phase to produce a specific proposal to modify any rules.

The action phase will then follow. If the assessment recommends modification of rules, FINRA will separately engage in its usual rulemaking process to propose amendments to the rules based on the findings. This process will include input from FINRA's advisory committees and an opportunity for comment on specific proposed revisions in a *Regulatory Notice* or rule filing with the SEC, or both.

Request for Comment

FINRA has identified the membership application rules (MAP Rules) for review. The MAP Rules include the following:

- ▶ NASD Rule 1011 (Definitions)
- ▶ NASD IM-1011-1 (Safe Harbor for Business Expansions)
- ▶ NASD Rule 1012 (General Provisions)
- ▶ NASD Rule 1013 (New Member Application and Interview)
- ▶ NASD IM-1013-1 (Membership Waive-In Process for Certain New York Stock Exchange Member Organizations)
- ▶ NASD IM-1013-2 (Membership Waive-In Process for Certain NYSE Alternext US LLC Member Organizations)
- ▶ NASD Rule 1014 (Department Decision)
- ▶ NASD Rule 1015 (Review by National Adjudicatory Council)
- ▶ NASD Rule 1016 (Discretionary Review by FINRA Board)
- ▶ NASD Rule 1017 (Application for Approval of Change in Ownership, Control, or Business Operations)
- ▶ NASD Rule 1019 (Application to Commission for Review)

The purpose of the MAP Rules is to allow FINRA to assess the proposed business activities of its potential and current member firms for investor protection purposes. The MAP Group, which is part of FINRA's Department of Member Regulation, administers the MAP Rules. The MAP Group evaluates an applicant's financial, operational, supervisory and compliance systems to ensure that each applicant meets the standards for admission or for a change in ownership, control or business operations, and that the application and all supporting documents appear consistent with the federal securities laws, the rules and regulations thereunder, and FINRA rules and regulations.

FINRA seeks answers to the following questions with respect to this rule set:

1. Have the rules effectively addressed the problem(s) they were intended to mitigate?
2. What have been experiences with implementation of the rule set, including any ambiguities in the rules or challenges to comply with them?
3. What have been the costs and benefits arising from FINRA's rules? Have the costs and benefits been in line with expectations described in the rulemaking?
4. Can FINRA make the rules more efficient and effective, including FINRA's administrative processes?

In addition to comments responsive to these questions, FINRA requests any data or evidence in support of comments. While FINRA welcomes specific suggestions as to how the rules should be changed, the purpose of this *Notice* is to obtain input as to whether or not the current rule set is effective and efficient. As discussed above, FINRA will separately consider during the action phase specific changes to the rules.

Endnotes

1. 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 *Notice to Members 03-73* (November 2003) (Online Availability of Comments) for more information.
2. A rule set is a group of rules identified by FINRA staff to contain a similar subject, characteristics or objectives.