December 2010

Notices

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Regulatory Notice 10-61

Independent Verification of Assets

SEC Approves New FINRA Rule 4160 Relating to the Verification of Assets at a Non-Member Financial Institution

Effective Date: February 1, 2011

Executive Summary

Effective February 1, 2011, new FINRA Rule 4160 (Verification of Assets) prohibits a member, when notified by FINRA, from continuing to custody or retain record ownership of assets at a non-member financial institution, which, upon FINRA staff's request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution.[1] The text of FINRA Rule 4160 is set forth in Attachment A of this *Notice*.

Questions concerning this *Notice* should be directed to:

- Anand Ramtahal, Senior Vice President, Risk Oversight & Operational Regulation, at (646) 315-8565; or
- Matthew E. Vitek, Counsel, Office of General Counsel, at (202) 728-8156.

Background & Discussion

FINRA has adopted a rule to strengthen its ability to independently verify assets maintained by a member at a non-member financial institution. FINRA Rule 4160 prohibits a member, when notified by FINRA, from continuing to custody or retain record ownership of assets, whether such assets are proprietary or customer assets, at a non-member financial institution, which, upon FINRA's staff's request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution. At this time, FINRA is not requiring members to

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Notice Type
- New Rule

Suggested Routing
- Compliance
- Finance
- Legal
- Operations
- Senior Management

Key Topics
- Asset Transfers
- Asset Verification
- Custody
- Record Ownership

Referenced Rules & Notices
- SEA Rule 15c3-1
- SEA Rule 15c3-3

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enter into written contracts with non-member financial institutions maintaining their proprietary or customer assets that would obligate the institutions to comply with FINRA staff's requests for verification; however, FINRA strongly encourages members to enter into such contracts. Irrespective of whether such a contract exists, FINRA Rule 4160 precludes a member, when notified by FINRA, from continuing to maintain assets at the financial institution and requires the member to transfer the assets to another financial institution.

FINRA Rule 4160(b) provides two exemptions from the rule. The rule does not apply to:

- proprietary assets of members that are treated as non-allowable assets under SEA Rule 15c3-1; or
- instances where FINRA determines that there is no independent custody or record ownership of the assets.

Supplementary Material .01 (Asset Transfers) to the rule sets forth that in the event a member is required to transfer its assets pursuant to the rule, the member shall effect such transfer in a reasonable period of time. Supplementary Material .02 (Member Obligations Under SEA Rule 15c3-3) to the rule clarifies that nothing in the rule shall be construed as altering in any manner a member's obligations under SEA Rule 15c3-3.

Endnotes

1 *See* Exchange Act Release No. 63044 (October 5, 2010), 75 FR 62911 (October 13,2010) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1; File No. SR-FINRA-2010-042). *See also* Exchange Act Release No. 63383 (November 29, 2010), 75 FR 75529 (December 3, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2010-062 to Extend the Implementation Period for SR-FINRA-2010-042).

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ATTACHMENT A

The following is the text of new Rule 4160.

* * * * *

4000. FINANCIAL AND OPERATIONAL RULES

4100. FINANCIAL CONDITION

* * * * *

4160. Verification of Assets

(a) A member, when notified by FINRA, may not continue to custody or retain record ownership of assets, whether such assets are proprietary or customer assets, at a financial institution that is not a member of FINRA, which, upon FINRA staff's request, fails promptly to provide FINRA with written verification of assets maintained by the member at such financial institution.

(b) The Rule shall not apply:

(1) to proprietary assets of members that are treated as non-allowable assets under SEA Rule 15c3-1; or

(2) in instances where FINRA determines that there is no independent custody or record ownership of the assets.

• • • Supplementary Material: ----------

.01 Asset Transfers. Any member required to transfer its proprietary and/or customer assets pursuant to this Rule shall effect such transfer within a reasonable period of time.

.02 Member Obligations Under SEA Rule 15c3-3. Nothing in this Rule shall be construed as altering in any manner a member's obligations under SEA Rule 15c3-3.

Regulatory Notice 10-62

SEC Approves New Consolidated FINRA Rule

SEC Approval and Effective Date for New Consolidated FINRA Rule

Effective Date: June 17, 2011

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.[1] FINRA is proposing new consolidated rules in phases for approval by the Securities and Exchange Commission (SEC) as part of the Consolidated FINRA Rulebook.[2] In October and November, the SEC approved four new consolidated FINRA Rules.[3] This *Regulatory Notice* specifically addresses the approval and effective date of new FINRA Rule 2232 (Customer Confirmations).[4]

The text of new FINRA Rule 2232 is available in the online FINRA Manual at *www.finra.org/finramanual*.[5]

Questions regarding this *Notice* should be directed to Adam H. Arkel, Assistant General Counsel, Office of General Counsel, at (202) 728-6961.

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Notice Type

- Consolidated Rulebook
- Rule Approval

Suggested Routing

- Compliance
- Legal
- Operations
- Senior Management

Key Topics

- Customer Confirmations
- Effective Dates of Consolidated Rule
- FINRA Manual
- Rulebook Consolidation

Referenced Rules & Notices

- FINRA Rule 2232
- Incorporated NYSE Rule 409(f)
- Information Notice 03/12/08
- Information Notice 10/06/08
- NASD Rule 2230
- NASD IM-2110-6
- Regulatory Notice 08-57

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Background & Discussion

On October 21, 2010, the SEC approved FINRA's proposed rule change to adopt FINRA Rule 2232 (Customer Confirmations) in the Consolidated FINRA Rulebook and delete NASD Rule 2230, NASD IM-2110-6 and Incorporated NYSE Rule 409(f). New FINRA Rule 2232 streamlines and combines basic customer confirmation requirements in the NASD and Incorporated NYSE Rules. Specifically:

- FINRA Rule 2232(a) provides that a member must, at or before the completion of any transaction in any security effected for or with an account of a customer, give or send to such customer written notification ("confirmation") in conformity with the requirements of SEA Rule 10b-10.
- FINRA Rule 2232(b) provides that a confirmation given or sent pursuant to the rule must further disclose:
  - (1) with respect to any transaction in any NMS stock, as defined in Rule 600 of SEC Regulation NMS, or any security subject to the reporting requirements of the FINRA Rule 6600 Series, other than direct participation programs as defined in FINRA Rule 6420, the settlement date of the transaction; and
  - (2) with respect to any transaction in a callable equity security, that: (A) the security is a callable equity security; and (B) a customer may contact the member for more information concerning the security.

Rule Conversion Charts

As discussed in additional detail in *Information Notice 10/06/08* and *Regulatory Notice 08-57*, FINRA has posted three Rule Conversion Charts on its website to help firms become familiar with the new rules, and show how the new rules relate to the NASD and/or Incorporated NYSE Rules in the Transitional Rulebook that they will replace.

Firms should be aware that the charts are intended as a reference aid only. FINRA reminds firms that the charts do not in any way serve as a substitute for diligent review of the relevant new rule language. The Rule Conversion Charts are located at *www.finra.org/ruleconversionchart*.

Endnotes

1 *See Information Notice 10/06/08* (Rulebook Consolidation Process: 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 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. As the Consolidated FINRA Rulebook expands with the SEC's 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. When the Consolidated FINRA Rulebook is completed, the Transitional Rulebook will have been eliminated in its entirety.

3 In October and November 2010, the SEC approved three FINRA proposed rule changes to adopt four new rules in the Consolidated FINRA Rulebook. *See* Securities Exchange Act Release No. 63150 (October 21, 2010), 75 FR 66173 (October 27, 2010) (SR-FINRA-2009-058); Securities Exchange Act Release No. 63260 (November 5, 2010), 75 FR 69508 (November 12, 2010) (SR-FINRA-2010-034); Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (SR-FINRA-2010-039).

4 *See* Securities Exchange Act Release No. 63150 (October 21, 2010), 75 FR 66173 (October 27, 2010) (SR-FINRA-2009-058); *see also* SR-FINRA-2010-066. FINRA will issue separate *Regulatory Notices* announcing the effective dates of the approved rules set forth in SR-FINRA-2010-034 and SR-FINRA-2010-039. *See supra* note 3.

5 FINRA updates the rule text on its online *Manual* within two business days of SEC approval of changes to the rule text.

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Information Notice

2011 Holiday Trade Date, Settlement Date and Margin Extensions Schedule

December 2, 2010

Suggested Routing

- Compliance
- Internal Audit
- Legal
- Municipal/Government Securities
- Operations
- Trading

Key Topic(s)

- Holiday Settlement Dates
- Holiday Extension Dates

Referenced Rules and Notices

- Regulation T 220.4 and 220.8
- SEA Rule 15c3-3

Executive Summary

FINRA is providing the following schedule to assist member firms and reduce the number of Federal Reserve Board Regulation T and Securities Exchange Act Regulation 15c3-3 extensions denied around holidays. "Regular way" transactions made on the business days noted below will be subject to the following schedule.

Questions regarding this *Notice* should be directed to:

- Debra German, Senior Credit Regulation Coordinator, Risk Oversight and Operational Regulation (ROOR), at (646) 315-8467;
- Theresa Reynolds, Credit Regulation Coordinator, ROOR, at (646) 315-8567; or
- Vincent Rotolo, Senior Credit Specialist, ROOR, at (646) 315-8576.

Background

Brokers, dealers and municipal securities dealers should use the following **settlement dates** for purposes of clearing and settling transactions pursuant to the securities exchanges.

As specified in Sections 220.4(d) and 220.8(b)(4) of Regulation T of the Federal Reserve Board, a broker-dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a margin account or cash account if payment is not received within five business days from the date of purchase or, pursuant to Section 220.4(c)(3) and 220.8(d)(1), apply to extend the time period specified. The date by which firms must take such action is shown below in the column titled **"Regulation T Date."**

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Similarly, SEA Regulation 15c3-3 requires firms to take prompt steps to obtain possession or control of securities pursuant to paragraph (m) through a buy-in procedure or otherwise if securities are not received within ten business days from the settlement date of the sale or, pursuant to paragraph (n), apply to extend the time period specified. The date by which firms must take such action is shown below in the column titled **"SEC Extension Date."**

All SEA Rule 15c-3 extension requests **must be** received on the due dates listed below. Adherence to this procedure will reduce the number of denied requests for improper dates and establish uniformity among member firms.

SEA Rule 15c3-3 Subparagraph	Date Due
(d)(2)	on the 30th calendar day after settlement date
(d)(3)	on the 45th calendar day after settlement date
(h)	on the 45th calendar day after settlement date
(m)	on the 10th business day after settlement date

These dates also apply to a security listed on a foreign exchange. Firms must file SEA Rule 15c3-3 extensions on the appropriate dates regardless of the settlement cycle established by the foreign security market on which the security is traded.

New Year's Day

New Year's Day (January 1) in 2011 falls on a Saturday. The rules of the applicable exchanges state that when a holiday falls on a Saturday, the preceding Friday is observed, unless the Friday is the end of a monthly or yearly accounting period. In this case, Friday, December 31, 2010, is the end of both a monthly and yearly accounting period; therefore the exchanges will be open that day and the following Monday.

Martin Luther King, Jr. Day

The securities exchanges will be **closed** on **Monday, January 17, 2011**, in observance of Martin Luther King's birthday.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
January 10	January 13	January 18	January 28
11	14	19	31
12	18	20	February 1
13	19	21	2
14	20	24	3
17	**Markets Closed**	—	—
18	21	25	4

Presidents' Day

The securities exchanges will be **closed** on **Monday, February 21, 2011**, in observance of Presidents' Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
February 14	February 17	February 22	March 4
15	18	23	7
16	22	24	8
17	23	25	9
18	24	28	10
21	**Markets Closed**	—	—
22	25	March 1	11

Good Friday

The securities exchanges will be **closed** on **Friday, April 22, 2011**, in observance of Good Friday.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
April 15	April 20	April 25	May 5
18	21	26	6
19	25	27	9
20	26	28	10
21	27	29	11
22	**Markets Closed**	—	—
25	28	May 2	12

Memorial Day

The securities exchanges will be **closed** on **Monday, May 30, 2011**, in observance of Memorial Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
May 23	May 26	May 31	June 10
24	27	June 1	13
25	31	2	14
26	June 1	3	15
27	2	6	16
30	**Markets Closed**	—	—
31	3	7	17

Independence Day

The securities exchanges will be **closed** on **Monday, July 4, 2011**, in observance of Independence Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
June 27	June 30	July 5	July 15
28	July 1	6	18
29	5	7	19
30	6	8	20
July 1	7	11	21
4	**Markets Closed**	—	—
5	8	12	22

Labor Day

The securities exchanges will be **closed** on **Monday, September 5, 2011**, in observance of Labor Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
August 29	September 1	September 6	September 16
30	2	7	19
31	6	8	20
September 1	7	9	21
2	8	12	22
5	**Markets Closed**	—	—
6	9	13	23

Columbus Day

The securities exchanges will be **open** for trading on Columbus Day, **Monday, October 10, 2011**. Therefore, it is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
October 3	October 6	October 10	October 20
4	7	11	21
5	11	12	25
6	12	13	26
7	13	14	27
10	13	17	27
11	14	18	28

Veteran's Day

The securities exchanges will be **open** for trading on Veteran's Day, **Friday, November 11, 2011**. Therefore, it is considered a business day for receiving customers' payments under Regulation T of the Federal Reserve Board. However, it will not be a settlement date because many of the nation's banking institutions will be closed.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
November 4	November 9	November 11	November 23
7	10	14	25
8	14	15	29
9	15	16	30
10	16	17	December 1
11	16	18	1
14	17	21	2

Thanksgiving Day

The securities exchanges will be **closed** on **Thursday, November 24, 2011**, in observance of Thanksgiving Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
November 17	November 22	November 25	December 7
18	23	28	8
21	25	29	9
22	28	30	12
23	29	December 1	13
24	**Markets Closed**	—	—
25	30	2	14

Christmas Day

The securities exchanges will be **closed** on **Monday, December 26, 2011**, in observance of Christmas Day.

Trade Date	Settlement Date	Regulation T Date	SEC Extension Date
December 19	December 22	December 27	January 6, 2012
20	23	28	9
21	27	29	10
22	28	30	11
23	29	January 2	12
26	**Markets Closed**	—	—
27	30	3	13

Information Notice

Extension of Current Rate for Fees Paid Under Section 31 of the Exchange Act

December 14, 2010

Suggested Routing

- Compliance
- Legal
- Trading

Key Topic

- Section 31 Fee

Referenced Rules & Notices

- Section 3 of Schedule A to the By-Laws
- Section 31 of the Securities Exchange Act of 1934

Executive Summary

Since October 1, 2010, the SEC has been operating under a continuing resolution for fiscal year 2011. As such, the Section 31 rate applicable to specified securities transactions on the exchanges and in the over-the-counter market will remain at $16.90 per million dollars until the SEC's regular fiscal budget is approved and firms are advised of the final date for implementing a rate change.

Finance-related questions should be directed to:

- Sheila Gregory, Accounting Manager, Finance, at (240) 386-5388.

Legal and interpretive questions should be directed to:

- Kathleen O'Mara, Associate General Counsel, Office of Oversight Liaison and Counsel, at (240) 386-5309 or
- Brant Brown, Associate General Counsel, Office of General Counsel, at (202) 728-6927.

Background and Discussion

As announced by the Securities and Exchange Commission (SEC) in Fee Rate Advisory #3 for Fiscal Year (FY) 2011, the SEC has been operating under a continuing resolution since the start of FY 2011 on October 1, 2010. The Fee Rate Advisory specifies that the fee paid under Section 31 of the Securities Exchange Act of 1934 (Exchange Act) will remain at the current rate of $16.90 per million.

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However, as the SEC has announced, 30 days after the date of enactment of its regular fiscal year 2011 appropriation, the rate for the Section 31 fee will increase from $16.90 per million to $19.20 per million. FINRA will notify firms through an *Information Notice* when the SEC's regular appropriation has been enacted and a final date has been determined for implementing the rate change to $19.20 per million.

FINRA obtains its Section 31 fees from member firms, in accordance with Section 3 of Schedule A to the By-Laws. Section 3 specifies that the amount assessed on firms will be determined periodically in accordance with Section 31 of the Exchange Act.

A copy of the SEC's October 1, 2010, order regarding fee rates for FY 2011 is available at *http://www.sec.gov/rules/other/2010/33-9122.pdf*.

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