April 2011

Notices

Notices

11-15 Guidance on Low-Priced Equity Securities in Customer Margin and Firm Proprietary Accounts

11-16 Treatment of Non-Margin Eligible Equity Securities; **Effective Date: July 1, 2011**

11-17 Revised Discovery Guide and Document Production Lists for Customer Arbitration Proceedings; **Effective Date: May 16, 2011**

11-18 Securities Industry/Regulatory Council on Continuing Education Issues Firm Element Advisory Update

11-19 SEC Approves Consolidated FINRA Rules Governing Books and Records; **Effective Date: December 5, 2011**

Information Notices

04/15/11 Continuing Education Planning

04/20/11 March 2011 Supplement to the Options Disclosure Document

FINRA®

Financial Industry Regulatory Authority

FINRA *Notices* are published monthly by FINRA Corporate Communications, Michelle Volpe-Kohler, Editor, 1735 K Street, NW, Washington, DC 20006-1506, (202) 728-8289.

Notices (December 1996 to current) are also available on the Internet at *www.finra.org/notices*.

Regulatory Notice 11-15

Low-Priced Equity Securities

Guidance on Low-Priced Equity Securities in Customer Margin and Firm Proprietary Accounts

April 2011

Notice Type
- Special Alert

Suggested Routing
- Compliance
- Legal
- Margin Department
- Operations
- Regulatory Reporting
- Risk Management
- Senior Management

Key Topics
- Low-Priced Equity Securities
- Margin
- Net Capital

Referenced Rules & Notices
- FINRA Rule 4210
- Regulatory Notice 09-53
- Regulatory Notice 09-65
- SEA Rule 15c3-1

Executive Summary

This *Notice* provides guidance to firms on low-priced equity securities in customer margin and firm proprietary accounts.

Questions concerning this *Notice* should be directed to:

- Rudolph Verra, Managing Director, Risk Oversight and Operational Regulation, at (646) 315-8811;
- Glen Garofalo, Director, Credit Regulation, at (646) 315-8464; or
- Steve Yannolo, Project Manager, Credit Regulation, at (646) 315-8621.

Background & Discussion

Price volatility is more often associated with low-priced, rather than higher-priced, equity securities. Low-priced equity securities tend to trade with bid and ask spreads that make up a greater percentage of the security's price. This is especially true for newer companies whose stock is priced low and whose earnings may be more volatile. In addition, due to lower volumes, low-priced equity securities can experience large price swings during a given trading day, which translates into greater price risk. Further, low-priced equity securities may be removed from an index, which can increase the volatility and exacerbate the price risk.

In a strategy-based margin account, the current maintenance margin requirement for any long equity security is generally 25 percent of the current market value,[1] and generally 30 percent of the current market value for any short equity security.[2] In a portfolio margin account, the current maintenance margin requirement for both long and short eligible equity securities is determined by the Options Clearing Corporation's TIMS stress range of +/- 15 percent.[3]

Firms are reminded to consider the risks associated with low-priced equity securities when extending credit in a strategy-based or portfolio margin account. Firms should take into account volatility and concentrated positions in a single customer account and across all customer accounts, as well as the daily volume and market capitalization of each security when imposing "house" maintenance margin requirements.[4] Firms should also consider the fundamental business drivers and financial performance of the issuer in setting house requirements. Increased maintenance margin requirements can help to ensure that the equity in each customer account is sufficient to cover any large variances in the price of a security. FINRA believes that a best practice is for firms to pay close attention to low-priced equity securities when considering the dollar amount of credit to be extended to any one customer.[5] Similarly, in a portfolio margin account, FINRA believes that a best practice is for firms to subject low-priced or concentrated positions to heightened review and daily monitoring, subjected to higher margin requirements, where appropriate, and to include such positions in exception reporting to senior management.[6]

Firms are also reminded that, pursuant to SEA Rule 15c3-1, if markets can absorb only a limited number of shares of a security for which a ready market exists (a marketplace blockage), the non-marketable portion in the proprietary or other accounts of a broker-dealer is subject to a 100 percent deduction to net capital, and is treated as a non-allowable asset.[7]

Endnotes

1 *See* FINRA Rule 4210(c). FINRA prescribes higher maintenance margin requirements for leveraged exchange-traded funds (ETFs) and uncovered options overlying leveraged ETFs. *See Regulatory Notices 09-53 and 09-65.*

2 FINRA Rule 4210(c) prescribes a maintenance margin requirement of $2.50 per share or 100 percent of the current market value, whichever is greater, for each short stock priced at less than $5.00 per share; and $5.00 per share or 30 percent of the current market value, whichever is greater, for each short stock priced at $5.00 per share or greater.

3 *See* FINRA Rule 4210(g). TIMS stands for Theoretical Intermarket Margin System.

4 *See* FINRA Rule 4210(f)(1) and its associated Interpretation /01 for concentrated or volatile securities (providing, among other things, that substantial additional margin must be required: (1) when there are concentrations in single securities (either in particular accounts or in all margin accounts carried) which, due to their size, may not be liquidated promptly; and (2) for accounts with positions in volatile securities subject to unusually rapid or violent changes in value. Accordingly, steps should be taken to increase margin requirements when it appears that accumulated positions will be difficult to liquidate promptly; and prevent such positions from being acquired).

5 *See* FINRA Rule 4210(d) and its associated Interpretation /01 (requiring, among other things, that members determine the total dollar amount of credit to be extended to any one customer or on any one security to limit the potential loss or exposure to the member. It is important that specific limits be established to prevent any one customer or group of customers from endangering the member's capital).

6 *See* FINRA Rule 4210(g)(1)(I) and its associated Interpretation /01 (requiring, among other things, member firms to have procedures that describe the identification and monitoring of concentrated positions within individual portfolio margin accounts and across all portfolio margin accounts, including what department is responsible for the daily monitoring of such positions, what the escalation procedures are, and a detailed description of what additional margin requirements, if any, are applied to concentrated positions).

7 *See* Interpretation /01 of SEA Rule 15c3-1(c)(2)(vii). In an October 5, 1987, letter from the Division of Trading and Markets, the Division provided guidance for determining which portion of a particular position is considered non-marketable when a broker-dealer is confronted with a marketplace blockage. The Division indicated that it would recommend no action to the SEC if a broker-dealer, when faced with a blockage in securities, treats as readily marketable securities that portion of the block which equals the aggregate of the most recent four-week, inter-dealer trading volume. The number of shares exceeding this amount should be considered non-marketable and subject to a 100 percent deduction from net capital, and is treated as a non-allowable asset, unless the broker-dealer can demonstrate to its Designated Examining Authority that a ready market exists for the excess shares. The shares purchased by the broker-dealer during the most recent four-week period are to be excluded when determining trading volume.

Regulatory Notice 11-16

Margin Requirements

Treatment of Non-Margin Eligible Equity Securities

Effective Date: July 1, 2011

Executive Summary

This *Notice* clarifies customer maintenance margin requirements and the application of maintenance loan value for equity securities that do not meet the definition of a margin equity security under Regulation T.[1] Firms have until July 1, 2011, to comply with these requirements.

Questions concerning this *Notice* should be directed to:

- Rudolph R. Verra, Managing Director, Risk Oversight and Operational Regulation, at (646) 315-8811;
- Glen Garofalo, Director, Credit Regulation, at (646) 315-8464; or
- Steve Yannolo, Project Manager, Credit Regulation, at (646) 315-8621.

Background & Discussion

Regulation T stipulates that the initial margin requirement for an equity security is 50 percent of the current market value,[2] provided the security meets the definition of a margin equity security. This initial requirement is applied at the time a trade is executed. Once the trade has been executed, FINRA imposes a daily maintenance margin requirement, which for long equity securities is generally 25 percent of the current market value.[3] In addition, the current maintenance margin requirement for a short equity security is the greater of: (1) $2.50 per share or 100 percent of the current market value of each short equity security priced at less than $5.00 per share, or (2) $5.00 per share or 30 percent of the current market value of each short equity security priced at $5.00 per share or greater.[4] Detailed below are the initial and maintenance margin requirements for non-margin eligible equity securities.

April 2011

Notice Type

- Guidance

Suggested Routing

- Compliance
- Legal
- Margin Department
- Operations
- Regulatory Reporting
- Risk Management
- Senior Management

Key Topics

- Day Trading
- Good Faith Accounts
- Maintenance Loan Value
- Margin Requirements
- Non-Margin Eligible Equity Securities
- Non-Purpose Loans
- Portfolio Margin Accounts
- Regulation T Margin Accounts

Referenced Rules & Notices

- FINRA Rule 4210
- Regulation T
- Regulatory Notice 09-53

FINRA®
Financial Industry Regulatory Authority

Long Positions

Regulation T permits a long position of a non-margin eligible equity security to be held in a margin account, provided an initial requirement of 100 percent of the current market value is deposited.[5]

Pursuant to FINRA Rule 4210(f)(8)(A)(ii), FINRA is clarifying that the maintenance margin requirement for a non-margin eligible equity security held long in a Regulation T margin account shall be 100 percent of the current market value. This is consistent with the maintenance margin requirement for a non-margin eligible equity security held in a portfolio margin account.[6]

FINRA is further clarifying that firms may apply a maintenance loan value based on current maintenance margin requirements (for example, 25 percent for long equity securities or higher for leveraged ETFs[7]) to a long non-margin eligible equity security held in a Regulation T or portfolio margin account only when there is the presence of a maintenance margin deficiency in such account, provided the amount of maintenance loan value does not exceed the amount of the maintenance margin deficiency. The maintenance loan value permitted above **cannot** be extended for the purpose of financing additional transactions or for withdrawals. The examples below illustrate how the maintenance loan value may be applied.

Example 1

Maintenance Margin Deficiency	$5,000
Non-Margin Eligible Equity Securities Market Value	$4,000
Usable Maintenance Loan Value ($4,000 x .75)	$3,000
Adjusted Maintenance Margin Deficiency ($5,000 - $3,000)	$2,000

In this example, 100 percent of the maintenance loan value may be used.

Example 2

Maintenance Margin Deficiency	$5,000
Non-Margin Eligible Equity Securities Market Value	$10,000
Maintenance Loan Value ($10,000 x .75)	$7,500
Usable Maintenance Loan Value (Loan value cannot exceed the maintenance margin deficiency)	$5,000

In this example, only $5,000 of the maintenance loan value may be extended.

Short Positions

For short positions, the initial margin requirement pursuant to Regulation T is 150 percent of the current market value of a non-margin eligible equity security.[8] In a Regulation T margin account, the current maintenance margin requirements for all short equity securities and leveraged ETFs set forth in FINRA Rule 4210(c)(2) and (3) and in *Regulatory Notice 09-53*, respectively, continue to apply. Pursuant to FINRA Rule 4210(f)(8)(A)(ii), FINRA is clarifying that in a portfolio margin account, the maintenance margin requirement for a short non-margin eligible equity security shall be the greater of: (1) $2.50 per share or 100 percent of the current market value of each short equity security priced at less than $5.00 per share, or (2) $5.00 per share or 50 percent of the current market value of each short equity security priced at $5.00 per share or greater.

Non-Purpose Loans in Good Faith Accounts

Pursuant to Regulation T 220.6(e), non-purpose loans must be executed in the good faith account. FINRA is clarifying that firms may extend maintenance loan value on non-margin eligible equity securities when used to collateralize non-purpose loans. Firms are reminded that non-purpose loans are to be extended in accordance with the requirements promulgated under Regulation T,[9] and that any debit balances are not to be included in the Reserve Formula computation.[10]

Day Trading

Pursuant to FINRA Rule 4210(f)(8)(A)(ii), FINRA is clarifying that for customers who day trade in a Regulation T margin account or portfolio margin account, the special maintenance margin requirement for non-margin eligible equity securities is 100 percent. In addition, firms cannot extend maintenance loan value for the purpose of calculating day-trading buying power. Customers will be permitted to day trade a non-margin eligible equity security in such accounts, provided the special maintenance margin requirement of 100 percent does not exceed one times the regulatory maintenance excess (equity in the account after the maintenance margin requirement is met). In the event a customer does day trade in excess of this limit, the firms are required to issue a day-trade call. If the customer does not meet the day-trade call within the required number of business days pursuant to Rule 4210(f)(8)(B)(iii) or 4210(g)(13), then the firm will be required to cancel the day-trade transactions.

Endnotes

1 *See* Regulation T section 220.2 for the definitions of margin equity security and margin security.

2 *See* Regulation T section 220.12(a).

3 FINRA imposes higher maintenance margin requirements for leveraged Exchange Traded Funds (ETFs) and related options. *See Regulatory Notice 09-53*.

4 *See* FINRA Rule 4210(c) for the maintenance margin requirements for long and short securities.

5 *See* Regulation T section 220.12(e).

6 *See* FINRA Rule Interpretation 4210(g)(6)(B)(i)(a)/01.

7 *See* note 3.

8 *See* Regulation T section 220.12(c).

9 *See* Regulation T section 220.6(e).

10 *See* SEA Rule 15c3-3 (Exhibit A – Item 10)/032.

Regulatory Notice 11-17

Arbitration

Revised Discovery Guide and Document Production Lists for Customer Arbitration Proceedings

Effective Date: May 16, 2011

Executive Summary

FINRA is revising the Discovery Guide to expand the guidance it gives to parties and arbitrators on the discovery process and to update the Document Production Lists.[1] FINRA is consolidating the Document Production Lists from the 14 current Lists (two general Lists and 12 separate Lists for specific types of claims) to two lists of "presumptively discoverable" documents—one for firms/associated persons to produce and one for customers to produce. Many of the documents on the current Lists are included in the revised Discovery Guide. In addition, under the revised Guide, FINRA is requiring parties to produce additional types of documents that forum users have indicated they need to develop a case.

The amendments are effective on May 16, 2011, and will apply to all customer cases filed on or after the effective date. The amendments to Rules 12506 and 12508 are set forth in Attachment A, and the revised Discovery Guide is available on our website at *www.finra.org/arbitration/discoveryguide*.

Questions concerning this *Notice* should be directed to:

- Richard W. Berry, Senior Vice President and Director of Case Administration and Regional Office Services, Dispute Resolution (DR), at (212) 858-4307 or *richard.berry@finra.org*; or
- Margo A. Hassan, Assistant Chief Counsel, DR, at (212) 858-4481 or *margo.hassan@finra.org*.

April 2011

Notice Type

- Rule Amendment

Suggested Routing

- Compliance
- Legal
- Registered Representatives
- Senior Management

Key Topics

- Arbitration
- Code of Arbitration Procedure
- Discovery

Referenced Rules & Notices

- FINRA Rule 12506
- FINRA Rule 12508
- NTM 99-90

FINRA®
Financial Industry Regulatory Authority

Background & Discussion

In 1999, FINRA adopted the Discovery Guide (Guide), which includes Document Production Lists (Lists), for use in customer arbitration proceedings.[2] The Guide provides direction on which documents parties should exchange without arbitrator or staff intervention, and the Lists specifically indentify the documents parties should exchange before the hearing, depending on the type of dispute. After years of experience with the Guide, FINRA is revising it to expand the guidance given to parties and arbitrators on the discovery process and to update the Lists.

FINRA is replacing the current 14 Lists with just two Lists of presumptively discoverable documents: one for firms/associated persons to produce and one for customers to produce. As noted above, many of the documents on the current Lists are included in the revised Guide. In addition, the revised Guide requires parties to produce additional types of documents that users indicated they need to develop a case. Although each item on the Lists (with a few exceptions) will be presumptively discoverable in every customer case, the revised Guide encourages arbitrators to tailor the Guide to the facts and circumstances of each case. FINRA is also making conforming changes to Rules 12506 (Document Production Lists) and 12508 (Objecting to Discovery Requests; Waiver of Objection) that reflect the List consolidations.

Discovery Guide Introduction

FINRA is revising the Guide's introduction to expand its guidance to parties and arbitrators on the discovery process generally, and to clarify how arbitrators should apply the Guide in arbitration proceedings. The revised introduction addresses, among other matters:

- **Flexibility:** The parties and arbitrators retain their flexibility in the discovery process. Arbitrators can:
  - order the production of documents not provided for by the Lists;
  - order that parties do not have to produce certain documents on the Lists; and
  - alter the production schedule.
- **Objections Based on Cost/Burden:** A party may object to producing a document on the List because of the cost or burden of production. If a party demonstrates that the cost or burden of production is disproportionate to the need for the document, the arbitrators should determine if the document is relevant or likely to lead to relevant evidence and, if so, the arbitrators should consider whether there are alternatives that can lessen the impact.

- **Requests for Additional Documents:** Arbitrators must use their judgment in considering requests for additional documents and may not deny document requests on the ground that the documents are not expressly listed in the Guide.
- **Party and Non-Party Production:** Only named parties must produce documents pursuant to the guidelines. Non-parties may be required to produce documents pursuant to a subpoena or an order of the arbitrator.
- **Consideration of Firm Business Models and Customer Claims:** Not all firms have the same business operations model and certain items on the Lists may not apply to a particular case when the firm's business model is considered. In addition, certain items on the Customer List may not apply to a particular case depending on the claims asserted.
- **Electronic Discovery:** Electronic files are "documents" within the meaning of the Guide.
- **Confidentiality:** When deciding contested requests for confidentiality orders, arbitrators should consider factors specified in the Guide including, among others, whether disclosure would constitute an unwarranted invasion of personal privacy, or whether the information contains proprietary confidential business plans and procedures or trade secrets.
- **Privilege:** Parties are not required to produce documents that are otherwise subject to an established privilege.
- **Affirmations:** If a party responds that there are no responsive documents in the party's possession, custody or control, the customer or the appropriate person in the brokerage firm who has knowledge must:
  1. state in writing that the party conducted a good faith search;
  2. describe the extent of the search; and
  3. state that, based on the search, there are no requested documents in the party's possession, custody or control.
- **No Obligation to Create Documents:** Parties are not required to create documents in response to items on the Lists.
- **Admissibility:** Production of documents in discovery does not create a presumption that the documents are admissible at the hearing.

Documents the Firm/Associated Persons Shall Produce in All Customer Cases (List 1)

Document Production List 1 specifies the presumptively discoverable documents that firms/associated persons are required to produce in customer cases. Subject to the limited exceptions specified in certain List items, firms/associated persons are required to produce every document in every case unless the required production is narrowed either by party agreement or by order of the arbitrator. Highlights of the items follow. See the attached Guide for the full details and requirements of each item, including relevant time frames.

Item 1: Account record information for the customer parties, documents concerning the customer parties' risk tolerance and agreements with the customer parties.

Item 2: Correspondence sent to the customer parties or received by the firm/associated persons, and advertising materials sent to customers of the firm.

Item 3: Documents evidencing any investment or trading strategies used or recommended in the customer parties' accounts.

Item 4: For claims alleging unauthorized trading, all documents the firm/associated persons relied upon to establish that the customer parties authorized the transactions at issue, all documents relating to the customer parties' authorization of the transactions and all order tickets for the transactions.

Item 5: Materials the firm and/or associated persons prepared or used and/or provided to the customer parties relating to the transactions or products at issue, and worksheets or notes indicating that the associated persons reviewed or read such documents.

Item 6: Notes the firm/associated persons made relating to the customer parties and/or the customer parties' claims, accounts, transactions or products or types of products at issue.

Item 7: Notes or memoranda evidencing supervisory, compliance or managerial review of the customer parties' accounts or transactions, or of the associated persons assigned to the customer parties' accounts; and correspondence between the customer parties and firm/associated persons relating to the customer parties' claims, accounts, transactions or products or types of products at issue bearing indications of managerial, compliance or supervisory review.

Item 8: Recordings, telephone logs and notes of telephone calls or conversations about the transactions at issue that occurred between the associated persons and the customer parties, and/or between the firm and the associated persons.

Item 9: Writings reflecting communications between the associated persons assigned to the customer parties' accounts at issue and members of the firm's compliance department relating to the securities/products at issue and/or the customer parties' claims, accounts or transactions.

Item 10: Forms RE-3, U4 and U5 and Disclosure Reporting Pages for the associated persons assigned to the customer parties' accounts at issue, customer complaints identified in the forms, and customer complaints filed against the associated persons.

Item 11: Sections of the firm's manuals relating to the claims alleged, including separate or supplemental manuals governing the duties and responsibilities of the associated persons and supervisors, bulletins the firm issued and the table of contents/index to the manuals/bulletins.

Item 12: Analyses and reconciliations of the customer parties' accounts, including those relating to reviews of the customer parties' claims, accounts, transactions or the product or types of products at issue.

Item 13: Exception reports, supervisory activity reviews, concentration reports, active account runs and similar documents produced to review for activity in the customer parties' accounts related to the allegations. For claims alleging failure to supervise, the firm/associated persons must produce the documents listed in this Item that were produced to review for activity in customer accounts handled by associated persons and related to the allegations.

Item 14: Portions of internal audit reports for the branch in which the customer parties maintained accounts that concern associated persons or the accounts or transactions at issue and discussed alleged improper behavior in the branch against other individuals similar to the improper conduct alleged.

Item 15: Records of disciplinary action taken against associated persons by any regulator or employer for all sales practice violations or conduct similar to the conduct alleged.

Item 16: Investigations, charges, or findings by any regulator and the firm/associated persons' responses.

Item 17: Portions of examination reports or similar reports following an examination or inspection conducted by any regulator that focused on the associated persons or the customer parties' claims, accounts or transactions, or the product or types of products, or that discussed alleged improper behavior in the branch against other individuals similar to the conduct alleged.

Item 18: Documents related to the case that the firm/associated persons received by subpoena or by document request directed to third parties.

Item 19: For the transactions at issue, documentation showing the compensation, gross and net, to the associated persons.

Item 20: For claims related to solicited trading activity, a record of all compensation, including, but not limited to, monthly commission runs for the associated persons.

Item 21: A record of all agreements pertaining to the relationship between the associated persons and the firm, summarizing the associated persons' compensation arrangement or plan with the firm.

Item 22: For allegations regarding an insurance product that includes a death benefit, information concerning the customer parties' insurance holdings and recommendations, if any, regarding insurance products.

Documents the Customer Parties Shall Produce in All Customer Cases (List 2)

Document Production List 2 specifies the presumptively discoverable documents that customer parties are required to produce in customer cases. Subject to the limited exceptions specified in certain List items, customer parties are required to produce every document in every case unless the required production is narrowed either by party agreement or by order of the arbitrator. Highlights of the items follow. See the attached Guide for the full details and requirements of each item, including relevant time frames.

Item 1: Customer party federal income tax returns, limited to pages 1 and 2 of Form 1040; Schedules A, B, D and E; and the IRS worksheets related to these schedules, redacted to delete the customer parties' Social Security numbers. Customer parties may redact information relating to medical and dental expenses and names of charities on Schedule A unless the information is related to allegations in the Statement of Claim.

Item 2: Financial statements, including statements within a loan application, or similar statements of the customer parties' assets, liabilities and/or net worth.

Item 3: Documents the customer parties received from the firm/associated persons and from entities in which the customer parties invested through the firm/associated persons, including account opening documents and/or forms, prospectuses, research reports, annual and periodic reports, and correspondence.

Item 4: Account statements for each non-party securities firm where the customer parties maintained an account.

Item 5: Documents, including agreements and forms, relating to accounts at the firm or transactions with the firm.

Item 6: Account analyses and reconciliations prepared by or for the customer parties relating to the customer parties' accounts at the firm or transactions with the firm.

Item 7: Notes, including entries in diaries or calendars, relating to the accounts at the firm or the transactions at issue.

Item 8: Recordings and notes or logs of telephone calls or conversations about the customer parties' accounts or transactions at issue that occurred between the associated persons and the customer parties, and telephone records evidencing telephone contact between the customer parties and the firm/associated persons.

Item 9: Correspondence the customer parties sent or received relating to the accounts or transactions at issue.

Item 10: Previously prepared written statements by persons with knowledge of the facts and circumstances related to the accounts or transactions at issue.

Item 11: Complaints/Statements of Claim and answers filed in civil actions involving securities and securities arbitration proceedings in which the customer parties have been a party, and all final decisions or awards or non-confidential settlements entered in these matters. If a person is a party to a confidential settlement agreement that by its terms does not preclude identification of the existence of the agreement, the party shall identify the documents comprising the agreement.

Item 12: Documents showing the customer parties' ownership in or control over any business entity. If the customer parties are trustees, documents showing the accounts over which the customer parties have trading authority.

Item 13: Documents the customer parties received, including documents found through the customer parties' own efforts, relating to the investments at issue.

Item 14: For claims alleging unauthorized trading, documents the customer parties relied upon to show that they did not know about or consent to the transactions at issue.

Item 15: Materials the customer parties received or obtained relating to the claims, transactions or products at issue, and materials received relating to other investment opportunities.

Item 16: Customer parties' resumes.

Item 17: Existing descriptions of the customer parties' educational and employment background if not set forth in resumes.

Item 18: Documents related to the case that the customer parties received by subpoena or by document request directed to third parties.

Item 19: To the extent that an insurance product that provides a death benefit is included in the Statement of Claim, information received from an insurance sales agent or securities broker relating to such insurance.

Effective Date

The amendments are effective on May 16, 2011, and will apply to all customer cases filed on or after the effective date.

Endnotes

1 Exchange Act Release No. 64166 (April 1, 2011), 76 Federal Register 19155 (April 6, 2011) (File No. SR-FINRA-2010-035).

2 *See Notice to Members (NTM) 99-90* (November 1999).

Attachment A

Deletions are in brackets.

Code of Arbitration Procedure for Customer Disputes

* * *

12506. Document Production Lists

(a) Applicability of Document Production Lists

When the Director serves the statement of claim, the Director will notify parties of the location of the FINRA Discovery Guide and Document Production Lists on FINRA's Web site, but will provide a copy to the parties upon request. Document Production Lists 1 and 2 describe the documents that are presumed to be discoverable in all arbitrations between a customer and a member or associated person. **[**Other Document Production Lists may also apply, depending on the specific cause(s) of action alleged.**]**

(b) Time for Responding to Document Production Lists

(1) Unless the parties agree otherwise, within 60 days of the date that the answer to the statement of claim is due, or, for parties added by amendment or third party claim, within 60 days of the date that their answer is due, parties must either:

- Produce to all other parties all documents in their possession or control that are described in **[**the**]** Document Production Lists 1 and 2**[**, and any other Document Production List that is applicable based on the cause(s) of action alleged**]**;

- Identify and explain the reason that specific documents described in Document Production Lists 1 and 2**[**, and any other Document Production List that is applicable based on the cause(s) of action alleged,**]** cannot be produced within the required time, and state when the documents will be produced; or

- Object as provided in Rule 12508.

(2) No change.

(c) No change.

* * *

12508. Objecting to Discovery; Waiver of Objection

(a) If a party objects to producing any document described in Document Production Lists 1 or 2**[**, any other applicable Document Production List,**]** or any document or information requested under Rule 12507, it must specifically identify which document or requested information it is objecting to and why. Objections must be in writing, and must be served on all other parties at the same time and in the same manner. Objections should not be filed with the Director. Parties must produce all applicable listed documents, or other requested documents or information not specified in the objection.

(b)-(c) No change.

* * *

Regulatory Notice 11-18

Continuing Education

Securities Industry/Regulatory Council on Continuing Education Issues Firm Element Advisory Update

The Securities Industry/Regulatory Council on Continuing Education (Council) has released its *Spring 2011 Firm Element Advisory* (FEA). The Council produces the FEA to identify regulatory and sales practice topics that firms should consider in their Firm Element training plans. Topics updated or added since the prior FEA are indicated as such in the document.

FEA topics are not exhaustive and are intended as a guide to firms when they determine what to include in their training plans. Firms should consider the specific nature of their business, clients, products and services when creating their training plans.

Previous editions of the FEA, as well as a *matrix* indicating the topics covered in those editions, are available at the Council's website at *www.cecouncil.com*.

Questions concerning this *Notice* should be directed to:

- *cecounciladmin@finra.org*; or
- Roni Meikle, Director, Continuing Education, FINRA, at (646) 315-8688.

April 2011

Notice Type
- Guidance

Suggested Routing
- Compliance
- Continuing Education
- Legal
- Registration
- Senior Management

Key Topics
- Continuing Education
- Firm Element

FINRA
Financial Industry Regulatory Authority

Regulatory Notice 11-19

Books and Records

SEC Approves Consolidated FINRA Rules Governing Books and Records

Effective Date: December 5, 2011

Executive Summary

The SEC approved FINRA's proposal to adopt rules governing books and records[1] for the consolidated FINRA rulebook.[2] The new rules, FINRA Rules 2268, 4511, 4512, 4513, 4514, 4515, 5340 and 7440(a)(4), are based in large part on NASD Rule 3110, NYSE Rule 440 and NYSE Rule Interpretations 410/01 and 410/02.

The text of the new rules is set forth in Attachment A. The rules take effect on December 5, 2011.

Questions regarding this *Notice* should be directed to Afshin Atabaki, Assistant General Counsel, Office of General Counsel, at (202) 728-8902.

Background & Discussion

The new rules, which are modeled after NASD Rule 3110, NYSE Rule 440 and NYSE Rule Interpretations 410/01 and 410/02, require member firms to make and preserve certain books and records to show compliance with applicable securities laws, rules and regulations—and to enable FINRA and SEC staffs to conduct effective examinations. In general, the new rules streamline, strengthen and clarify existing requirements, as explained below.[3]

General Requirements

FINRA Rule 4511, which is based on the general recordkeeping requirements of NASD Rule 3110(a) and NYSE Rule 440, clarifies that firms are obligated to: (1) make and preserve books and records as required under the rules of FINRA, the Securities Exchange Act (SEA) and the applicable SEA rules;[4] and (2) preserve the books and records required to be made pursuant to the FINRA rules in a format and media that complies with SEA Rule 17a-4.[5]

April 2011

Notice Type
- Consolidated FINRA Rulebook
- Rule Approval

Suggested Routing
- Compliance
- Legal
- Operations
- Senior Management

Key Topics
- Account Name and Designation
- Books and Records
- Customer Account Information
- Customer Complaints
- Electronic Signature and Approval
- Investment Adviser Orders
- Negotiable Instruments
- Pre-Time Stamping
- Predispute Arbitration Agreements
- Recording of Order Information
- Retention Requirements

Referenced Rules & Notices
- E-Sign Act
- FINRA Rule 2070
- FINRA Rules 2268, 4511, 4512, 4513, 4514, 4515, 5340 and 7440
- FINRA Rule 12904
- Information Notice 3/12/08
- Investment Advisers Act
- NASD Rules 2510 and 3110
- NYSE Rule 410
- NYSE Rule Interpretations 410/01 and 410/02
- NYSE Rule 440
- Regulatory Notices 09-63 and 11-05
- SEA Rule 17a-3
- SEA Rule 17a-4

FINRA®
Financial Industry Regulatory Authority

Additionally, FINRA Rule 4511 requires firms to preserve for a period of at least six years those FINRA books and records for which there is no specified retention period under the FINRA rules or applicable SEA rules.[6] This six-year retention period is a default retention period for those FINRA rules that require firms to preserve certain books and records, but do not specify a retention period, and where there is no retention period specified under the SEA rules. In the absence of contrary guidance in a rule, if the books and records pertain to an account, the retention period is for six years after the date the account is closed; otherwise, the retention period is for six years after such books and records are made.

Customer Account Information

FINRA Rule 4512 requires firms to maintain certain information relating to customer accounts. The new rule is based on existing requirements in NASD Rule 3110(c), with several changes as described below.

The new rule requires firms to maintain the name of the associated person, if any, responsible for the account, rather than requiring firms to maintain the signature of the registered representative introducing the account.[7] Where a member firm designates multiple individuals as being responsible for an account, the firm is required to maintain each of their names and a record indicating the scope of their responsibilities with respect to the account. For purposes of the rule, it is the member firm's obligation to determine whether a particular individual is responsible for the account based on the scope of the individual's activities with respect to that account.

The new rule continues to require a firm to maintain the signature of a partner, officer or manager of the firm with respect to an account,[8] but it clarifies that the purpose of this signature is to denote that the account has been accepted in accordance with the firm's policies and procedures for acceptance of accounts.[9] The signature also serves to validate the identity of the named associated person, if any. The rule does not require a partner, officer or manager to provide any particular representations. Further, this signature requirement may be satisfied through the use of electronic means. In this regard, FINRA will consider a valid electronic signature to be any electronic mark that clearly identifies the signatory and is otherwise in compliance with the Electronic Signatures in Global and National Commerce Act (E-Sign Act), the guidance issued by the SEC relating to the E-Sign Act[10] and the guidance provided by FINRA through its interpretive letters,[11] which address electronic approval processes generally.

With respect to a discretionary account maintained by a member firm, the new rule requires firms to obtain the manual dated signature of each named, natural person authorized to exercise discretion in the account.[12] For retention purposes, firms may choose to maintain and preserve the signature record on electronic storage media consistent with SEA Rule 17a-4(f). The new rule no longer requires firms to record the date discretion was granted,[13] or to record the age or approximate age of the customer in connection with

exempted securities. The new rule also clarifies that: (1) the requirements of the rule do not apply to investment discretion granted by a customer as to the price at which or the time to execute an order given by the customer for the purchase or sale of a definite dollar amount or quantity of a specified security; and (2) nothing in the rule shall be construed as allowing member firms to maintain discretionary accounts or exercise discretion in such accounts except to the extent permitted under the federal securities laws.

For an account that was opened pursuant to a prior FINRA rule, FINRA Rule 4512 requires member firms to update the information for such an account in compliance with the new rule whenever they update the account information in the course of their routine and customary business, or as required by other applicable laws or rules.[14] FINRA believes that to promote greater consistency and uniformity of account record information, it is necessary that firms update the account information in such a manner.

Finally, the new rule includes the following additional provisions:

- It requires firms to preserve: (1) any customer account information that subsequently is updated for at least six years after that update; and (2) the last update to any customer account information, or the original account information if there are no updates, for at least six years after the account is closed.[15]
- It reminds firms that they may be subject to additional recordkeeping requirements under the SEA.[16]
- It also reminds firms of their obligation to comply with the requirements of FINRA Rule 2070 (Transactions Involving FINRA Employees).[17]
- It provides general explanations of the terms "maintain" and "preserve" for purposes of FINRA Rule 4512 only.[18]

Records of Written Customer Complaints

Consistent with existing requirements under NASD Rule 3110, FINRA Rule 4513 addresses a member's obligation to preserve records of written customer complaints at each office of supervisory jurisdiction (OSJ)[19] and defines the term "customer complaint" for purposes of this requirement.[20]

The new rule clarifies that the obligation to keep customer complaint records in each OSJ applies only to complaints that relate to that office, including complaints that relate to activities supervised from that office, and provides that firms may maintain the required records at the OSJ or make them promptly available at such office upon FINRA's request. Lastly, to take into account FINRA's four-year routine examination cycle for certain member firms, FINRA Rule 4513 requires that firms preserve the customer complaint records for a period of at least four years.[21]

Authorization Records for Negotiable Instruments

FINRA Rule 4514 provides, similar to NASD Rule 3110(g), that member firms or associated persons must get a customer's express written authorization before obtaining from a customer, or submitting for payment, a negotiable instrument drawn on the customer's checking, savings, share or similar account. As is the case today, the new rule requires that firms preserve the written authorization and provides that the customer's signature on the negotiable instrument would satisfy the authorization requirement, in which case the member firm is not required to preserve that negotiable instrument.

However, FINRA Rule 4514 clarifies that where the required authorization is separate from the negotiable instrument, firms must preserve that required authorization. The new rule further clarifies that the applicable retention period is three years *following the date such authorization expires* since a customer authorization may remain in effect beyond three years from the date of the request.[22]

Changes in Account Name or Designation

FINRA Rule 4515, which is modeled after NASD Rule 3110(j) and NYSE Rule 410, requires that, before a customer order is executed, the account name or designation must be placed upon the order form or other similar record for the transaction,[23] and it addresses the approval and documentation procedures for changes in such account name or designation. FINRA Rule 4515 clarifies that with respect to any change in account name or designation that takes place prior to execution of the trade, the essential facts the principal relied on in approving such change must be documented in writing *prior to execution*. Firms may use electronic means to satisfy the approval and documentation requirements of FINRA Rule 4515, consistent with the guidance above regarding the use of electronic means to denote acceptance of accounts under FINRA Rule 4512.

Additionally, FINRA Rule 4515.01, which is generally based on NYSE Rule Interpretation 410/02, provides that when accepting orders from investment advisers, the member firm may allow such investment advisers to make allocations on their orders for customers on whose behalf the investment advisers submit the orders, as long as the firm receives specific account designations or customer names from such investment advisers by noon of the *next* business day *following* the trading session.[24] FINRA Rule 4515.01 is not limited to block orders, but it only applies where there is more than one customer for any particular order. Moreover, the provision extends to investment advisers that are registered under the Investment Advisers Act or that, but for Investment Advisers Act Section 203(b) or 203A, would be required to register under the Investment Advisers Act.[25] The provision does not extend to accounts handled by individual registered representatives of firms who otherwise exercise discretionary authority over accounts pursuant to NASD Rule 2510.

Lastly, FINRA Rule 4515.01 clarifies that member firms may not knowingly facilitate the allocation of orders from investment advisers in a manner other than in compliance with both (i) the investment adviser's intent at the time of trade execution to allocate shares on a percentage basis to the participating accounts and (ii) the investment adviser's fiduciary duty with respect to allocations for such participating accounts, including but not limited to allocations based on the performance of a transaction between the time of execution and the time of allocation. The "knowingly facilitate" standard means that a broker-dealer may not act recklessly or with knowledge in facilitating an investment adviser's breach of its fiduciary duty to its clients, and compliance with that standard turns on the facts and circumstances.

Predispute Arbitration Agreements

FINRA Rule 2268 requires, among other things, that predispute arbitration agreements contain certain highlighted disclosures so that customers are advised about what they are agreeing to when they sign them. The new rule continues the requirements of NASD Rule 3110(f) and updates the disclosure language to reflect amendments to FINRA Rule 12904, which requires arbitrators to provide an explained decision to the parties in eligible cases[26] if there is a joint request by all parties at least 20 days before the first scheduled hearing date.[27] The disclosure provision regarding explained decisions will apply prospectively to predispute arbitration agreements entered into on or after December 5, 2011, the effective date of FINRA Rule 2268.[28]

Order Audit Trail System (OATS) Recordkeeping Requirements

FINRA Rule 7440(a)(4) sets forth the OATS recordkeeping requirements for member firms that are "Reporting Members," as defined in the OATS rules, for orders received or executed at their trading departments. The new rule is modeled after NASD Rule 3110(h).

Pre-Time Stamping

FINRA Rule 5340 states that pre-time stamping of order tickets in connection with block positioning is contrary to FINRA Rule 4511. This requirement is based on a similar requirement in NYSE Rule Interpretation 410/01.

1 *See* Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (Order Approving Proposed Rule Change; File No. SR-FINRA-2010-052) (Approval Order).

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 FINRA Rules apply to all FINRA member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* *Information Notice 3/12/08* (Rulebook Consolidation Process). For convenience, the Incorporated NYSE Rules are referred to as the NYSE Rules.

3 This *Notice* highlights the most significant changes. For a detailed description of all the changes, firms should review the *Approval Order*.

4 *See* FINRA Rule 4511(a). In contrast, the general recordkeeping obligation in NASD Rule 3110(a) extends to all applicable laws, rules and regulations.

5 *See* FINRA Rule 4511(c).

6 *See* FINRA Rule 4511(b).

7 *See* FINRA Rule 4512(a)(1)(C). Member firms would continue to be subject to any additional requirements imposed by SEA Rule 17a-3. For example, SEA Rule 17a-3(a)(17) requires that for each account with a natural person, the account record must indicate whether it has been signed by the associated person (if any) responsible for the account. However, this requirement only applies to accounts for which the member is, or within the past 36 months has been, required to make a suitability determination under the federal securities laws or the requirements of a self-regulatory organization of which it is a member.

8 *See* FINRA Rule 4512(a)(1)(D).

9 NASD Rule 3110(c) simply provides that firms are required to maintain the signature of the partner, officer, or manager "who accepts the account."

10 *See* Securities Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001) (Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f)).

11 *See, e.g.*, *Letter to Jeffrey W. Kilduff, O'Melveny & Myers, LLP, from Nancy Libin, NASD, dated July 5, 2001.*

12 *See* FINRA Rule 4512(a)(3). NASD Rule 3110(c) requires firms to obtain the signature of each person authorized to exercise discretion in the account. FINRA will address the requirements applicable to other types of accounts in which a person is authorized by a customer to act on the customer's behalf in the context of the proposed changes to NASD Rule 2510 (Discretionary Accounts). *See* Regulatory Notice 09-63 (November 2009) (Proposed Consolidated FINRA Rule Governing Discretionary Accounts and Transactions).

13 Pursuant to NASD Rule 2510, firms would still be required to obtain the customer's prior written authorization. As part of the proposed changes to NASD Rule 2510, FINRA is proposing to require firms to obtain the customer's "dated" prior written authorization. *See* Regulatory Notice 09-63.

14 *See* FINRA Rule 4512(b).

15 *See* FINRA Rule 4512.01.

16 *See* FINRA Rule 4512.02.

17 *See* FINRA Rule 4512.03. FINRA Rule 2070 plays a vital role in helping FINRA monitor whether employees are abiding by trading restrictions imposed by the FINRA Code of Conduct.

18 *See* FINRA Rule 4512.04.

19 *See* FINRA Rule 4513(a).

20 *See* FINRA Rule 4513(b).

21 Currently, firms are required to preserve these records for a period of at least three years. *See* SEA Rules 17a-3(a)(18) and 17a-4(b)(4).

22 NASD Rule 3110(g) requires firms to preserve the required written authorization (other than a copy of a negotiable instrument signed by the customer) for a period of three years.

23 *See also* SEA Rule 17a-3(a)(6).

24 NYSE Rule Interpretation 410/02 only applies to block orders and requires members to obtain the required information by the end of the business day.

25 NYSE Rule Interpretation 410/02 only applies to investment advisers that are either registered under the Investment Advisers Act or subject to state regulation pursuant to Section 203A of the Investment Advisers Act.

26 Pursuant to FINRA Rule 12904(g)(6), the requirement does not apply to simplified cases decided without a hearing under FINRA Rule 12800 or to default cases conducted under FINRA Rule 12801.

27 *See* FINRA Rule 2268(a)(4).

28 FINRA is considering additional changes to FINRA Rule 2268 to reflect amendments to the Code of Arbitration Procedure for Customer Disputes allowing customers to choose an all public arbitration panel. *See* Regulatory Notice 11-05 (February 2011) (Customer Option to Choose an All Public Arbitration Panel in All Cases).

ATTACHMENT A

Below is the text of the new FINRA rules.

* * * * *

2268. Requirements When Using Predispute Arbitration Agreements for Customer Accounts

(a) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following language in outline form.

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:

(1) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(2) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(3) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(4) The arbitrators do not have to explain the reason(s) for their award unless, in an eligible case, a joint request for an explained decision has been submitted by all parties to the panel at least 20 days prior to the first scheduled hearing date.

(5) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(6) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(7) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(b)(1) In any agreement containing a predispute arbitration agreement, there shall be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(2) Within thirty days of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(c)(1) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to paragraph (b)(2) above, the member must provide a copy to the customer by the earlier date required by this paragraph (c)(1) or by paragraph (b)(2).

(2) Upon request by a customer, a member shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(d) No predispute arbitration agreement shall include any condition that:

(1) limits or contradicts the rules of any self-regulatory organization;

(2) limits the ability of a party to file any claim in arbitration;

(3) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(4) limits the ability of arbitrators to make any award.

(e) If a customer files a complaint in court against a member that contains claims that are subject to arbitration pursuant to a predispute arbitration agreement between the member and the customer, the member may seek to compel arbitration of the claims that are subject to arbitration. If the member seeks to compel arbitration of such claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer so requests.

(f) All agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(g) The provisions of this Rule shall become effective on May 1, 2005. The provisions of paragraph (c) shall apply to all members as of the effective date of this Rule regardless of when the customer agreement in question was executed. Otherwise, agreements signed by a customer before May 1, 2005 are subject to the provisions of this Rule in effect at the time the agreement was signed.

* * * * *

4510. Books and Records Requirements

4511. General Requirements

(a) Members shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules.

(b) Members shall preserve for a period of at least six years those FINRA books and records for which there is no specified period under the FINRA rules or applicable Exchange Act rules.

(c) All books and records required to be made pursuant to the FINRA rules shall be preserved in a format and media that complies with SEA Rule 17a-4.

4512. Customer Account Information

(a) Each member shall maintain the following information:

(1) for each account:

(A) customer's name and residence;

(B) whether customer is of legal age;

(C) name(s) of the associated person(s), if any, responsible for the account and if multiple individuals are assigned responsibility for the account, a record indicating the scope of their responsibilities with respect to the account;

(D) signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member's policies and procedures for acceptance of accounts; and

(E) if the customer is a corporation, partnership or other legal entity, the names of any persons authorized to transact business on behalf of the entity;

(2) for each account other than an institutional account, and accounts in which investments are limited to transactions in open-end investment company shares that are not recommended by the member or its associated persons, each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

(A) customer's tax identification or Social Security number;

(B) occupation of customer and name and address of employer; and

(C) whether customer is an associated person of another member; and

(3) for discretionary accounts, in addition to compliance with subparagraph (1) and, to the extent applicable, subparagraph (2) above, and NASD Rule 2510(b), the member shall maintain a record of the dated, manual signature of each named, natural person authorized to exercise discretion in the account. This recordkeeping requirement shall not apply to investment discretion granted by a customer as to the price at which or the time to execute an order given by a customer for the purchase or sale of a definite dollar amount or quantity of a specified security. Nothing in this Rule shall be construed as allowing members to maintain discretionary accounts or exercise discretion in such accounts except to the extent permitted under the federal securities laws.

(b) A member need not meet the requirements of this Rule with respect to any account that was opened pursuant to a prior FINRA rule until such time as the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.

(c) For purposes of this Rule, the term "institutional account" shall mean the account of:

(1) a bank, savings and loan association, insurance company or registered investment company;

(2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or

(3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

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

.01 Customer Account Information Retention Periods. For purposes of this Rule, members shall preserve a record of any customer account information that subsequently is updated for at least six years after the date that such information is updated. Members shall preserve a record of the last update to any customer account information, or the original account information if there are no updates to the account information, for at least six years after the date the account is closed.

.02 Additional Customer Account Records Under the Exchange Act. Members should be aware that they may be required to make and preserve additional customer account records as required under Section 17(a) of the Exchange Act and the applicable associated Exchange Act rules.

.03 Compliance With Rule 2070. With respect to paragraph (a)(2)(B) of this Rule, members should be aware that they have an obligation to comply with the requirements of Rule 2070(a) if they have actual notice that a customer having a financial interest in, or controlling trading in, an account is an employee of FINRA.

.04 "Maintain" and "Preserve." For purposes of Rule 4512 only, as a general matter, the term "maintain" is used to reflect customer account information that is current or in use. The term "preserve" is used to reflect customer account information that is no longer current or in use.

4513. Records of Written Customer Complaints

(a) Each member shall keep and preserve in each office of supervisory jurisdiction either a separate file of all written customer complaints that relate to that office (including complaints that relate to activities supervised from that office) and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files in that office containing the correspondence connected with such complaints. Rather than keep and preserve the customer complaint records required under this Rule at the office of supervisory jurisdiction, the member may choose to make them promptly available at that office, upon request of FINRA. Customer complaint records shall be preserved for a period of at least four years.

(b) For purposes of this Rule, "customer complaint" means any grievance by a customer or any person authorized to act on behalf of the customer involving the activities of the member or a person associated with the member in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

4514. Authorization Records for Negotiable Instruments Drawn From a Customer's Account

No member or person associated with a member shall obtain from a customer or submit for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Where the written authorization is separate from the negotiable instrument, the member shall preserve the authorization for a period of three years following the date the authorization expires. This provision shall not, however, require members to preserve copies of negotiable instruments signed by customers.

4515. Approval and Documentation of Changes in Account Name or Designation

Before any customer order is executed, there must be placed upon the order form or other similar record of the member for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a qualified and registered principal designated by the member. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for the period of time and accessibility specified in SEA Rule 17a-4(b). With respect to any change that takes place prior to execution of the trade, the required approval and documentation must take place prior to execution.

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

.01 Allocations of Orders Made by Investment Advisers. Members may accept orders from investment advisers as described below and allow such investment advisers to make allocations on their orders for customers on whose behalf the investment advisers submit the orders, provided that members receive specific account designations or customer names from such investment advisers by noon of the next business day following the trading session. This exception only applies where there is more than one customer for any particular order.

In addition, this exception applies to: (a) outside investment advisers; and (b) associated persons of a member who provide investment advisory services on behalf of a member acting as an investment adviser. However, in either instance, the investment adviser must be one who is registered under the Investment Advisers Act or who, but for Investment Advisers Act Section 203(b) or 203A, would be required to register under the Investment Advisers Act. It does not apply to accounts handled by individual registered representatives of members who otherwise exercise discretionary authority over accounts pursuant to NASD Rule 2510. Nothing in this Rule or Supplementary Material may be construed as allowing a member knowingly to facilitate the allocation of orders from investment advisers in a manner other than in compliance with both (i) the investment adviser's intent at the time of trade execution to allocate shares on a percentage basis to the participating accounts and (ii) the investment adviser's fiduciary duty with respect to allocations for such participating accounts, including but not limited to allocations based on the performance of a transaction between the time of execution and the time of allocation.

* * * * *

5340. Pre-Time Stamping

Pre-time stamping of order tickets in connection with block positioning is contrary to Rule 4511.

* * * * *

7440. Recording of Order Information

(a) Procedures

(1) through (3) No Change.

(4) With respect to each order that is received or executed at its trading department, each Reporting Member shall record an identification of:

(A) each registered person who receives the order directly from a customer;

(B) each registered person who executes the order; and

(C) the department that originated the order if the order is originated by the member and transmitted manually to another department.

(5) Maintaining and Preserving Records

(A) through (B) No Change.

(b) through **(d)** No Change.

* * * * *

Information Notice

Continuing Education Planning

Executive Summary

On April 14, 2011, the Securities Industry/Regulatory Council on Continuing Education (the Council) released the semi-annual Firm Element Advisory (FEA) (see *Regulatory Notice 11-18*). The Council suggests that firms consult the FEA when developing their Firm Element training needs analysis.

FINRA offers the following online training resources that address many of the topics that the Council has outlined in the FEA:

- **E-Learning Courses:** Online training featuring assessment tests, scenarios, real-time completion tracking and certificates of completion (see *www.finra.org/elearning*).
- **Podcasts:** Short audio recordings on specific targeted topics, which can be heard online or downloaded to a portable media player (see *www.finra.org/podcasts*).

Send questions regarding this *Notice* to *education@finra.org*.

FIRM ELEMENT ADVISORY TOPICS	FINRA TRAINING
Consolidated FINRA Rulebook	**Rulebook Consolidation Series** (Podcast)
Alternative Investments	**Reverse Exchangeable Securities (Reverse Convertibles)** • Reverse Convertibles (Podcast)
	Sales Practice Obligations for Commodity Futures-Linked Securities • Commodity Futures-Linked Securities (Podcast) • Understanding Commodity Futures-Linked Securities (E-Learning)

April 15, 2011

Suggested Routing
- Compliance
- Continuing Education
- Legal
- Training

Key Topics
- Continuing Education
- Firm Element

Referenced Rules & Notices
- Notice 11-18

FIRM ELEMENT ADVISORY TOPICS	FINRA TRAINING
Anti-Money Laundering	• Anti-Money Laundering Series (E-Learning)
Business Continuity	• FINRA's Business Continuity Planning Template (Podcast) • Pandemic Preparedness – Parts I and II (Podcasts)
Communications With the Public	• Electronic Communications Series (Podcasts) • Social Networking (Podcast) • Use of Social Media for Business Purposes (E-Learning) • Electronic Communications Series (E-Learning)
Corporate Finance and Institutional Business	• Private Placements (E-Learning) • Private Placements: Conducting Reasonable Investigations for Regulation D Offerings (E-Learning)
Customer Accounts	• Consolidated Account Reports (Podcast)
Finance and Operations	**Verification of Assets at a Non-Member Financial Institution** • Independent Verification of Assets (Podcast) **Funding and Liquidity Risk Management Practices** • Funding and Liquidity Risk Management – Parts I and II (Podcast)
Insurance and Annuities	• Deferred Variable Annuities (Podcast) • Variable Annuities Series (E-Learning)
Municipal Securities	• Municipal Securities Series (Podcast)
Registration and Disclosure	**BrokerCheck** • BrokerCheck (Podcast) **Forms U4 and U5** • Uniform Forms Electronic Filing Requirements (Podcast) • What to Expect: The U4 and U5 Filing Process (Podcast)

FIRM ELEMENT ADVISORY TOPICS	FINRA TRAINING
Sales Practices and Supervision	• Retail Supervision: Sales to Senior Investors (E-Learning) • Supervisory Considerations for Working with Seniors (E-Learning)
Transaction Reporting and Data Dissemination	**FINRA Expands the Order Audit Trail System (OATS) to All NMS Stocks** • OATS Expansion (Podcast) **OTC Equity and Restricted Securities** • Reg NMS and OTC Equity Securities (Podcast) **Trading Halts** • Trading-Pause Pilot Program (Podcast)

Information Notice

March 2011 Supplement to the Options Disclosure Document

The SEC approved a supplement to the Options Disclosure Document (ODD) on March 31, 2011. The ODD contains general disclosures on the characteristics and risks of trading standardized options. The March 2011 supplement amends the discussion of variability index options to provide disclosure regarding the characteristics of options on equity-based volatility indexes[1] and their special risks. The supplement also adds new disclosures regarding the characteristics of options on relative performance indexes[2] and their special risks. Finally, the supplement amends the ODD to update the inside front cover so that it contains a current list of the U.S. exchanges that trade options issued by The Options Clearing Corporation. As with other supplements to the ODD, this should be read in conjunction with the current ODD, *Characteristics and Risks of Standardized Options*.

Rule 9b-1 under the Securities Exchange Act requires broker-dealers to deliver the ODD and supplements to customers.[3] FINRA has similar requirements in FINRA Rule 2360(b)(11)(A)(1), which requires firms to deliver the current ODD to each customer at or before the time the customer is approved to trade options. In addition, FINRA Rule 2360(b)(11)(A)(1) requires firms to distribute a copy of each ODD supplement to customers who previously received the ODD. Firms must deliver the ODD supplements no later than the time a customer receives a confirmation of a transaction in the category of options to which the supplement pertains. Rule 2360(b)(11)(A)(3) also requires FINRA to advise firms when revisions to the ODD are made.

To comply with the requirements of FINRA Rule 2360(b)(11)(A)(1), firms may distribute the ODD supplement in various ways, including, but not limited to, one of the following:

1. conducting a mass mailing of the supplement to all of its customers approved to trade options who have already received the ODD; or
2. distributing the supplement to a customer who has already received the ODD not later than the time a customer receives a confirmation of a transaction in the category of options to which the amendment pertains.

April 20, 2011

Suggested Routing

- Compliance
- Institutional
- Legal
- Options
- Senior Management
- Trading

Key Topics

- Options
- Options Disclosure Document
- Relative Performance Index Options
- Variability Index Options

Referenced Rules & Notices

- FINRA Rule 2360
- NTM 98-003
- SEA Rule 9b-1

FINRA®
Financial Industry Regulatory Authority

FINRA reminds firms that they may electronically transmit documents that they are required to furnish to customers under FINRA rules, including the ODD and supplements thereto, provided the firm adheres to the standards contained in the May 1996 and October 1995 Securities Exchange Commission Releases,[4] and as discussed in *Notice to Members 98-03*. Firms may also transmit the ODD and supplements to customers who have consented to electronic delivery through the use of a hyperlink.[5]

Questions regarding this *Notice* may be directed to Kathryn M. Moore, Assistant General Counsel, Office of General Counsel, at (202) 974-2974.

Endnotes

1 For purposes of the ODD, the disclosure will make clear that an equity-based volatility index measures the implied volatility, or the realized variance or volatility of a specified reference security.

2 For purposes of the ODD, relative performance indexes are a special type of strategy-based index that measures the relative performance—generally the relative total return—of two index components (the target component and the benchmark component). The index is calculated by measuring the total return of the target component relative to the total return of the benchmark component. The index will rise as, and to the extent that, the target component outperforms the benchmark component, and will fall as, and to the extent that, the opposite occurs. As stated in the March 2011 supplement, as of the date of the supplement, the only relative performance options approved for trading are options on indexes of which both index components are equity securities, and one of which could be a fund share.

3 17 CFR 240.9b-1.

4 *See* Securities Act Release No. 7288 (May 9, 1996) 61 FR 24644 (May 15, 1996) and Securities Act Release No. 7233 (October 6, 1995) 60 FR 53458 (October 13, 1995).

5 *See* Securities Act Release No. 58738 (October 6, 2008) 73 FR 60371 (October 10, 2008).