

Notices

Regulatory Notices

- 12-12** SEC Approves Amendments to FINRA's Code of Procedure; **Effective Date: March 30, 2012**
- 12-13** SEC Approves Consolidated FINRA Best Execution Rule; **Effective Date: May 31, 2012**
- 12-14** FINRA Requests Comment on Proposed Amendments to NASD Rule 2340 to Address Values of Unlisted Direct Participation Programs and Real Estate Investment Trusts; **Comment Period Expires: April 11, 2012**
- 12-15** SEC Approves Rule to Establish an Accounting Support Fee to Fund the Governmental Accounting Standards Board; **Effective Date: February 23, 2012 Election Notices**
- 12-16** Changes to Qualification Examination Fees and New Service Charge for Regulatory Element Continuing Education Sessions Taken Outside the United States; **Effective Date: April 2, 2012**

Information Notices

- 03/01/12** Revised Fee for Fingerprint Processing; **Effective Date: March 19, 2012**
- 03/08/12** New Rate for Fees Paid Under Section 31 of the Exchange Act; **Effective Date: April 1, 2012**

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

Code of Procedure

SEC Approves Amendments to FINRA's Code of Procedure

Effective Date: March 30, 2012

Executive Summary

The SEC approved amendments to FINRA's Code of Procedure.¹ The amendments are procedural in nature and include the following, in addition to several more minor changes:

- ▶ allowing service of a complaint (and notices of certain expedited proceedings) on counsel when counsel agrees to accept such service;
- ▶ permitting electronic filing of papers with an adjudicator;
- ▶ requiring an attorney seeking to withdraw from a disciplinary case to file a motion before withdrawal would be approved;
- ▶ allowing hearing officers to manage the parties' pre-hearing submissions to reduce and eliminate duplicative filings; and
- ▶ allowing counsel to the NAC to decide a procedural motion in an eligibility proceeding or an expedited proceeding.

The text of the amended rules can be found at www.finra.org/notices/12-12. Once effective, the amended rules will apply immediately to all new and pending matters governed by FINRA's Code of Procedure.

Questions concerning this *Notice* should be directed to:

- ▶ Alan Lawhead, Vice President and Director, Appellate Group, Office of General Counsel (OGC), at (202) 728-8853;
- ▶ Andrew J. Love, Associate General Counsel, OGC, at (202) 728-8281; or
- ▶ Matthew E. Vitek, Assistant General Counsel, OGC, at (202) 728-8156.

March 2012

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Legal
- ▶ Senior Management

Key Topics

- ▶ Code of Procedure

Referenced Rules & Notices

- ▶ FINRA Rule 9000 Series

Background & Discussion

FINRA's Code of Procedure (the Code) contains detailed provisions for initiating and adjudicating various types of actions, including disciplinary, eligibility, expedited, and cease and desist proceedings.² The amendments, as described below, seek generally to improve the efficient administration of FINRA proceedings and are procedural in nature. The amendments become effective on March 30, 2012, and, once effective, apply immediately to all new and pending matters governed by the Code.

Service of Complaint

FINRA Rule 9131(a) requires a complaint to be served on each respondent by FINRA's Enforcement or Market Regulation departments. The amended rule now allows for service on counsel or another person authorized to represent others when the representative agrees to accept service of the complaint. Further, Rule 9131(a) previously provided that a party initiating a proceeding shall serve a document initiating the proceeding on the other party. Amended Rule 9131(a) deletes this provision to clarify that only Enforcement or Market Regulation can initiate a proceeding.³

The FINRA Rule 9550 Series provides procedures for initiating and adjudicating expedited proceedings. The service provisions contained in the Rule 9550 Series are similar to Rule 9131(a) in that they require serving notice on a member firm, person associated with a member firm or person subject to FINRA's jurisdiction, but do not provide for service on counsel. The amended rules, Rules 9551(b), 9552(b), 9553(b), 9554(b), 9555(b) and 9556(b), now allow FINRA to serve counsel or a person authorized to represent others when counsel or a representative agrees to accept service of a notice.

Filing of Papers With Adjudicator

FINRA Rule 9135(a) prescribes the timing for the filing of papers with an adjudicator and the method of their delivery. Amended Rule 9135(a) adds the use of electronic mail as another delivery method for complaints and other papers required to be filed with an adjudicator.

FINRA Rule 9136 establishes the form for papers filed in connection with a disciplinary proceeding or an appeal of a disciplinary proceeding. Amended Rule 9136(a)(5) modifies the format for footnotes by requiring them to be single-spaced. Additionally, to reduce duplication, amended Rule 9136(c) decreases the number of copies required to be filed with the adjudicator from three to one, unless otherwise ordered. Finally, the rule change amends Rule 9313 by giving counsel to the National Adjudicatory Council (NAC) the authority to set the number of copies of all papers to be filed with the NAC.

Motion to Withdraw by Attorney

FINRA Rule 9142 requires an attorney for a party or a person authorized to represent others seeking to withdraw to give notice setting forth good cause for the withdrawal at least 30 days prior to withdrawal, unless circumstances do not permit. The amended rule now requires an attorney for a party (or a person authorized to represent others by Rule 9141) seeking to withdraw to file a motion that sets forth good cause for withdrawal and contains the contact information of the party no longer being represented.

Subjects Discussed at Pre-Hearing Conference

FINRA Rule 9241(c) describes the subjects that the hearing officer, in a pre-hearing conference, may consider and act upon. The amended rule adds an additional, permissive subject for a pre-hearing conference: designation of relevant portions of transcripts from investigative testimony or other proceedings and the inclusion of an index for such testimony.

Fees for Copying Costs During Discovery

FINRA Rule 9251(f) allows a respondent to obtain a photocopy of all documents made available for inspection by FINRA's Enforcement or Market Regulation departments and requires the respondent to pay the copying costs. The amended rule now identifies FINRA staff as setting the rate for copies. FINRA staff will base the copying charges on rates charged by local copying vendors in the area where FINRA maintains the documents.

Submission of Evidence

FINRA Rule 9261(a) addresses pre-hearing disclosures and requires each party to submit to all other parties and to the hearing officer copies of documentary exhibits the parties intend to introduce and the names of the witnesses each party intends to present at a hearing. Currently, pre-hearing, proposed documentary evidence submitted to the hearing officer becomes part of the record. At the hearing, all of the documents that are admitted into evidence also become part of the record.⁴ This results in the record containing a duplicate of nearly every document that was admitted into evidence. Amended Rule 9261(a) establishes that documentary evidence submitted prior to a hearing shall not become part of the record, unless a hearing officer, hearing panel or extended hearing panel orders that it will be. Under the amended rule, the record will be focused on the evidence the parties introduced, or attempted to introduce, at the hearing. Further, the hearing officer may order the parties—who will continue to exchange proposed documentary evidence with other parties—to refrain from submitting their proposed documentary evidence to the hearing officer.

Hearing Panel and NAC Decisions

FINRA Rules 9268(b)(1) and 9349(b)(1) require that a statement describing the investigative or other origin of the disciplinary proceeding be included in the contents of a decision of the hearing panel or the NAC, respectively. The amended rule requires such a statement only if the information is not otherwise contained in the record.

Review Proceedings

FINRA Rule 9312(a)(2) requires that if a default decision issued pursuant to Rule 9269 is called for review by the general counsel within 25 days after the date of service of the decision, the decision will be reviewed by the NAC. Amended Rule 9312(a)(2) clarifies that the Review Subcommittee also may review the decisions.⁵

Oral Argument on Appeal

FINRA Rule 9341(a) establishes the procedure for a party on appeal to request an oral argument before the subcommittee of the NAC or, if applicable, the Extended Proceeding Committee of the NAC. Currently, once oral argument is requested, there is no mechanism to cancel the argument if a respondent abandons his or her request for oral argument subsequent to filing a brief but prior to the date set for oral argument. Amended Rule 9341(a) allows the subcommittee or, if applicable, the Extended Proceeding Committee, to cancel in writing a previously scheduled oral argument, and decide the matter based on the briefs and the record without oral argument, if the adjudicator finds good cause due to a respondent abandoning his or her prior request, or being unreasonably unavailable.

Failure to Participate in Disciplinary Proceeding

FINRA Rule 9344(a) gives the NAC or the Review Subcommittee discretion on how to proceed when an appealing party did not participate in the disciplinary proceeding before a hearing officer, a hearing panel or, if applicable, an Extended Hearing Panel. The amended rule now states more plainly that the NAC or the Review Subcommittee will remand the disciplinary proceeding with instructions when a party shows good cause for failing to participate. If, on the other hand, a party does not show good cause, the amended rule states that the subcommittee or other adjudicator will decide the case based on the briefs and the record and without oral argument.

Filing of Papers in Eligibility Proceedings

FINRA Rule 9524(a)(5) gives a hearing panel in an eligibility proceeding the ability, after obtaining consent of all the parties, to extend or shorten any time limits prescribed by the Code for the filing of any papers. The amended rule removes the consent requirement for any extension of a time limit to empower hearing panels with authority over scheduling matters.

Procedural Motions in Eligibility or Expedited Proceedings

FINRA Rule 9146(j)(3) requires that in the Rule 9500 Series, a motion shall be decided by an adjudicator. The amended rule allows counsel to the NAC to decide a procedural motion made in an eligibility proceeding or an expedited proceeding.

Endnotes

1. See Securities Exchange Act Release No. 66096 (January 4, 2012), 77 FR 1524 (January 10, 2012) (Order Approving File No. SR-FINRA-2011-044); see also SR-FINRA-2012-019.
2. The FINRA Rule 9000 Series is FINRA's Code of Procedure.
3. The concept of allowing an aggrieved person to initiate an NASD disciplinary proceeding was eliminated, with SEC approval, in 1997. See *Russell A. Simpson*, 53 S.E.C. 1042, 1044 n.3, (1998).
4. See FINRA Rule 9267(a)(3).
5. The Review Subcommittee is authorized to determine whether disciplinary decisions should be called for review by the NAC and to perform any other function set forth in FINRA's rules. See FINRA Regulation By-Laws, Article V, Section 5.13.

Best Execution

SEC Approves Consolidated FINRA Best Execution Rule

Effective Date: May 31, 2012

Executive Summary

The SEC approved FINRA's proposed rule change to adopt FINRA Rules 5310 (Best Execution and Interpositioning) and 6438 (Displaying Priced Quotations in Multiple Quotation Mediums) in the consolidated rulebook (Consolidated FINRA Rulebook).¹ FINRA Rule 5310 is the new consolidated rule governing members' best execution requirements that is based largely on NASD Rule 2320 (Best Execution and Interpositioning). The Supplementary Material to Rule 5310 draws substantially from NASD IM-2320 (Interpretive Guidance with Respect to Best Execution Requirements) but includes several new provisions concerning securities with limited quotation or pricing information available, foreign securities, customer instructions on routing orders, and regular and rigorous review of execution quality. Rules 5310 and 6438 become effective on May 31, 2012.

The text of FINRA Rules 5310 and 6438 are available in the online FINRA manual at www.finra.org/finramanual.²

Questions concerning this *Notice* should be directed to Brant Brown, Associate General Counsel, Office of General Counsel, at (202) 728-6927.

Background & Discussion

The SEC approved FINRA's proposed rule change to adopt FINRA Rules 5310 and 6438 in the Consolidated FINRA Rulebook.³ FINRA Rule 5310 is the new consolidated rule governing members' best execution requirements and is based largely on NASD Rule 2320. The Supplementary Material to Rule 5310 draws substantially from NASD IM-2320 but includes several new provisions that are described below.⁴ Rule 6438 replaces, but does not substantively alter, NASD Rule 2320(f)(2) requiring members to display the same priced quotation for OTC equity securities in multiple quotation mediums.⁵

March 2012

Notice Type

- ▶ Consolidated FINRA Rule

Suggested Routing

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

Key Topics

- ▶ Best Execution
- ▶ Directed Orders
- ▶ Foreign Securities
- ▶ Regular and Rigorous Review
- ▶ Three Quote Rule

Referenced Rules & Notices

- ▶ FINRA Rule 5310
- ▶ FINRA Rule 5320
- ▶ FINRA Rule 6420
- ▶ FINRA Rule 6438
- ▶ NASD Rule 2320
- ▶ NASD IM-2320
- ▶ NASD Rule 3110
- ▶ NTM 01-22

FINRA Rule 5310 leaves in place the general requirements of best execution. Rule 5310(a) requires a member firm, in any transaction for or with a customer or a customer of another broker-dealer, to use “reasonable diligence” to ascertain the best market for a security and to buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. The rule identifies five factors that are among those to be considered in determining whether the firm has used reasonable diligence:

- ▶ the character of the market for the security;
- ▶ the size and type of transaction;
- ▶ the number of markets checked;
- ▶ the accessibility of the quotation; and
- ▶ the terms and conditions of the order as communicated to the firm.

Rule 5310 also includes provisions related to interpositioning (*i.e.*, interjecting a third party between the firm and the best available market), the use of a broker’s broker,⁶ the staffing of order rooms and the application of the best execution requirements to other parties.⁷

As noted above, the Supplementary Material to Rule 5310 includes the following new provisions:⁸

1. Supplementary Material .06: Securities with Limited Quotation or Pricing Information

NASD Rule 2320(f), which was commonly referred to as the “Three Quote Rule,” has been replaced with Supplementary Material .06. The new Supplementary Material emphasizes a firm’s best execution obligations when handling an order involving any security, equity or debt, for which there is limited quotations or pricing information available. It stresses that a firm must be especially diligent with respect to best execution obligations when there is limited quotation or other pricing information available regarding the security that is the subject of the order and requires the firm to have written policies and procedures in place to address the steps the firm will take to determine the best market for such a security in the absence of multiple quotations or pricing information and to document how the firm has complied with those policies and procedures.⁹ The Supplementary Material specifically notes that, when handling orders for such securities, a firm should generally seek out other sources of pricing information or potential liquidity, which may include obtaining quotations from other sources (*e.g.*, other firms that the member firm previously has traded with in the security). For example, in many instances, particularly in the context of equity securities with limited quotation information available, contacting other broker-dealers may be necessary to comply with a firm’s best execution obligations. The Supplementary Material recognizes that contacting other broker-dealers can often be necessary for a firm to meet its best execution obligations.¹⁰

2. **Supplementary Material .07: Orders for Foreign Securities with No U.S. Market**

Markets in foreign jurisdictions often do not have identical best execution requirements as those in the United States and, in many cases, may not have comparable pre-trade or post-trade transparency standards. Consequently, the handling of orders for foreign securities with no U.S. market can differ substantially from the handling of orders in securities that trade in the United States. Supplementary Material .07 to Rule 5310 addresses firms' best execution obligations when handling orders for foreign securities, and in particular foreign securities with no U.S. market.

Supplementary Material .07 recognizes that markets for different securities can vary dramatically and that the standard of "reasonable diligence" required by FINRA Rule 5310(a) must be assessed by examining specific factors, including "the character of the market for the security" and the "accessibility of the quotation." Accordingly, the determination as to whether a firm has satisfied its best execution obligations necessarily involves a "facts and circumstances" analysis. Supplementary Material .07 notes that even though a foreign security may not trade in the United States, firms still have an obligation to seek best execution for customer orders involving the security. Consequently, a firm that handles customer orders for foreign securities that do not trade in the United States must have specific written policies and procedures in place regarding its handling of customer orders for these securities that are reasonably designed to obtain the most favorable terms available for the customer, taking into account differences that may exist between U.S. markets and foreign markets. The Supplementary Material further notes that a firm's best execution obligations will evolve as changes occur in the market that may give rise to improved executions, including opportunities to trade at more advantageous prices. Firms must, therefore, regularly review their policies and procedures to assess the quality of executions received and update or revise the policies and procedures as necessary.

3. **Supplementary Material .08: Customer Instructions Regarding the Routing of Orders**

Supplementary Material .08 addresses situations where the customer has, on an unsolicited basis, specifically instructed the firm to route its order to a particular market.¹¹ Under those circumstances, the firm is not required to make a best execution determination beyond that specific customer instruction; however, the firm must process the customer's order promptly and in accordance with the terms of the order. Supplementary Material .08 also makes clear that, where a customer has directed the firm to route an order to another broker-dealer that is also a FINRA member firm, the exception would not apply to the receiving broker-dealer to which the order was directed.¹²

4. **Supplementary Material .09: Regular and Rigorous Review of Execution Quality**

Supplementary Material .09 codifies a firm's obligations when it undertakes a regular and rigorous review of execution quality likely to be obtained from different market centers. These longstanding obligations are set forth and explained in various SEC releases and *Notices to Members*.¹³ Supplementary Material .09 codifies this guidance and does not alter existing requirements regarding regular and rigorous review.

Endnotes

1. See Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9, 2011) (Order Approving SR-FINRA-2011-052). The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from the NYSE (Incorporated NYSE Rules) (together the NASD Rules and Incorporated NYSE Rules are referred to as the Transitional Rulebook). While the NASD Rules generally apply to all FINRA member firms, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The new FINRA Rules apply to all member firms, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice 03/12/08* (Rulebook Consolidation Process).
2. FINRA updates the rule text on its online *Manual* within two business days of SEC approval of changes to the rule text.
3. See Securities Exchange Act Release No. 65895 (December 5, 2011), 76 FR 77042 (December 9, 2011) (Order Approving SR-FINRA-2011-052).
4. IM-2320 was adopted in 2006 to codify interpretive guidance that FINRA staff had provided involving compliance with NASD Rule 2320. See Securities Exchange Act Release No. 54339 (August 21, 2006), 71 FR 50959 (August 28, 2006). Specifically, IM-2320 addressed issues involving the term “market” for purposes of the rule as well as the application of the rule to debt securities and to broker-dealers that are executing a customer’s order against the broker-dealer’s quote.
5. NASD Rule 2320(f)(2) generally required members that display priced quotations on a real-time basis for a non-exchange-listed security in two or more quotation mediums that permit quotation updates on a real-time basis to display the same priced quotation in each medium except for certain customer limit orders displayed on an electronic communications network. Rule 6438 replaces the term “non-exchange-listed security” with “OTC Equity Security” to conform the rule language to other FINRA rules addressing non-NMS stocks, and the rule does not include a separate definition of “quotation medium.” For purposes of Rule 6438, the terms “OTC Equity Security” and “quotation medium” are defined in FINRA Rule 6420.
6. Certain parts of the provision concerning the use of a broker’s broker were relocated from NASD Rule 2320(b) into Supplementary Material .05 of Rule 5310.
7. FINRA also amended paragraph (e) of the rule to clarify that a firm’s best execution obligations extend to all customer orders, thus avoiding the potential misimpression that the paragraph limits the scope of the rule’s requirements.
8. Supplementary Material .01 of Rule 5310 repeats the obligation in Supplementary Material .01 to FINRA Rule 5320 (Prohibition Against Trading Ahead of Customer Orders) that a firm must make every effort to execute a marketable customer order that it receives fully and promptly.

9. NASD Rule 3110(b) (Books and Records) generally required firms to indicate on the customer order ticket how they complied with the Three Quote Rule, if applicable. FINRA has replaced this provision with a more general documentation requirement in Supplementary Material .06 that requires firms to retain records sufficient to demonstrate that they have handled orders covered by the rule in accordance with their policies and procedures.
10. In recognizing the importance of contacting other broker-dealers for pricing or liquidity information, many firms may choose to adopt policies and procedures that are substantially similar to the Three Quote Rule but may, for example, allow for firms to adapt their procedures for certain situations if the firm reasonably concludes that those requirements would result in unnecessary delay or otherwise not benefit the customer. Firms must also continue to take into account when developing their procedures that the Three Quote Rule was a minimum standard, and contacting other dealers does not guarantee that a firm has met its best execution obligations in all cases.
11. When the order is for an NMS security, these orders are often referred to as “directed orders.” See 17 CFR 242.600(b)(19). Of note, directed orders are excluded from the order routing statistics required to be produced under Rule 606 of SEC Regulation NMS. See 17 CFR 242.606.
12. For example, if a customer of Member Firm A directs Member Firm A to route an order to Member Firm B, Member Firm B would continue to have best execution obligations to that customer order received from Member Firm A.
13. See, e.g., Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996); *NTM 01-22* (April 2001).

Customer Account Statements

FINRA Requests Comment on Proposed Amendments to NASD Rule 2340 to Address Values of Unlisted Direct Participation Programs and Real Estate Investment Trusts

Comment Period Expires: April 11, 2012

Executive Summary

FINRA seeks comment on a revised proposal to amend NASD Rule 2340 (Customer Account Statements) to address the per share estimated values at which unlisted Direct Participation Programs (DPPs) and unlisted Real Estate Investment Trusts (REITs) are reported on customer account statements. The revised proposal reflects changes based on comments to the amendments FINRA proposed in [Regulatory Notice 11-44](#).

Under the revised proposal, general securities members would no longer be required to provide a per share estimated value, unless and until the issuer provides an estimate based upon an appraisal of assets and liabilities in a periodic or current report filed under the Securities Exchange Act of 1934. During the initial offering period, member firms would have the option of using a modified net offering price or designating the securities as “not priced.” Additionally, the revised proposal modifies the account statement disclosures that accompany the per share estimated value. The revised proposal also includes alternative requirements for DPPs or REITs that calculate a daily net asset value (NAV).

The text of the proposed amendments to NASD Rule 2340 (Customer Account Statements) is set forth in Attachment A.

Questions regarding this *Notice* may be directed to:

- ▶ Thomas M. Selman, Executive Vice President, Regulatory Policy, at (202) 728- 6977;
- ▶ Joseph E. Price, Senior Vice President, Corporate Financing/Advertising Regulation, at (240) 386-4623; or
- ▶ Gary L. Goldsholle, Vice President and Associate General Counsel, Office of the General Counsel, at (202) 728-8104.

March 2012

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Senior Management

Key Topics

- ▶ Customer Account Statements
- ▶ Unlisted Real Estate Investment Trusts (REITs)
- ▶ Unlisted Direct Participation Programs (DPPs)

Referenced Rules & Notices

- ▶ FINRA Rule 2310
- ▶ NASD Rule 2340
- ▶ Notice to Members 01-08
- ▶ Regulatory Notice 11-44
- ▶ Rule 415 under the Securities Act of 1933

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by April 11, 2012.

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

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

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

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

Important Notes: The only comments that FINRA will consider are those submitted pursuant to the methods described above. All comments received in response to this *Notice* will be made available to the public on the FINRA website. Generally, FINRA will post comments as they are received.¹

Before becoming effective, a proposed rule change must be authorized for filing with the Securities and Exchange Commission (SEC) by the FINRA Board of Governors, and then must be filed with the SEC pursuant to Section 19(b) of the Securities Exchange Act of 1934 (SEA).²

Background

As discussed in [Regulatory Notice 11-44](#), NASD Rule 2340 generally requires each general securities member firm to send account statements to customers at least quarterly. The account statements must include a description of any securities positions, money balances and account activity since the firm issued the prior account statement. A firm that does not carry customer accounts and does not hold customer funds or securities is not a general securities member firm and is not subject to the provisions of NASD Rule 2340.

Paragraph (c) of the rule contains specific provisions addressing the estimated values of DPPs and REITs on customer account statements. The rule generally requires that a general securities member firm include a per share estimated value for a DPP or REIT security held in a customer's account whenever a value appears in the issuer's annual report. The rule states that the per share estimated value included on a customer account statement may

be obtained from the annual report, an independent valuation service or any other source. The rule requires that firms develop a per share estimated value on a customer account statement from data that is not more than 18 months old. The rule also requires a firm to remove or amend a per share estimated value if the firm can demonstrate that the value was inaccurate as of the date of valuation or is no longer accurate as a result of a material change in operations. DPPs and REITs are the only securities identified in NASD Rule 2340 for which per share estimated account values are required on an account statement.

In *Regulatory Notice 11-44*, FINRA proposed several modifications to NASD Rule 2340 that were designed to improve the quality of the information provided to customers. The proposed amendments in *Regulatory Notice 11-44* (original proposal) would have limited the time period for which the per share estimated value may be based upon the gross offering price, to the initial three-year offering period provided under Rule 415(a)(5) of the Securities Act of 1933 (initial offering period). It also would have required firms to deduct organization and offering expenses from the gross offering price to reach a per share estimated value (net offering price). In addition, the original proposal would have prohibited a firm from using a per share estimated value from any source, if it “knows or has reason to know the value is unreliable,” based upon publicly available information or nonpublic information that has come to the firm’s attention. Finally, the original proposal would have allowed a firm to omit a per share estimated value on a customer account statement if the most recent annual report of the DPP or REIT does not contain a value that complies with the disclosure requirements of NASD Rule 2340.

Comments Received on Regulatory Notice 11-44

FINRA received 25 comments on the original proposal. While some commenters supported the proposal, many expressed concern about two elements: (1) the proposed requirement that the net offering price, rather than a gross offering price, be provided during the initial offering period, and (2) the proposed requirement that a general securities member firm refrain from providing a per share estimated value if it knows or *has reason to know* the value is unreliable.

The commenters provided numerous bases for objecting to the proposal’s net offering price requirement. Some commenters addressed the practical limitations of calculating a net offering price, stating that a net offering price might vary over time as certain fixed expenses are allocated across a larger number of units sold, or might vary based upon the amount of selling concessions allocated to a particular broker-dealer. In addition, commenters noted that displaying a net offering price might create incentives to reduce expenditures on due diligence and might complicate implementation of issuer dividend reinvestment and redemption plans.

Of greater import from a policy perspective were the comments that implied that the gross offering price was not representative of value. One commenter stated that the gross offering price is an arbitrary figure and “does not reflect actual value.”³ Commenters also stated that since the gross offering price does not reflect an estimate of the true value of the shares, the gross price net of organization and offering expenses cannot reflect such an estimate. As one broker-dealer stated, “[b]ecause the \$10 public offering price is not a reflection of the net asset value of the security – subtracting organizational and offering expenses from this arbitrary number to create a second arbitrary number fails to properly address the issue – *i.e., that the net asset value of the security is not calculable until the assets have been invested.*”⁴

Another commenter added that the net offering price “is not reflective of the investment’s actual value,” and “deducting organization and offering expenses from an arbitrary starting price that does not reflect intrinsic value will leave investors confused, as the net amount is a misrepresentation of what investors may believe is an intrinsic value.”⁵ Commenters also suggested that a net price would “confuse investors” and be “artificially low.”⁶

Most commenters stated that they would support a requirement that member firms present a per share estimated value based upon an appraisal of the issuer’s assets and liabilities after the initial offering period. As noted by one commenter, the “appraisals will be more relevant if they are done at a time when it is reasonably likely that a significant portion of the offering proceeds will have been invested.”⁷

Revised Proposal⁸

FINRA proposes to eliminate the requirement from the existing rule that a member firm include a per share estimated value for a DPP or REIT security held in a customer’s account whenever any value appears in the issuer’s annual report. Instead, FINRA proposes to require that a firm provide a per share estimated value based upon an appraisal from the issuer’s most recent periodic or current report. We agree with commenters that the appraised value that appears in the issuer’s periodic or current reports should provide the most reliable per share estimated value. Requiring the gross offering price or net offering price to be included in customer account statements simply because it appears in the issuer’s annual report does not address issues of value.

While the proposal would not require the presentation of net offering price, it would permit firms to present net offering price (modified as described below) until an appraised value appears in the issuer’s periodic or current reports, but in no event after the second quarterly public filing following the initial offering period. An appraised value during most of the initial offering period would not be as useful to investors because most of the assets in the program will typically consist of cash and short-term, liquid securities. By the time of this second quarterly filing, if the issuer has not included an appraised value in its periodic or current reports, then a member firm would be permitted only to indicate that the security

is “not priced” in its customer account statements. This quarterly filing “grace period” is designed to ensure that issuers have had sufficient time to conduct an appraisal and include an appraised value after the initial offering period. Moreover, a quarterly public filing deadline might occur immediately after the initial offering period, and for this reason the proposal would allow firms to present the net offering price until the issuer has filed one more quarterly filing, unless the issuer includes an appraised value in its periodic or current reports before that time.

During the period in which the issuer has not provided an appraised value (but extending no longer than the second quarterly filing after the initial offering period) a member may present a modified version of net offering price or list the securities as “not priced.” To address some of the practical limitations of calculating a net price, FINRA proposes to redefine “net offering price” for purposes of the rule as the gross offering price less any front-end underwriting compensation expenses (as defined in Rule 2310(b)(4)(c)(ii)) reimbursed or paid for with offering proceeds. As such, firms would not be required to subtract either issuer expenses, due diligence expenses, or trail fees, unlike the original proposal. Simplifying the methodology to arrive at a net offering price should ease the burdens on firms electing to use that figure. Moreover, since the net offering price would reflect only the amount of front-end underwriting compensation expenses (used typically to pay the wholesaler and dealers), that value will be easily identified by firms participating in the offering and the estimated value would not have any undesired implications on the operation and pricing of an issuer’s dividend reinvestment or share repurchase plans.

In light of the comments and concerns expressed herein about the appropriateness of using gross offering price as a per share estimated value, and the requirements under the existing rule that firms provide an estimated value on a customer account statement where one is contained in the annual report, pending adoption of the proposed amendments to Rule 2340, FINRA will accept exemptive requests from firms that do not wish to use a gross offering price on a customer account statement. Paragraph (e) of the existing rule grants FINRA authority to exempt firms from the provisions of the rule for good cause shown. A firm that requests to remove a gross offering price from a customer account statement because that price is not indicative of the estimated value will generally be deemed to have met this standard.

Reliability of Estimated Values

Commenters expressed concern about the proposed requirement that a general securities member firm refrain from providing a per share estimated value if it knows or *has reason to know* the value is unreliable. The purpose of this proposal was to clarify the meaning of a current provision in the rule, which requires a firm to refrain from including a per share estimated value if the firm “can demonstrate” the value is inaccurate. However, in light of the other changes to the original proposal, FINRA has withdrawn that particular proposed requirement concerning the reliability of appraised values.

Under the revised proposal, we anticipate that per share estimated values will be almost exclusively derived from values based on appraisals obtained by issuers and included either in the issuer's periodic or current reports or a daily NAV calculation. As such, firms typically will have no reason to question their reliability, and the proposed requirement should not be necessary. If, however, a firm is aware of red flags as to the reliability of a per share estimated value, at a minimum, the firm must follow up with the issuer or its independent valuation service and ask the issuer or independent valuation service to reconsider the valuation in light of the information. The member firm must evaluate the response received to determine whether continuing to include the per share estimated NAV is appropriate in light of the red flags identified. The revised proposal does not require a member firm to include a per share estimated value on its customer account statements that it reasonably believes is unreliable.

Account Disclosures

NASD Rule 2340 requires that when a per share estimated value is provided on an account statement, firms must make certain disclosures pertaining to the illiquid nature of these securities and the source of the estimated net asset value. FINRA proposes to augment and refine these disclosures to assist investors in understanding them. First, FINRA proposes that the requirement to describe the value and the methodology by which a per share estimated value has been determined should apply only to the net offering price that may appear before the issuer provides an appraised value. Second, FINRA proposes to replace the terms "illiquid" and "liquidity" with terms more likely to be familiar to ordinary investors. Third, FINRA proposes disclosures directing customers to the issuer for information on redemption and the per share estimated value. Specifically, FINRA proposes that a general securities firm disclose:

- ▶ that the per share estimated value is being reproduced from the issuer's public filings with the SEC and is being presented without inquiry or investigation;
- ▶ the methodology by which any net price is calculated;
- ▶ that no public market currently exists for the securities, and even if the customer is able to sell these securities, the value the customer receives may be less than the per share estimated value reflected on the statement; and
- ▶ that additional information about redemption options and the per share estimated value reflected on the statement is available from the issuer.

As noted above, in recent years some unlisted DPPs and REITs have developed a daily NAV.⁹ To accommodate this new development, FINRA proposes an alternative and parallel regime for unlisted DPPs and REITs calculating a daily NAV. For these securities, a general securities firm would have to publish the per share daily estimated NAV as of the end of the statement period. The proposed required account statement disclosures are virtually identical and would reflect only small changes based upon the daily NAV method. The proposal requires disclosure that:

- ▶ the per share estimated daily NAV is provided by the issuer and is being presented without inquiry or investigation;
- ▶ notwithstanding the availability of a per share estimated daily NAV, no public market currently exists for the securities, and even if the customer is able to sell these securities, the value the customer receives may be less than the per share estimated value reflected on the statement; and
- ▶ additional information about redemption options and the per share estimated daily NAV reflected on the statement is available from the issuer.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. *See Notice to Members 03-73* (November 2003) (NASD Announces Online Availability of Comments) for more information.
2. *See* Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the *Federal Register*. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. *See* SEA Section 19(b)(3) and SEA Rule 19b-4.
3. Letter from David T. Hirschmann, President and Chief Executive Officer, Center for Capital Markets Competitiveness of the United States Chamber of Commerce, dated November 11, 2011 (Chamber of Commerce).
4. Letter from Stephanie L. Brown, Managing Director and General Counsel, LPL Financial, dated November 12, 2011 (emphasis in original).
5. Chamber of Commerce.
6. Letters from Martel Day, Chairman, Investment Program Association, dated November 11, 2011, and Jeffrey W. Rubin, Chair, Federal Regulation of Securities Committee, Business Law Section, American Bar Association, dated November 16, 2011.

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7. Letter from W.P. Carey & Co. LLC, dated November 11, 2011.
8. As part of the rulebook consolidation process, FINRA has proposed new FINRA Rule 2231 to replace NASD Rule 2340. See SR-FINRA-2009-028. The amendments discussed herein would be made to NASD Rule 2340 or new FINRA Rule 2231, depending upon the timing of SEC approval.
9. One commenter described a new type of unlisted DPP and REIT with a daily, fluctuating NAV. Letter from Michael Weil, CEO, Realty Capital Securities, LLC, and Nicholas S. Schorsch, Chairman and CEO, American Realty Capital, dated November 11, 2011. Daily NAV REITs calculate the NAV in part based on appraisals of properties by an independent valuation firm in accordance with guidelines established by the board of directors. Changes in daily NAV typically reflect factors such as portfolio income, interest expense and unrealized capital gains or losses on assets and accrued fees and expenses. For DPPs and REITs that calculate a daily NAV, firms should use the daily NAV from the issuer for the end of the period of the customer account statement.

Attachment A

Below is the text of the proposed amendments to NASD Rule 2340.

2340. Customer Account Statements

(a) General

No Change.

(b) Delivery Versus Payment/Receive Versus Payment (DVP/RVP) Accounts

No Change.

(c) Unlisted DPP/REIT Securities

(1) A general securities member that holds in a customer's account a direct participation program (DPP) or real estate investment trust (REIT), or any other member that elects to provide per share estimated net asset value (NAV) on an account statement must publish a per share estimated NAV and accompanying disclosures as provided herein:

(A) Non-Daily NAV Securities

(i) Appraised Value

A member must publish on regularly scheduled account statements the per share estimated NAV based upon an appraisal of assets and liabilities from the issuer's most recent periodic or current report filed with the SEC under the Act, unless the member reasonably believes that such per share estimated NAV is unreliable.

(ii) Net Offering Price

A member may publish on account statements a net offering price that, at a minimum, deducts any front-end underwriting compensation expenses as defined in Rule 2310(b)(4)(c)(ii) reimbursed or paid for with offering proceeds, until the sooner of the presentation of an appraisal of the assets and liabilities in the issuer's periodic or current report, or the issuer's filing of its second quarterly filing following the effective period of the first registration statement for the DPP or REIT securities.

(iii) Disclosures

A member must disclose in connection with any per share estimated NAV or net offering price that:

(a) the per share estimated NAV is being reproduced from the issuer's public filings with the SEC and is being presented without inquiry or investigation;

(b) the methodology by which any net offering price is calculated;

(c) no public market currently exists for the securities, and even if the customer is able to sell the securities, the value received may be less than the per share estimated NAV or net offering price; and

(d) additional information about redemption options and the per share estimated NAV is available from the issuer.

(B) Daily NAV Securities

A member must publish the per share estimated daily NAV as of the end of the statement period, unless the member reasonably believes that such per share estimated daily NAV is unreliable, and disclose in connection with any per share estimated daily NAV that:

(i) the per share estimated daily NAV is provided by the issuer and is being presented without inquiry or investigation;

(ii) notwithstanding the availability of a per share estimated daily NAV, no public market currently exists for the securities, and even if the customer is able to sell the securities, the value received may be less than the per share estimated daily NAV reflected on the statement; and

(iii) additional information about redemption options and the per share estimated daily NAV reflected on the statement is available from the issuer.

(d) Definitions

No Change.

(e) Exemptions

No Change.

* * * * *

GASB Accounting Support Fee

SEC Approves Rule to Establish an Accounting Support Fee to Fund the Governmental Accounting Standards Board

Effective Date: February 23, 2012

Executive Summary

Pursuant to an SEC order, FINRA has established an accounting support fee (GASB Accounting Support Fee) to adequately fund the annual budget of the Governmental Accounting Standards Board (GASB). For 2012, FINRA will assess and collect a total of \$8,451,300 for the GASB Accounting Support Fee by collecting \$2,112,825 from its member firms each calendar quarter. The GASB Accounting Support Fee will be collected quarterly from member firms that report trades to the Municipal Securities Rulemaking Board (MSRB). Each member firm's assessment will be based on the member firm's portion of the total par value of municipal securities transactions reported by FINRA member firms to the MSRB during the previous quarter. FINRA will send the first invoices for the GASB Accounting Support Fee in April. The first invoice will be based on trading activity during the first quarter of 2012.

Questions concerning this *Notice* should be directed to:

- ▶ Finance Department, at (240) 386-5313; or
- ▶ Office of General Counsel, at (202) 728-8071.

Background & Discussion

On May 11, 2011, the SEC issued an order under Section 19(g) of the Securities Act of 1933 (Securities Act) requiring FINRA to establish (i) a reasonable annual accounting support fee to adequately fund the annual budget of the GASB; and (ii) rules and procedures, in consultation with the principal organizations representing state governors, legislators, local elected officials, and state and local finance officers, to provide for the equitable allocation, assessment and collection of the fee from its members, and the remittance of all such accounting support fees to the Financial Accounting Foundation

March 2012

Notice Type

- ▶ New Rule

Suggested Routing

- ▶ Compliance
- ▶ Finance
- ▶ Government Securities
- ▶ Institutional
- ▶ Legal
- ▶ Municipal
- ▶ Operations
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Financial Accounting Foundation
- ▶ GASB Accounting Support Fee
- ▶ Governmental Accounting Standards Board
- ▶ Municipal Securities Transactions

Referenced Rules & Notices

- ▶ Dodd-Frank Act Section 978
- ▶ FINRA By-Laws, Schedule A
- ▶ MSRB Rule G-14(b)
- ▶ Regulatory Notice 11-28
- ▶ Securities Act Section 19(g)

(FAF).¹ In response to the SEC's order, FINRA proposed Section 14 (Accounting Support Fee for Governmental Accounting Standards Board) to Schedule A of the FINRA By-Laws to establish the GASB Accounting Support Fee, and the SEC approved the proposal on February 23, 2012.²

Under Section 14, the GASB Accounting Support Fee is assessed quarterly based on member firms' municipal securities trading volume reported to the MSRB during the previous calendar quarter. Each member firm's assessment will be based on the member firm's portion of the total par value of municipal securities transactions reported by FINRA member firms to the MSRB during the previous quarter. To exclude firms with *de minimis* transactions in municipal securities in a given quarter from being assessed the fee, members with a quarterly assessment of less than \$25 will not be charged the fee for that quarter, and any amounts originally assessed to those firms will be reallocated among the firms with an assessment that quarter of \$25 or more. In addition, firms that do not engage in reportable municipal securities transactions during a particular calendar quarter will not be subject to the GASB Accounting Support Fee for that quarter. To collect the GASB Accounting Support Fee, FINRA will invoice member firms four times each year (in January, April, July and October). FINRA will send the first invoices for the GASB Accounting Support Fee in April. The invoice will be based on trading activity during the first quarter of 2012.

For 2012, GASB's recoverable annual budgeted expenses for purposes of the GASB Accounting Support Fee is \$8,451,300;³ therefore, FINRA will collect \$2,112,825 from its members each quarter.⁴ FINRA will send invoices to member firms for the 2012 GASB Accounting Support Fee in April, July, October and January 2013. Each member firm's fee will be based on the member firm's proportion of municipal securities transactions (based on the par value of reported transactions, not their price) reported by all FINRA members to the MSRB in the previous calendar quarter. Thus, for example, if a member firm reported transactions to the MSRB in the first quarter of 2012 that accounted for 10 percent of the total par value amount of transactions reported by all FINRA member firms during the quarter, the member firm's assessment would be 10 percent of one quarter of GASB's annual budget (*i.e.*, the member's base quarterly assessment, before accounting for any member firms subject to the \$25 exemption, would be \$211,282.50, or 10 percent of \$2,112,825).

As FINRA noted in [Regulatory Notice 11-28](#), because some firms may seek to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions, FINRA will set out an estimated fee rate (per \$1,000 par value) based on the GASB recoverable annual budgeted expenses reported to FINRA for that year and historical municipal security trade reporting volumes so that firms will have some basis on which to establish a fee should they choose to do so. Based on reported municipal trading activity by FINRA member firms in 2011 and the 2012 GASB budget, FINRA estimates that the GASB Accounting Support Fee for 2012 will be between \$0.0027 and \$0.0030 per \$1,000 par value. To the extent any member firms are excluded from the fee in a given quarter, those member firms with assessments of \$25 or more will pay a slightly higher rate.

Member firms are reminded that, should they choose to pass along the fee, they must ensure that the fee is properly disclosed, including, if applicable, the fact that the fee is an estimate and that the firm ultimately may pay more or less than the fee charged to the customer. In addition, any disclosure used by a member firm cannot be misleading and must conform to FINRA rules, including just and equitable principles of trade, as well as any applicable MSRB rules.

Endnotes

1. Securities Exchange Act Release No. 64462 (May 11, 2011), 76 FR 28247 (May 16, 2011). Section 19(g) of the Securities Act, as added by Section 978 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), gave the SEC the authority to require a national securities association to establish a reasonable annual accounting support fee to adequately fund the annual budget of the GASB and to draft the rules and procedures necessary to equitably assess the fee on the association's members. *See* 15 U.S.C. 77s(g); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
2. *See* Securities Exchange Act Release No. 66454 (February 23, 2012), 77 FR 12340 (February 29, 2012); *see also* [Regulatory Notice 11-28](#) (June 2011). In accordance with Section 19(g)(5)(B) of the Securities Act, collection of the GASB Accounting Support Fee shall not be construed to provide the SEC or FINRA direct or indirect oversight of the budget or technical agenda of the GASB or to affect the setting of generally accepted accounting principles by the GASB. *See* 15 U.S.C. 77s(g)(5)(B).
3. For purposes of the GASB Accounting Support Fee, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the FAF. *See* 15 U.S.C. 77s(g)(2). GASB's 2012 budget includes an administrative fee to FINRA of \$50,000 that is intended to cover FINRA's costs associated with calculating, assessing and collecting the GASB Accounting Support Fee. The amount of the administrative fee will be reviewed and evaluated each year by FINRA and the FAF in light of FINRA's experience in assessing and collecting the GASB Accounting Support Fee and the actual costs incurred by FINRA.
4. As required by Section 19(g) of the Securities Act, any GASB Accounting Support Fees collected by FINRA will be remitted to the FAF and used to support the efforts of the GASB to establish standards of financial accounting and reporting applicable to state and local governments. *See* 15 U.S.C. 77s(g)(1), (3). Section 19(g)(4) of the Securities Act prohibits FINRA from collecting GASB Accounting Support Fees for a fiscal year in excess of GASB's recoverable annual budgeted expenses. *See* 15 U.S.C. 77s(g)(4).

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Qualification Examination and Continuing Education Fees

Changes to Qualification Examination Fees and New Service Charge for Regulatory Element Continuing Education Sessions Taken Outside the United States

Effective Date: April 2, 2012

Executive Summary

Effective April 2, 2012, FINRA is increasing qualification examination fees, and assessing a service charge for any Regulatory Element Continuing Education (Regulatory Element) session taken in a test center located outside the territorial limits of the United States.¹

The text of the amendments to Section 4(c) of Schedule A to the FINRA By-Laws is set forth in Attachment A.

Questions concerning this *Notice* should be directed to Joe McDonald, Senior Director, Testing and Continuing Education Department, at (240) 386-5065.

Background & Discussion

As described in further detail below, FINRA has filed for immediate effectiveness amendments to Section 4(c) of Schedule A to the FINRA By-Laws to (1) increase qualification examination fees, and (2) assess a service charge for any Regulatory Element session taken in a test center located outside the territorial limits of the United States.

March 2012

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Continuing Education
- ▶ Legal
- ▶ Registered Representatives
- ▶ Registration
- ▶ Senior Management

Key Topics

- ▶ Qualification Examination Fees
- ▶ Regulatory Element Fees

Referenced Rules & Notices

- ▶ FINRA Rule 1230
- ▶ NASD Rule 1021
- ▶ NASD Rule 1022
- ▶ NASD Rule 1031
- ▶ NASD Rule 1032
- ▶ NASD Rule 1041
- ▶ NASD Rule 1050
- ▶ Section 4 of Schedule A to the FINRA By-Laws

Qualification Examination Fees

Under NASD Rules 1021(a) and 1031(a), persons engaged, or to be engaged, in the investment banking or securities business of a FINRA member firm and who are to function as principals or representatives are required to register with FINRA in each category of registration appropriate to their functions as specified in NASD Rules 1022 and 1032.² The individuals must pass an appropriate qualification examination before their registration can become effective. These mandatory qualification examinations cover a broad range of subjects regarding financial markets and products, individual responsibilities, securities industry rules and regulatory structure. FINRA develops, maintains and delivers all qualification examinations for individuals who are registered or seeking registration with FINRA. FINRA also administers and delivers examinations sponsored (*i.e.*, developed) by the Municipal Securities Rulemaking Board (MSRB), the North American Securities Administrators Association, the National Futures Association, the Federal Deposit Insurance Corporation and other self-regulatory organizations.

FINRA currently administers examinations via computer through the PROCTOR® system³ at testing centers operated by vendors under contract with FINRA. FINRA charges an examination fee to candidates for FINRA-sponsored and co-sponsored examinations to cover the development, maintenance and delivery of these examinations. For qualification examinations sponsored by a FINRA client and administered by FINRA, FINRA charges a delivery fee that represents either a portion of or the entire examination fee for the examination.⁴

FINRA regularly conducts a comprehensive review of the examination fee structure, including an analysis of the costs associated with developing, administering and delivering examinations. The most recent review revealed that certain operational costs have increased and, based on current information, will continue to increase over the next few years. In particular, these costs consist of (1) fees that vendors charge FINRA for delivering qualification examinations, and (2) PROCTOR maintenance and enhancement expenses. Therefore, FINRA is increasing certain qualification examination fees as follows:⁵

| Series | Examination Title | Current Fee | New Fee |
|-----------|---|-------------|---------|
| Series 4 | Registered Options Principal | \$90 | \$100 |
| Series 6 | Investment Company Products/Variable Contracts Representative | \$85 | \$95 |
| Series 7 | General Securities Representative | \$265 | \$290 |
| Series 9 | General Securities Sales Supervisor — Options Module | \$70 | \$75 |
| Series 10 | General Securities Sales Supervisor — General Module | \$110 | \$120 |
| Series 11 | Assistant Representative — Order Processing | \$70 | \$75 |
| Series 14 | Compliance Official | \$320 | \$335 |
| Series 16 | Supervisory Analyst | \$210 | \$230 |
| Series 17 | Limited Registered Representative | \$70 | \$75 |
| Series 22 | Direct Participation Programs Representative | \$85 | \$95 |
| Series 23 | General Securities Principal Sales Supervisor Module | \$85 | \$95 |
| Series 24 | General Securities Principal | \$105 | \$115 |
| Series 26 | Investment Company Products/Variable Contracts Principal | \$85 | \$95 |
| Series 27 | Financial and Operations Principal | \$105 | \$115 |
| Series 28 | Introducing Broker-Dealer Financial and Operations Principal | \$85 | \$95 |
| Series 37 | Canada Module of S7 (Options Required) | \$160 | \$175 |
| Series 38 | Canada Module of S7 (No Options Required) | \$160 | \$175 |
| Series 39 | Direct Participation Programs Principal | \$80 | \$90 |
| Series 42 | Registered Options Representative | \$65 | \$70 |
| Series 51 | Municipal Fund Securities Limited Principal | \$85 | \$95 |
| Series 52 | Municipal Securities Representative | \$95 | \$120 |
| Series 53 | Municipal Securities Principal | \$95 | \$105 |
| Series 55 | Limited Representative — Equity Trader | \$95 | \$105 |
| Series 62 | Corporate Securities Limited Representative | \$80 | \$90 |
| Series 72 | Government Securities Representative | \$95 | \$105 |
| Series 79 | Investment Banking Qualification Examination | \$265 | \$290 |
| Series 82 | Limited Representative — Private Securities Offering | \$80 | \$90 |
| Series 86 | Research Analyst — Analysis | \$160 | \$175 |
| Series 87 | Research Analyst — Regulatory | \$115 | \$125 |

The new qualification examination fees will apply for examination requests made in the CRD system on or after April 2, 2012.

Foreign Test Center Regulatory Element Session Service Charge

FINRA assesses a service charge of \$15 for any qualification examination that is taken in a foreign test center (*i.e.*, a test center located outside of the territorial limits of the United States) to help offset the higher fees that vendors charge FINRA for delivering qualification examinations in those locations. Vendors also charge FINRA higher fees for the delivery of Regulatory Element sessions in foreign test centers; however, all individuals are currently assessed the same amount for a Regulatory Element session regardless of where they take the session. Therefore, FINRA is assessing a \$15 service charge for any Regulatory Element session taken in a foreign test center to more closely align the fee with the cost of the sessions.

The foreign test center Regulatory Element session service charge will become effective for Regulatory Element sessions taken on or after April 2, 2012.

Endnotes

1. See Securities Exchange Act Release No. 66465 (February 24, 2012), 77 FR 12635 (March 1, 2012) (Notice of Filing and Immediate Effectiveness of SR-FINRA-2012-009).
2. See also NASD Rules 1041 and 1050 and FINRA Rule 1230(b)(6) regarding the qualification and registration requirements for Order Processing Assistant Representatives, Research Analysts and Operations Professionals, respectively.
3. PROCTOR is a computer system that is specifically designed for the administration and delivery of computer-based testing and training.
4. The delivery fee represents a portion of the entire examination fee when a FINRA client has established an additional fee for an examination that it sponsors. For example, the fee to take the Municipal Fund Securities Limited Principal qualification examination (Series 51) is currently \$145. Of this amount, \$85 is the FINRA administration and delivery fee, and \$60 is the development fee determined by the FINRA client, the MSRB. See MSRB Rule A-16.
5. FINRA is not increasing the fee for the Operations Professional qualification examination (Series 99) since it was implemented in late 2011. See Securities Exchange Act Release No. 64687 (June 16, 2011), 76 FR 36586 (June 22, 2011) (Order Approving Proposed Rule Change; File No. SR-FINRA-2011-013); Securities Exchange Act Release No. 65221 (August 30, 2011), 76 FR 55441 (September 7, 2011) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change; File No. SR-FINRA-2011-042).

Attachment A

Below is the text of the amendments. New language is underlined; deletions are in brackets.

* * * * *

Schedule A to the By-Laws of the Corporation

* * * * *

Section 4 – Fees

(a) and (b) No Change.

(c) The following fees shall be assessed to each individual who registers to take an examination as described below. These fees are in addition to the registration fee described in paragraph (b) and any other fees that the owner of an examination that FINRA administers may assess.

| | | |
|-----------|---|----------------------|
| Series 4 | Registered Options Principal | [\$90] <u>\$100</u> |
| Series 6 | Investment Company Products/ Variable Contracts Representative | [\$85] <u>\$95</u> |
| Series 7 | General Securities Representative | [\$265] <u>\$290</u> |
| Series 9 | General Securities Sales Supervisor — Options Module | [\$70] <u>\$75</u> |
| Series 10 | General Securities Sales Supervisor — General Module | [\$110] <u>\$120</u> |
| Series 11 | Assistant Representative — Order Processing | [\$70] <u>\$75</u> |
| Series 14 | Compliance Official | [\$320] <u>\$335</u> |
| Series 16 | Supervisory Analyst | [\$210] <u>\$230</u> |
| Series 17 | Limited Registered Representative | [\$70] <u>\$75</u> |
| Series 22 | Direct Participation Programs Representative | [\$85] <u>\$95</u> |
| Series 23 | General Securities Principal Sales Supervisor Module | [\$85] <u>\$95</u> |
| Series 24 | General Securities Principal | [\$105] <u>\$115</u> |
| Series 26 | Investment Company Products/Variable Contracts Principal | [\$85] <u>\$95</u> |

| | | |
|-----------|--|----------------------|
| Series 27 | Financial and Operations Principal | [\$105] <u>\$115</u> |
| Series 28 | Introducing Broker-Dealer Financial and Operations Principal | [\$85] <u>\$95</u> |
| Series 37 | Canada Module of S7 (Options Required) | [\$160] <u>\$175</u> |
| Series 38 | Canada Module of S7 (No Options Required) | [\$160] <u>\$175</u> |
| Series 39 | Direct Participation Programs Principal | [\$80] <u>\$90</u> |
| Series 42 | Registered Options Representative | [\$65] <u>\$70</u> |
| Series 51 | Municipal Fund Securities Limited Principal | [\$85] <u>\$95</u> |
| Series 52 | Municipal Securities Representative | [\$95] <u>\$120</u> |
| Series 53 | Municipal Securities Principal | [\$95] <u>\$105</u> |
| Series 55 | Limited Representative — Equity Trader | [\$95] <u>\$105</u> |
| Series 62 | Corporate Securities Limited Representative | [\$80] <u>\$90</u> |
| Series 72 | Government Securities Representative | [\$95] <u>\$105</u> |
| Series 79 | Investment Banking Qualification Examination | [\$265] <u>\$290</u> |
| Series 82 | Limited Representative — Private Securities Offering | [\$80] <u>\$90</u> |
| Series 86 | Research Analyst — Analysis | [\$160] <u>\$175</u> |
| Series 87 | Research Analyst — Regulatory | [\$115] <u>\$125</u> |
| Series 99 | Operations Professional | \$125 |

(1) No Change.

(2) There shall be an additional service charge of \$15.00 [in addition to those fees specified above] for any examination or Regulatory Element session taken in a [foreign] test center located outside the territorial limits of the United States.

(d) through (h) No Change.

* * * * *

Information Notice

Revised Fee for Fingerprint Processing

Effective Date: March 19, 2012

Executive Summary

Effective March 19, 2012, the fee for processing each set of fingerprints submitted by a member firm to FINRA will decrease from \$30.25 to \$27.50.

Questions regarding this Notice should be directed to the Gateway Call Center at (301) 869-6699.

Discussion

FINRA currently processes fingerprints submitted by member firms on behalf of their associated persons who are required to be fingerprinted pursuant to the Securities Exchange Act of 1934. Under Section 4(b)(4) of Schedule A to the FINRA By-Laws, FINRA charges a fee to process each set of fingerprints submitted by member firms. This fee consists of a \$13 FINRA charge, plus an additional \$17.25 that FINRA collects on behalf of the Federal Bureau of Investigation (FBI), consistent with FBI guidelines.¹

The FBI has announced that it will decrease its fee from \$17.25 to \$14.50, effective March 19, 2012.² As a result, FINRA will reduce the total fee that firms pay for the processing of each set of fingerprints from \$30.25 to \$27.50 for fingerprints processed on or after March 19, 2012.

March 1, 2012

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives
- ▶ Registration

Key Topic(s)

- ▶ Fingerprint Processing Fees

Referenced Rules & Notices

- ▶ Section 4 of Schedule A to the FINRA By-Laws

Endnotes

1. The FBI determines when and on what basis it will charge a fee. For example, the FBI does not charge a fee on the submission of a second set of fingerprints when it identifies both the first and the second sets as illegible for a particular individual.
2. See Revised User Fee Schedule, 76 FR 78950 (Dec. 20, 2011).

Information Notice

New Rate for Fees Paid Under Section 31 of the Exchange Act

Effective Date: April 1, 2012

Executive Summary

Effective April 1, 2012, the Section 31 fee rate applicable to specified securities transactions on the exchanges and in the over-the-counter markets will increase from its current rate of \$18.00 per million dollars in transactions to a new rate of \$22.40 per million dollars in transactions.

Finance-related questions should be directed to: Sheila Gregory, Accounting Manager, Finance, at (240) 386-5388.

Legal and interpretive questions should be directed to: Brant Brown, Associate General Counsel, Office of General Counsel, at (202) 728-6927.

Discussion

On March 1, 2012, the Securities and Exchange Commission (SEC) announced in [Fee Rate Advisory #6](#) for Fiscal Year (FY) 2012, that effective April 1, 2012, the Section 31 fee rate applicable to specified securities transactions on the exchanges and in the over-the-counter markets will increase from its current rate of \$18.00 per million dollars in transactions to a new rate of \$22.40 per million dollars in transactions. Until that date, the current rate of \$18.00 per million dollars will remain in effect.

Section 31 of the Exchange Act requires the SEC to annually adjust the fee rates applicable under Section 31, and in some circumstances, to also make a mid-year adjustment, after consultation with the Congressional Budget Office and the Office of Management and Budget. See the [SEC's March 1, 2012, order](#) for more information about the fee rates for FY 2012.

The SEC will issue further notices as appropriate, and the notices will be posted on the SEC's website at www.sec.gov.

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.

March 8, 2012

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Trading

Key Topic

- ▶ Section 31 Fees

Referenced Rules & Notices

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