

Notices

Regulatory Notices

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

BD and IA Renewals for 2014

Broker-Dealer, Investment Adviser Firm, Agent and Investment Adviser Representative, and Branch Renewals for 2014

Payment Deadline: December 13, 2013

Executive Summary

The 2014 Renewal Program begins on November 11, 2013, when FINRA makes the online Preliminary Renewal Statements available to all firms on Web CRD/IARD.

Firms should note the following key dates in the renewal process:

November 1, 2013 Firms may begin submitting post-dated Form U5, BR Closing/Withdrawal, BDW and ADV-W filings via Web CRD/IARD.

Please Note: Post-dated filings submitted by 11 p.m., Eastern Time (ET), November 8, 2013, do not appear on the firm's Preliminary Renewal Statement. The only allowed date for post-dated termination filings is December 31, 2013.

November 11, 2013 Preliminary Renewal Statements are available on Web CRD/IARD.

December 13, 2013 Full payment of Preliminary Renewal Statements is due.

January 2, 2014 Final Renewal Statements are available on Web CRD/IARD.

January 10, 2014 Full payment of Final Renewal Statements is due.

FINRA advises FINRA-registered firms that failure to remit full payment of their Preliminary Renewal Statements to FINRA by December 13, 2013, may cause the firm to become ineligible to do business in the jurisdictions where it is registered, effective January 1, 2014. FINRA-registered firms will also be subject to a late fee if payment is not received by this deadline.

November 2013

Notice Type

- ▶ Renewals

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registration
- ▶ Senior Management

Key Topics

- ▶ IARD™
- ▶ Registration
- ▶ Renewals
- ▶ Web CRD®

Referenced Rules & Notices

- ▶ NTM 02-48

In addition to this *Notice*, firms should review the [renewal instructions](#), especially the *Renewal Program Bulletin*, the *IARD Renewal Program Bulletin* (if applicable) on the [Investment Adviser Registration Depository](#) (IARD) website, and any information mailed to ensure continued eligibility to do business as of January 1, 2014.

Please direct questions concerning this *Notice* to the FINRA Gateway Call Center at (301) 869-6699.

Background & Discussion

Preliminary Renewal Statements

Beginning November 11, 2013, Preliminary Renewal Statements are available for viewing and printing on Web CRD/IARD. The statements include the following fees:

- ▶ Web CRD system processing fees;
- ▶ FINRA branch office and branch processing fees;
- ▶ NYSE MKT LLC (AMEX), BATS Y-Exchange, Inc. (BATS-YX), BATS Z-Exchange, Inc. (BATS-ZX), BOX Options Exchange, LLC (BOX), NASDAQ OMX BX, Inc. (BX), C2 Options Exchange, Incorporated (C2), Chicago Board Options Exchange (CBOE), Chicago Stock Exchange (CHX), EDGA Exchange, Inc. (EDGA), EDGX Exchange, Inc.(EDGX), International Securities Exchange (ISE), ISE GEMINI (GEMINI), NASDAQ Stock Exchange (NOX), National Stock Exchange (NSX), New York Stock Exchange (NYSE), NYSE Arca, Inc. (ARCA), and NASDAQ OMX PHLX, Inc. (PHLX) maintenance fees, if applicable;
- ▶ state broker-dealer firm, branch, and agent renewal fees, if applicable;
- ▶ state investment adviser firm, branch and representative renewal fees, if applicable.

FINRA must receive full payment of the Preliminary Renewal Statement fees no later than December 13, 2013.

If payment is not received by December 13, 2013, FINRA-registered firms will be assessed a Renewal Payment Late Fee. FINRA includes this late fee as part of the Final Renewal Statement and calculates the fee as follows: 10 percent of a firm's cumulative final renewal assessment or \$100, whichever is greater, with a cap of \$5,000. Please see [Notice to Members \(NTM\) 02-48](#) for details. In addition, if FINRA fails to receive payment by the deadline, firms also risk becoming ineligible to do business in the jurisdictions where their registrations are not renewed.

Fees

FINRA assesses a fee of \$45 for each individual who renews his/her registration with any regulator through Web CRD. Firms can access a listing of agents assessed this fee by requesting the Renewals—Firm Renewal Roster.

In addition, any IARD system fees as determined by the SEC and/or the North American Securities Administrators Association (NASAA) for investment adviser firms and investment adviser representatives (RA) who renew through IARD will also be included on the Preliminary Renewal Statement.

Based on the number of active FINRA branches, FINRA assesses each firm a branch office annual registration renewal fee per branch. FINRA waives one branch office annual registration renewal fee per firm. Additionally, FINRA assesses each firm a FINRA branch system processing renewal fee of \$20 per branch. FINRA waives one branch system processing renewal fee per firm.

Please Note: FINRA does not assess the personnel assessment fees through the annual Renewal Program. FINRA will mail all FINRA-registered firms a separate invoice for these fees. Firms can obtain a listing of agents for whom the firms will be assessed the personnel assessment fee by requesting the Renewals—Firm Renewal Roster.

Web CRD/IARD assesses renewal fees for AMEX, ARCA, BATS-YX, BATS-ZX, BOX, BX, C2, CBOE, CHX, EDGA, EDGX, GEMINI, ISE, NQX, NSX, NYSE, PHLX and state registrations on the Preliminary Renewal Statement. The system displays any applicable fees for the number of individuals registered with each SRO and jurisdiction.

Web CRD/IARD assesses branch office renewal fees for those regulators that choose to renew branches registered through Web CRD/IARD.

Some participating jurisdictions may require steps beyond the payment to FINRA of renewal fees to complete the BD or IA renewal process. Firms should contact each jurisdiction directly for further information on state renewal requirements. A [Regulator Directory](#) is located on the NASAA website.

For detailed information regarding investment adviser renewals, you may also visit the [IARD website](#). A matrix of investment adviser [renewal fees](#) for states that participate in the IARD Renewal Program is also posted on the IARD website.

Renewal Payment

Firms are encouraged to check their Renewal Statements to confirm payment has been received by FINRA and that the firm's Renewal Statement balance is paid in full. Firms have four payment methods available to pay renewal fees:

1. FINRA's E-Bill System (replaced Web CRD/IARD E-Pay System)
2. Wire Transfer
3. Automatic FINRA Flex-Funding Account-to-Renewal Account Transfer
4. Check

Electronic Payment via E-Bill

E-Bill allows a firm to authorize electronic payment directly from its designated bank account to its Renewal Account. Payments submitted by 8 p.m., Eastern Time (ET), should post within two business days to the firm's Renewal Account. FINRA does not charge for using E-Bill; however, firms should verify if their banks charge additional fees. Firms must enroll to use E-Bill. For your convenience, a hyperlink to E-Bill is on your firm's renewal statement.

Wire Payment

Firms may wire full payment of their Preliminary Renewal Statements. Firms should provide their banks with the following information:

| | |
|-----------------------|-----------------------------------------------|
| Transfer funds to: | BNY Mellon Financial, Philadelphia, PA |
| ABA Number: | 031000037 |
| Beneficiary: | FINRA |
| FINRA Account Number: | 8-234-353 |
| Reference Number: | Firm CRD number and "Renewal" |

To ensure prompt processing of a renewal payment by wire transfer, remember to:

- ▶ Inform the bank to credit funds to the FINRA bank account.
- ▶ Provide the firm's CRD number and "Renewal" as reference only.
- ▶ Record the confirmation number of the wire transfer provided by the bank.

Automatic Flex-Funding Account-to-Renewal Account Transfer

Beginning on December 11, 2013, and through December 26, 2013, if a firm has sufficient funds available in its Flex-Funding Account to cover the total renewal fees due, then FINRA will automatically transfer funds from a firm's Flex-Funding Account to its Renewal

Account. **Please Note:** If your firm does not want funds automatically transferred then ensure FINRA receives payment in your firm’s Renewal Account using E-Bill or by wire transfer. Separately, if your firm needs to transfer funds between affiliated firms, you should submit a [Web CRD/IARD Funds Transfer Request form](#). This automatic Flex-Funding Account-to-Renewal Account transfer process will also be applied daily beginning Jan. 13, 2014, until any outstanding renewal assessment is satisfied.

Check

All Web CRD/IARD check payments sent to FINRA are deposited into firms’ Flex-Funding Accounts. If you mail a check to pay your firm’s renewal fees, it will not be applied to your Renewal Account until December 11, 2013, when FINRA begins the automatic Flex-Funding Account-to-Renewal Account transfer noted above. For inclusion in the automatic transfer, please ensure that you have sufficient funds in your Flex-Funding Account to cover the total renewal fees due. If you would like your renewal payment to be applied before December 11, 2013, then you must pay using E-Bill or with a wire transfer directly to your Renewal Account.

The check must be drawn on the FINRA-registered firm’s account and include the firm’s CRD number and “Renewal” in the memo line. Firms paying by check should account for U.S. mail delivery and payment processing time. To ensure prompt processing of checks:

- ▶ Include a print-out of the first page of your Preliminary Renewal Statement with payment.
- ▶ Do not include any other forms or fee submissions.
- ▶ Make the check payable to FINRA and write your firm’s CRD number and “Renewal” on the check memo line.

Send payment in the blue, pre-addressed renewal payment envelope mailed to your firm in early November or write the address on an envelope exactly as noted in this *Notice*:

| U.S. Mail | Overnight or Express Delivery |
|---------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| FINRA P.O. Box 7777-W9995 Philadelphia, PA 19175-9995 <i>(Note: This box will not accept courier or overnight deliveries.)</i> | FINRA Attention: 9995 500 Ross Street 154-0455 Pittsburgh, PA 15262 Telephone: (301) 869-6699 |

If your firm’s accounting software (e.g., Quicken, Quickbooks) stores vendor addresses, please ensure it reflects the addresses shown above.

Renewal Reports

Beginning November 11, 2013, firms can request, print and/or download renewal reports via Web CRD/IARD. Three reports are available for reconciliation with the Preliminary Renewal Statement:

- ▶ **Firm Renewal Report**—This report lists individuals included in the Renewal Program and includes billing codes (if the firm has provided them).
- ▶ **Branches Renewal Report**—This report lists each branch registered with FINRA and/or with any other regulator that renews branches through Web CRD/IARD and for which the firm is being assessed a fee.
- ▶ **Approved AG Reg Without FINRA Approval Report**—This report contains all individuals who are not registered with FINRA, but are registered with one or more jurisdictions. Firms should request this report as soon as possible to determine if they need to request any FINRA registrations or terminate jurisdiction registrations.

Post-Dated Form Filings

Firms can file termination forms with a termination date of December 31, 2013. If a Form U5, BDW, BR Closing/Withdrawal or ADV-W filing indicates a termination date of December 31, 2013, an agent (AG), investment adviser representative, broker-dealer and/or investment adviser (firm) and the branch may continue doing business in that jurisdiction until the end of the calendar year without being assessed renewal fees. **December 31, 2013, is the only date allowed for a post-dated form filing.**

Firms can begin filing post-dated Form U5, BR Closing/Withdrawal, BDW and ADV-W filings via Web CRD/IARD on November 1, 2013. Firms that submit post-dated termination filings by 11 p.m., ET, on November 8, 2013, will not be assessed renewal fees for the terminated registrations on their Preliminary Renewal Statements. Firms that submit post-dated termination filings on, or after, November 11, 2013, **will not** be assessed renewal fees for the terminated jurisdictions on their Final Renewal Statements in January 2014. Those firms should see a credit balance on their Final Renewal Statements if the firm has not requested additional registrations during that time period to offset the credit balance.

After submitting any termination filing, firms should query individual, branch and/or firm registrations to ensure that Form U5, BR Closing/Withdrawal, BDW and ADV-W filings process by the renewal filing deadline date of 6 p.m., ET, on December 26, 2013.

Firms should exercise care when submitting all post-dated filings. Web CRD/IARD processes these forms when they are submitted and FINRA cannot withdraw a post-dated termination filing. A firm that submits a post-dated termination filing in error will have to file a new Form U4, BD, Form BR or Form ADV when Web CRD/IARD resumes normal processing on January 2, 2014, and Web CRD/IARD will assess new registration fees.

Filing Form BDW

The deadline for electronic filing of a Form BDW for any firm that wants to terminate a registration before year-end is 6 p.m., ET, December 26, 2013.

Filing Forms ADV to Cancel Notice Filings or Forms ADV-W to Terminate Registrations

Firms that file either a Form ADV Amendment, unmarking a state (generating the status of “Removal Requested at End of Year”) or a Form ADV-W by 11 p.m., ET, November 8, 2013, avoid the assessment of applicable renewal fees on their Preliminary Renewal Statements. The deadline to file Form ADV Amendments or Form ADV-W for firms that want to cancel a notice filing or terminate a state registration before year-end is 6 p.m., ET, December 26, 2013.

Removing Open Registrations

Throughout the year, firms have access to the “Approved AG Reg Without FINRA Approval Report” via Web CRD. This report identifies agents with an approved jurisdiction registration but who do not have an approved FINRA registration. Firms should use this report to terminate obsolete jurisdiction registrations through the submission of a Form U5 or reinstate the FINRA positions through the filing of a Form U4 Amendment. Firms should request this report as soon as possible so they can identify individuals to terminate by November 8, 2013, to avoid renewal charges for those individuals on their Preliminary Renewal Statements. This report also advises the firm if there are no agents at the firm within this category.

Final Renewal Statements

On January 2, 2014, FINRA makes available all Final Renewal Statements on Web CRD/IARD. These statements reflect the status of broker-dealer, agent (AG), investment adviser firm and investment adviser representative (RA) registrations, exempt reporting, or notice filings as of December 31, 2013. Any adjustments in fees owed resulting from registration terminations, approvals, notice filings or transitions after the Preliminary Renewal Statement appear on the Final Renewal Statement in Web CRD/IARD.

- ▶ Web CRD/IARD reflects an amount owed if a firm has more individuals, branch offices or jurisdictions registered and/or notice filed on Web CRD/IARD at year-end than it did when the Preliminary Renewal Statement was generated.

- ▶ Web CRD/IARD issues a refund if a firm has fewer individuals, branch offices or jurisdictions registered or notice filed at year-end than it did on the Preliminary Renewal Statement. Note that FINRA transfers overpayments to firms' FINRA Flex-Funding Accounts on January 2, 2014. Firms that have a credit balance in their FINRA Flex-Funding Accounts may submit a [refund request](#) to FINRA.

On or after January 2, 2014, firms should access the Web CRD reports functionality for the **Firm Renewal Report**, which will list all individuals renewed with FINRA, AMEX, ARCA, BATS-YX, BATS-ZX, BOX, BX, C2, CBOE, CHX, EDGA, EDGX, GEMINI, ISE, NOXX, NSX, NYSE, PHLX and each jurisdiction. Agents and RAs whose registrations are "approved" in any of these jurisdictions during November and December will be included in this roster. "Pending" and "deficient" registrations at year's end are not included in the Renewal Program. Firms will also be able to request the **Branches Renewal Report** that lists all branches for which they have been assessed renewal fees. Versions of these reports will also be available for download.

Firms have until **January 10, 2014**, to report any discrepancies on the renewal reports. This is also the **deadline for receipt of final payment**. Specific information and instructions concerning the Final Renewal Statement and renewal reports will be available in a January 2014 *Regulatory Notice*.

Electronic Blue Sheet Submissions

FINRA and ISG Extend Effective Date for Certain Electronic Blue Sheet Data Elements

Effective Date: May 1, 2014

Executive Summary

FINRA and the other U.S. members of the Intermarket Surveillance Group (ISG members)¹ have extended the effective date for compliance with certain new data elements for Electronic Blue Sheets (EBS) identified in [Regulatory Notice 13-16](#) to May 1, 2014. FINRA and the other ISG members have also extended the effective date for compliance with certain other data elements to be consistent with the exemptive relief provided by the SEC, which extended the compliance date for certain broker-dealer recordkeeping and reporting requirements of SEA Rule 13h-1 (Large Trader Rule) from November 1, 2013 to November 1, 2015.²

Attachment A to this *Notice* sets forth the EBS record layout, which, except for minor modifications noted below, remains unchanged from the version published in [Regulatory Notice 13-16](#). Attachment B to this *Notice* outlines the Transaction Type Identifiers, which, except for minor modifications noted below, remains unchanged from the version published in [Regulatory Notice 13-16](#).

Questions concerning the EBS enhancements should be directed to ebfaq@finra.org.

November 2013

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Senior Management

Key Topics

- ▶ Blue Sheets

Referenced Rules & Notices

- ▶ FINRA Rule 8211
- ▶ FINRA Rule 8213
- ▶ Notice to Members 05-58
- ▶ Regulatory Notice 11-56
- ▶ Regulatory Notice 12-36
- ▶ Regulatory Notice 12-47
- ▶ Regulatory Notice 13-16
- ▶ SEA Rule 13h-1

Discussion

FINRA and the other ISG members have extended the effective date for compliance with certain new data elements for EBS identified in [Regulatory Notice 13-16](#) to May 1, 2014. Specifically, for EBS requests from FINRA and other ISG members, the Primary Party Identifier and Contra Party Identifier fields identified in [Regulatory Notice 13-16](#) are unchanged and the effective date for compliance has been extended to May 1, 2014, to allow broker-dealers additional time to implement changes to comply with the new requirements. The fields are reiterated below and in Attachment A to this *Notice*. Firms may voluntarily submit the values for Primary Party Identifier and Contra Party Identifier fields before May 1, 2014, and they will be accepted. For conventional EBS requests (not related to the Large Trader Rule), firms must provide the Order Execution Time in a similar manner to the SEC's Phase One and Phase Two requirements described in the SEC Extension Order and as described in more detail below; and the effective date for compliance has been extended to May 1, 2014. Firms may also voluntarily submit Large Trader Identification Number 1-3 and Large Trader Identification Qualifier values to FINRA and other ISG members at any time and they will be accepted.

FINRA and the other ISG members have also extended the effective date for compliance with certain data elements to be consistent with the exemptive relief provided by the SEC, which extended the compliance date for certain broker-dealer recordkeeping and reporting requirements of the Large Trader Rule from November 1, 2013, to November 1, 2015. The SEC has grouped the Large Trader Rule into three phases for purposes of implementation.

- ▶ Phase One required clearing broker-dealers for large traders to keep records of and report, upon the SEC's request, specified data concerning (1) proprietary trades by large traders that are U.S. registered broker-dealers; and (2) transactions effected by large traders through a sponsored access arrangement.³ Transaction data include both the large trader identification number (LTID) and execution time. The compliance date for Phase One was November 30, 2012.
- ▶ Phase Two extends the recordkeeping and reporting requirements for clearing broker-dealers to transactions effected pursuant to a direct market access (DMA) arrangement.⁴ As with Phase One, this requires clearing broker-dealers to report Transaction Data that includes both LTID and execution time for DMA arrangements. Phase Two also include the prime broker or other carrying broker-dealer that carries an account for a Large Trader. These entities will have to report Transaction Data other than execution time, *e.g.*, the applicable LTID. The compliance date for Phase Two is November 1, 2013.

In addition, the recordkeeping and reporting requirements with respect to Unidentified Large Traders, and the related monitoring safe harbor provided by SEA Rule 13h-1(f), will apply to broker-dealers that carry an account for a large trader as of November 1, 2013.

- ▶ The remaining types of large traders and the transactions not covered by Phases One and Two are covered by Phase Three. Phase Three will therefore apply to all other broker-dealers subject to the recordkeeping and reporting requirements of the Rule (*i.e.*, broker-dealers that are large traders but do not self-clear, and broker-dealers effecting transactions directly or indirectly for a large trader where a non-broker-dealer carries the account for the large trader). The compliance date for Phase Three is November 1, 2015.

As set forth above, by November 1, 2013, broker-dealers must be in EBS reporting compliance for the Order Execution Time, Large Trader Identification Number 1-3 and Large Trader Identification Qualifier fields as outlined in Phase Two of the recordkeeping, reporting and monitoring requirements of SEA Rule 13h-1. Additionally, by November 1, 2015, broker-dealers must be in EBS reporting compliance for the Order Execution Time, Large Trader Identification Number 1-3 and Large Trader Identification Qualifier fields as outlined in Phase Three of the recordkeeping, reporting and monitoring requirements of SEA Rule 13h-1. The Primary Party Identifier and Contra Party Identifier fields are not required to be populated in response to SEC Large Trader EBS requests, but at any time firms may voluntarily submit the values to the SEC and they will be accepted.

The required EBS fields are set forth below and are unchanged from [Regulatory Notice 13-16](#). Also see Attachment A for details.

Order Execution Time, Record Sequence Number Five, Field Position 72 to 77

Firms should use this record to submit the order execution time in 24-hour format and in Eastern Time formatted as HHMMSS. This information is not limited to the blue sheet transactions relating to the SEC Large Trader Reporting Rule (SEA Rule 13h-1). Please note that all firms must synchronize their time clocks to the atomic clock to maintain an accurate audit trail in connection to the reported execution time.

Large Trader Identification Number 1, Record Sequence Number Seven, Field Position 2 to 14

Firms should use this record to submit the Large Trader Identification Number. This information is requested under the approved SEC Large Trader Reporting Rule (SEA Rule 13h-1) requirements.

Large Trader Identification Number 2, Record Sequence Number Seven, Field Position 15 to 27

Firms should use this record to submit the Large Trader Identification Number. This information is requested under the approved SEC Large Trader Reporting Rule (SEA Rule 13h-1) requirements.

Large Trader Identification Number 3, Record Sequence Number Seven, Field Position 28 to 40

Firms should use this record to submit the Large Trader Identification Number. This information is requested under the approved SEC Large Trader Reporting Rule (SEA Rule 13h-1) requirements.

Large Trader Identification Qualifier, Record Sequence Number Seven, Field Position 41

Firms should use this record to submit the Large Trader Identification Qualifier. If more than three LTIDs exist for a transaction, then firms should mark the field “Y” for Yes. Otherwise it should be marked “N” for No. This information is requested under the approved SEC Large Trader Reporting Rule (SEA Rule 13h-1) requirements.

Primary Party Identifier, Record Sequence Number Seven, Field Positions 42 to 49

Firms should use this record to submit the Primary Party Identifier, which provides the identity of the party to the trade that is represented by the Submitting Broker of an EBS. The firm may submit a Market Participant Identifier, Central Registration Depository Number or Option Clearing Corporation Clearing Number for this field. Please note that the Primary Party Identifier field replaces the previous Entering Firm Identifier field.

Contra Party Identifier, Record Sequence Number Seven, Field Positions 50 to 57

Firms should use this record to submit the Contra Party Identifier, which provides the identity of the contra party to the trade that is represented by the Opposing Broker of an EBS, if applicable. The firm may submit a Market Participant Identifier, Central Registration Depository Number or Option Clearing Corporation Clearing Number for this field. Please note that the Contra Party Identifier field replaces the previous Executing Firm Identifier field.

Consistent with [Regulatory Notice 13-16](#), the Employer SIC Code field has been withdrawn as an EBS requirement.

The following modifications were made to Attachment A of this *Notice*:

- ▶ For the Requestor Code field, the value “1” was updated to include ISE Gemini.
- ▶ For the Exchange Code field, the value “1” was added to represent ISE Gemini.

The following modifications were made to Attachment B of this *Notice*:

- ▶ For equity securities, the values of “3”, “4”, “5”, “G” and “V” were deleted.

Broker-dealers are reminded that failure to properly fill out the EBS fields is a violation of FINRA Rule 8211 or 8213.

Blue Sheet Submission Methodology

Currently, EBS requests are made under specific security symbols and option symbology. As noted in [Regulatory Notice 13-16](#), firms will be required to submit EBS, when requested, using three additional formats:

- ▶ account number and date;
- ▶ account number, symbol and date; or
- ▶ date range and Primary Party Identifier.

Compliance with this requirement is similarly extended to May 1, 2014. As outlined in [Regulatory Notice 13-16](#), the request by account number would require firms to identify the account number of a specific account at a firm, *e.g.* John Doe at CC Clearing Co. The request would cover all transactions under the John Doe account number at CC Clearing Co. To reduce data submission size, an EBS request may also ask for a specific symbol and date in connection with the account number. Additionally, EBS requests may be made for a specific review period under a primary party identifier. This request would require a firm to identify a clearing firm client's blue sheets for a set number of days, weeks or months, *e.g.*, correspondent firm ABC for the month of January 2011.

Additionally, in response to a request from the SEC for large trader transaction records, broker-dealers must be prepared to submit blue sheet data, when requested, by large trader status, including LTID number(s) as outlined in Phase One and Two of the recordkeeping, reporting and monitoring requirements of SEA Rule 13h-1.

Blue Sheet Testing

FINRA's customer test website is available for firms to test whether the field format of their enhanced blue sheets data file is consistent with the EBS record layout before submitting it to production. The test website will not test whether the inputted values are complete or accurate. Firms that already have entitlement to FINRA's Regulation Filing Application can proceed with testing their EBS modifications by submitting their test data to <https://reqfilingtest.finra.org>. To access the customer test website, firms should enter the same user ID and password that they use to access the production website. Firms that do not have entitlement to FINRA's Regulation Filing Application should contact (800) 321-6273.

The Securities Industry Automation Corporation (SIAC) is also available to receive blue sheet test files. Firms can obtain initial testing instructions from SIAC by contacting Eugene Chernovetsky at (212) 656-2867 or echernovetsky@nyx.com or David Savage at (212) 383-3410 or dsavage@nyx.com.

Frequently Asked Questions

FINRA provides answers to frequently asked questions (FAQ) on its website. The FAQs will be updated from time to time. Please see FINRA's website for the most recent version. Questions concerning the EBS enhancements should be directed to ebfaq@finra.org.

Endnotes

1. The U.S. members of the ISG include the following exchanges and self-regulatory organizations (SROs): BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., C2 Options Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., FINRA, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE MKT, LLC, NYSE Arca, Inc., BOX Options Exchange, LLC, Miami International Securities Exchange, LLC and ISE Gemini.
2. The SEC issued an order temporarily exempting certain broker-dealers and certain transactions from recordkeeping and reporting requirements of the Large Trader Rule. See Securities Exchange Release No. 70150 (August 8, 2013), 78 FR 49556 (August 14, 2013) for further details (SEC Extension Order).
3. A sponsored access arrangement is defined as one "where a broker-dealer permits a customer to enter orders into a trading center without using the broker-dealer's trading system (*i.e.*, using the customer's own technology or that of a third party provider)." See Extension Order, *supra* note 3 at 49557.
4. A direct market access arrangement is defined as "an arrangement whereby a broker-dealer permits customers to enter orders into a trading center but such orders flow through the broker-dealer's trading systems prior to reaching the trading center." See Extension Order, *supra* note 2 at 49560. In that order, the SEC noted that direct market access arrangements subject to recordkeeping and reporting in Phase Two, would include, for example, those where the large trader customer enters individual orders manually or through an algorithm under its control, but those orders flow through the broker-dealer's systems prior to reaching the trading center. Phase Two would not include, however, large trader customers that delegate to the broker-dealer the discretion to determine the price, size, timing, or routing of individual orders. *Id.*

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Attachment A

Record Layout for Submission of Trading Information

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------|----------------|--------------------------|
| From | To | | | | | | |
| | | | ***This record must be the first record of the file*** | | | | |
| 1 | 3 | 3 | FILLER | A | LJ | X(3) | HDR |
| 4 | 5 | 2 | FILLER | A | LJ | X(2) | .S |
| 6 | 10 | 5 | DTRK-SYSID | N | LJ | 9(5) | 12343 |
| 11 | 12 | 2 | FILLER | A | LJ | X(2) | .E |
| 13 | 14 | 2 | FILLER | N | LJ | 9(2) | 00 |
| 15 | 16 | 2 | FILLER | A | LJ | X(2) | .C |
| 17 | 20 | 4 | DTRK-ORIGINATOR Please call SIAC for assignment (212) 383-2210. | A | LJ | X(4) | -- |
| 21 | 22 | 2 | FILLER | A | LJ | X(2) | .S |
| 23 | 26 | 4 | DTRK-SUB-ORIGINATOR Please call SIAC for assignment (212) 383-2210. | A | LJ | X(4) | -- |
| 27 | 27 | 1 | FILLER | A | LJ | X(1) | B |
| 28 | 33 | 6 | DTRK-DATE Contains submission date. | N | LJ | 9(6) | MMDDYY |
| 34 | 34 | 1 | FILLER | A | LJ | X(1) | B |
| 35 | 59 | 25 | DTRK-DESCRIPTION Required to identify this file. | A | LJ | X(25) | FIRM TRADING INFORMATION |
| 60 | 80 | 21 | FILLER | A | LJ | X(21) | B |
| 1 | 1 | 1 | HEADER RECORD CODE Value: Low Values OR ZERO | A | -- | X | -- |
| 2 | 5 | 4 | SUBMITTING BROKER NUMBER If NSCC member use NSCC clearing number. If not a NSCC member, use clearing number assigned to you by your clearing agency. | A-R | LJ | X(4) | B |
| 6 | 40 | 35 | FIRM'S REQUEST NUMBER Tracking number used by the firm to record requests from an organization. | A | -- | X(35) | B |
| 41 | 46 | 6 | FILE CREATION DATE Format is YYMMDD | A | -- | X(6) | -- |

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|----------------------------------------------------------------------------------------------|--------------|---------|----------------|---------------|
| From | To | | | | | | |
| 47 | 54 | 8 | FILE CREATION TIME Format is HH:MM:SS | A | -- | X(8) | -- |
| 55 | 55 | 1 | REQUESTOR CODE Requesting Organization Identification Values: | A | -- | X | -- |
| | | | A = New York Stock Exchange | | | | |
| | | | B = NYSE MKT, LLC | | | | |
| | | | C = Chicago Stock Exchange | | | | |
| | | | D = NASDAQ OMX | | | | |
| | | | E = NYSE Arca | | | | |
| | | | F = NASDAQ OMX BX, Inc. | | | | |
| | | | G = National Stock Exchange | | | | |
| | | | H = BATS Exchange, Inc. | | | | |
| | | | I = International Securities Exchange and ISE Gemini | | | | |
| | | | J = Direct Edge (EDGA Exchange and EDGX Exchange) | | | | |
| | | | K = Chicago Board Options Exchange, C2 Options Exchange and CBSX (CBOE Stock Exchange) | | | | |
| | | | R = FINRA | | | | |
| | | | U = BOX Options Exchange, LLC | | | | |
| | | | X = U.S. Securities and Exchange Commission | | | | |
| | | | Y = BATS Y-Exchange, Inc. | | | | |
| | | | 7 = Miami International Securities Exchange | | | | |
| 56 | 70 | 15 | REQUESTING ORGANIZATION NUMBER Number assigned by requesting organization. | A | LJ | X(15) | B |
| 71 | 80 | 10 | FILLER | A | -- | X(10) | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER ONE The first record of the transaction. Value: 1 | A | -- | X | -- |

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------|----------------|---------------|
| From | To | | | | | | |
| 2 | 5 | 4 | SUBMITTING BROKER NUMBER Identical to Submitting Broker Number in Header Record | A-R | LJ | X(4) | -- |
| 6 | 9 | 4 | OPPOSING BROKER NUMBER The NSCC clearing house number of the broker on the other side of the trade. | A-R | LJ | X(4) | B |
| 10 | 21 | 12 | CUSIP NUMBER The cusip number assigned to the security. Left justified since the number is nine characters at present (8+ check digit) but will expand in the future. | A | LJ | X(12) | B |
| 22 | 29 | 8 | TICKER SYMBOL The symbol assigned to this security. For options (pre-OSI), the OPRA option symbol (space), OPRA expiration month symbol and OPRA strike price symbol should be used. (Ex. Maytag May 20 call option series would be reported as MYG ED. This example uses six spaces in the field with a space between the OPRA symbol and the OPRA expiration month.) Post OSI this field must contain OPTIONXX and a Record Sequence Number Six must be completed. | A-R | LJ | X(8) | B |
| 30 | 35 | 6 | TRADE DATE The date this trade executed. Format is YYMMDD. | A-R | -- | X(6) | B |
| 36 | 41 | 6 | SETTLEMENT DATE The date this trade will settle. Format is YYMMDD. | A | -- | X(6) | B |

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------|----------------|---------------|
| From | To | | | | | | |
| 42 | 53 | 12 | QUANTITY The number of shares or quantity of bonds or option contracts. | N-R | RJ | 9(12) | Z |
| 54 | 67 | 14 | NET AMOUNT The proceeds of sales or cost of purchases after commissions and other charges. | N | RJ | S9(12) V99 | Z |
| 68 | 68 | 1 | BUY/SELL CODE Values: 0 = Buy, 1 = Sale, 2 = Short Sale, 3 = Buy Open, 4 = Sell Open, 5 = Sell Close, 6 = Buy Close. A = Buy Cancel, B = Sell Cancel, C = Short Sale Cancel, D = Buy Open Cancel, E = Sell Open Cancel, F = Sell Close Cancel, G = Buy Close Cancel. Values 3 to 6 and D to G are for options only. | A-R | -- | X | B |
| 69 | 78 | 10 | PRICE The transaction price. Format: \$\$\$\$ CCCCCC. | N-R | RJ | 9(4)V(6) | Z |
| 79 | 79 | 1 | EXCHANGE CODE Exchange where trade was executed. Values: | A-R | -- | X | B |
| | | | A = New York Stock Exchange | | | | |
| | | | B = NYSE MKT, LLC | | | | |
| | | | C = Chicago Stock Exchange | | | | |
| | | | D = NASDAQ OMX PHLX | | | | |
| | | | E = NYSE Arca | | | | |
| | | | F = NASDAQ OMX BX, Inc. | | | | |
| | | | G = National Stock Exchange | | | | |
| | | | H = BATS Exchange, Inc. | | | | |
| | | | I = International Securities Exchange | | | | |

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|----------------------------------------------------------------------------------------------------------|--------------|---------|----------------|---------------|
| From | To | | | | | | |
| | | | J = C2 Options Exchange | | | | |
| | | | K = Chicago Board Options Exchange | | | | |
| | | | L = London Stock Exchange | | | | |
| | | | M = Toronto Stock Exchange | | | | |
| | | | N = Montreal Stock Exchange | | | | |
| | | | O = TSX Venture Exchange | | | | |
| | | | P = Direct Edge (EDGA Exchange) | | | | |
| | | | Q = FINRA ADF | | | | |
| | | | R = NASDAQ OMX/NASDAQ OMX Options Market | | | | |
| | | | S = Over-the-Counter | | | | |
| | | | T = Tokyo Stock Exchange | | | | |
| | | | U = BOX Options Exchange, LLC | | | | |
| | | | V = Direct Edge (EDGX Exchange) | | | | |
| | | | W = CBSX (CBOE Stock Exchange) | | | | |
| | | | X = NASDAQ OMX PSX | | | | |
| | | | Y = BATS Y-Exchange, Inc. | | | | |
| | | | Z = Other | | | | |
| | | | 1 = ISE Gemini | | | | |
| | | | 7 = Miami International Securities Exchange | | | | |
| 80 | 80 | 1 | BROKER/DEALER CODE Indicate if trade was done for another Broker/Dealer. Values: 0 = No; 1 = Yes | A-R | -- | X | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER TWO Value: 2 | A | -- | X | -- |
| 2 | 2 | 1 | SOLICITED CODE Values: 0 = No; 1 = Yes | A-R | -- | X | B |
| 3 | 4 | 2 | STATE CODE Standard Postal two character identification. | A-R | -- | X(2) | B |
| 5 | 14 | 10 | ZIP CODE/COUNTRY CODE Zip Code—five or nine character (zip plus four) Country code—for future use. | A-R | LJ | X(10) | B |

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|-----------------------------------------------------------------------------------------------------------------------|--------------|---------|----------------|---------------|
| From | To | | | | | | |
| 15 | 22 | 8 | BRANCH OFFICE/REGISTERED REPRESENTATIVE NUMBER Each treated as a four-character field. Both are left justified. | A-R | LJ | X(8) | B |
| 23 | 28 | 6 | DATE ACCOUNT OPENED Format is YYMMDD | A-R | -- | X(6) | B |
| 29 | 48 | 20 | SHORT NAME FIELD Contains last name followed by comma (or space) then as much of first name as will fit. | A | LJ | X(20) | B |
| 49 | 78 | 30 | EMPLOYER NAME | A | LJ | X(30) | B |
| 79 | 79 | 1 | TIN 1 INDICATOR Values: 1 = SS#; 2 = TIN | A-R | -- | X | B |
| 80 | 80 | 1 | TIN 2 INDICATOR Values: 1 = SS#; 2 = TIN—for future use. | A | -- | X | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER THREE Value: 3 | A | -- | X | -- |
| 2 | 10 | 9 | TIN ONE Taxpayer Identification Number Social Security or Tax ID Number. | A-R | LJ | X(9) | B |
| 11 | 19 | 9 | TIN TWO Taxpayer Identification Number #2 Reserved for future use. | A | LJ | X(9) | B |
| 20 | 20 | 1 | NUMBER OF N&A LINES | A | -- | X | B |
| 21 | 50 | 30 | NAME AND ADDRESS LINE ONE | A-R | LJ | X(30) | B |
| 51 | 80 | 30 | NAME AND ADDRESS LINE TWO | A-R | LJ | X(30) | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER FOUR Value: 4 | A | -- | X | -- |
| 2 | 31 | 30 | NAME AND ADDRESS LINE THREE | A-R | LJ | X(30) | B |
| 32 | 61 | 30 | NAME AND ADDRESS LINE FOUR | A-R | LJ | X(30) | B |

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|-------------------------------------------------------------------------------------------------------------------------|--------------|---------|----------------|---------------|
| From | To | | | | | | |
| 62 | 62 | 1 | TRANSACTION TYPE IDENTIFIERS See Attachment B for current codes. | A-R | -- | X | B |
| 63 | 80 | 18 | ACCOUNT NUMBER Account number | A-R | LJ | X(18) | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER FIVE Value: 5 | A | -- | X(1) | -- |
| 2 | 31 | 30 | NAME AND ADDRESS LINE FIVE | A-R | LJ | X(30) | B |
| 32 | 61 | 30 | NAME AND ADDRESS LINE SIX | A-R | LJ | X(30) | B |
| 62 | 65 | 4 | PRIME BROKER Clearing number of the account's prime broker. | A-R | LJ | X(4) | B |
| 66 | 66 | 1 | AVERAGE PRICE ACCOUNT 1 = recipient of average price transaction. 2 = average price account itself. | N-R | -- | 9(1) | Z |
| 67 | 71 | 5 | DEPOSITORY INSTITUTION IDENTIFIER Identifying number assigned to the account by the depository institution. | A-R | LJ | X(5) | B |
| 72 | 77 | 6 | ORDER EXECUTION TIME HHMMSS – Time format will be in Eastern Time and 24 hour format. | A-R | LJ | -- | -- |
| 78 | 80 | 3 | FILLER | A | -- | X | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER SIX Value: 6 | A | -- | -- | |
| 2 | 9 | 8 | DERIVATIVE SYMBOL The symbol assigned to the derivative. | A-R | LJ | -- | B |
| 10 | 15 | 6 | EXPIRATION DATE The date the option expires. Format is YYYYMMDD. | A-R | -- | -- | B |

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------|----------------|---------------|
| From | To | | | | | | |
| 16 | 16 | 1 | CALL/PUT INDICATOR C = Call, P = Put | A-R | -- | -- | B |
| 17 | 24 | 8 | STRIKE DOLLAR The dollar amount of the strike price. | N-R | RJ | -- | Z |
| 25 | 30 | 6 | STRIKE DECIMAL The decimal amount of the strike price. | N-R | LJ | -- | Z |
| 31 | 80 | 50 | FILLER | A | LJ | -- | B |
| 1 | 1 | 1 | RECORD SEQUENCE NUMBER SEVEN Value: 7 | A | -- | -- | |
| 2 | 14 | 13 | LARGE TRADER IDENTIFICATION 1 | A-R | LJ | -- | Z |
| 15 | 27 | 13 | LARGE TRADER IDENTIFICATION 2 | A-R | LJ | -- | Z |
| 28 | 40 | 13 | LARGE TRADER IDENTIFICATION 3 | A-R | LJ | -- | Z |
| 41 | 41 | 1 | LARGE TRADER IDENTIFICATION QUALIFIER | A-R | LJ | -- | Z |
| 42 | 49 | 8 | PRIMARY PARTY IDENTIFIER Identity of the party to the trade that is represented by the Submitting Broker of an EBS. Acceptable values include MPID, CRD or OCC Clearing Number. | A-R | LJ | -- | B |
| 50 | 57 | 8 | CONTRA PARTY IDENTIFIER Identity of the contra party to the trade that is represented by the Opposing Broker of an EBS. Acceptable values include MPID, CRD or OCC Clearing Number. | A-R | LJ | -- | B |
| 58 | 80 | 23 | FILLER | A | LJ | -- | B |
| 1 | 1 | 1 | TRAILER RECORD DATE One record per submission. Must be the last record on the file. Value: High Values or "9" | A | -- | X | -- |

| Field Position | | Field Length | Field Name/Description/Remarks | Field Format | Justify | Picture Clause | Default Value |
|----------------|----|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|---------------------------------------------------------------------------------------|----------------|---------------|
| From | To | | | | | | |
| 2 | 17 | 16 | TOTAL TRANSACTIONS The total number of transactions. This total excludes Header and Trailer Records. | N | RJ | 9(16) | B |
| 18 | 33 | 16 | TOTAL RECORDS ON FILE The total number of 80 byte records. This total includes Header and Trailer Records, but not the Datatrak Header Record (<i>i.e.</i> , it does not include the first record on the file). | N | RJ | 9(16) | Z |
| 34 | 80 | 47 | FILLER | A | -- | X(47) | B |
| | | | Field Format A = Alphanumeric (all caps) N = Numeric P = Packed B = Binary R = Validation Required | Default Values B = Blanks Z = Zero | Justify RJ = Right Justification of Data LJ = Left Justification of Data | | |

Attachment B

Record Layout for Submission of Trading Information

| Transaction Type | Security Type | |
|------------------------------------------------------------------------------|---------------|---------|
| | Equity* | Options |
| Non-Program Trading, Agency | A | C |
| Non-Index Arbitrage, Program Trading, Proprietary | C | |
| Index Arbitrage, Program Trading, Proprietary | D | |
| Index Arbitrage, Program Trading, Individual Investor | J | |
| Non-Index Arbitrage, Program Trading, Individual Investor | K | |
| Non-Program Trading, Proprietary | P | F |
| Non-Program Trading, Individual Investor | I | |
| Non-Index Arbitrage, Program Trading, Agency | Y | |
| Index Arbitrage, Program Trading, Agency | U | |
| Designated Market Makers | S | S |
| Market-Maker | | M |
| Non-Member Market-Maker/Specialist Account | | N |
| Stock Specialist — Assignment | | Y |
| Customer Range Account of a Broker/Dealer | | B |
| Error Trade | Q | |
| Registered Trader Market Maker Transaction Regardless of the Clearing Number | | P |
| Voluntary Professional | | W |
| Joint Back Office | | J |

* Equity securities include those securities that trade like equities (e.g., ETFs and structured products).

Options and Margin Requirements

SEC Approves Amendments to FINRA Rule 2360 (Options) and FINRA Rule 4210 (Margin Requirements) in Connection With Over-the-Counter Options Cleared by the OCC

Effective Date: November 7, 2013

Executive Summary

The SEC approved amendments to treat over-the-counter (OTC) options cleared by The Options Clearing Corporation (OCC) as conventional options for purposes of FINRA Rule 2360 (Options) and as listed options for purposes of FINRA Rule 4210 (Margin Requirements).¹ Accordingly, OCC cleared OTC options will be considered conventional options for purposes of position limit and reporting requirements and delivery of certain disclosure documents and will be considered listed options for purposes of margin requirements, including maintenance margin requirements and portfolio margin requirements. The effective date is November 7, 2013.

The amended rule text is set forth in Attachment A.

Questions concerning this *Notice* or FINRA Rule 2360 should be directed to:

- ▶ Max Tourtelot, Director, Options Regulation, at (917) 281-3133;
- ▶ James Turnbull, Associate Director, Options Regulation, at (917) 281-3177; or
- ▶ Kathryn Moore, Associate General Counsel, Office of General Counsel, at (202) 728-8200.

Questions concerning FINRA Rule 4210 should be directed to:

- ▶ Glen Garofalo, Director, Credit Regulation, at (646) 315-8464;
- ▶ Steve Yannolo, Project Manager, Credit Regulation, at (646) 315-8621; or
- ▶ Patricia Dorn, Project Manager, Credit Regulation, at (646) 315-8559.

November 2013

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Institutional
- ▶ Internal Audit
- ▶ Legal
- ▶ Margin
- ▶ Operations
- ▶ Options
- ▶ Risk
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Conventional Options
- ▶ Listed Options
- ▶ Margin
- ▶ Options Clearing Corporation (OCC)
- ▶ Options Disclosure Document (ODD)
- ▶ Over-the-Counter (OTC) Options
- ▶ Standardized Options

Referenced Rules & Notices

- ▶ FINRA Rule 2360
- ▶ FINRA Rule 4210

Background & Discussion

The SEC recently approved amendments to FINRA rules on options and margin requirements to address new rules established by OCC to clear and guarantee OTC options on the S&P 500 index.² Because OCC-cleared OTC options have aspects similar to both standardized and conventional options, FINRA amended Rule 2360 (Options) and Rule 4210 (Margin Requirements), as discussed below, to provide for the proper application of the rules to OCC cleared OTC options.

Rule 2360 (Options)

FINRA Rule 2360 covers, among other things, the definitions, position limits, exercise limits, reporting, suitability and disclosure requirements related to options and options trading. The rule generally classifies options as either standardized³ or conventional.⁴ Historically, all standardized options have been traded on an exchange, and all conventional options have been traded OTC. To provide clarity and consistent treatment with OTC options more generally, FINRA amended Rule 2360 to treat OCC cleared OTC options as conventional options.

FINRA amended several definitions to clarify this treatment. Specifically, FINRA defined an OCC cleared OTC option as “any put, call, straddle or other option or privilege that meets the definition of an ‘option’ under Rule 2360(a)(21) and is cleared by The Options Clearing Corporation, is entered into other than on or through the facilities of a national securities exchange, and is entered into exclusively by persons who are ‘eligible contract participants’ as defined in the Exchange Act.”⁵ FINRA also clarified that the definitions of conventional option and conventional index option include OCC cleared OTC options.⁶ FINRA further amended the definitions of standardized equity option, standardized index option and FLEX equity option to specifically exclude OCC cleared OTC options.⁷ Finally, FINRA made minor amendments to the definition of expiration date in Rule 2360(a)(14) to reflect that the expiration date of OCC cleared OTC options may be customized by the parties to the trade in accordance with the rules of the OCC.

Accordingly, for position limits and reporting requirements that differentiate between conventional and standardized options, OCC cleared OTC options will be considered conventional options. In addition, as with other conventional options, OCC cleared OTC options will not be subject to the requirement to deliver the Options Disclosure Statement (ODD) and the Special Statement for Uncovered Options Writers (Special Written Statement). FINRA amended Rule 2360(b)(11)(A) and Rule 2360(b)(16) to provide that the ODD and Special Written Statement are not required to be delivered by firms effecting a transaction in OCC cleared OTC options.

Rule 4210 (Margin Requirements)

For purposes of margin treatment, FINRA amended Rule 4210 to treat OCC cleared OTC options as it treats other cleared and guaranteed options, which to date have always been listed options,⁸ in light of the clearing and guaranteeing functions performed by the OCC. The beneficial margin treatment for an OCC cleared OTC option may only be applied by a firm after the OTC option has been accepted for clearing and guaranteed by the OCC.⁹

Specifically, FINRA provided that a listed option means an option that is traded on a national securities exchange or issued and guaranteed by a registered clearing agency and shall include an OCC cleared OTC option as defined in FINRA Rule 2360. FINRA also amended the definition of OTC to provide that OTC options shall not include an OCC cleared OTC option. FINRA also made conforming amendments regarding portfolio margin requirements to provide that a listed option means an option that is traded on a national securities exchange or issued and guaranteed by a registered clearing agency and shall include an OCC cleared OTC option. Finally, FINRA amended Rule 4210(g)(2)(H) to clarify that an unlisted derivative would include, among other things, an index-based option that is neither traded on a national securities exchange nor issued or guaranteed by a registered clearing agency and shall not include an OCC cleared OTC option.

The amendments are effective on November 7, 2013.

Endnotes

1. See Securities Exchange Act Release No. 70619 (October 7, 2013), 78 FR 62722 (October 22, 2013) (SEC Order Approving File No. SR-FINRA-2013-027).
2. See Securities Exchange Act Release No. 68434 (December 14, 2012), 77 FR 75243 (December 19, 2012) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, and Notice of No Objection to Advance Notice, Modified by Amendment No. 1 Thereto, Relating to the Clearance and Settlement of Over-the-Counter Options; File No. SR-OCC-2012-14). The OCC has not yet implemented clearing of OTC options on the S&P 500 index.
3. A standardized equity option is “any equity options contract issued, or subject to issuance, by The [OCC] that is not a FLEX Equity Option.” See FINRA Rule 2360(a)(31). See also FINRA Rule 2360(a)(32) for the definition of standardized index option.
4. A conventional option is “any option contract not issued, or subject to issuance, by The [OCC].” See FINRA Rule 2360(a)(9). See also FINRA Rule 2360(a)(8) for the definition of conventional index option.
5. The definition reflects the OCC requirement that counterparties to OCC cleared OTC options must be “eligible contract participants” as defined in the Act. See note 2 and Section 6(f), Article XVII of the OCC By-Laws.
6. See amended FINRA Rule 2360(a)(8) and (a)(9), respectively.
7. See re-numbered FINRA Rule 2360(a)(32), (a)(33) and (a)(16), respectively.
8. See FINRA Rule 4210(f)(2)(A)(xxiv) and FINRA Rule 4210(g)(2)(A) for the definition of “listed” and “listed option,” respectively.
9. The OCC intends that the trade data for an OTC option trade be submitted to an approved OCC vendor that will process the trade and submit it as a confirmed trade to OCC for clearing. The OCC then will confirm if the OTC option trade meets OCC’s validation requirements and will notify the vendor, which will notify the submitting parties. FINRA understands that, if the option trade is rejected for clearing, the option remains subject to any applicable agreement between the original parties to the transaction, which may provide that (1) such rejected transaction shall remain a bilateral transaction between the parties subject to such agreement or other documentation as the parties have entered into for that purpose or (2) may be terminated. See note 2 and interpretation .02 of Section 6, Article VII of the OCC By-Laws. If the OTC option was rejected for clearing, but the option contract was not terminated by the parties and remained an OTC option contract, the firm would be required to apply the applicable OTC option margin requirements, not the listed option margin requirements. See FINRA Rule 4210(f)(2)(E)(iii).

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Attachment A

New language is underlined; deletions are in brackets.

2360. Options

(a) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

(1) through (7) No Change.

(8) Conventional Index Option — The term “conventional index option” means any options contract not issued, or subject to issuance, by The Options Clearing Corporation, or an OCC Cleared OTC Option, that, as of the trade date, overlies a basket or index of securities that:

(A) through (B) No Change.

(9) Conventional Option — The term “conventional option” shall mean: (A) any option contract not issued, or subject to issuance, by The Options Clearing Corporation; or (B) an OCC Cleared OTC Option.

(10) through (13) No Change.

(14) Expiration Date — The term “expiration date” of an option contract issued by The Options Clearing Corporation means the day and time fixed [by] in accordance with the rules of The Options Clearing Corporation for the expiration of [all]such option contract[s having the same expiration month as such option contract]. The term “expiration date” of all other option contracts means the date specified thereon for such.

(15) No Change.

(16) FLEX Equity Option — The term “FLEX Equity Option” means any options contract issued, or subject to issuance by, The Options Clearing Corporation, other than an OCC Cleared OTC Option, whereby the parties to the transaction have the ability to negotiate the terms of the contract consistent with the rules of the exchange on which the options contract is traded.

(17) through (18) No Change.

(19) OCC Cleared OTC Option – The term “OCC Cleared OTC Option” means any put, call, straddle or other option or privilege that meets the definition of an “option” under Rule 2360(a)(21), and is cleared by The Options Clearing Corporation, is entered into other than on or through the facilities of a national securities exchange, and is entered into exclusively by persons who are “eligible contract participants” as defined in the Exchange Act.

(19) through (21) renumbered as (20) through (22).

~~[(22)]~~(23) Options Contract — The term “options contract” means any option as defined in paragraph (a)~~[(20)]~~(21). For purposes of paragraphs (b)(3) through (12), an option to purchase or sell common stock shall be deemed to cover 100 shares of such stock at the time the contract granting such option is written. If a stock option is granted covering some other number of shares, then for purposes of paragraphs (b)(3) through (12), it shall be deemed to constitute as many option contracts as that other number of shares divided by 100 (e.g., an option to buy or sell five hundred shares of common stock shall be considered as five option contracts). A stock option contract that, when written, grants the right to purchase or sell 100 shares of common stock shall continue to be considered as one contract throughout its life, notwithstanding that, pursuant to its terms, the number of shares that it covers may be adjusted to reflect stock dividends, stock splits, reverse splits, or other similar actions by the issuer of such stock.

(23) through (30) renumbered as (24) through (31).

~~[(31)]~~(32) Standardized Equity Option — The term “standardized equity option” means any equity options contract issued, or subject to issuance by, The Options Clearing Corporation that is not a FLEX Equity Option and not an OCC Cleared OTC Option.

~~[(32)]~~(33) Standardized Index Option — The term “standardized index option” means any options contract issued, or subject to issuance, by The Options Clearing Corporation that is based upon an index and is not an OCC Cleared OTC Option.

(33) through (38) renumbered as (34) through (39)

(b) Requirements**(1) Applicability**

This Rule shall be applicable to the extent appropriate unless otherwise stated herein: (A) to the conduct of accounts, the execution of transactions, and the handling of orders in exchange-listed options by members that are not members of an exchange on which the option executed is listed; (B) to the conduct of accounts, the execution of transactions, and the handling of orders in conventional options by all members; and (C) to other matters related to options trading.

Subparagraphs (3) through (12) shall apply only to standardized and conventional options on common stock. Subparagraphs (13) through (24) shall apply to transactions in all options as defined in paragraph (a)(20)(21), including common stock unless otherwise indicated herein.

(2) through (10) No Change.

(11) Delivery of Current Disclosure Documents

(A)(i[1]) Characteristics and Risks of Standardized Options (the “ODD”). Every member shall deliver the current ODD to each customer at or prior to the time such customer’s account is approved for trading options issued by The Options Clearing Corporation, other than an OCC Cleared OTC Option. Thereafter, a copy of each amendment to the ODD shall be distributed to each customer to whom the member previously delivered the ODD not later than the time a confirmation of a transaction in the category of options to which the amendment pertains is delivered to such customer.

(ii[2]) Special Statement for Uncovered Option Writers (“Special Written Statement”). In the case of customers approved for writing uncovered short options transactions, the Special Written Statement required by paragraph (b)(16) shall be in a format prescribed by FINRA and delivered to customers in accordance with paragraph (b)(16). A copy of each new or revised Special Written Statement shall be distributed to each customer having an account approved for writing uncovered short options not later than the time a confirmation of a transaction is delivered to each customer who enters into a transaction in options issued by The Options Clearing Corporation, other than an OCC Cleared OTC Option.

(iii[3]) FINRA will advise members when a new or revised current disclosure document meeting the requirements of SEA Rule 9b-1 is available.

(B) through (C) No Change.

(12) through (15) No Change.

(16) Opening of Accounts

(A) through (C) No Change.

(D) Account Agreement

Within fifteen (15) days after a customer's account has been approved for options trading, a member shall obtain from the customer a written agreement that the customer is aware of and agrees to be bound by FINRA rules applicable to the trading of option contracts and, if he desires to engage in transactions in options issued by The Options Clearing Corporation, other than solely for OCC Cleared OTC Options, that the customer has received a copy of the current disclosure document(s) required to be furnished under this subparagraph (16) and that he is aware of and agrees to be bound by the rules of The Options Clearing Corporation. In addition, the customer shall indicate on such written agreement that he is aware of and agrees not to violate the position limits established pursuant to paragraph (b)(3) and the exercise limits established pursuant to paragraph (b)(4).

(E) No Change.

(17) through (24) No Change.

(c) No Change.

••• Supplementary Material: -----

.01 through .03 No Change.

* * * * *

4210. Margin Requirements

(a) through (e) No Change.

(f) Other Provisions

(1) No Change.

(2) Puts, Calls and Other Options, Currency Warrants, Currency Index Warrants and Stock Index Warrants

(A) Definitions.

Except where the context otherwise requires or as defined below, the definitions contained in section (a) of Rule 2360, "Options," shall apply to the terms used in this Rule.

(i) through (xxiii) No Change.

(xxiv) The term "listed" as used with reference to a call or put option contract means an option contract that is traded on a national securities exchange or[and] issued and guaranteed by a registered clearing agency and shall include an OCC Cleared OTC Option (as defined in Rule 2360).

(xxv) through (xxvi) No Change.

(xxvii) The term "OTC" as used with reference to a call or put option contract means an over-the-counter option contract that is not traded on a national securities exchange and is issued and guaranteed by the carrying broker-dealer and shall not include OCC Cleared OTC Option (as defined in Rule 2360).

(xxviii) through (xxxvi) No Change.

(B) through (N) No Change.

(3) through (10) No Change.

(g) Portfolio Margin

As an alternative to the "strategy-based" margin requirements set forth in paragraphs (a) through (f) of this Rule, members may elect to apply the portfolio margin requirements set forth in this paragraph (g) to all margin equity securities,¹ listed options, security futures products (as defined in Section 3(a)(56) of the Exchange Act), unlisted derivatives, warrants, stock index warrants and related instruments (as defined in paragraph (g)(2)(D)), provided that the requirements of paragraph (g)(6)(B)(i) of this Rule are met.

1. No Change.

In addition, a member, provided that it is a Futures Commission Merchant (“FCM”) and is either a clearing member of a futures clearing organization or has an affiliate that is a clearing member of a futures clearing organization, is permitted under this paragraph (g) to combine an eligible participant’s related instruments with listed index options, unlisted derivatives, options on exchange traded funds (“ETF”), stock index warrants and underlying instruments and compute a margin requirement for such combined products on a portfolio margin basis.

The portfolio margin provisions of this Rule shall not apply to Individual Retirement Accounts (“IRAs”).

(1) No Change.

(2) Definitions

For purposes of this paragraph (g), the following terms shall have the meanings specified below:

(A) The term “listed option” means any equity-based or equity index-based option traded on a registered national securities exchange or issued and guaranteed by a registered clearing agency and shall include an OCC Cleared OTC Option (as defined in Rule 2360).

(B) through (G) No Change.

(H) The term “unlisted derivative” means any equity-based or equity index-based [unlisted] option, forward contract, or security-based swap that can be valued by a theoretical pricing model approved by the SEC and that is neither traded on a national securities exchange, nor issued and guaranteed by a registered clearing agency and shall not include an OCC Cleared OTC Option (as defined in Rule 2360).

(3) through (15) No Change.

(h) No Change.

••• **Supplementary Material:** -----

.01 No Change

Discovery Guide

SEC Approves Amendments to Discovery Guide Used in Customer Arbitration Proceedings to Address Electronic Discovery, Product Cases and Affirmations

Effective Date: December 2, 2013

Executive Summary

The SEC approved amendments to the Discovery Guide used in customer arbitration proceedings.¹ The amended guide provides arbitrators with guidance on resolving electronic discovery (e-discovery) disputes relating to the form for producing electronic documents. It explains how product cases are different from other customer cases and describes the types of documents that parties typically request in product cases. Finally, it clarifies the circumstances under which a party may request an affirmation when an opposing party does not produce documents specified in the guide.

The amendments are effective on December 2, 2013, for all customer cases filed on or after the effective date.

The text of the amendments is set forth in Attachment A.

Questions concerning this *Notice* should be directed to:

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

November 2013

Notice Type

- ▶ Rule Amendment

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Registered Representatives

Key Topics

- ▶ Affirmations
- ▶ Arbitration
- ▶ Code of Arbitration Procedure
- ▶ Discovery Guide
- ▶ Electronic Discovery
- ▶ Product Cases

Background & Discussion

The guide supplements the discovery rules contained in the FINRA Code of Arbitration Procedure for Customer Disputes (Customer Code). It includes an introduction which describes the discovery process generally, and explains how arbitrators should apply the guide in arbitration proceedings. The introduction is followed by two Document Production Lists, one for firms/associated persons and one for customers, which enumerate the documents that parties should exchange without arbitrator or staff intervention. The guide only applies to customer arbitration proceedings, not to intra-industry cases. The SEC approved amendments to the guide to provide general guidance on e-discovery issues and product cases and to clarify the provision relating to affirmations made when a party does not produce documents specified in the guide.

E-discovery

The guide's introduction states that electronic files are documents within the meaning of the guide and that arbitrators decide any disputes that arise about the form in which a party produces a document. FINRA amended the guide to provide that parties are encouraged to discuss the form in which they intend to produce documents and, whenever possible, to agree to the form of production. The provision requires parties to produce electronic files in a "reasonably usable format." The term reasonably usable format refers, generally, to the format in which a party ordinarily maintains a document, or to a converted format that does not make it more difficult or burdensome for the requesting party to use in connection with the arbitration.

The guide instructs arbitrators who are resolving contested motions about the form of production, to consider the totality of the circumstances, including, among other matters, the following three factors:

- ▶ for documents in a party's possession or custody, whether the chosen form of production is different from the form in which a document is ordinarily maintained;
- ▶ for documents that must be obtained from a third party (because they are not in a party's possession or custody), whether the chosen form of production is different from the form in which the third party provided it; and
- ▶ for documents converted from their original format, a party's reasons for choosing a particular form of production; how the documents may be affected by the conversion to a new format; and whether the requesting party's ability to use the documents is diminished by a change in the documents' appearance, searchability, metadata or maneuverability.²

In conjunction with the new guidance on e-discovery, FINRA amended the guide's discussion on cost or burden of production. Currently, the guide states that if the arbitrators determine that the document is relevant or likely to lead to relevant evidence, they should consider whether there are alternatives that can lessen the impact of producing it, such as narrowing the time frame or scope of an item on the Document Production Lists, or determining whether another document can provide the same information. FINRA is mindful of the costs associated with e-discovery and amended the cost or burden of production provision to advise arbitrators that they may order a different form of production if it would lessen the impact of producing electronic documents.

Product Cases

FINRA amended the guide's introduction to add guidance on product cases. Product cases are unique customer cases that differ from other customer cases in several ways. The amended text provides that a product case is one in which one or more of the asserted claims centers around allegations regarding the widespread mismarketing or defective development of a specific security or specific group of securities. It enumerates some of the ways that product cases are different from other customer cases, including that:

- ▶ the volume of documents tends to be much greater;
- ▶ multiple investor claimants may seek the same documents;
- ▶ the documents are not client specific;
- ▶ the product at issue is more likely to be the subject of a regulatory investigation;
- ▶ the cases are more likely to involve a class action with documents subject to a mandatory hold;³
- ▶ the same documents may have been produced to multiple parties in other cases involving the same security or to regulators; and
- ▶ documents are more likely to relate to due diligence analyses performed by persons who did not handle the claimant's account.

The guide explains that the two existing Document Production Lists may not provide all of the documents parties typically request in a product case relating to, among other things, a firm's creation of a product; due diligence reviews of a product; training on or marketing of a product; or post-approval review of a product. The text emphasizes that, in a product case, parties are not limited to the documents enumerated in the lists. It also emphasizes that the Customer Code provides a mechanism for parties to seek additional documents. Finally, the guidelines explain that parties do not always agree on whether a case is a product case, and the arbitrators may ask the parties to explain their rationale for asserting that a case is, or is not, a product case.

Affirmations

The guide provides for affirmations when a party indicates that there are no responsive documents in the party's possession, custody or control. The affirmation language provides that, upon the request of a party seeking documents, the customer, or appropriate person at the firm who has knowledge, must state that the party conducted a good faith search for the documents, describe the extent of the search and state that based on the search there are no requested documents.

FINRA amended the affirmation language to make clear that a party may request an affirmation when an opposing party makes only a partial production. The revised language provides that, if a party does not produce a document specified in a list item on the applicable Document Production List, upon the request of the party seeking the document that was not produced, the customer or the appropriate person at the brokerage firm who has knowledge must affirm in writing that the party conducted a good faith search for the requested document. FINRA is also requiring a party to state the sources searched in the affirmation.

Effective Date

The amendments are effective on December 2, 2013, for all customer cases filed on or after the effective date.

Endnotes

1. See Securities Exchange Act Rel. No. 70419 (September 16, 2013), 78 Federal Register 57916 (September 20, 2013) (File No. SR-FINRA-2013-024).
2. FINRA provides guidance on the terms appearance, searchability, metadata, and maneuverability in its [Discovery, Abuses and Sanctions](#) training and [The Arbitrator's Guide](#).
3. A mandatory hold is an act by an entity to preserve documents and electronic information relevant to a lawsuit or government investigation.

Attachment A

New language is underlined; Deletions are in brackets

* * * * *

Discovery Guide

This Discovery Guide and Document Production Lists supplement the discovery rules contained in the FINRA Code of Arbitration Procedure for Customer Disputes (“Customer Code”) (See Rules 12505-12511).

No requirement under the Discovery Guide supersedes any record retention requirement of any federal or state law or regulation or any rule of a self-regulatory organization.

Flexibility in Discovery

The Discovery Guide, including the Document Production Lists (Lists), serves as a guide for the parties and the arbitrators. While the parties and arbitrators should consider the documents described in the Lists presumptively discoverable, 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 in a particular case; and alter the production schedule described in the 12500 series of rules. [Where additional documents are relevant in a particular case, parties can seek them in accordance with the time frames provided in the 12500 series of rules.]

Cost or Burden of Production

A party may object to producing a document on a List because of the cost or burden of production. If the party demonstrates that the cost or burden is disproportionate to the need for the document, the arbitrators should determine if the document is relevant or likely to lead to relevant evidence. If the arbitrators determine that the document is relevant or likely to lead to relevant evidence, they should consider whether there are alternatives that can lessen the impact, such as narrowing the time frame or scope of an item on the Lists, [or] determining whether another document can provide the same information, or ordering a different form of production.

Requests for Additional Documents

Where additional documents may be relevant in a particular case, parties can seek them in accordance with the time frames provided in the 12500 series of rules. Arbitrators must use their judgment in considering requests for additional documents and may not deny document requests solely on the ground[s] that the documents are not expressly listed in the Discovery Guide.

Nothing in the Discovery Guide precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide. FINRA encourages the parties to agree to the voluntary exchange of documents and to stipulate to various matters. The fact that an item appears on the Lists does not shift the burden of establishing or defending any aspect of a claim.

Only named parties must produce documents pursuant to the guidelines set forth herein. However, non-parties may be required to produce documents pursuant to a subpoena or an arbitration panel order to direct the production of documents (see Rule 12513). In addition, the arbitrators may use the Lists as guidance for discovery issues involving non-parties.

Parties and arbitrators should recognize that 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 (e.g. full service firm, discount broker, clearing firm, or online broker) is taken into consideration. In addition, certain items on the Customer List may not apply to a particular case depending on the claims asserted. Absent a written objection or party agreement, the parties shall exchange documents on the Lists within the time frames set forth in the Customer Code. Parties should raise any objections to the production of documents, based on an established privilege, in accordance with the time frames for objections set forth in the Customer Code.

Form of Production

The parties are encouraged to discuss the form(s) in which they intend to produce documents (hard copy production or electronic production in its original format or some other format) and, whenever possible, agree to the form(s) of production. Both hard copy documents and [E]electronic files are "documents" within the meaning of the Discovery Guide. Parties must produce electronic files in a reasonably usable format. The term reasonably usable format refers, generally, to the format in which a party ordinarily maintains a document, or to a converted format that does not make it more difficult or burdensome for the requesting party to use in connection with the arbitration.

The arbitrators shall decide any dispute that arises concerning the form in which a document will be produced. When resolving contested motions relating to the form of production, arbitrators should consider the totality of the circumstances including, among other matters, the following in determining whether the electronic files are in a reasonably usable format:

1. For documents in a party's possession or custody, whether the chosen form of production is different from the form in which a document is ordinarily maintained;
2. For documents that must be obtained from a third party (because they are not in a party's possession or custody), whether the chosen form of production is different from the form in which the third party provided it; and
3. For documents converted from their original format, a party's reason(s) for choosing a particular form of production; how the documents may be affected by the conversion to a new format; and whether the requesting party's ability to use the documents is diminished by a change in the documents' appearance, searchability, metadata, or maneuverability.

Confidentiality

If a party objects to document production on grounds of privacy or confidentiality, the arbitrators or one of the parties may suggest a stipulation between the parties that the documents in question will not be disclosed or used in any manner outside of the arbitration of the particular case, or the arbitrators may issue a confidentiality order. When deciding contested requests for confidentiality orders, arbitrators should consider the competing interests of the parties. The party asserting confidentiality has the burden of establishing that the documents in question require confidential treatment. In deciding questions about confidentiality, arbitrators should, taking into account the facts of a particular case, consider factors such as the following:

1. Whether the disclosure would constitute an unwarranted invasion of personal privacy (*e.g.*, an individual's Social Security number, or medical information).
2. Whether there is a threat of harm attendant to disclosure of the information.
3. Whether the information contains proprietary confidential business plans and procedures or trade secrets.
4. Whether the information has previously been published or produced without confidentiality or is already in the public domain.

5. Whether an excessively broad confidentiality order could be against the public interest or could otherwise impede the interests of justice.
6. Whether there are legal or ethical issues which might be raised by excessive restrictions on the parties.

Privileged Documents

Parties are not required to produce documents that are otherwise subject to an established privilege, including the attorney-client privilege and the attorney work product doctrine. The arbitrators shall not issue an order or use a confidentiality agreement to require parties to produce documents otherwise subject to an established privilege, including attorney work product.

Affirmation in the Event that [There Are No Responsive] a Party Does Not Produce Documents Specified in the Document Production Lists

[If a party responds that there are no responsive documents in the party's possession, custody, or control,] If a party does not produce a document specified in a List item on the applicable Document Production List, upon the request of the party seeking the document that was not produced, the customer or the appropriate person in the brokerage firm who has knowledge, [upon the request of the party seeking the documents,] must: 1) [state] affirm in writing that the party conducted a good faith search for the requested document[s]; 2) describe the extent of the search including, but not limited to, stating the sources searched; and 3) state that, based on the search, the party does not have the requested document [there are no requested documents] in the party's possession, custody, or control. [In appropriate cases, t] The arbitrators may also order a party to provide such affirmations regarding discovery requests for documents beyond those contained in the Discovery Guide.

No Obligation to Create Documents

Parties are not required to create documents in response to items on the Lists that are not already in the parties' possession, custody, or control.

Admissibility

Production of documents in discovery does not create a presumption that the documents are admissible at the hearing. A party may object to the introduction of any document as evidence at the hearing to the same extent that a party can raise any other objection at an arbitration hearing.

Product Cases

Product cases are cases in which one or more of the asserted claims center around allegations regarding the widespread mismarketing or defective development of a specific security or specific group of securities. Product cases are different from other customer cases in several ways:

1. The volume of documents tends to be much greater
2. Multiple investor claimants may seek the same documents
3. The documents are not client specific
4. The product at issue is more likely to be the subject of a regulatory investigation
5. The cases are more likely to involve a class action with documents subject to a mandatory hold
6. The same documents may have been produced to multiple parties in other cases involving the same security or to regulators
7. Documents are more likely to relate to due diligence analyses performed by persons who did not handle the claimant's account.

In a product case, parties typically request documents relating to, among other things, a firm's: creation of a product; due diligence reviews of a product; training on or marketing of a product; or post-approval review of a product. The Document Production Lists may not provide all of the documents parties usually request in a product case. Pursuant to this Discovery Guide, parties are not limited to the documents enumerated in the Document Production Lists. As stated earlier in this Discovery Guide, where additional documents may be relevant in a particular case, parties can seek them in accordance with the time frames provided in the 12500 series of rules.

Parties do not always agree on whether a claim centers around a product as defined above and may ask the arbitrators to make that determination. The arbitrators may ask the parties to explain their rationale for asserting that a claim is, or is not, a product case. Parties may also ask the arbitrators to resolve disputes concerning which additional documents they must produce, and the scope of the additional documents.

Document Production Lists

Throughout the Lists, FINRA refers to customers that are parties to an arbitration case as “customer parties” and other firm/associated persons’ customers as “customers.” The Guide provides separate Lists for firms/associated persons and for customer parties. For ease of reference, throughout the Lists, the terms “customer parties,” “customers,” “documents,” “associated persons,” “accounts,” “claims” and “transactions” include the singular terms “customer party,” “customer,” “document,” “associated person,” “account,” “claim” and “transaction,” respectively. In addition, unless otherwise specifically stated, the term “firm” refers to a firm that is a party to the arbitration case.

* * * * *

Information Notice

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

Executive Summary

The SEC is operating under a continuing resolution until January 15, 2014. As such, the Section 31 rate applicable to specified securities transactions on the exchanges and in the over-the-counter market will remain at the current rate of \$17.40 per million dollars until 60 days after a regular appropriation for the SEC is enacted.

- ▶ 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, at (202) 728-6927.

Background and Discussion

As announced by the SEC in [Fee Rate Advisory #2 for Fiscal Year \(FY\) 2014](#), the SEC is operating under a continuing resolution through January 15, 2014. The Fee Rate Advisory specifies that the fee paid under Section 31 of the Securities Exchange Act of 1934 (Exchange Act) will remain at the current rate of \$17.40 per million for securities transactions.

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the SEC is required to publish a revised fee rate 30 days after the SEC's regular appropriation for FY 2014 is enacted, and this new fee rate will become effective 60 days after the appropriation is enacted. Until this time, the Section 31 fee rate will remain at the current rate of \$17.40 per million for securities transactions.

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

November 12, 2013

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Trading

Key Topic

- ▶ Section 31 Fee

Referenced Rules & Notices

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

Information Notice

FINRA Reminds Firms of Exercise Cut-Off Time for Weekly Options Expiring on the Friday After Thanksgiving

The national options exchanges are closing at 1:00 p.m. Eastern Time (ET) on Friday, November 29, 2013 (the Friday after Thanksgiving), which will modify the exercise cut-off time for expiring weekly options. FINRA reminds firms that pursuant to FINRA Rule 2360(b)(23)(A)(viii), if a national options exchange or The Options Clearing Corporation announces a modified time for the close of trading in standardized equity options, then the deadline for an option holder to make a final decision to exercise or not exercise an expiring option will be 1 hour 30 minutes following the time announced for the close of trading on that day instead of the 5:30 p.m. ET deadline. **Accordingly, option holders must make a final decision to exercise or not exercise options expiring on November 29, 2013, by 2:30 p.m. ET.**

Questions regarding this *Notice* may be directed to:

- ▶ Max Tourtelot, Director, Options Regulation, at (917) 281-3133;
- ▶ James Turnbull, Associate Director, Options Regulation, at (917) 281-3177; or
- ▶ Kathryn Moore, Associate General Counsel, Office of General Counsel, at (202) 728-8200.

November 26, 2013

Suggested Routing

- ▶ Compliance
- ▶ Institutional
- ▶ Legal
- ▶ Operations
- ▶ Options
- ▶ Senior Management
- ▶ Systems
- ▶ Trading

Key Topics

- ▶ Exercise Cut-off Time
- ▶ Expiration
- ▶ Standardized Equity Options
- ▶ Weekly Options

Referenced Rules & Notices

- ▶ FINRA Rule 2360

Election Notice

Small Firm Advisory Board Runoff Election

Ballot Due Date: December 16, 2013

The recent FINRA election to elect a New York Region¹ member of the Small Firm Advisory Board (SFAB) resulted in a tie². FINRA must therefore hold a runoff election for eligible small firm members in the New York region to select their SFAB representative.

The candidates in the runoff election are:

- ▶ Myles Edwards – Chief Compliance Officer & General Counsel, Constellation Wealth Advisors LLC
- ▶ Steve Hart – Chief Compliance Officer, Robotti & Company, LLC

Additional information about each candidate is available at www.finra.org/Industry/SmallFirms/P391524.

Voting Eligibility

FINRA small firm members who were eligible to vote in the New York Region election will receive another ballot to vote in the runoff election.³ **FINRA's election agent will email ballots to the executive representatives of small firm members in the New York region later today.** Firms may vote for only one candidate listed on the ballot.

The successful candidate will be the individual who receives the most votes and will be elected to serve a three-year term beginning in January 2014.

November 25, 2013

Suggested Routing

- ▶ Executive Representatives

Voting Methods

In this runoff election, firms will be able to vote by telephone and the Internet only. The ballot emailed to eligible small firms will contain detailed instructions on the submission procedures.

Voting concludes on Monday, December 16, 2013. Eligible firms are urged to vote in the election.

Questions regarding this *Election Notice* may be directed to:

- ▶ Marcia E. Asquith, Senior Vice President and Corporate Secretary, at (202) 728-8949;
- ▶ Jennifer Piorko Mitchell, Assistant Corporate Secretary, at (202) 278-8949; or
- ▶ Chip Jones, Senior Vice President, Member Relations, at (240) 386-4797.

Additional information about the SFAB Election is available at www.finra.org/sfab.

Endnotes

1. The New York Region comprises the New York counties of Nassau and Suffolk, and the five boroughs of New York City. (District 10)
2. Any senior member of a small firm whose primary place of business and whose firm has its main office (as indicated in FINRA records) in the New York Region was eligible to have his or her name placed on the ballot in this election. Four candidates were initially certified by the Corporate Secretary for the election that concluded on November 15, 2013.
3. FINRA small firms are eligible to vote for candidates running for the SFAB seat representing the region corresponding to the district to which they are assigned in the Central Registration Depository®.