

Notices

Regulatory Notices

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Information Notice

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Retrospective Rule Review

FINRA Requests Comment on the Effectiveness and Efficiency of its Communications With the Public Rules

Comment Period Expires: May 8, 2014

Executive Summary

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

Questions regarding this *Notice* should be directed to:

- ▶ Philip Shaikun, Vice President and Associate General Counsel, Office of General Counsel, at (202) 728-8451;
- ▶ Tom Pappas, Vice President, Advertising Regulation, at (240) 386-4553; or
- ▶ Hammad Qureshi, Economist, Office of the Chief Economist, at (202) 728-8150.

Action Requested

FINRA encourages all interested parties to comment. Comments must be received by May 8, 2014.

Comments must be submitted through one of the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:
Marcia E. Asquith
Office of the Corporate Secretary
FINRA
1735 K Street, NW
Washington, DC 20006-1506

April 2014

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Investment Companies
- ▶ Legal
- ▶ Registered Representatives
- ▶ Research
- ▶ Senior Management

Key Topics

- ▶ Communications With the Public
- ▶ Correspondence
- ▶ Institutional Communications
- ▶ Retail Communications

Referenced Rules & Notices

- ▶ FINRA Rule 2210
- ▶ FINRA Rule 2212
- ▶ FINRA Rule 2213
- ▶ FINRA Rule 2214
- ▶ FINRA Rule 2215
- ▶ FINRA Rule 2216

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

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

Background & Discussion

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

FINRA will prioritize rules for review, taking into consideration a number of factors, including:

- ▶ feedback from FINRA's Member Relations and Education department as to rules most frequently identified by firms as raising questions or concerns;
- ▶ input from FINRA's advisory committees;
- ▶ observations and experience of FINRA's operating departments, including examination findings, enforcement actions, interpretive requests and general questions;
- ▶ how recently the rule(s) have been amended or subjected to industry feedback;
- ▶ the anticipated length of the review process based on the breadth and complexity of the rule or rule set; and
- ▶ federal laws, regulations or rules that may preempt or otherwise limit FINRA's ability to amend rules.

For a newly adopted rule, FINRA will consider it for retrospective review after a reasonable implementation period—allowing FINRA time to gain experience with the rule and to obtain meaningful data to conduct a thorough assessment of the rule's impact.

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

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

Request for Comment

FINRA has identified the communications with the public rule set for review. This rule set includes the following rules:

- ▶ [FINRA Rule 2210](#) (Communications with the Public)
- ▶ [FINRA Rule 2212](#) (Use of Investment Company Rankings in Retail Communications)
- ▶ [FINRA Rule 2213](#) (Requirements for the Use of Bond Mutual Fund Volatility Ratings)
- ▶ [FINRA Rule 2214](#) (Requirements for Use of Investment Analysis Tools)
- ▶ [FINRA Rule 2215](#) (Communications with the Public Regarding Securities Futures)
- ▶ [FINRA Rule 2216](#) (Communications with the Public Regarding Collateralized Mortgage Obligations)

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

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

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

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See [NTM 03-73](#) (November 2003) (Online Availability of Comments) for more information.
2. A rule set is a group of rules identified by FINRA staff to contain similar subject, characteristics or objectives.

Retrospective Rule Review

FINRA Requests Comment on the Effectiveness and Efficiency of its Gifts and Gratuities and Non-Cash Compensation Rules

Comment Period Expires: **May 8, 2014**

Executive Summary

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

Questions regarding this *Notice* should be directed to:

- ▶ Joseph Savage, Vice President and Counsel, Regulatory Policy, at (240) 386-4534;
- ▶ Victoria Crane, Associate General Counsel, Office of General Counsel, at (202) 728-8104; or
- ▶ Hammad Qureshi, Economist, Office of the Chief Economist, at (202) 728-8150.

Action Requested

FINRA encourages all interested parties to comment. Comments must be received by May 8, 2014.

Comments must be submitted through one of the following methods:

- ▶ Emailing comments to pubcom@finra.org; or
- ▶ Mailing comments in hard copy to:
Marcia E. Asquith
Office of the Corporate Secretary
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1735 K Street, NW
Washington, DC 20006-1506

April 2014

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Compliance
- ▶ Investment Companies
- ▶ Legal
- ▶ Registered Representatives
- ▶ Senior Management
- ▶ Variable Contracts

Key Topics

- ▶ Business Entertainment
- ▶ Commercial Bribery
- ▶ Gifts
- ▶ Gratuities
- ▶ Non-Cash Compensation

Referenced Rules & Notices

- ▶ FINRA Rule 3220
- ▶ FINRA Rule 2310(c)
- ▶ FINRA Rule 2320(g)(4)
- ▶ FINRA Rule 5110(h)
- ▶ NASD Rule 2830(l)(5)

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

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

Background & Discussion

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

FINRA will prioritize rules for review, taking into consideration a number of factors, including:

- ▶ feedback from FINRA's Member Relations and Education department as to rules most frequently identified by firms as raising questions or concerns;
- ▶ input from FINRA's advisory committees;
- ▶ observations and experience of FINRA's operating departments, including examination findings, enforcement actions, interpretive requests and general questions;
- ▶ how recently the rule(s) have been amended or subjected to industry feedback;
- ▶ the anticipated length of the review process based on the breadth and complexity of the rule or rule set; and
- ▶ federal laws, regulations, or rules that may preempt or otherwise limit FINRA's ability to amend rules.

For a newly adopted rule, FINRA will consider it for retrospective review after a reasonable implementation period—allowing FINRA time to gain experience with the rule and to obtain meaningful data to conduct a thorough assessment of the rule's impact.

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

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

Request for Comment

FINRA has identified the gifts and gratuities and non-cash compensation rule set for review. This rule set includes the following rules:

[FINRA Rule 3220](#) (Influencing or Rewarding Employees of Others)³

[FINRA Rule 2310\(c\)](#) (Direct Participation Programs)

[FINRA Rule 2320\(g\)\(4\)](#) (Variable Contracts of an Insurance Company)

[FINRA Rule 5110\(h\)](#) (Corporate Financing Rule – Underwriting Terms and Arrangements)

[NASD Rule 2830\(l\)\(5\)](#) (Investment Company Securities)

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

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

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

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See [NTM 03-73](#) (November 2003) (Online Availability of Comments) for more information.
2. A rule set is a group of rules identified by FINRA staff to contain a similar subject, characteristics or objectives.
3. FINRA is including a review of firms' implementation experience with FINRA guidance regarding ordinary and usual business entertainment provided by firms or their associated persons to the firms' clients and their guests. See [letter](#) to Henry H. Hopkins and Sarah McCafferty, T. Rowe Price Investment Services, Inc., from R. Clark Hooper, NASD, dated June 10, 1999.

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Continuing Education

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

The Securities Industry/Regulatory Council on Continuing Education (Council) has released its Spring 2014 Firm Element Advisory (FEA). The Council produces the FEA to identify regulatory and sales practice topics that firms should consider in their Firm Element training plans. Topics updated or added since the prior FEA are indicated in the document as such.

The updated FEA is available at: http://cecouncil.com/Documents/FEA_Semi_Annual_Update.pdf.

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

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

Questions concerning this *Notice* should be directed to:

- ▶ cecounciladmin@finra.org; or
- ▶ Roni Meikle, Director, Continuing Education, FINRA, at (212) 858-4084.

April 2014

Notice Type

- ▶ Guidance

Suggested Routing

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

Key Topics

- ▶ Continuing Education
- ▶ Firm Element

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GASB Accounting Support Fee

2014 GASB Accounting Support Fee to Fund the Governmental Accounting Standards Board

Executive Summary

In February 2012, pursuant to an SEC order, FINRA established an accounting support fee (GASB Accounting Support Fee) to adequately fund the annual budget of the Governmental Accounting Standards Board (GASB). The GASB Accounting Support Fee is collected on a quarterly basis from member firms that report trades to the Municipal Securities Rulemaking Board (MSRB). Each member firm's assessment is based on the member firm's portion of the total par value of municipal securities transactions reported by all FINRA member firms to the MSRB during the previous quarter. FINRA will assess and collect a total of \$6,159,100 to adequately fund the GASB's annual budget by collecting \$1,539,775 from its member firms each calendar quarter beginning in April 2014.

Questions concerning this *Notice* should be directed to:

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

April 2014

Notice Type

- ▶ Guidance

Suggested Routing

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

Key Topics

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

Referenced Rules & Notices

- ▶ Dodd-Frank Act Section 978
- ▶ FINRA By-Laws, Schedule A
- ▶ MSRB Rule G-14(b)
- ▶ Regulatory Notice 13-17
- ▶ Regulatory Notice 12-15
- ▶ Securities Act Section 19(g)

Background & Discussion

Pursuant to Section 14 of Schedule A to FINRA's By-Laws, which was adopted in response to the SEC's 2011 order under Section 19(g) of the Securities Act of 1933 (Securities Act),¹ FINRA assesses a reasonable annual accounting support fee to adequately fund the annual budget of the GASB.² The GASB Accounting Support Fee is assessed on a quarterly basis and is based on member firms' municipal securities trading volume reported to the MSRB during the previous calendar quarter. Each quarter, FINRA collects one-fourth of the annual GASB Accounting Support Fee from its members. A member firm's quarterly assessment reflects its portion of the total par value of municipal securities transactions reported to the MSRB by all FINRA members in the previous calendar quarter. To exclude firms with de minimis transactions in municipal securities in a given quarter from being assessed the fee, members with a quarterly assessment of less than \$25 are not charged the fee for that quarter, and any amounts originally assessed to those firms are reallocated among the firms with an assessment that quarter of \$25 or more. Firms that do not engage in reportable municipal securities transactions during a particular calendar quarter are not subject to the GASB Accounting Support Fee for that quarter.

For 2014, GASB's annual budget expenses of \$9,248,800 will be partially funded from \$3,089,700 of excess reserves of the Financial Accounting Foundation. As a result, the recoverable annual budgeted expense for purposes of the GASB Accounting Support Fee is \$6,159,100;³ therefore, FINRA will collect \$1,539,775 from its members each quarter beginning in April 2014.⁴

Because some firms may seek to pass the GASB Accounting Support Fee onto customers engaged in municipal securities transactions, FINRA will continue to provide firms with an estimated fee rate (per \$1,000 par value) based on the GASB recoverable annual budgeted expenses reported to FINRA for that year and historical municipal security trade reporting volumes so that firms will have a basis on which to establish a fee. Based on reported municipal trading activity by FINRA member firms in 2013 and the 2014 GASB budget, FINRA estimates that the GASB Accounting Support Fee for 2014 will be between \$0.0018 and \$0.0022 per \$1,000 par value. Member firms are reminded that, if they choose to pass along the fee, they must ensure that any such fees are properly disclosed, including, if applicable, the fact that the fee is an estimate and that the firm ultimately may pay more or less than the fee charged to the customer. In addition, any disclosure used by a member firm cannot be misleading and must conform to FINRA rules, including just and equitable principles of trade, as well as any applicable MSRB rules.

Endnotes

1. Securities Exchange Act Release No. 64462 (May 11, 2011), 76 FR 28247 (May 16, 2011). Section 19(g) of the Securities Act, as added by Section 978 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), gave the SEC the authority to require a national securities association to establish a reasonable annual accounting support fee to adequately fund the annual budget of the GASB and to draft the rules and procedures necessary to equitably assess the fee on the association's members. See 15 U.S.C. 77s(g); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).
2. See Securities Exchange Act Release No. 66454 (February 23, 2012), 77 FR 12340 (February 29, 2012); see also [Regulatory Notice 13-17](#) (April 2013); [Regulatory Notice 12-15](#) (February 2012). In accordance with Section 19(g)(5)(B) of the Securities Act, collection of the GASB Accounting Support Fee shall not be construed to provide the SEC or FINRA direct or indirect oversight of the budget or technical agenda of the GASB or to affect the setting of generally accepted accounting principles by the GASB. See 15 U.S.C. 77s(g)(5)(B).
3. For purposes of the GASB Accounting Support Fee, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation (FAF). See 15 U.S.C. 77s(g)(2). GASB's 2014 budget includes an administrative fee to FINRA of \$30,000 that is intended to cover FINRA's costs associated with calculating, assessing, and collecting the GASB Accounting Support Fee. The amount of the administrative fee is reviewed and evaluated each year by FINRA and the FAF in light of FINRA's experience in assessing and collecting the GASB Accounting Support Fee and the actual costs incurred by FINRA.
4. The invoice firms receive in January 2014 covers the fourth quarter of GASB's 2013 budget and is based on the amounts set forth in [Regulatory Notice 13-17](#). As required by Section 19(g) of the Securities Act, any GASB Accounting Support Fees collected by FINRA are remitted to the FAF and used to support the efforts of the GASB to establish standards of financial accounting and reporting applicable to state and local governments. See 15 U.S.C. 77s(g)(1), (3). Section 19(g)(4) of the Securities Act prohibits FINRA from collecting GASB Accounting Support Fees for a fiscal year in excess of GASB's recoverable annual budgeted expenses. See 15 U.S.C. 77s(g)(4).

Qualification Examinations

FINRA Revises the Investment Company and Variable Contracts Products Principal (Series 26) Examination Program

Implementation Date: June 16, 2014

Executive Summary

FINRA periodically reviews the content of qualification examinations to determine whether revisions are necessary or appropriate in view of changes—including changes to the laws, rules and regulations—pertaining to the subject matter the examinations cover. Based on this review process, FINRA has revised the Investment Company and Variable Contracts Products Principal (Series 26) examination program.¹

The changes are reflected in the [Series 26 content outline](#) on FINRA's website and will appear in Series 26 examinations administered on or after June 16, 2014.

Questions regarding this *Notice* should be directed to:

- ▶ Amaka Omenka, Senior Qualifications Analyst, Testing and Continuing Education Department, at (240) 386-4678; or
- ▶ Bridget Fox, Qualifications Analyst, Testing and Continuing Education Department, at (240) 386-6472.

Background & Discussion

Section 15A(g)(3) of the Securities Exchange Act of 1934² authorizes FINRA to prescribe standards of training, experience and competence for persons associated with FINRA-regulated firms. In accordance with that provision, FINRA has developed examinations that are designed to establish that persons associated with FINRA-regulated firms have attained specified levels of competence and knowledge, consistent with applicable registration requirements under FINRA rules.

April 2014

Notice Type

- ▶ Guidance

Suggested Routing

- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registration
- ▶ Training

Key Topics

- ▶ Series 26 Qualification Examination

Referenced Rules & Notices

- ▶ FINRA Rule 2090
- ▶ FINRA Rule 2111
- ▶ FINRA Rule 3230
- ▶ FINRA Rule 4510
- ▶ Information Notice 3/12/08
- ▶ NASD Rule 1022(b)
- ▶ NASD Rule 2212
- ▶ NASD Rule 2310
- ▶ NASD Rule 2510
- ▶ NASD Rule 3110
- ▶ NYSE Rule 345.15(3) and its interpretation
- ▶ SEA Rule 15c1-7
- ▶ SEA Section 15A(g)(3)
- ▶ Securities Act Section 3(a)(8)

Pursuant to NASD Rule 1022(b)³ (Limited Principal – Investment Company and Variable Contracts Products), if a principal's activities are limited solely to redeemable securities of companies registered under the Investment Company Act of 1940 (Investment Company Act), securities of closed-end companies registered under the Investment Company Act during the period of original distribution, and variable contracts and insurance premium funding programs and other contracts issued by an insurance company (except contracts that are exempt securities pursuant to Section 3(a)(8) of the Securities Act of 1933), and he or she is registered as either a General Securities Representative or a Limited Representative – Investment Company and Variable Contracts Products, the principal may register and qualify as an Investment Company and Variable Contracts Products Principal.⁴ The Series 26 examination qualifies an individual to function as an Investment Company and Variable Contracts Products Principal.

In consultation with a committee of industry representatives, FINRA recently undertook a review of the Series 26 examination program. As a result of this review, FINRA has revised the content outline to reflect changes to the laws, rules and regulations the examination covers and to incorporate the functions and associated tasks an Investment Company and Variable Contracts Products Principal currently performs. FINRA also has revised the format of the content outline.

Revisions

FINRA has divided the content outline into three major job functions and included specific tasks for each function. The following are the three major job functions and the number of questions associated with each function:

Function 1: Personnel Management Activities and Registration of the Broker-Dealer, 16 questions;

Function 2: Supervises Associated Persons and Oversees Sales Practices, 49 questions; and

Function 3: Oversees Compliance and Business Processes of the Broker-Dealer and its Offices, 45 questions.

FINRA also adjusted the number of questions assigned to each major job function to ensure that the overall examination better reflects the key tasks performed by an Investment Company and Variable Contracts Products Principal. The questions on the revised Series 26 examination place greater emphasis on key tasks such as supervision of registered persons, sales practices and compliance.

Each function also includes specific tasks describing activities associated with performing that function. There are two tasks (1.1 – 1.2) associated with Function 1; six tasks (2.1 – 2.6) associated with Function 2; and six tasks (3.1 – 3.6) associated with Function 3.⁵ For example, one task (Task 2.1) monitors, supervises and documents the sales activities of associated persons to achieve compliance with securities industry rules and regulations and firm policies and provides feedback regarding product knowledge and performance.⁶ Further, the outline lists the knowledge required to perform each function and associated tasks (*e.g.*, standards of conduct and prohibited activities).⁷ In addition, where applicable, the outline lists the laws, rules and regulations a candidate is expected to know to perform each function and associated tasks. These include the applicable FINRA Rules (*e.g.*, FINRA Rule 2090), NASD Rules (*e.g.*, NASD Rule 2510) and SEC rules (*e.g.*, SEA Rule 15c1-7).⁸

FINRA conducted a job analysis study of Investment Company and Variable Contracts Products Principals, which included the use of a survey, in developing each function and associated tasks and updating the required knowledge set forth in the revised outline. The functions and associated tasks, which appear in the revised outline for the first time, reflect the day-to-day activities of an Investment Company and Variable Contracts Products Principal. FINRA also has revised the content outline to reflect changes to the laws, rules and regulations the examination covers. Among other revisions, FINRA has revised the content outline to reflect the adoption of FINRA rules that replace NASD rules in the consolidated FINRA rulebook (*e.g.*, FINRA Rules 2111 (Suitability), 3230 (Telemarketing) and 4510 Series (Books and Records Requirements), respectively).⁹ FINRA has adopted similar changes to the Series 26 selection specifications and question bank.

Finally, FINRA has revised the format of the content outline, including the preface, sample questions and reference materials.

The number of questions on the Series 26 examination will remain at 110 multiple-choice questions,¹⁰ and candidates will continue to have 165 minutes to complete the examination. A score of 70 percent is required to pass the examination, which is the same as the current passing score.

Availability of Content Outline

The revised [Series 26 content outline](#) is available on FINRA's website.

Endnotes

1. See Securities Exchange Act Release No. 71998 (April 23, 2014); 79 FR 24047 (April 29, 2014); File No. SR-FINRA-2014-015, which was filed with the SEC for immediate effectiveness on April 15, 2014.
2. 15 U.S.C. 78o-3(g)(3).
3. The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (Incorporated NYSE Rules) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (Dual Members). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see [Information Notice March 12, 2008](#) (Rulebook Consolidation Process).
4. See also Incorporated NYSE Rule 345.15(3) and Incorporated NYSE Rule Interpretation 345.15/02.
5. See Content Outline Pages 6-18.
6. See Content Outline Page 9.
7. See Content Outline Page 9.
8. See Content Outline Page 11.
9. See [Rule Conversion Chart](#).
10. Consistent with FINRA’s practice of including “pre-test” questions on certain qualification examinations, which is designed to ensure that new examination questions meet acceptable testing standards prior to use for scoring purposes, the examination includes 10 additional, unidentified pre-test questions that do not contribute towards the candidate’s score. Therefore, the examination actually consists of 120 questions, 110 of which are scored. The 10 pre-test questions are randomly distributed throughout the examination.

BrokerCheck

FINRA Requests Comment on a Revised Proposal to Require a Hyperlink to BrokerCheck in Online Retail Communications With the Public

Comment Period Expires: June 16, 2014

Executive Summary

FINRA seeks comment on a revised proposal to require a hyperlink to BrokerCheck in firms' online retail communications with the public. The revised proposal includes changes made in response to comments on a prior proposal to amend FINRA Rule 2267 (Investor Education and Protection). The revised proposal would require a firm to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors. In addition, it would require a firm to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications with the public that include a professional profile of, or contact information for, an associated person, subject to specified conditions and exceptions, including exceptions for electronic mail and text messages.

The proposed rule is available as Attachment A at www.finra.org/notices/14-19.

Questions concerning this *Notice* should be directed to:

- ▶ Joseph Savage, Vice President, Regulatory Policy, at (240) 386-4534;
- ▶ Richard E. Pullano, Vice President and Chief Counsel, Registration and Disclosure, at (240) 386-4821 (regarding BrokerCheck); or
- ▶ Erika Lazar, Assistant General Counsel, Office of General Counsel, at (202) 728-8013.

April 2014

Notice Type

- ▶ Request for Comment

Suggested Routing

- ▶ Advertising
- ▶ Compliance
- ▶ Legal
- ▶ Operations
- ▶ Registered Representatives
- ▶ Registration
- ▶ Senior Management
- ▶ Systems
- ▶ Technology

Key Topics

- ▶ BrokerCheck®
- ▶ Central Registration Depository (CRD®)
- ▶ Social Media
- ▶ Uniform Registration Forms

Referenced Rules & Notices

- ▶ Regulatory Notice 10-06
- ▶ Regulatory Notice 11-39
- ▶ Regulatory Notice 12-10
- ▶ FINRA Rule 2210
- ▶ FINRA Rule 2267

Action Requested

FINRA encourages all interested parties to comment on the proposal. Comments must be received by June 16, 2014.

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

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

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

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

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

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

Background & Discussion

A. Initial Proposal

In January 2013, FINRA filed with the SEC a proposed rule change to amend FINRA Rule 2267 (Investor Education and Protection)³ to require all firms to include a prominent description of and link to BrokerCheck on their websites, social media pages and any comparable Internet presence (the initial proposal).⁴ The requirement also applied to the websites, social media pages and any comparable Internet presence relating to a firm's investment banking or securities business maintained by or on behalf of any person associated with a firm. The proposed rule change was intended to increase investor awareness and use of BrokerCheck.⁵ The SEC received 24 comment letters in response to the proposed rule change, some of which raised operational issues. The most common concerns involved the challenges of implementing the proposed rule change with respect to social media pages and the use of a "deep" link to BrokerCheck summary reports specific to each member firm or associated person.⁶ FINRA withdrew the filing to assess and respond to commenters' concerns.

B. Revised Proposal

In light of the concerns with the initial proposal, FINRA requests comment on a revised proposal that incorporates the proposed BrokerCheck link requirement into FINRA's regulatory framework for communications with the public in FINRA Rule 2210 (Communications With the Public). Specifically, the revised proposal would adopt FINRA Rule 2210(d)(8)(A) to require a firm to include a readily apparent reference and hyperlink to BrokerCheck on each website of the firm that is available to retail investors.

In addition, proposed FINRA Rule 2210(d)(8)(B) would require a firm to include a readily apparent reference and hyperlink to BrokerCheck in online retail communications that include a professional profile of, or contact information for, an associated person, subject to the following conditions:⁷

- ▶ If the retail communication appears on the firm's website or any site that it hosts, the hyperlink to BrokerCheck must appear in close proximity to the profile or contact information.
- ▶ If the retail communication appears on a third-party website that permits a hyperlink to another website, the firm must either (1) post a hyperlink to BrokerCheck in close proximity to the profile or contact information; or (2) post a hyperlink to the firm's website, which includes a readily apparent reference and hyperlink to BrokerCheck, in close proximity to the profile or contact information, and include in the third-party website communication disclosure that informs the reader that a hyperlink to BrokerCheck is available through the linked website.
- ▶ If the retail communication appears on a third-party website that does not permit a hyperlink to another website, the firm must provide the BrokerCheck web address (uniform resource locator (URL)) in close proximity to the profile or contact information and, to the extent feasible, disclose that information concerning the associated person is available through BrokerCheck.

Proposed FINRA Rule 2210(d)(8)(C) would except from the proposed requirements:

- ▶ electronic mail or text messages;
- ▶ a retail communication that is posted on an online interactive electronic forum (such as a message board, Twitter feed or chat room);⁸
- ▶ a member firm that does not provide products or services to retail investors; or
- ▶ a directory or list of associated persons limited to names and contact information.⁹

FINRA does not treat third-party communications as a firm's or its associated persons' communications under FINRA Rule 2210 unless the firm or its associated persons have adopted or become entangled with the communication.¹⁰ Accordingly, the disclosure requirements of proposed FINRA Rule 2210(d)(8) would not apply to independent third-party websites that provide contact or profile information about a firm or its associated persons if the firm and its associated persons have not adopted the website and have no involvement with its content.¹¹

FINRA believes the proposed amendments to FINRA Rule 2210 address many of the commenters' concerns on the original proposal. By incorporating the proposed rule change into the regulatory framework for communications with the public, the revised proposal clarifies the operation of the proposed requirements. In this regard, FINRA has issued guidance related to FINRA Rule 2210 that addresses the rule's application to social media pages, blogs and other online communications with the public.¹² In addition, the revised proposal clarifies that a hyperlink to BrokerCheck be included only on websites of the firm that are available to retail investors, rather than on all of its social media pages and proprietary sites that limit access to institutional investors.

As detailed above, the revised proposal provides flexibility with respect to online retail communications on third-party websites that are not controlled by the firm, such as social media sites, by providing firms with options to address the restrictions and limitations of such websites.¹³ In addition, the exceptions in the revised proposal provide clarity regarding the application of the proposed rule. The revised proposal eliminates the requirement for a deep link to a firm's or associated person's BrokerCheck report summary page.

FINRA believes that the revised approach will increase investor awareness of BrokerCheck, while addressing the operational concerns the initial proposal raised.

To assist firms in assessing the impact of the revised proposal, FINRA reviewed a selection of popular social media sites and conducted trials to determine how firms could implement the proposed requirements for third-party websites. Based on this review, FINRA determined that firms would be able to post a hyperlink to BrokerCheck or a hyperlink to the firm's website in close proximity to an associated person's profile or contact information on:¹⁴

- ▶ **Facebook:** in the "About" section of the Profile page;
- ▶ **LinkedIn:** in the "Background Summary" section (individuals);
- ▶ **YouTube:** in the "About" section of the Profile page; and
- ▶ **Pinterest:** in the "About" section of the Profile page.

With respect to Twitter, FINRA understands that due to character limitations along with the inability to include hyperlinks in a user's profile, the inclusion of a hyperlink to BrokerCheck or a hyperlink to the firm's website is not feasible. For sites with such restrictions, firms would be required to provide the BrokerCheck URL in close proximity to an associated person's profile or contact information and, to the extent feasible, disclose that information concerning the associated person is available through BrokerCheck. On Twitter, the BrokerCheck web address would be required in the "About" section of an associated person's Profile page.

FINRA requests comment on all aspects of the revised proposal, including any potential costs and burdens that the revised proposal could impose on firms. FINRA particularly requests comment concerning the following issues:

- ▶ Does the revised proposal address the operational concerns raised by the initial proposal, particularly with respect to the proposed requirements for third-party websites? Why or why not?
- ▶ Should FINRA retain the deep link requirement to provide investors with direct access to a firm's or associated person's BrokerCheck report summary?¹⁵
- ▶ Will the revised proposal increase investor use and awareness of BrokerCheck?
- ▶ What are the direct and indirect costs of the proposed rule to firms, including the cost associated with monitoring retail communications of associated persons across different channels? FINRA welcomes estimates of these costs to firms.
- ▶ Are there alternative approaches FINRA should consider to accomplish this goal? If so, what are those alternatives and why could they be better suited?

FINRA requests that commenters provide empirical data or other factual support for their comments wherever possible.

Endnotes

1. FINRA will not edit personal identifying information, such as names or email addresses, from submissions. Persons should submit only information that they wish to make publicly available. See *NTM 03-73* (November 2003) (Online Availability of Comments) for more information.
2. See SEA Section 19 and rules thereunder. After a proposed rule change is filed with the SEC, the proposed rule change generally is published for public comment in the Federal Register. Certain limited types of proposed rule changes, however, take effect upon filing with the SEC. See SEA Section 19(b)(3) and SEA Rule 19b-4.
3. Subject to limited exceptions, FINRA Rule 2267(a) requires member firms to provide annually in writing to each of their customers the BrokerCheck hotline number, the FINRA website address, and a notification of the availability of an investor brochure that describes BrokerCheck.
4. See Securities Exchange Act Release No. 68700 (January 18, 2013), 78 FR 5542 (January 25, 2013) (Notice of Filing of SR-FINRA-2013-002).
5. See also *Regulatory Notice 12-10* (February 2012).
6. A BrokerCheck report summary page displays the firm's or person's CRD number, SEC number (for firms), registration status and employing firm (for individuals).
7. FINRA Rule 2210(a)(5) defines a "retail communication" as any written (including electronic) communication that is distributed or made available to more than 25 retail investors within any 30 calendar-day period. Rule 2210(a)(6) defines a "retail investor" as any person other than an institutional investor (as defined in Rule 2210(a)(4)), regardless of whether the person has an account with a member.
8. FINRA notes, however, that the proposed requirements would apply to static content on a site that hosts an online interactive forum (such as a profile page).
9. This exception for directories that are limited to the names and contact information of associated persons is intended to apply both to directories that appear on a member's website, as well as third-party website directories in which the firm or associated person was involved with the website's content.
10. See *Regulatory Notice 11-39* (August 2011), Question 4.
11. For example, a firm would not be required to ensure that an independent third-party website that provides ratings or customer reviews about broker-dealers includes a hyperlink to BrokerCheck if the firm and its associated persons have not adopted the website or become entangled with the creation of the website's content. Similarly, the requirements of proposed FINRA Rule 2210(d)(8) would not apply to online directories that aggregate and assemble service industry information based on publicly available data without any involvement of a firm or its associated persons.
12. See *Regulatory Notice 11-39* (August 2011) and *Regulatory Notice 10-06* (January 2010).
13. FINRA notes that, consistent with social media guidance published by FINRA in relation to FINRA Rule 2210, the revised proposal would not apply to personal social media sites or a biography on a website that is outside the scope of an associated person's relationship with a member firm.

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14. If the hyperlink is to the firm's website, the firm also must include disclosure that informs the reader that a hyperlink to BrokerCheck is available through the linked website.
15. FINRA notes that a deep link can be created by adding a firm's or individual's CRD number to the end of the appropriate web address format (Designated URL). For example, the deep link for the individual with CRD number 1234 is www.brokercheck.finra.org/Individual/1234.

Information Notice

Continuing Education Planning

Executive Summary

On April 11, 2014, the Securities Industry/Regulatory Council on Continuing Education (the Council) released the semi-annual Firm Element Advisory (FEA) (see [Regulatory Notice 14-16](#)). The Council suggests that firms consult the FEA when developing their Firm Element training needs analysis.

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

- ▶ **E-Learning Courses:** Online training featuring assessment tests, scenarios, real-time completion tracking and certificates of completion (see www.finra.org/elearning).
- ▶ **Podcasts:** Short audio recordings on specific targeted topics, which can be heard online or downloaded to a portable media player (see www.finra.org/podcasts).
- ▶ **Webinars:** Free live, online video programs that include panel discussions with FINRA staff and/or industry experts, and feature online resource materials (see www.finra.org/webinars).

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

FIRM ELEMENT ADVISORY TOPICS	FINRA TRAINING
Consolidated FINRA Rulebook	<ul style="list-style-type: none">• Rulebook Consolidation Series (Podcasts)
Alternative Investments	<ul style="list-style-type: none">• Commodity Futures-Linked Securities (Podcast)• Heightened Supervision of Complex Products – Parts I and II (Podcasts)• Reverse Convertibles (Podcast)• Exchange-Traded Products: Understanding Leveraged and Inverse ETPs (E-Learning)• Understanding Commodity Futures-Linked Securities (E-Learning)• Understanding Retail Structured Products (E-Learning)
Anti-Money Laundering	<ul style="list-style-type: none">• Anti-Money Laundering Series (Podcasts)• Anti-Money Laundering Series (E-Learning)

April 11, 2014

Suggested Routing

- ▶ Compliance
- ▶ Continuing Education
- ▶ Legal
- ▶ Training

Key Topics

- ▶ Continuing Education
- ▶ Firm Element

Referenced Rules & Notices

- ▶ Notice 14-16

FIRM ELEMENT ADVISORY TOPICS	FINRA TRAINING
Business Continuity	<ul style="list-style-type: none"> • FINRA’s Business Continuity Planning Template (Podcast) • Pandemic Preparedness – Parts I and II (Podcasts)
Communications With the Public	<ul style="list-style-type: none"> • Communications With the Public Consolidated Rule – Parts I and II (Podcasts) • Communications With the Public: Real Estate Investment Programs (Podcast) • Electronic Communications With the Public Parts I and II (Podcasts) • Understanding Social Media for Retail Registered Representatives (E-Learning) • Use of Social Media for Business Purposes (E-Learning) • Social Media and Personal Electronic Devices Series (Podcasts) • Communications With the Public Series (E-Learning)
Corporate Finance	<ul style="list-style-type: none"> • Private Placements (E-Learning) • Private Placements: Conducting Reasonable Investigations for Regulation D Offerings (E-Learning)
Customer Accounts	<ul style="list-style-type: none"> • Communications With the Public: Retail and IRA Fee Disclosure (Podcast) • Consolidated Account Reports (Podcast) • FTC’s Red Flags Rule Template (Podcast) • FACT Act Red Flags Rule (Podcast) • Requirements for Customer Assets (Podcast)
Dispute Resolution	<ul style="list-style-type: none"> • Arbitration Panel Composition (Podcast)
Municipal Securities	<ul style="list-style-type: none"> • MSRB Supervision Rules (E-Learning) • Municipal Continuing Disclosure Report (Podcast) • Municipal Securities Series (Podcasts)

FIRM ELEMENT ADVISORY TOPICS	FINRA TRAINING
Registration and Disclosure	<ul style="list-style-type: none"> • BrokerCheck (Podcast) • Professional Registration Category Series (Podcast)
Sales Practices and Supervision	<ul style="list-style-type: none"> • Considerations for Working With Seniors Series (Podcasts) • New Supervision and Supervisory Control Rules (Webinar) • Senior Designations – Parts I and II (Podcasts) • Suitability and Know Your Customer Rules (Podcast) • Suitability: Effective Practices (Podcast) • Suitability Guidance Series (Podcasts) • Outside Business Activities Series (E-Learning) • Understanding Supervisory Controls (Podcast) • Senior Investors Suitability Considerations (E-Learning) • Suitability and Know Your Customer Obligations: FINRA Rules 2111 and 2090 (E-Learning) • Suitability: Findings and Industry Practices (Webinar)
Transaction Reporting and Data Dissemination	<ul style="list-style-type: none"> • Trading-Pause Pilot Program (Podcast)

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