

Proposed Rule Change by Financial Industry Regulatory Authority
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook

Contact Information
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
 Title
 E-mail
 Telephone Fax

Signature
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date
 By Executive Vice President and General Counsel
 (Name) (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “SEA”),¹ Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt NASD Rule 2340 (Customer Account Statements) as FINRA Rule 2231 in the consolidated FINRA rulebook with moderate changes. The proposed rule change would delete Incorporated NYSE Rule 409 (Statements of Accounts of Customers), except for paragraph (f), and certain of its related interpretations.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

(b) Upon Commission approval and implementation of the proposed rule change, the corresponding NASD and Incorporated NYSE rules, or sections thereof, will be eliminated from the current FINRA rulebook.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

At its meeting on September 16, 2008, the FINRA Board of Governors authorized the filing of the proposed rule change with the SEC. No other action by FINRA is necessary for the filing of the proposed rule change.

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

¹ 15 U.S.C. 78s(b)(1).

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

As part of the process of developing a new consolidated rulebook (“Consolidated FINRA Rulebook”),² FINRA is proposing to adopt NASD Rule 2340 (Customer Account Statements) as FINRA Rule 2231 in the Consolidated FINRA Rulebook with moderate changes. The proposed rule change would delete: (1) Incorporated NYSE Rule 409³ (Statements of Accounts of Customers), except for paragraph (f); and (2) NYSE Rule Interpretations Rule 409(a) and 409(b), except for paragraphs 409(a)/01 and 409(a)/03, as such rule and its related interpretations are, in main part, duplicative of NASD Rule 2340. However, as further described herein, the proposed rule change would incorporate certain provisions of NYSE Rule 409 and its interpretations into new FINRA Rule 2231.

Proposed FINRA Rule 2231 (Customer Account Statements)

Frequency of Delivery of Account Statements and Disclosures

NASD Rule 2340 generally requires each general securities member to send account statements to customers at least once each calendar quarter containing a description of any securities positions, money balances or account activity in the

² The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (“Incorporated NYSE Rules”) (together, the NASD Rules and Incorporated NYSE Rules are referred to as the “Transitional Rulebook”). While the NASD Rules generally apply to all FINRA 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 FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

³ For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

accounts since the prior account statements were sent. NYSE Rule 409(a) similarly requires member organizations to send customer account statements at least once each calendar quarter.

In contrast, proposed FINRA Rule 2231(a) would require each general securities member to send account statements at least once every calendar month to each customer whose account had account activity during the period since the last statement was sent to the customer, and at least once every calendar quarter to each customer whose account had a security position or money balance during the period since the last statement was sent to the customer.

Proposed FINRA Rule 2231 would adopt the definitions of the terms “general securities member” and “account activity” set forth in NASD Rule 2340. A "general securities member" would be any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEA Rule 15c3-1(a). However, a member that does not carry customer accounts and does not hold customer funds or securities would continue to be exempt from the provisions of FINRA Rule 2231. "Account activity" would be defined broadly and would include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries and/or journal entries relating to securities or funds in the possession or control of the member.

FINRA believes the proposed amendment better reflects current industry practice as a significant number of members already send customers monthly account statements through their clearing firms. FINRA believes that receipt of monthly statements will

allow customers to review their statements in a timely manner for errors, possible identify theft or other potential problems.

Proposed FINRA Rule 2231(a) would also retain the requirement in NASD Rule 2340(a) (and NYSE Rule 409(e)) to include on customer account statements a statement advising customers to report promptly any inaccuracy or discrepancy in their account to the introducing firm and clearing firm (where there are two different firms) and to re-confirm any oral communications in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act ("SIPA").

DVP/RVP Securities on Account Statements

Proposed FINRA Rule 2231(b) would incorporate without substantive change the provisions in NASD Rule 2340(b) (and NYSE Rule 409(a)) providing that account statements do not need to be sent to a customer if the customer's account is carried solely for execution on a Delivery versus Payment/Receive versus Payment ("DVP/RVP") basis, subject to certain specified conditions. The rule would continue to provide that it does not qualify or condition the obligations of members under SEA Rule 15c3-2 concerning quarterly notices of free credit balances on statements.

Value of DPP/REIT Securities on Account Statements

Proposed FINRA Rule 2231(c) would incorporate without substantive change the provisions in NASD Rule 2340(c) regarding the disclosure of values for unlisted or illiquid direct participation program ("DPP") and real estate investment trust ("REIT") securities on customer account statements. The proposed rule would require that estimated values for DPP/REIT securities must be disclosed under certain circumstances

and describe how such estimated values must be determined. NYSE Rule 409 does not include the requirement regarding disclosure of values for DPPs and REITS.

Definitions

Proposed FINRA Rule 2231(d) would incorporate without substantive change the definitions of significant terms used in the rule, such as account activity, general securities member, direct participation program, real estate investment trust, annual report and DVP/RVP account (this last term is also defined in NYSE Rule 409(a)).

Exemptions

Proposed FINRA Rule 2231(e) would incorporate without substantive change the provision in NASD Rule 2340(e) authorizing FINRA to exempt members from the provisions of the rule pursuant to the Rule 9600 Series.

Proposed Supplementary Materials to FINRA Rule 2231

FINRA is proposing to adopt the following provisions as supplementary materials to FINRA Rule 2231. As further described below, these provisions are adopted largely from NYSE Rule 409 and its related interpretations.

Proposed Supplementary Material .01 (Transmission of Customer Account Statements to Other Persons or Entities)

This provision, which is based in part on NYSE Rule 409(b), would expressly require a firm to obtain written instructions from the customer in order to send/deliver customer statements, confirmations or other communications to other persons or entities.

Proposed Supplementary Material .02 (Use of Electronic Media to Satisfy Delivery Obligations)

This provision would allow a firm to satisfy its delivery obligations under the rule by using electronic media, subject to compliance with standards established by the SEC

on the use of electronic media for delivery purposes. This provision is consistent with prior guidance issued by FINRA on the use of electronic media to satisfy delivery obligations.⁴

Proposed Supplementary Material .03 (Information to be Disclosed on Statement)

This provision, which is based on NYSE Rule Interpretation 409(a)/02, would require the following items to be prominently disclosed on the front of the statement: (i) the identity of the introducing and clearing firm (if different) and their respective contact information for customer service (though the identity of the clearing firm and its contact information may appear on the back of the statement provided such information is in “bold” or “highlighted” letters); (ii) that the clearing firm is a member of SIPC; and (iii) the opening and closing balances for the account.

Proposed Supplementary Material .04 (Assets Externally Held and Included on Statements Solely as a Service to Customers)

This provision, which is based on NYSE Rule Interpretation 409(a)/04, would provide that account statements must clearly indicate those instances where certain assets are externally held but included on the statement as a courtesy.

Proposed Supplementary Material .05 (Use of Logos, Trademarks, etc.)

This provision, which is based on NYSE Rule Interpretation 409(a)/05, would regulate the use of trademarks and logos of other persons on account statements.

⁴ See NASD Notice to Members 98-3 (January 1998).

Proposed Supplementary Material .06 (Use of Summary Statements)

This provision, which is based on NYSE Rule Interpretation 409(a)/06, would regulate the use of aggregated account statements for a customer who has accounts with other persons.

Eliminated Provisions of NYSE Rule 409

FINRA is proposing to delete NYSE Rule 409 in its entirety (except for NYSE Rule 409(f) which will be reviewed as part of a later phase of the rulebook consolidation process).⁵ The following describes certain provisions that are found in NYSE Rule 409 and its related interpretations that would not be adopted in proposed FINRA Rule 2231:

Duplicate Account Statements

NYSE Rule 409(b) contains provisions prohibiting, without NYSE's consent, the delivery of statements, confirmations or other communications to non-member customers (1) in care of a person holding power of attorney over the customer's account unless the customer has provided written instructions to send such confirmations, statements or communications to such person, or duplicate copies are sent to the customer at some other address designated in writing; or (2) at the address of any member or in care of any partner or stockholder who is actively engaged in the member's business or employee of the member.

⁵ NYSE Rule 409(f) states “[c]onfirmations of all transactions (including those made “over-the-counter” and on other exchanges) in securities admitted to dealings on the Exchange, sent by members or member organizations to their customers, shall clearly set forth with a suitable legend the settlement date of each transaction. This requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from whom the orders were received. (See SEC Rule 10b-10).”

NYSE Rule 409(g) also provides that members carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically provided in writing that they do not want such statements sent to them.

NASD Rule 2340 does not contain either provision. As noted above, proposed supplementary material .01 to FINRA Rule 2231 is based in part on NYSE Rule 409(b), but eliminates the reference to non-member customers and requires that a member have written instructions from a customer to send communications relating to the customer's account to any third parties designated by the customer. FINRA is proposing to eliminate NYSE Rule 409(g) because it believes that the provision generally advising members to send duplicate account statements to guarantors, absent contrary instructions from the guarantor, need not be incorporated into proposed FINRA Rule 2231 and is better addressed by the general requirement described above to obtain written instructions from the customer to send customer statements to any third parties.

Legends on Account Statements

NYSE Rule 409(e)(1) requires the inclusion of a legend on all account statements that notifies a customer that the firm's financial statements are available for inspection at its offices or a copy can be mailed upon request. FINRA is proposing to eliminate this requirement in light of existing requirements under SEC Rule 17a-5(c), which generally requires broker-dealers that carry customer accounts to provide statements of the broker-dealer's financial condition to their customers, and NASD Rule 2270 (Disclosure of Financial Condition to Customers), which requires a member to make information relative to a member's financial condition available to inspection by customers, upon

request. FINRA will consider NASD Rule 2270 as part of a later phase of the rulebook consolidation process.

NYSE Supplementary Material and Interpretations to be Deleted

FINRA is proposing to eliminate NYSE Rule Interpretation 409(b)/01 (Standards for Holding Mail For Foreign Customers), which provides guidelines for holding confirmations, statements and other communications for foreign customers. FINRA is addressing members' obligations with respect to customer mail as part of the consolidated FINRA rules governing supervision and the related proposal to adopt FINRA Rule 3150 (Holding of Customer Mail).⁶

Technical Changes

In addition, the proposal reflects certain technical, non-substantive amendments to NASD Rule 2340 to change all references to "NASD" to "FINRA," and to change all references to "SEC" Rules to "SEA" Rules.

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

⁶ See Regulatory Notice 08-24 (May 2008). Further, FINRA is not proposing to eliminate the following NYSE Rule Interpretations as part of this rule filing: 409(a)/01 (Applicability), which provides that the member firm carrying the account is responsible for compliance with the rule unless responsibility has been allocated to a non-member broker-dealer carrying organization pursuant to an approved carrying agreement; and 409(a)/03 (Use of Third Party Agents), which regulates the use of third party agents to prepare and/or transmit statements. These interpretations will be reviewed as part of a later phase of the rulebook consolidation process.

(b) Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide customers with critical information regarding their accounts and will allow them to review their statements in a timely manner, while also clarifying and streamlining the customer account rules for adoption as FINRA Rules in the Consolidated FINRA Rulebook.

4. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

FINRA does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁸

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(2).

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-FINRA-2009-028)

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Adopt FINRA Rule 2231 (Customer Account Statements) in the Consolidated FINRA Rulebook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on _____, _____, Financial Industry Regulatory Authority, Inc. (“FINRA”) (f/k/a National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2340 (Customer Account Statements) as FINRA Rule 2231 in the consolidated FINRA rulebook with moderate changes. The proposed rule change would delete Incorporated NYSE Rule 409 (Statements of Accounts of Customers), except for paragraph (f), and certain of its related interpretations.

The text of the proposed rule change is available on FINRA’s Web site at <http://www.finra.org>, at the principal office of FINRA and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),³ FINRA is proposing to adopt NASD Rule 2340 (Customer Account Statements) as FINRA Rule 2231 in the Consolidated FINRA Rulebook with moderate changes. The proposed rule change would delete: (1) Incorporated NYSE Rule 409⁴ (Statements of Accounts of Customers), except for paragraph (f); and (2) NYSE Rule Interpretations Rule 409(a) and 409(b), except for paragraphs 409(a)/01 and 409(a)/03, as such rule and its related interpretations are, in main part, duplicative of NASD Rule 2340.

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 FINRA Information Notice, March 12, 2008 (Rulebook Consolidation Process).

⁴ For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

However, as further described herein, the proposed rule change would incorporate certain provisions of NYSE Rule 409 and its interpretations into new FINRA Rule 2231.

Proposed FINRA Rule 2231 (Customer Account Statements)

Frequency of Delivery of Account Statements and Disclosures

NASD Rule 2340 generally requires each general securities member to send account statements to customers at least once each calendar quarter containing a description of any securities positions, money balances or account activity in the accounts since the prior account statements were sent. NYSE Rule 409(a) similarly requires member organizations to send customer account statements at least once each calendar quarter.

In contrast, proposed FINRA Rule 2231(a) would require each general securities member to send account statements at least once every calendar month to each customer whose account had account activity during the period since the last statement was sent to the customer, and at least once every calendar quarter to each customer whose account had a security position or money balance during the period since the last statement was sent to the customer.

Proposed FINRA Rule 2231 would adopt the definitions of the terms “general securities member” and “account activity” set forth in NASD Rule 2340. A "general securities member" would be any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEA Rule 15c3-1(a). However, a member that does not carry customer accounts and does not hold customer funds or securities would continue to be exempt from the provisions of FINRA Rule 2231. "Account activity" would be defined broadly and would include, but not be limited

to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries and/or journal entries relating to securities or funds in the possession or control of the member.

FINRA believes the proposed amendment better reflects current industry practice as a significant number of members already send customers monthly account statements through their clearing firms. FINRA believes that receipt of monthly statements will allow customers to review their statements in a timely manner for errors, possibly identify theft or other potential problems.

Proposed FINRA Rule 2231(a) would also retain the requirement in NASD Rule 2340(a) (and NYSE Rule 409(e)) to include on customer account statements a statement advising customers to report promptly any inaccuracy or discrepancy in their account to the introducing firm and clearing firm (where there are two different firms) and to re-confirm any oral communications in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act ("SIPA").

DVP/RVP Securities on Account Statements

Proposed FINRA Rule 2231(b) would incorporate without substantive change the provisions in NASD Rule 2340(b) (and NYSE Rule 409(a)) providing that account statements do not need to be sent to a customer if the customer's account is carried solely for execution on a Delivery versus Payment/Receive versus Payment ("DVP/RVP") basis, subject to certain specified conditions. The rule would continue to provide that it does not qualify or condition the obligations of members under SEA Rule 15c3-2 concerning quarterly notices of free credit balances on statements.

Value of DPP/REIT Securities on Account Statements

Proposed FINRA Rule 2231(c) would incorporate without substantive change the provisions in NASD Rule 2340(c) regarding the disclosure of values for unlisted or illiquid direct participation program (“DPP”) and real estate investment trust (“REIT”) securities on customer account statements. The proposed rule would require that estimated values for DPP/REIT securities must be disclosed under certain circumstances and describe how such estimated values must be determined. NYSE Rule 409 does not include the requirement regarding disclosure of values for DPPs and REITS.

Definitions

Proposed FINRA Rule 2231(d) would incorporate without substantive change the definitions of significant terms used in the rule, such as account activity, general securities member, direct participation program, real estate investment trust, annual report and DVP/RVP account (this last term is also defined in NYSE Rule 409(a)).

Exemptions

Proposed FINRA Rule 2231(e) would incorporate without substantive change the provision in NASD Rule 2340(e) authorizing FINRA to exempt members from the provisions of the rule pursuant to the Rule 9600 Series.

Proposed Supplementary Materials to FINRA Rule 2231

FINRA is proposing to adopt the following provisions as supplementary materials to FINRA Rule 2231. As further described below, these provisions are adopted largely from NYSE Rule 409 and its related interpretations.

Proposed Supplementary Material .01 (Transmission of Customer Account Statements to Other Persons or Entities)

This provision, which is based in part on NYSE Rule 409(b), would expressly require a firm to obtain written instructions from the customer in order to send/deliver customer statements, confirmations or other communications to other persons or entities.

Proposed Supplementary Material .02 (Use of Electronic Media to Satisfy Delivery Obligations)

This provision would allow a firm to satisfy its delivery obligations under the rule by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes. This provision is consistent with prior guidance issued by FINRA on the use of electronic media to satisfy delivery obligations.⁵

Proposed Supplementary Material .03 (Information to be Disclosed on Statement)

This provision, which is based on NYSE Rule Interpretation 409(a)/02, would require the following items to be prominently disclosed on the front of the statement: (i) the identity of the introducing and clearing firm (if different) and their respective contact information for customer service (though the identity of the clearing firm and its contact information may appear on the back of the statement provided such information is in “bold” or “highlighted” letters); (ii) that the clearing firm is a member of SIPC; and (iii) the opening and closing balances for the account.

⁵ See NASD Notice to Members 98-3 (January 1998).

Proposed Supplementary Material .04 (Assets Externally Held and Included on Statements Solely as a Service to Customers)

This provision, which is based on NYSE Rule Interpretation 409(a)/04, would provide that account statements must clearly indicate those instances where certain assets are externally held but included on the statement as a courtesy.

Proposed Supplementary Material .05 (Use of Logos, Trademarks, etc.)

This provision, which is based on NYSE Rule Interpretation 409(a)/05, would regulate the use of trademarks and logos of other persons on account statements.

Proposed Supplementary Material .06 (Use of Summary Statements)

This provision, which is based on NYSE Rule Interpretation 409(a)/06, would regulate the use of aggregated account statements for a customer who has accounts with other persons.

Eliminated Provisions of NYSE Rule 409

FINRA is proposing to delete NYSE Rule 409 in its entirety (except for NYSE Rule 409(f) which will be reviewed as part of a later phase of the rulebook consolidation process).⁶ The following describes certain provisions that are found in NYSE Rule 409 and its related interpretations that would not be adopted in proposed FINRA Rule 2231:

⁶ NYSE Rule 409(f) states “[c]onfirmations of all transactions (including those made “over-the-counter” and on other exchanges) in securities admitted to dealings on the Exchange, sent by members or member organizations to their customers, shall clearly set forth with a suitable legend the settlement date of each transaction. This requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from whom the orders were received. (See SEC Rule 10b-10).”

Duplicate Account Statements

NYSE Rule 409(b) contains provisions prohibiting, without NYSE's consent, the delivery of statements, confirmations or other communications to non-member customers (1) in care of a person holding power of attorney over the customer's account unless the customer has provided written instructions to send such confirmations, statements or communications to such person, or duplicate copies are sent to the customer at some other address designated in writing; or (2) at the address of any member or in care of any partner or stockholder who is actively engaged in the member's business or employee of the member.

NYSE Rule 409(g) also provides that members carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically provided in writing that they do not want such statements sent to them.

NASD Rule 2340 does not contain either provision. As noted above, proposed supplementary material .01 to FINRA Rule 2231 is based in part on NYSE Rule 409(b), but eliminates the reference to non-member customers and requires that a member have written instructions from a customer to send communications relating to the customer's account to any third parties designated by the customer. FINRA is proposing to eliminate NYSE Rule 409(g) because it believes that the provision generally advising members to send duplicate account statements to guarantors, absent contrary instructions from the guarantor, need not be incorporated into proposed FINRA Rule 2231 and is better addressed by the general requirement described above to obtain written instructions from the customer to send customer statements to any third parties.

Legends on Account Statements

NYSE Rule 409(e)(1) requires the inclusion of a legend on all account statements that notifies a customer that the firm's financial statements are available for inspection at its offices or a copy can be mailed upon request. FINRA is proposing to eliminate this requirement in light of existing requirements under SEC Rule 17a-5(c), which generally requires broker-dealers that carry customer accounts to provide statements of the broker-dealer's financial condition to their customers, and NASD Rule 2270 (Disclosure of Financial Condition to Customers), which requires a member to make information relative to a member's financial condition available to inspection by customers, upon request. FINRA will consider NASD Rule 2270 as part of a later phase of the rulebook consolidation process.

NYSE Supplementary Material and Interpretations to be Deleted

FINRA is proposing to eliminate NYSE Rule Interpretation 409(b)/01 (Standards for Holding Mail For Foreign Customers), which provides guidelines for holding confirmations, statements and other communications for foreign customers. FINRA is addressing members' obligations with respect to customer mail as part of the consolidated FINRA rules governing supervision and the related proposal to adopt FINRA Rule 3150 (Holding of Customer Mail).⁷

⁷ See Regulatory Notice 08-24 (May 2008). Further, FINRA is not proposing to eliminate the following NYSE Rule Interpretations as part of this rule filing: 409(a)/01 (Applicability), which provides that the member firm carrying the account is responsible for compliance with the rule unless responsibility has been allocated to a non-member broker-dealer carrying organization pursuant to an approved carrying agreement; and 409(a)/03 (Use of Third Party Agents), which regulates the use of third party agents to prepare and/or transmit statements. These interpretations will be reviewed as part of a later phase of the rulebook consolidation process.

Technical Changes

In addition, the proposal reflects certain technical, non-substantive amendments to NASD Rule 2340 to change all references to “NASD” to “FINRA,” and to change all references to “SEC” Rules to “SEA” Rules.

As noted above, FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide customers with critical information regarding their accounts and will allow them to review their statements in a timely manner, while also clarifying and streamlining the customer account rules for adoption as FINRA Rules in the Consolidated FINRA Rulebook.

B. Self-Regulatory Organization’s Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

⁸ 15 U.S.C. 78q-3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2009-028 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Florence E. Harmon, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2009-028. This file number should be included on the subject line if e-mail is used. To help the Commission process

and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2009-028 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Florence E. Harmon
Deputy Secretary

⁹ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Exhibit 5 shows the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

**Text of Proposed New FINRA Rule
(Marked to Show Changes from NASD Rule 2340; NASD Rule 2340 to be Deleted in
its Entirety from the Transitional Rulebook)**

* * * * *

2000. DUTIES AND CONFLICTS

* * * * *

2200. COMMUNICATIONS AND DISCLOSURES

* * * * *

2230. Customer Account Statements and Confirmations

[2340]2231. Customer Account Statements

(a) General

Except as otherwise provided by paragraph (b), each general securities member shall[, with a frequency of not less than once every calendar quarter,] send a statement of account ("account statement") containing a description of any securities positions, money balances[,] or account activity, with a frequency of not less than once every calendar month, to each customer whose account had [a security position, money balance, or] account activity during the period since the last such statement was sent to the customer, and with a frequency of not less than once every calendar quarter to each customer whose account had a security position or money balance during the period since the last such statement was sent to the customer. In addition, each general securities member shall include in the account statement a statement that advises the customer to report promptly

any inaccuracy or discrepancy in that person's account to his or her brokerage firm. (In cases where the customer's account is serviced by both an introducing and clearing firm, each general securities member must include in the advisory a reference that such reports be made to both firms.) Such statement also shall advise the customer that any oral communications should be re-confirmed in writing to further protect the customer's rights, including rights under the Securities Investor Protection Act (SIPA).

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

[Quarterly a] Account statements need not be sent to a customer pursuant to paragraph (a) of this Rule if:

- (1) the customer's account is carried solely for the purpose of execution on a DVP/RVP basis;
- (2) all transactions effected for the account are done on a DVP/RVP basis in conformity with NASD Rule 11860;
- (3) the account does not show security or money positions at the end of the quarter (provided, however that positions of a temporary nature, such as those arising from fails to receive or deliver, errors, questioned trades, dividend or bond interest entries and other similar transactions, shall not be deemed security or money positions for the purpose of this paragraph (b));
- (4) the customer consents to the suspension of such statements in writing. The member must maintain such consents in a manner consistent with NASD Rule 3110 and SE[C]A Rule 17a-4;
- (5) the member undertakes to provide any particular statement or statements to the customer promptly upon request; and

(6) the member undertakes to promptly reinstate the delivery of such statements to the customer upon request.

Nothing in this Rule shall be seen to qualify or condition the obligations of a member under SE[C]A Rule 15c3-2 concerning quarterly notices of free credit balances on statements.

(c) DPP/REIT Securities

(1)(A) Voluntary Estimated Value

A general securities member may provide a per share estimated value for a direct participation program ("DPP") or real estate investment trust ("REIT") security on an account statement, provided the member meets the conditions of paragraphs [(b)](c)(2) and (3) below.

(B) Mandatory Estimated Value

If the annual report of a DPP or REIT includes a per share estimated value for a DPP or REIT security that is held in the customer's account or included on the customer's account statement, a general securities member must include an estimated value from the annual report, an independent valuation service, or any other source, in the first account statement issued by the member thereafter, provided that the member meets the conditions of paragraphs [(b)](c)(2) and (3) below.

(2) A member may only provide a per share estimated value for a DPP or REIT security on an account statement if the estimated value has been developed from data that is as of a date no more than 18 months prior to the date that the statement is issued.

(3) If an account statement provides an estimated value for a DPP or REIT security, it must include:

(A) a brief description of the estimated value, its source, and the method by which it was developed; and

(B) disclosure that DPP or REIT securities are generally illiquid, and that the estimated value may not be realized when the investor seeks to liquidate the security.

(4) Notwithstanding the requirement in paragraph [(b)](c)(1)(B), a member must refrain from including a per share estimated value for a DPP or REIT security on an account statement if the member can demonstrate the value was inaccurate as of the date of the valuation or is no longer accurate as a result of a material change in the operations or assets of the program or trust.

(5) If an account statement does not provide an estimated value for a DPP or REIT security, it must include disclosure that:

(A) DPP or REIT securities are generally illiquid;

(B) the value of the security will be different than its purchase price; and

(C) if applicable, that accurate valuation information is not available.

(d) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) "account activity" includes, but is not limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity,

securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the member.

(2) a "general securities member" refers to any member that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SE[C]A Rule 15c3-1(a). Notwithstanding the foregoing definition, a member that does not carry customer accounts and does not hold customer funds or securities is exempt from the provisions of this [section] Rule.

(3) "direct participation program" or "direct participation program security" refers to the publicly issued equity securities of a direct participation program as defined in NASD Rule 2810 (including limited liability companies), but does not include securities on deposit in a registered securities depository and settled regular way, securities listed on a national securities exchange, or any program registered as a commodity pool with the Commodities Futures Trading Commission.

(4) "real estate investment trust" or "real estate investment trust security" refers to the publicly issued equity securities of a real estate investment trust as defined in Section 856 of the Internal Revenue Code, but does not include securities on deposit in a registered securities depository and settled regular way or securities listed on a national securities exchange.

(5) "annual report" means the most recent annual report of the DPP or REIT distributed to investors pursuant Section 13(a) of the Exchange Act.

(6) a "DVP/RVP account" is an arrangement whereby payment for securities purchased is made to the selling customer's agent and/or delivery of

securities sold is made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.

(e) Exemptions

Pursuant to the Rule 9600 Series, [NASD] FINRA may exempt any member from the provisions of this Rule for good cause shown.

••• Supplementary Material: -----

.01 Transmission of Customer Account Statements to Other Persons or Entities. A

member may not address and/or send account statements, confirmations or other communications relating to a customer's account to other persons or entities, unless the customer has provided written instructions to the member to send such confirmations, statements or communications to such person or entity.

.02 Use of Electronic Media to Satisfy Delivery Obligations. Members may satisfy

their delivery obligations under this Rule by using electronic media, subject to compliance with standards established by the SEC on the use of electronic media for delivery purposes.

.03 Information to be Disclosed on Statement. Customer account statements must

clearly and prominently disclose on the front of the statement:

(a) the identity of the introducing firm and clearing firm (if different) and their respective contact information for customer service. The identity of the clearing firm and its contact information for customer service may appear on the back of the statement provided such information is in "bold" or "highlighted" letters;

(b) that the clearing firm is a member of SIPC; and

(c) the opening and closing balances for the account.

.04 Assets Externally Held and Included on Statements Solely as a Service to

Customers. Where a customer account statement includes assets that the member does not hold on behalf of the customer and which are not included on the member's books and records, such assets must be clearly and distinguishably separated on the statement. The statement must: clearly indicate that such externally held assets are included on the statement solely as a courtesy to the customer, disclose that information (including valuation) for such externally held assets included on the statement is derived from the customer or other external source for which the member is not responsible, and identify that such externally held assets may not be covered by SIPC.

.05 Use of Logos, Trademarks, etc. Where the logo, trademark or other similar identification of a person (other than the introducing firm or clearing firm) appears on a customer account statement, the identity of such person(s) and the relationship to the introducing, clearing or other firm included on the statement must be provided and may not be used in a manner which is misleading or causes customer confusion.

.06 Use of Summary Statements. Where a member holds a customer's account and another person(s) who separately offers financial related products/services to the same customer (e.g. mutual fund sales/custodial services, banking products/services, insurance products/services, securities products/services, etc.) seek to jointly formulate and/or distribute their respective customer account statements together with a statement summarizing or combining assets held in different accounts ("summary statement"), the member is required to:

- (a) Provide the following in the summary statement:

(1) indicate that the “summary statement” is provided for informational purposes and includes assets held at different entities;

(2) identify each entity from which information is provided or assets being held are included, their relationship with each other (e.g., parent, subsidiary or affiliated organization), and their respective functions (introducing/carrying brokerage firms, fund distributor, banking/insurance product providers, etc.);

(3) clearly distinguish between assets held or categories of assets held by each entity included in the summary;

(4) identify the customer’s account number at each entity and provide contact information for customer service at each entity; provided however that if the customer’s account number and the contact information for customer service at each entity are included on their respective account statements, such information need not be included on the summary statement; and

(5) identify each entity that is a member of SIPC.

(b) To the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation shall be recognizable as having been arithmetically derived from the separately stated totals or their components.

(c) That the beginning and end of each separate statement (e.g., summary, brokerage, mutual fund, banking, insurance, etc.) be clearly distinguishable by color, pagination or other distinct form of demarcation.

(d) That there be a written agreement between the clearing firm and each other person jointly formulating and/or distributing its respective customer account statements

attesting that each such person has developed procedures/controls for reviewing and testing the accuracy of the information included on its respective statements.

(e) That the summary statement shall comply with Rule 2231.

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**Text of Incorporated NYSE Rule and NYSE Rule Interpretation
to Remain in the Transitional Rulebook**

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Incorporated NYSE Rule

* * * * *

Rule 409. Statements of Accounts to Customers

(a) Reserved. [Except with the permission of the Exchange, or as otherwise provided by this paragraph, member organizations shall send to their customers statements of account showing security and money positions and entries at least quarterly to all accounts having an entry, money or security position during the preceding quarter. Quarterly statements need not be sent to a customer pursuant to Rule 409(a) if:]

[1] the customer's account is carried solely for the purpose of execution on a Delivery versus Payment/Receive versus Payment basis (DVP/RVP);]

[2] all transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 387;]

[3] the account does not show security or money positions at the end of the quarter;]

[4] the customer consents to the suspension of such statements in writing. Such

consents must be maintained by the member organization in a manner consistent with Exchange Rule 440 and Rule 17a-4 under the Securities Exchange Act of 1934;]

[5) the member organization undertakes to provide any particular statement or statements to the customer promptly upon request; and]

[6) the member organization undertakes to promptly reinstate the delivery of such Statements to the customer upon request.]

[Nothing in this rule shall be seen to qualify or condition the obligations of a member organization under SEC Rule 15c3-2 concerning quarterly notices of free credit balances on statements.]

[For purposes of this rule, a DVP/RVP account is an arrangement whereby payment for securities purchased is to be made to the selling customer's agent and/or delivery of securities sold is to be made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash.]

(b) Reserved. [No member organization shall address confirmations, statements or other communications to a nonmember customer]

[(1) in care of a person holding power of attorney over the customer's account unless either (A) the customer has instructed the member organization in writing to send such confirmations, statements or other communications in care of such person, or (B) duplicate copies are sent to the customer at some other address designated in writing by him; or]

[(2) at the address of any member, member organization, or in care of a partner, stockholder who is actively engaged in the member corporation's business or

employee of any member organization. The Exchange may upon written request therefore waive these requirements.]

(c) Reserved. [Rescinded October 6, 1978. (See SEC Rule 10b-10).]

(d) Reserved. [Rescinded July 1, 1970. (See SEC Rule 10b-16).]

(e) Reserved. [Each statement of account sent to a customer pursuant to this rule shall bear a legend as follows:]

[(1) A legend that reads: "A financial statement of this organization is available for your personal inspection at its offices, or a copy of it will be mailed upon your written request."]

[(2) A legend that advises customers to report promptly any inaccuracy or discrepancy in that person's account to his or her brokerage firm. If a customer's account is subject to a clearing agreement pursuant to Rule 382, the legend must advise that such notification be sent to both the introducing firm and the clearing firm. The legend must also advise the customer that any oral communications with either the introducing firm or the clearing firm should be re-confirmed in writing in order to further protect the customer's rights, including its rights under the Securities Investor Protection Act (SIPA).]

(f) Confirmation of all transactions (including those made "over-the-counter" and on other exchanges) in securities admitted to dealings on the Exchange, sent by members or member organizations to their customers, shall clearly set forth with a suitable legend the settlement date of each transaction. This requirement also applies to confirmations or reports from an organization to a correspondent, but does not apply to reports made by floor brokers to the member organization from whom the orders were received.

(See SEC Rule 10b-10)

(g) Reserved. [Member organizations carrying margin accounts for customers should send duplicate copies of monthly statements of guaranteed accounts to the respective guarantors unless such guarantors have specifically declared in writing that they do not wish such statements sent to them.]

••• Supplementary Material: -----

.10 Reserved. [Exceptions to Rule 409(b) [¶2409]—The provisions of Rule 409(b), above, are not considered applicable to the following:]

[(1) General or special partners or holders of voting or non-voting stock other than any freely transferable security of member organizations.]

[(2) Employees of member organizations.]

[(3) Persons who maintain desk space at the office of a member or member organization and who thereby establish such office as their place of business.]

[(4) Corporations of which partners, stockholders or employees are officers or directors, and corporation accounts over which such persons have powers of attorney, provided, in each such case, the partner, stockholder or employee is duly authorized by the corporation to receive communications covering the account.]

[(5) Trust accounts, when a partner, stockholder or employee of a member organization is a trustee and has been duly authorized by all other trustees to receive communications covering the account.]

[(6) Estate accounts, when a partner, stockholder or employee of a member organization is an executor or administrator of the estate and has been duly

authorized by all other executors or administrators to receive communications covering the account.]

[(7) Upon the written instructions of a customer and with the written approval of a member or allied member, a member organization may hold mail for a customer who will not be at his usual address for the period of his absence, but (a) not to exceed two months if the organization is advised that such customer will be on vacation or traveling or (b) not be exceed three months if the customer is going abroad.]

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NYSE Rule Interpretation

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RULE 409. STATEMENTS OF ACCOUNTS TO CUSTOMERS

(a)

/01 Applicability

Compliance with Rule 409(a) and the accuracy of statements of accounts thereunder is the responsibility of the member organization carrying the customer account for which the statement is required, unless such responsibility has been allocated to a non-member registered broker-dealer carrying organization pursuant to an Exchange approved agreement under Rule 382.

[/02 Information to be Disclosed]

[Statements of accounts to customers must clearly and prominently disclose on the front of the statement:]

[1. the identity of the introducing and carrying organization and their respective phone numbers for service¹];]

[2. that the carrying organization is a member of SIPC;]

[3. the opening and closing balances for the account.]

/03 Use of Third Party Agents

Prior to utilizing a “third party agent” to prepare and/or transmit statements of accounts to customers, a member organization shall represent/undertake in writing to the Exchange that:

1. The third party is acting as agent for the member organization;
2. the member organization retains responsibility for compliance with Rule 409(a);
3. the member organization has developed procedures/controls for reviewing and testing the accuracy of statements of accounts prepared and/or transmitted by the third party agent;
4. the member organization will retain copies of statements of accounts prepared and/or transmitted by the third party agent in accordance with applicable books and records requirements.

Allocation of responsibilities for preparation and/or transmissions of statements to any person other than a carrying organization pursuant to an

[¹ The SEC has stated that under the Securities Exchange Act Rule 15c3-1(a)(2)(iv), certain carrying firms must issue customer account statements, and the account statements must contain the name and telephone number of a person at the carrying firm who the customer can contact with inquiries regarding the account (See SEA Release No. 34-31511, dated November 24, 1992). The phone number of the carrying organization may appear on the back of the statement. If it does, it must be in “bold” or “highlighted” letters.]

agreement approved by the Exchange in accordance with Rule 382 (Carrying Agreements) shall be deemed to be utilization of a “third party agent.”

An introducing organization that is a provider of services included in a member organization’s statements of accounts may not function as a “third party agent” and may not itself prepare and/or transmit such statements.

[/04 Assets Externally Held and Included on Statements Solely as a Service to Customers]

[Where a statement of account includes assets as to which the member organization does not have fiduciary responsibility, does not have access to and which are not included on the member organization’s books and records, such assets must be clearly and distinguishably separated on the statement. It must be clearly indicated on the statement that such externally held assets: are included on the statement solely as a courtesy to the customer, information (including valuation) is derived from the customer or other external source for which the member organization is not responsible, and are not covered by SIPC.]

[/05 Use of Logos, Trademarks, etc.]

[Where the logo, trademark or other similar identification of a person (other than the carrying or introducing organization) appears on a customer account statement, the identity of such person(s) and the relationship to the introducing, carrying or other organization included on the statement must be provided and may not be utilized in a manner which is misleading or

causes customer confusion.]

[/06 Use of Summary Statements]

[Where a member organization carrying a customer's account and another person(s) who separately offers financial related products/services to the same customer (e.g. mutual fund sales/custodial services, banking products/services, insurance products/services, securities products/services, etc.) seek to jointly formulate and/or distribute their respective customer account statements together with a statement summarizing or combining assets held in different accounts ("summary statement"), the Exchange will require:]

[1. That the summary statement:]

[a. indicate that the "summary statement" is provided for informational purposes and includes assets held at different entities;]

[b. identify each entity from which information is provided or assets being held are included, their relationship with each other (e.g., parent, subsidiary or affiliated organization), and their respective functions (introducing/carrying brokerage firms, fund distributor, banking/insurance product providers, etc.);]

[c. clearly distinguish between assets held by each entity by use of columns, coloring or other distinct form of demarcation;]

[d. identify the customer's account number at each entity ²;]

[e. provide a telephone number for customer service at each entity ²]

[² If the client's account number and the customer service telephone number at each entity are included on their respective account statements, such information need not be included on the summary statement.]

[f. disclose which entity carries each of the different assets or categories of assets included on the summary;]

[g. identify each entity that is a member of SIPC.³]

[2. To the extent that the summary statement aggregates the values of the various accounts summarized or portions thereof, such aggregation shall be recognizable as having been arithmetically derived from the separately stated totals or their components.]

[3. That the beginning and end of each separate statement (e.g., summary, brokerage, mutual fund, banking, insurance, etc.) be clearly distinguishable by color, pagination or other distinct form of demarcation.]

[4. That there be a written agreement between the carrying organization and each other person jointly formulating and/or distributing its respective customer account statements attesting that each such person has developed procedures/controls for reviewing and testing the accuracy of the information included on its respective statements.]

[5. That the summary statement shall comply with Rule 409 and all interpretations thereof.]

[(b)]

[/01 Standards For Holding Mail For Foreign Customers – Rule 409(b)(2)]

[Waivers]

[The Exchange will consider written requests from member organizations

³ See, e.g., SIPC Bylaws (Article II) for possible ways to identify SIPC membership by using SIPC statements or symbols.]

for the implementation of policies and procedures for the holding of confirmations, statements and broker-dealer financial statements (“communications”) for foreign customers. Requests for waivers under Rule 409(b) must include the following representations:]

[1. that the member organization will obtain not less frequently than annually and will retain (in accordance with SEA Rule 17a-4(b)) a written statement from the customer who has requested such waiver, that it is not feasible for such customer to make alternative arrangements for the regular receipt of these communications and that by reason of inefficient local mail services or unstable political climates, the customer requests that such material temporarily be held on behalf of such customer at the premises of the member organization; and]

[2. that the member organization has written procedures in place for the holding of mail that include, at a minimum, that:]

[a. frequent supervisory review be conducted of any account for which waivers for transmissions of communications have been obtained, with special attention given to discretionary accounts.]

[b. an annual review of the organization’s system shall be conducted by the compliance/internal audit department or by the person(s) assigned or delegated such responsibility pursuant to Rule 342 (independent of the branch office) – such review should encompass a reasonable sampling of account documentation and account activity,]

[c. a log of such communications will be maintained at the branch or

(principal) sales office servicing the account, which will note the date of direct transmittal of such communications to the customer and where sent, and]

[d. the member organization will endeavor to promptly communicate (orally) the substance of the communications directly to the customer and that a written record is kept of all meetings and conversations, etc., with the customer. Communications will be furnished to the customer at the earliest possible meeting. Each foreign customer for whom mail is held is required to state, in writing, that it is not feasible to make alternative arrangements for the regular receipt of the mail. In this regard, member organizations shall represent to the Exchange that it will take steps to determine that the foreign customer has no other U.S. location reasonably available for receipt of the communications. In making that determination, member organizations may rely on the customer's statement unless the member or member organization is on notice of facts to the contrary. Foreign customer accounts for which mail is held require frequent supervisory review by the member organization, i.e., a higher level of supervision and monitoring than is accorded other accounts. Additionally, the annual review conducted by the compliance/internal audit department (or other person(s) delegated such responsibility) must include a determination as to whether all the foreign customer communications are retained pursuant to written customer instructions.]

[The foreign customer communications held in accordance with a

waiver under 409(b)(2) shall be made available to the customer for review at all times and at no special cost.]

* * * * *